

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JUNE 16, 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

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 June 2, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia advised that a hearing will be held on June 30 in Federal Court with Judge Nugent to go over the motion to enter the consent decree regarding the Combined Sewer Overflow Long-Term Control Plan (hereinafter "CSO LTCP"). The federal government will address a number of issues including comments from the public that were entered as a part of this case.

Moving discussion towards the Stormwater Management Program (hereinafter "SMP") litigation, he stated he would provide an update on the case and further details during Executive Session to discuss issues that have arisen during mediation. He turned the meeting over to Mark Wallach, of Calfee, Halter & Griswold LLP, who is representing the District on the case.

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Mr. Wallach advised that the case was filed on January 7, 2010, asking the Court to find that the program set forth in Title V is consistent with Ohio law and the District's enabling documents and statutes. The case also asks in the alternative for a modification of the orders that Court originally issued creating the District, if necessary.

Mr. Wallach explained that various counter claims and motions were made as well as subsequent motions to dismiss filed by some of the defendant members of the District. All of the motions to dismiss were overruled. He advised that several parties intervened in the case: a group of property owners, the Cleveland Catholic Diocese and the Cleveland Municipal School Board. The National Association for the Advancement of Colored People (hereinafter "NAACP") intervened as well, although it had not participated in the litigation.

Cross motions for summary judgment were filed. Mr. Wallach explained that the District filed for partial summary judgment, asking the Court to find that as a matter of law all of the proposed programs in Title V -- with the exception of the fee provisions, which were more complex legally -- were authorized by Ohio statutes and enabling orders. The Court granted the motion for partial summary judgment.

Mr. Wallach advised that a number of the defendants and interveners filed motions for summary judgment, asking the Court to find that the program was not authorized. The Court overruled those motions with the exception of one filed by the City of Richmond Heights regarding three minor provisions in Title V. The Court found that the provisions are beyond the District's authority and ordered them be stricken.

The issue of the fee and whether it is consistent with Ohio law will be tried in court. The trial is currently scheduled for September 6, 2011, and the Court expects it to take between two to three weeks, depending on the number of witnesses. He advised that the date is firm and the Court has indicated there will be no further extensions.

Mr. Wallach stated that while mediation efforts continue, preparations for trial are ongoing and he expects to go to trial on September 6. A number of fact witnesses are available; there are four expert witnesses who will support the District's position on fees. He anticipates a decision on the case will be made before the end of the year.

Mayor DePiero inquired as to the status of Cuyahoga County Executive Ed FitzGerald's request for the parties to mediate. Mr. Wallach stated that mediation has been ongoing for over a month. Mr. FitzGerald designated Geoffrey Mearns, the Cleveland State University Provost, as the mediator. Four or five meetings have been held and the mediation process is proceeding slowly. Mr. Wallach stated that he would provide more details during Executive Session, but he still anticipates going to trial in September.

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Executive Director Ciaccia stated that issue came up during mediation that will be discussed during Executive Session. A mediation session is scheduled for tomorrow at 1:30 p.m. and he wanted to apprise the Board of the discussion points before that meeting.

Executive Director Ciaccia advised that the Ohio State Auditor conducted a performance audit on the District and it is near completion. He turned the meeting over to Deputy Executive Director F. Michael Bucci to provide an update on that item.

Deputy Executive Director Bucci advised that the State Auditor is finalizing a draft report of the performance audit. A special Board session will be held following the next regular meeting on July 7, during which they will present the final audit report. He stated that the report will be included in the Board packet that will be sent out on July 1 along with management's comments.

Deputy Executive Director Bucci explained that the session with the Auditor of State is an exception to the public meeting law and a reminder notice will be sent to Board members prior to the next meeting.

V. Action Items

Authorization to Advertise

Resolution No. 133-11	One-Year Requirement Contract for Gravity Belt Thickener Polymer for Use at the Southerly Wastewater Treatment Plant. Anticipated Expenditure: \$345,000.00.
Resolution No. 134-11	Two-Year Requirement Contract for Janitorial Services for the George J. McMonagle Building and Environmental and Maintenance Services Center. Anticipated Expenditure: \$383,000.00.
Resolution No. 135-11	Two-Year Requirement Contract for Sodium Hypochlorite Solution for Use at All Wastewater Treatment Plants. Anticipated Expenditure: \$595,800.00.
Resolution No. 136-11	Easterly Tunnel Dewatering Pump Station. Engineer's Opinion of Probable Construction Cost: \$86,200,000.00.

MOTION – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution Nos. 133-136-11. Without objection, the motion carried.

Mr. Brown stated that as the Easterly Tunnel Dewatering Station moves through the

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design phase he contemplates the interceptor and pump station. The elevation of Euclid Creek affects the system and local system by outfalls that directly discharge into Euclid Creek. He questioned if there is collaboration in terms of projects done to provide a high level of protection from basement flooding resulting from water coming back into the system from Euclid Creek.

Kellie Rotunno, Director of Engineering & Construction, stated that she was not very familiar with the planning of the Euclid Creek project, but Frank Greenland, Director of Watershed Programs, might be able to provide an answer.

