

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
AUGUST 4, 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

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

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. O'Malley seconded that the minutes of the July 21, 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 stated that Robert Kassouf was recently sentenced to 57 months in jail in connection with the corruption case regarding the District and the Mill Creek tunnel project. Mr. Kassouf pled guilty to charges of bribing the District's former general counsel.

Mr. Kassouf agreed to pay restitution to the District in the amount of \$682,132. The funds are currently in the clerk's office of the U.S. Court and District staff expects to receive it in the next couple months. Executive Director Ciaccia stated that he was

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pleased that this phase of the investigation has concluded. While he does not know if it is the final phase, the matter "seems to be behind us."

Executive Director Ciaccia advised that the trial date regarding the Stormwater Management Program (hereinafter "SMP") is set for September 6. Judge Pokorny previously ruled that the District has the authority to carry out the program under Ohio Revised Code (hereinafter "ORC") Sec. 6119 and the court order under which the District was originally established.

The remaining issue is whether the cost of the SMP is a fee or tax. District staff maintains it is charging a fee authorized under ORC 6119 while some of the opposing communities believe it is an un-voted tax. The trial will focus on that particular issue. A pretrial will take place in August.

Recently District staff has engaged in mediation with the opposing communities spearheaded by Cuyahoga County Executive Ed FitzGerald. Another meeting was held last Monday. Executive Director Ciaccia advised that the mediation has come to an impasse and he does not know if it will go any further. Each side traded its last proposals and he does not think there will be further movement.

Executive Director Ciaccia stated that storms continue and there have been articles recently in the *Sun News*, *The Plain Dealer* and *Cleveland.com* regarding flooding in many communities that clearly showed the need for regional solutions and additional local efforts to address the problems.

Frank Greenland, Director of Watershed Programs, has been involved in such efforts and attended a community meeting in Parma. He advised that staff is willing to go to any community to communicate with its residents.

Executive Director Ciaccia explained that the SMP will help significantly once it may begin; however, he advised that it is not the only solution. A long-term solution also includes the communities' ability to deal with local issues.

The SMP will encompass a community cost-share component in which 7.5% of the fees collected from each community will be given back for local efforts to address flooding.

Staff thinks there is significant opportunity for additional District involvement but is currently focused on implementing this regional system and then working with each community with other needs.

Mayor DePiero noted that Mr. Greenland has worked with his community over the last ten days. In addition to attending the community meeting, Mr. Greenland participated in

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a meeting this morning with Mayor DePiero, members of his staff and the Cuyahoga County Sanitary Engineer and has been an integral part of Parma's short-term and long-term planning on the stormwater issue.

Mayor DePiero stated that one would "have to be living in a cave" to not realize the need for an agency to take on this effort and that the time is now. He hoped the lawsuit would be resolved in the District's favor quickly because the SMP will benefit everyone.

Mayor DePiero reiterated that Mr. Greenland has done great work with Parma and he appreciated Mr. Greenland's commitment. He also appreciated the District's intervention before the SMP has gone into effect; it shows a commitment to the communities.

Mayor Starr inquired if the District is moving forward with the planned capital investment programs regarding stormwater. Executive Director Ciaccia advised that it is not moving forward at this time but preliminary planning is ongoing. He explained that many things are continuing at the planning level, but the District may not begin fully moving forward until a dedicated funding source is identified.

Executive Director Ciaccia stated that a couple of communities have called him recently because "they have projects in the hopper." He explained that he wishes the matter had been resolved or handled through successful mediation, but it has not.

Executive Director Ciaccia advised that District staff continues planning and wants to be ready to "hit the ground" when the SMP may be implemented. A lot of maintenance needs to be done aside from capital work. He indicated that maintenance issues could have helped during the recent storms.

Mayor Starr inquired if there is a preliminary list of projects. Mr. Greenland advised that staff continues to plan towards implementation while developing Request for Proposal (hereinafter "RFP") scopes for external resources for maintenance. A preliminary list of "early-action projects" is in draft form. The list has not been presented to communities yet, but discussions have been held about potential projects. He explained that when the litigation has concluded such projects will be discussed with member communities with attention focused on the first couple of years.

Mr. Greenland explained that staff is developing scopes of work for master plans that will be vital in terms of developing short and long-term solutions on the regional network. Those studies will shed light on local problems and potential solutions.

Mayor Starr inquired if the SMP will have a minor or a significant impact on stormwater and flooding, when and if it is approved. Mr. Greenland stated that it will significantly impact certain areas. He indicated that during the most recent rain events many phone

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calls were fielded at the local level and many regional streams need to be cleaned. Having a mechanism and agency in place that can respond quickly to clean culverts and streams following significant rains is a huge benefit. Such a mechanism also helps prevent future problems.

