

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
APRIL 21, 2011

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
D. DePiero
J. Bacci
S. Kelly
W. O'Malley
G. Starr

Ms. Kelly arrived after Roll Call.

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mayor Bacci moved and Mr. Sulik seconded that the minutes of the April 7, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that one member from the public registered to speak at Public Session but then withdrew his name.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item and he advised that at the end of the meeting he will request that the Board adjourn into Executive Session to discuss the mediation in the KMM&K MCT-3 litigation.

The Finance Committee meeting will be held immediately following the Board meeting to discuss the proposed rate increases.

Executive Director Ciaccia moved to the next report item and advised that the District held one public meeting this week in Hudson to discuss the rate increases. The District previously held public forums in Maple Heights and Beachwood. Only nine residents attended Hudson's meeting. It was a relatively short meeting that included a presentation made by Director of Finance, Jennifer Demmerle, and Deputy Executive Director, F. Michael Bucci. Ms. Demmerle and Mr. Bucci fielded a few questions from the public at that meeting.

The District will hold public meetings at Gunning Park on the Westside of Cleveland on April 26th, Middleburg Heights on May 4th and the Easterly Wastewater Treatment Plan (hereinafter "WWTP") on May 14th.

Executive Director Ciaccia stated that the public forums have been good, although he expected there would have been more attendees.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP") litigation. County Executive, Edward Fitzgerald, held a meeting with all parties involved in the SMP litigation for the purpose of seeing whether the parties were amenable to mediation. District representatives attended that meeting including Mayor DePiero. Approximately 20 suburban mayors, attorneys and intervening parties were also present.

Mr. Fitzgerald began the meeting by gathering everyone in a large conference room. The meeting was open to the public, and a few members from the media were present. Mr. Fitzgerald made some brief statements and responded to questions from the media; however, he did not allow any of the parties to speak during that time.

Subsequently, Mr. Fitzgerald divided the parties into three groups: the communities, the District, and intervening parties. He met with each group individually in his office.

Executive Director Ciaccia advised that Mayor DePiero did not join the communities. Rather, he attended the meeting in his Board trustee capacity.

All parties agreed that they wanted to pursue mediation. The District provided names of mediators, and the other side will most likely do the same. At this point, the District will await Mr. Fitzgerald's response as it relates to next steps, which is expected to be a three week process to be completed near the end of May.

Executive Director Ciaccia advised that the District is awaiting Judge Pokorny's decision on the District's Motion for [Partial Summary Judgment] in the SMP matter. The trial on the elements of Title V will begin in July. Executive Director Ciaccia indicated that he

was unsure how successful this process will be but that it is worth trying. He then turned the discussion over to Mayor DePiero.

Mayor DePiero stated that Mr. Fitzgerald's effort to pull together the different groups was a good thing. There are many communities trying to look for way out of the lawsuit, and there are some communities wanting to go to the finish line. Mayor DePiero indicated that he informed Mr. Fitzgerald that previous attempts were made to conduct outreach with the communities but that their legal counsel indicated that they should not speak with the mayors. Mayor DePiero found this meeting to be a good effort and he was hopeful that the suggested mediators will be taken into consideration and that a resolution will be reached.

Executive Director Ciaccia moved to the last report item regarding the District's state advocacy services. Since the District entered into contract with Tucker Ellis & West LLP (hereinafter "Tucker Ellis") for state advocacy services, Matthew Cox, our main contact, has left the firm. The District would like to cancel its contract with Tucker Ellis and re-review the proposals submitted for state advocacy services. The District will then bring its recommendation to the Board for consideration.

Mr. Brown indicated that he wanted the record to reflect that Ms. Kelly joined the Board meeting.

V. Action Items

Authorization to Enter Into Agreement

Resolution No. 94-11

Agreement for Sponsorship of the 2011
Water Resource Restoration Sponsor
Program.

MOTION – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution No. 94-11. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

Resolution No. 95-11

Two (2) year requirement contract with
Professional Electric Products Company
for Arc Flash equipment. Cost not to
exceed \$63,507.00.

Resolution No. 96-11

Two (2) year contract with Smith & Nejedlik, Inc. and Sherman-Andrzejczyk Group, Inc. for appraisal and appraisal review services. Cost not to exceed \$75,000.00 Each.

Resolution No. 97-11

Two (2) year contract with O.R. Colan Associates, Inc. and TranSystems Real Estate Consulting, Inc. for general right-of-way services. Cost not-to-exceed \$150,000.00 each.

MOTION – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 95-11 through 97-11. Without objection, the motion carried unanimously.

Authorization to Reject Bids

Resolution No. 98-11

Reject all bids for construction of the Environmental and Maintenance Services Center (EMSC) HVAC Improvements.

MOTION – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 98-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 99-11

Agreement with the Ohio Turnpike Commission for the disposal of hauled wastewater at the Southerly Wastewater Treatment Center.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 99-11. Without objection, the motion carried unanimously.

VI. Information Items

There were no Information Items.

VII. Open Session

Mayor Starr wanted to address a matter that was brought to his attention concerning the District’s contract bidding requirements; more specifically, that reinsurance coverage and

personal sureties are not acceptable. Mayor Starr read aloud from Article X "Bid Guarantee" Section (B):

If a Bond is submitted by a Bid Guarantee, it shall be secured by a guarantee of surety company authorized to do business in the state of Ohio and listed in the latest issue of U.S. Treasury Circular 570. The amount of the Bond shall be within the maximum amount specified for such company in the tables of said Circular 570.

Mayor Starr commented that the problematic clause reads as follows: "Reinsurance coverage and personal sureties are not acceptable."

Mayor Starr stated that "the interpretation and claims being made is that the impact of the reinsurance not acceptable is that the surety company would then have to assume without reinsurance the full risk of say the millions of dollars for the project and to the bidders."

Mayor Starr advised that people within the industry indicated, quote, that "no one in our office has ever seen such a restriction in any public or private sector bid bond specs in any of the states or jurisdictions in which we have done business."

Mayor Starr stated that the unfortunate impact for the District is that this language precludes many local and regional contractors who would otherwise be fully acceptable bidders from presenting a bid. This ultimately drives up the costs for taxpayers for work being completed.

Mayor Starr commented that "it would require a very large or international insurance company to write a bid bond without any reinsurance." It can be done, but is exceedingly rare under circumstances in greater Cleveland.

Mayor Starr requested that the administration look into this matter and follow up with the Board with respect to the following questions: Is it legal and proper to include this clause in the District's contracts? Who recommended the language? How long has this language been in District contracts? Can this language be amended or removed if it does indeed restrict the present bidders or future contracts?

Mr. Brown requested that staff address Mayor Starr's concerns by the May 5th Board meeting.

VIII. Public Session (any subject matter)

No members from the public registered to speak at Public Session.

IX. Executive Session

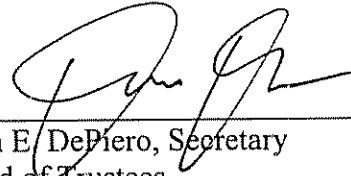
Mr. Brown stated that there was a matter for discussion in Executive Session.

MOTION – Mayor Bacci moved and Mayor Starr seconded to enter into Executive Session to discuss litigation matters relative to the MCT-3 contract and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

The Board met in Executive Session from 12:45 p.m. to 1:40 p.m.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded he would entertain a motion to adjourn. Mr. Sulik moved and Mayor Bacci seconded the motion to adjourn at 1:40 p.m. Without objection, the motion carried unanimously.



Dean E. DePiero, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District