Mr. Greenland explained that Lake Avenue was a good example of a sewer at this elevation that may result in basement flooding due to backflow. He advised that staff will consider the potential for higher levels of service beyond the five year.

Mr. Greenland explained that years ago staff examined which streams were backflowing into the combined sewer system. Subsequently, backflow prevention was installed in the form of tide flex valves in the Fagan's area of the Flats and other locations. The stream can rise to that elevation during extreme events. Staff will consider whether a tide flex-type of arrangement might be applicable there.

Authorization to Enter Into Contract

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| Resolution No. 137-11 | Authorize Wichert Insurance Services, Inc. to Procure Necessary Insurance Coverage on Behalf of the District. Insurance Procurement: Not to Exceed \$732,908.00. |
| Resolution No. 138-11 | Contract with AECOM for Professional Design Services for the Dugway West Interceptor Relief Sewer. Contract Fee: \$9,622,934.00. |
| Resolution No. 139-11 | Contract with Marous Brothers Construction, Inc. for the Easterly Wastewater Treatment Plant Screenings Conveyance/Storage Project (EFPI-1). Contract Amount \$5,473,040.00. |

MOTION – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 137-139-11. Without objection, the motion carried.

Authorization to Negotiate and Enter Into Contract

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| Resolution No. 140-11 | Five-Year Contract with Cleveland Housing Network to Administer the District's Low Income Affordability Programs. Cost: Not-to-Exceed \$600,875.00. |
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MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 140-11. Without objection, the motion carried.

Authorization to Amend Resolution

Resolution No. 141-11 Amend Resolution No. 90-10 to Increase the Original Purchase Quantity of Sodium Hypochlorite Solution for Use at All Wastewater Treatment Plants. Cost: An Increase in the Amount of \$28,876.28 Bringing the Total Contract Price to \$463,055.48.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 141-11. Without objection, the motion carried.

Authorization to Enter Into Settlement Agreement

Resolution No. 142-11 Settlement Agreement with Anthony and Halle Nero. Cost: \$973.75.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 142-11. Without objection, the motion carried.

Authorization of Revisions

Resolution No. 132-11 Adopt Revisions to *Northeast Ohio Regional Sewer District Code of Ethics*.

Mayor DePiero thanked the Ad-Hoc Committee on Ethics for doing such work in this area. He requested the Board hold this resolution as one Board member was not in attendance. He stated that the Code of Ethics is a bold statement and a very important step in becoming more transparent. For those reasons he believed it was important that all Board members have the opportunity to vote on it.

Mr. Sulik, chair of the Committee, did not object.

Executive Director Ciaccia advised that during the last Board meeting Mayor Starr raised questions in regards to this resolution. The questions were provided to management and District counsel Craig White and responses were provided.

Mr. Brown stated that responses had been generated in regards to the questions raised during the last meeting and distributed to all Board members. He advised that the Board appreciated the dissemination of the questions and responses, which he felt were appropriate.

Mr. Sulik advised that he conferred with Mr. White, who informed him there were no

additional questions from Mayor Starr.

Mr. Brown stated that only the vote remains and the resolution will be held until the next Board meeting.

Authorization to Purchase

Resolution No. 143-11 Purchase from Herbst Electrical Company, Electrical Feed Cable Replacement at the Southerly Wastewater Treatment Plant. Anticipated Expenditure: \$32,198.00.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 143-11. The motion carried with one abstention by Mr. O'Malley.

Mr. Brown stated that as he looked through the agenda a number of the items are required to move towards compliance with the CSO LTCP. The ability to fund and approve the project is a result of actions the Board has taken in recent weeks.

Mr. Brown stated that it is important to note that the District has moved forward with its requirements to bring overdue relief to the environment and a number of customers, who have felt the impacts of the environment and the potential of basement flooding that has occurred for many years. He stated that these are very good projects, but are also large and costly; the ability to move them forward should not go unnoticed.

VI. Information Items

There were no information items.

VII. Open Session

Mr. Brown stated that the Board must elect officers for the coming year. He asked Mr. Sulik to chair a committee with the support of both Ms. Kelly and Mayor Bacci to formulate nominations for the next term. The Board would then be in the position to vote for officers during the July 7 meeting and to install the officers for the July 21 meeting. Doing so would keep the District in compliance with its rules and regulations.

VIII. Public Session (any subject matter)

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

IX. Executive Session

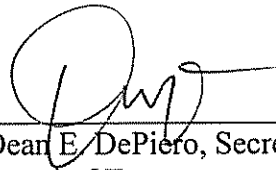
Mr. Brown stated that there were matters for discussion in Executive Session.

MOTION – Mayor Bacci moved and Ms. Kelly seconded to enter into Executive Session to consult with legal counsel and District administration regarding the status of labor negotiations with Local 2798 and mediation with the Stormwater Management Program litigation 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 (4) and attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

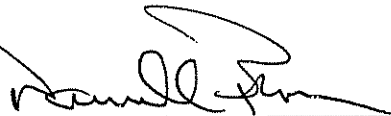
The Board met in Executive Session from 12:51 p.m. to 1:30 p.m.

X. Adjournment

MOTION – Mr. Brown stated that business having been concluded he would entertain a motion to adjourn. Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 1:30 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