Mayor Starr stated that was a point well taken; if money is spent cleaning a stream one week, it must be done again if a major storm event occurs. Mr. Greenland agreed.

Mr. Brown stated that it may be helpful as litigation moves forward to strategically gauge the amount of water falling in certain areas to determine which are the most impacted. Such information may help guide the District in planning projects to mitigate the problems.

Mr. Brown indicated he was amazed that some areas that have never experienced flooding problems are now having them, which is a sign to him that rainfall patterns are changing and there is nothing that can be done about that.

What the District can do, Mr. Brown stated, is respond to the challenge of rain events and raise awareness that stormwater does not respect political boundaries. Moving stormwater out of one community is sometimes to another's detriment. He thinks it is an understanding of that balance that favors a regional approach to stormwater management.

Mr. Greenland stated that staff does not want to continue with the status quo, which results in problems being moved elsewhere rather than solved, resulting in twice the investment. That is a significant benefit the SMP will provide. Mr. Brown agreed.

Executive Director Ciaccia advised that he will keep the Board informed as the trial date draws closer.

Executive Director Ciaccia moved discussion towards financial metrics. In 2010 cash from remittances were down 11% through the end of June. The reasons were associated with the conversion to the new Cleveland Water Department (hereinafter "CWD") billing system. This year, there was a 9% rate increase and cash remittances are up by 14%. The District is not only getting the money expected to get from the rate increase, but also starting to make up for money from last year.

Executive Director Ciaccia estimated the increase in remittances needs to be in the 21% range to even out. He explained that staff is making progress in that regard, which means accounts receivables are up.

A recent article in the *The Plain Dealer* reported on progress CWD has made regarding their customer service and billing issues.

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Executive Director Ciaccia explained that to get to the 21% figure CWD needs to be more aggressive with collections. He explained that CWD is aware of that and reported it to their city council. They have a plan and will become very aggressive in the coming months.

CWD will place an ad in *The Plain Dealer* this Sunday advising customers that they will become very aggressive regarding collections. They will initially focus on accounts 180 days and older and pursue the largest outstanding accounts first, which Executive Director Ciaccia believed was a good strategy.

Executive Director Ciaccia stated that the current focus is on the right issue. He thinks CWD customer service has seemingly been corrected, accuracy of bills is much improved and money is coming in. The focus from CWD's perspective and the District's is on collections. He was happy CWD were moving in that regard.

CWD also reported to Cleveland City Council that there are other agencies for which they have important work to do and on their timelines. That includes programming the new District sanitary rates by January 2012 and the stormwater fee. There has been progress and he thinks it is moving in a positive direction.

Executive Director Ciaccia stated that the District conducted numerous public meetings regarding the consent order and rate increases. Staff wants to continue to be communicative and transparent and is planning several events to that end. An open house will be held at the Southerly plant on Saturday, August 13. Good attendance is expected and staff hopes for good weather.

Executive Director Ciaccia advised that staff has discussed holding a public meeting twice per year in the evening at the George J. McMonagle Building (hereinafter "GJM"). The first such meeting is tentatively scheduled for October 25, during which a short presentation will be made regarding the hot issues the District currently faces and to afford the public the opportunity to address District staff and any Board member who wishes to attend.

Staff thinks GJM is a good central meeting place with plenty of free parking. He hopes it turns out well and that future events may be taken into the communities. Staff will continue to be proactive with interactive events. The first event will be done on an RSVP basis to gauge attendance.

Mr. Sulik questioned what time the meeting would take place. Constance Haqq, Director of Administration & External Affairs, advised that the meetings would likely begin at 5:30 or 6:00 p.m. and end about 7:00 or 8:00 p.m., enabling people to attend after work.

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Executive Director Ciaccia questioned when the Southerly open house takes place, to which Ms. Haqq advised it runs from 10:00 a.m. to 2:00 p.m. and there are events for children as well as a facility tour.

Moving to the next subject of his report, Executive Director Ciaccia advised that the District runs a number of programs that go toward the Summer Student Program. Both the departments of Administration and External Affairs and Human Resources, headed by Director Douglas Dykes, brings in students and some of the students will be given the opportunity to address the Board on their experiences.

Executive Director Ciaccia introduced Michael Gregg, whom was hired by the District for the summer to coordinate the students. Mr. Gregg is also a former summer student.

Mr. Gregg stated that he is currently a senior at the University of Mount Union majoring in business. He has been with the District for three years after being referred by Margie Nelson, who works in the Administrative Services Department.

Mr. Gregg advised that he was currently the student liaison for the District's Student Assistant Program. In that role he works to maximize the educational experience for each student by keeping in regular contact with them and helping address any issues or concerns that may arise.

Mr. Gregg appreciated the opportunity to gain valuable knowledge and experience leading a group of people, helping prepare them to be successful, sharing with them the vision and purpose of the program and to communicate effectively the roles and responsibilities to make the program an enjoyable and educationally rich experience.

Mr. Gregg stated that in addition to himself the Board will hear from Ronald Burke, Robert Nedrich, Lamar Legrone and Stephanie Harris.

Mr. Burke stated that he was a first-year student at the Southerly plant and a student assistant referred to the job by his parent, Yvette Burke, who is also a District employee at GJM.

Mr. Burke explained that his role as a student assistant is to learn about the different areas of the plant from the different managers and supervisors.

He also advised that he is a sophomore at Wright State University majoring in biology, a discipline which requires many chemistry classes. He has learned during his experience at the plant that there are many different chemicals and components the workers need to

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use to break down materials, test the wastewater being treated and show different components or suspended solids in the wastewater.

Mr. Nedrich stated that this year is his second with the District. He currently works at the Westerly plant and is a sophomore at Miami University, majoring in mechanical engineering with a Naval science minor. He indicated he was in the Naval Reserve Officers Training Corps and will graduate as a Naval officer.

Working at the District has been one of his best working experiences, according to Mr. Nedrich. He explained that he is able to help pay for his college tuition and get a taste of the real world by working 40 hours a week while gaining valuable skills that will help throughout his life. He specifically cited responsibility, leadership, integrity, how to communicate with people, to be a team player and adaptability.

Mr. Nedrich explained that he has also gotten insight from talking with co-workers at the plant about their lives and decisions they have made. He stated that gives him guidance to make sure he is making the right decision.

Mr. Legrone stated that he is a fourth-year student at Central State University, majoring in manufacturing engineering with a minor in mathematics. He is the 2011-2012 Louis B. Stokes intern scholarship recipient.

Mr. Legrone is currently working at the Southerly plant under Tom Vasel and Dave Terken. He has learned several different operations of the plant, including viewing lock-out tag-out procedures to attending safety classes, along with maintaining personal daily reports using SharePoint on assigned projects.

Mr. Legrone advised that his summer employment with the District has given him a greater appreciation for lessons he learned in the classroom and applying them to real-world applications. He also has greater knowledge about and a passion for wastewater treatment. He thanked the District for granting him the opportunity the internship provides in imparting knowledge in a viable occupation and future endeavors at the District.

Ms. Harris stated this is her second year with the District. She is a student assistant at the Southerly plant and a recent graduate of Hawken School. She plans to attend Miami University in the fall and take on a double major of journalism and public administration.

Ms. Harris stated that she was fortunate enough to obtain a job with the District through her involvement in the Student Technical Enrichment Program, which is sponsored by the District and other organizations.

Ms. Harris' experience with the District has involved "getting my hands dirty" which tasks such as weed-whacking, painting during hot degree weather, shoveling sludge, hosing tunnels and scooping grease balls off the second stage tank. She indicated that most of her time has been spent working in operations under unit process managers.

According to Ms. Harris, with their guidance she has learned to complete all daily, weekly and monthly reports which are needed as a means of measuring the level of success in the process of treating water. She has "learned the ins and outs of the lab" and how to run a variety of tests, such as chlorine residuals, suspended solids, total solids and percent solids tests. Additionally, she learned many technical operations, such as changing the polymer feed on a gravity belt thickener, swishing ash lagoons and draining a grit tank.

Ms. Harris stated that she never stopped learning about the plant itself and its purpose in the community. The things she has done -- even the dirty jobs -- have contributed to a wonderful and valuable experience and she hopes she may continue to work at the District for many years to come.

At that time, Ms. Harris welcomed questions from the Board.

Ms. Kelly stated that she was very proud of every student for the time they invested with the District. She inquired how they have been impacted by the mentorship and the business of this wastewater organization, and particularly if it has impacted their future endeavors to possibly become a part of the organization.

Mr. Legrone stated that he has found a great impact. He explained that he took a difficult differential equations course during his junior year. One of his projects was a wastewater treatment project using differential equations. He explained he did not necessarily understand the wastewater aspect of the project at the time but the differential equations working at the plant has given him a greater correlation for it.

Mr. Legrone advised that his mentors, Dave Terken and Tom Vasel, taught him patience in understanding the business aspect of engineering rather than a textbook view. He worked on estimates, calculating demolitions from freight and breaking, concrete and recycling and acquired knowledge from an engineering aspect.

Mr. Brown added his congratulations. He explained he is interested and concerned as a Board member about the public perception of the District and what it does for the community. These summer student opportunities provide "willing ambassadors" to spread the word about what the District does to add to the quality of life of the region. Mr. Brown stated that it takes a lot of planning, effort and coordination, but mostly hard work by men and women who come to work every day.

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Many of these jobs are very tough jobs that must be done. Mr. Brown explained that it is because people are willing to invest the time and effort to do so that the District is able to provide the quality of life in terms of restoring the environment. He hopes the connection is made between the impact of what is done at the plants and the improvement of the environment.

Mr. Brown stated that “another story that comes out of this” is summer students who firsthand had the chance to participate physically, mentally and otherwise who can go to their various homes, colleges and communities and talk about an experience in an environment that many people do not fully understand in many respects.

Mr. Brown appreciated the opportunity provided and taking advantage of that opportunity. He thanked Ms. Haqq and her staff for working to make the program and outreach a great success.

Moving to another subject, Executive Director Ciaccia advised that he asked Director of Operation Dave McNeeley and his staff to prepare a report for the next Board Meeting regarding the status of the Southerly plant, which experienced flooding earlier this year. The Board will be brought up to date on repair work that has been done and the analysis of what led to it.

Mr. Brown appreciated the formulation of the report. He noted that when the subject was last discussed it had been mentioned that lessons were learned as a result of the previous experience.

Mr. Brown stated that certain parts of the service area are tributary to Southerly; understanding trends of the flows coming into that plant, which is a derivative of rainfall patterns, should be helpful in anticipating the plant’s demands now and in the future.

The District should learn from that experience and determine whether things need to be done differently in terms of what is happening with the service area and how to respond in regards to maintenance and capital planning for that plant. Executive Director Ciaccia stated that staff will be prepared.

V. Action Items

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 173-11

Westerly Wastewater Treatment Center Code and Safety Improvements Project.

Resolution No. 174-11 RFPs for Upgrades to the Cisco Network Hardware Used on the Information Technology Business Network and Plant Automation Control Network.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution Nos. 173-11 and 174-11. Without objection, the motion carried.

Authorization to Purchase

Resolution No. 175-11 Purchase from Wright Line, Under State of Ohio Contract No. 7771401708, Office Furniture for the Water Quality & Industrial Surveillance Department at the Environmental and Maintenance Services Center. Cost: Not-to-Exceed \$26,997.05.

Resolution No. 176-11 Purchase from Sole Source Vendor QMation/Wonderware North, Wonderware Software Maintenance for Various District Facilities. Cost: \$46,377.00.

MOTION – Mr. O'Malley moved and Ms. Kelly seconded to adopt Resolution Nos. 175-11 and 176-11. Without objection, the motion carried.

Authorization to Enter Into Contract

Resolution No. 177-11 Two-Year Requirement Contract with Bearing Service Company of PA for the Bearings and Seals Product Class for Use at District Facilities. Cost: Not-to-Exceed \$31,662.68.

Resolution No. 178-11 Two-Year Requirement Contract with A.D.W., Inc. for Janitorial Services at the George J. McMonagle Building, Environmental and Maintenance Services Center and Fleet Services. Cost: \$304,766.87.

Resolution No. 179-11 Two-Year Requirement Contract with JCI Jones Chemicals, Inc. for Sodium Hypochlorite Solution for Use at All Wastewater Treatment Plants. Cost: \$563,448.06.

Resolution No. 180-11 One-Year Requirement Contract with Polydyne, Inc. for Gravity Belt Thickener Polymer for Use at the Southerly Wastewater Treatment Plant. Cost: \$341,000.00.

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 177-11 through 180-11. Without objection, the motion carried.

Authorization of Easement

- Resolution No. 181-11 Acquire from Cole WG Cleveland OH LLC, Parcel 9P Permanent Easement (Part of Permanent Parcel No. 113-01-007) Necessary for Construction of the Euclid Creek Tunnel Project. Consideration: \$25,071.00.
- Resolution No. 182-11 Acquire from McDonald's Real Estate Company in the City of Cleveland, Parcel 7P Permanent Easement (Part of Permanent Parcel No. 113-01-009) Necessary for Construction of the Euclid Creek Tunnel Project. Consideration: \$27,000.00.
- Resolution No. 183-11 Acquire from Morabito Enterprises, Inc. in the City of Cleveland, One Permanent Easement (Part of Permanent Parcel No. 113-13-003) Necessary for the Burke Brook Sewer. Consideration: \$0.00.

MOTION – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution Nos. 181-11 through 183-11. Without objection, the motion carried.

Authorization of Rights of Entry

- Resolution No. 184-11 West Creek Watershed Restoration Project. Consideration: \$0.00

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 184-11. Without objection, the motion carried.

Authorization to Enter Into Agreements

- Resolution No. 185-11 Agreements for Green Infrastructure Demonstration Project in Partnership with University Circle East.

MOTION – Mr. O'Malley moved and Ms. Kelly seconded to adopt Resolution No. 185-11. Without objection, the motion carried.

Authorization of Revisions

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

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 132-11. A roll call vote was taken and the motion carried with one "No" vote by Mayor Starr.

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Mr. Sulik stated that the Board had commissioned an Ad Hoc Committee on Ethics (hereinafter "Committee"), which he was asked to chair to review the Board's Code of Ethics adopted in 2008 and to recommend updates to the Board.

The Committee met several times in public session with the assistance of Board counsel and the District's counsel in a comprehensive review of the ethics code. The Committee determined that the 2008 code was fundamentally sound and did not require replacement, but some provisions could be sharpened in the spirit of increasing transparency for ratepayers as to the operation of the District.

The purpose and intent of the code is to protect the integrity of the District's processes. Mr. Sulik stated that some will feel the code does not go far enough while others will regard it as too much. The goal is to provide a code written in "plain English" with examples that will provide guidance to those to whom it applies.

Mr. Sulik stated that times change and "we learn from events" that befall the District and other governmental bodies. To this end the code will be periodically reviewed to make sure it remains contemporary, timely and relevant. The Committee believes the code as presented produces a reasonable and workable balance for the situations most likely to confront the District's trustees and employees.

Mr. Sulik stated that it is therefore the Committee's recommendation that the Board adopt the code of ethics as presented.

Mayor Starr advised that he continues to have questions regarding the revisions. He stated his questions as follows:

"Number one, confidential information section continues to have some problems.

"A. Who designates something as confidential? Is everything that is discussed in executive session automatically confidential? If it is confidential today, is it always confidential even if all or part of it is revealed in another context such as a court filing?

"What if a Board member reports something to the Board or to the Law Director that might be confidential with the expectations that some actions will be taken, but nothing is done? "After some period of time can a board member report that information to outside counsel or an outside source like the attorney general, prosecutor, to the public or to the media? Can the Board keep a piece of information confidential forever, even though the approach should be the Board's business is the public's business?

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“B. There should be a whistleblower provision in the code as there are in federal and state regulations and statutes which permit a Board member or an employee of the District to go outside the parameters of the code of confidentiality provisions to report wrongdoing or ethical violations.

“As written the code seems to vest the full and ongoing discretion to the Law Director and the Board for labeling something as confidential. This is the same thing that's happened over the last 30 years when the District was defrauded of millions of dollars. That discretion has been used to facilitate and foster and cover up corruption. There are times when the exposure of a piece of information that the Board wants to keep out of the public view is actually in the public interest.

“C. There should be a provision in the code for a Board member or employee to object to something being labeled a confidential. There is none.

“D. The procedure for dealing with allegations of violations of the confidentiality policy becomes public at some point which means that confidential information someone is accused of making public may become even more public by way of a public hearing. This is not to suggest that the hearing should not be public. Only that accusing someone of violating the confidentiality policy may not affect the making of a piece of supposedly confidential information even more public than it already was when the person allegedly violated the confidential policy.

“E. There should be a provision reinforcing that executive sessions and confidential information are the exception and that by statute the Board's business is public business and that any labeling of a piece of information or document as confidential is to be an exception to the rule and strictly construed in favor of openness.”

“And lastly on nepotism, which is a hot topic and controversy in Cuyahoga County, there should be a provision stating that a review will be done by the current administration seeking to find out if current employees are related to Board members or administrators via the same type of questionnaire being used by FitzGerald and by Cuyahoga County.

“And that if it is discovered that there is nepotism that would violate the old policy, but was not in force a review will be done to determine whether hiring was done in a way that violated the old policy or the new policy if applicable and if so, what are the consequences?

“There should also be a clause in the new policy dealing with reappointment of someone who is related to a Board member. Does that come under the new policy, is it the person who is being hired for the first time or can that person be grandfathered in and reappointed without regard to the relationship with the board member? Thank you.”

Ms. Kelly stated that she appreciated Mayor Starr's comments. She asked Mayor Starr why he did not attend any of the open Ethics Committee meetings to express his concerns. Mayor Starr stated that his concerns "have been widely expressed on a continuous basis both publicly, here at Board meetings, and through the media, which is a form of free speech."

Ms. Kelly stated there was an opportunity for him to attend any of the Ethics Committee meetings. She noted that he described several recommendations, some of which she had not heard before. She stated that they could have been expressed during a committee meeting.

Mayor Starr advised that he has raised the issues continuously. He stated that she may not have not read communications he sent to Board members and "how I do it is my own particular way of doing things."

Mayor Starr stated that Ms. Kelly has known about these issues and that he expressed them to her on a repeated basis. Mayor Starr advised that he sent correspondence regarding his issues on February 28 to all Board members and that he raised issues when the code was adopted in 2008. He stated that "arguing over the media and not the substance I think does a disservice to the arguments and issues I've raised."

Ms. Kelly stated that she took exception to a comment Mayor Starr made about the Board participating in a cover-up of corruption. She stated that the seven Board members do their due diligence and work very hard on behalf of the ratepayers. She reiterated that she takes exception to his statement that the other six Board members have participated in a cover-up of corruption.

Mayor Starr asked under what context the statement was made and questioned the source. Ms. Kelly indicated the assertion was in Mayor Starr's statement during the meeting today. She suggested Mayor Starr look at his notes and see that the statement was made. She indicated that meeting minutes are kept and his comments will be reflected.

Mayor Starr stated that he and Ms. Kelly have a right to disagree and have disagreed over the years. He stated he recalled disagreeing with Ms. Kelly over the question of why meeting minutes are recorded. Ms. Kelly disagreed and stated that is another issue. She asked Mayor Starr about the statement he made and stated that she would like him to respond to it. Mayor Starr stated that he had already responded.

Mayor Bacci inquired if Board counsel Craig White could provide a broad overview in reference to Mayor Starr's pointed questions.

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Mr. Brown stated that that would be a good course of action. He asked Mr. White to comment on the process the Board and Ethics Committee went through to arrive at this point. He was aware of a reference to Cuyahoga County's recently adopted Code of the Ethics which was viewed as good work.

Mr. Brown stated that as it relates to the process and review, many of the things Mayor Starr read into the record are questions he put in writing and that Mr. White responded to those questions.

Mayor Bacci inquired if the product would add value to the District and noted that nothing is perfect.

Mr. White advised that several open Ethics Committee meetings were held and all Board members were invited to attend each session.

The first thing the committee did was to examine the Code adopted in 2008. The conclusion was that nothing was fundamentally wrong, but it needed periodic review, which the committee engaged in and the decision was made to not to rewrite the code but make it better with a spirit of transparency.

A line-by-line, section-by-section review was conducted over several sessions with considerable feedback from the District's legal counsel as well as from the District's executive management. Mr. White explained that from that standpoint it was, in effect, a comprehensive review.

Mr. White explained that the style of the code is very usable and devoid of "legalese." The document was developed with the notion of guidance to people of good will to order their steps when difficult issues arise. He stated that the code contains practical examples. Some were taken out and new examples were added.

Mr. White stated that the document is a better product than the code currently in use. The committee's recommendation was to continue with periodic reviews and reform it as needed with practical examples in "plain English."

Mr. White acknowledged the questions in Mayor Starr's statement. He advised that he was unsure if Mayor Starr received his responses to the June 13 communication Mayor Starr sent to Mr. White as Board counsel. Mr. White stated that the detailed responses were provided to Mayor Starr and every Board member. Mr. White stated he did not hear back from Mayor Starr to confirm the message had been received.

Mr. White stated that his response is a matter of attorney-client privilege and under the rules he cannot disclose the answers to his questions unless he and the fellow Board

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members waive the privilege and release them to the public. He again stated that he responded in detail to many of the questions. Policy statements or accusations are not the role of counsel to respond to.

One of the changes is to separate the issue of confidential information from privileged. Mr. White stated that it is misleading to suggest a number of the questions Mayor Starr posed today have not been thought about or debated by the Ethics Committee.

Mr. White explained that there are five buckets in which something must fall to be considered confidential information. There are "safe harbors" when a Board member has an issue. The Board member can go to his or her fellow Board members or the Law Director for a written opinion regarding whether something is confidential or not.

With respect to the issue that Mayor Starr raised regarding information always being confidential, Mr. White stated that he indicated to him and the committee when the code was drafted that there is no definition in any code – based upon his experience in representing government or private bodies – that places a practical limitation on confidential information.

Mr. White advised that placing an artificial timeframe on confidential information is an impractical approach. These issues were considered along with Cuyahoga County's new Code of Ethics, which some say is a "state-of-the-art code." Some aspects were adopted and others were not.

Mr. White advised that Cuyahoga County does not include public officials within the whistleblower definition for the concept Mayor Starr cited. However, ORC 4113.52 protects the District's employees with respect to retaliation. Board members are not District employees for the purposes of this code.

The District made the decision in 2008 to have a code that applied to both Board members as well as employees. Mr. White indicated he was not involved in that decision.

Mr. White explained that it is probably not appropriate to put whistleblower provisions with respect to employees in this code, but to refer that matter to the HR Department and make it part of the employee code. He inquired if his statements were responsive to the questions and concerns.

Mayor Bacci thanked Mr. White and asked for whom he was legal counsel. Mr. White advised that he was legal counsel for the Board.

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Mayor Bacci questioned if Mr. White would consider the document a living document that is ripe for editing at any point. Mr. White stated that it was. He elaborated by stating that a code is merely words on a page; it is a question of the spirit at the District. He sees a growing culture of integrity, from the Board members, administration and hardworking employees of the District.

Executive Director Ciaccia appreciated the debate that the Board was having regarding the code, but he wanted to be clear that an ethics policy did not exist at the District until 2008. He noted the State Auditor's excellent report which mentioned the District's transparency and that a court reporter is present at Board Meetings for minutes. He stated that District business is being done as transparently and by-the-book as possible. There was no Code of Ethics 30 years ago, 10 years ago or 5 years ago.

Mayor Starr stated that there was a code of ethics applicable and a set of federal and state laws that covered conduct and behavior, which have been enforced. The Board has just personally adopted and reinforced many of the same statutes.

Executive Director Ciaccia inquired whether Mayor Starr was saying the ethics policy was not needed. Mayor Starr stated that some provisions were necessary and some were not. He took exception to some provisions that are "unclear and murky" and has documented some of his concerns.

Mayor Starr stated that he appreciated the hard work Mr. White has done. He also stated that other Board members have contributed significantly to the reforms and had a positive impact. All have a right to disagree on certain issues and debate it publicly.

Mayor Starr stated that "in regard to my colleague, Ms. Kelly, stating that there was some impression that the information and issues that I've raised were not noted to the committee, Mr. White, did you not send an e-mail on June 13, 2011, to all Board members concerning my questions?"

Mr. White advised that he responded to Mayor Starr's questions, and per his policy, all Board members are sent a copy of the correspondence when legal counsel responds. Mayor Starr stated that the Board members then had knowledge of these issues via the e-mail Mr. White sent.

Mayor Starr asked Mr. White if he did not send the e-mail. Mr. White stated that Mayor Starr did not respond to indicate he had received the e-mail and he cannot say whether others received it.

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Mayor Starr stated that it is not his issue if Mr. White is not sending it to people, but he received it. Mr. White stated that he was merely stating that Mayor Starr did not respond to him.

Mayor Starr inquired if Ms. Kelly had received the e-mail. Ms. Kelly indicated she did receive the e-mail. Mayor Starr stated that was all he needed to know.

Ms. Kelly stated that Mayor Starr's comments, questions and concerns could have been addressed during the meeting, which was her "only point."

Mr. Brown stated that good discussion had taken place and he thanked the Ethics Committee, the Board's counsel, the District's counsel and staff for their hard work.

Mr. Brown agreed with Mayor Bacci in that the revisions represent an improvement over the previous document and instruction and that it is a living document.

The document provides guidance for both staff and the Board with good examples of areas of concern, particularly for people looking to do the right thing.

VI. Information Items

1. 2010 Annual Audit Results

Ms. Demmerle advised that the results were included with a copy of the comprehensive annual financial report. The auditors will be meeting with the Audit Committee during its next meeting to discuss the results of the audit in more detail.

The Ohio Auditor of State released the annual audit results on July 11 with no modifications to the report. There is a report in Exhibit B on compliance and internal controls over financial reporting. There were no instances of noncompliance or material weaknesses or finding for recovery or any significant control deficiency. The audit came out very clean.

Ms. Demmerle advised that Exhibit R is a report the auditors are required to send to Board members regarding their responsibilities and any significant findings they have found. There were none to be reported.

The last report under Exhibit D is the Auditor's management comment report, which includes minor comments on process improvements -- not necessarily anything with material effect on statements.

2. Northeast Ohio Regional Sewer District Financial Report and Investment Advisor Performance Report for the Six Month Period Ending June 30, 2011

Ms. Demmerle advised that the second quarter financial investment advisor report is consistent with what has been reported on a monthly basis with more detail.

As of June 30, revenues were slightly up from last year with expenses flat as of the same time last year. The District continues to operate under budget. Revenues are \$86.7 million halfway through the year -- right at budget. Expenses are at \$45.4 million, which is well under budget as of June 30.

Ms. Demmerle advised that the District has about \$478 million invested. The portfolio is earning 0.62% growth, which is better than the benchmark of 0.27%, and better than STAR Ohio, which is earning 0.04%.

The financial staff has developed new metrics with its quarterly financials and they are reflected on Page 7. They are metrics rating agencies like to see as well as the target levels.

Ms. Demmerle indicated those metrics will be reported on a quarterly basis and more will be developed throughout the year. Staff will also be look at sewer agencies of similar size and programs to use as a benchmark.

Mr. Brown thanked Ms. Demmerle for the reports and stated that they show transparency, good oversight and good governance. He applauded the work of Ms. Demmerle's staff with the support of Executive Director Ciaccia and also the work of the Board. Each has been working very hard to make sure everything stands the light of day and is done at a level that would be considered a best practice.

3. Program Management Status Report and Update – July 2011

Director of Engineering and Construction, Kellie Rotunno presented the Board with the Program Management Status Report and Update for July 2011. The Euclid Creek Tunnel Project (hereinafter "ECT") has commenced under Project Clean Lake. The shaft sites are being excavated at the Nine Mile Creek (hereinafter "NMC") site and the District is proceeding under its permit.

Bids are due on September 23 for the Tunnel Dewatering Pump Station (hereinafter "TDPS") at Easterly. A pre-bid conference is scheduled for August 17. The District will also hold an outreach activity through the Office of Contract Compliance (hereinafter "OCC") for minority- (MBE), small- (SBE) and women- (WBE) owned enterprises to discuss subcontracting opportunities on the TDPS project.

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Professional design services for the Dugway West Interceptor Relief Sewer (hereinafter "DWIRS") is nearing completion and the District held a kickoff meeting on July 28.

The Green Infrastructure Feasibility Study (hereinafter "GIFS") will be completed by December 31 and is a required milestone under the consent decree. The District is studying stormwater volume in an effort to identify the areas throughout the service area receiving the highest volume of stormwater runoff. The District desires collecting the stormwater through green infrastructure measures before it can enter the collection system which will minimize Combined Sewer Overflows (hereinafter "CSOs").

The Renewable Energy Facility (hereinafter "REF") is 40% complete and 60% of the incinerator equipment is on site at Southerly. The heavy rainfall has left the site muddy and there is no roof on the REF at this time. Ms. Rotunno suggested scheduling a tour of the REF site for those who are interested.

Ms. Rotunno referred to the performance auditor completed by the Auditor of State (hereinafter "Auditor") wherein 53 out of the 104 contracts were reviewed which comprised 73% of the District's contract costs at that point in time. Ms. Rotunno stated that although the number of contracts was around half, the costs associated with those contracts was nearly three-quarters of the District's entire portfolio. There were some minor improvements suggested by the Auditor with respect to the District's internal controls, but no significant findings were made. The District is developing processes to coincide with those recommendations made by the Auditor as well as designing a system to evaluate contractor and consultant performance throughout the duration of projects.

Ms. Rotunno moved discussion to the Key Performance Indicators (hereinafter "KPIs"). The District is on target to deliver the Capital Improvement Program (hereinafter "CIP") projects this year. Ms. Rotunno advised that she incorrectly informed the Board during last month's CIP update that the District was behind on its revised plan. She referred to a graphic and explained that the top bar showed the projected number of projects to be awarded in 2011, which was 34. Ms. Rotunno referred to the dashed line in the revised plan and advised that the District is now projecting that 33 projects will be awarded in 2011. Ms. Rotunno advised that the District awarded 10 projects and is therefore on track with the revised plan.

Ms. Rotunno moved to the KPI for the engineer's opinion of probable construction costs and she advised that the engineers continue to be conservative. The average of bids of the 10 projects awarded to date is 17% under the engineers' estimates. The District will continue to exercise its diligence and would like to see the average near the 10% range.

Ms. Rotunno moved to the KPI for performance on construction projects. The District did not meet its KPI on the Westerly 700 building improvements project and expended

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100% of the allowance which was approximately \$55,000.00 on a \$600,000.00 project. Ms. Rotunno explained that the District may request Board approval to allow more than 10% in the general allowance fund on smaller projects.

The total portfolio of construction costs is \$462 million of which \$32.2 million is reserved for general and specific allowances. To date the District authorized \$4.94 million in allowances which is 1% of the contingencies on the construction program. According to Ms. Rotunno most utilities within the industry average 4%.

Ms. Rotunno advised that the District is \$8.5 million below bid versus close out amounts.

Ms. Rotunno moved to the MBE, WBE and SBE participation goals on District projects and she advised that the Westerly 700 building improvements project closed out. Said project was bid under the SBE program and exceeded both the District's and contractor's committed goals.

Mr. Brown referred to the MBE, WBE and SBE subcontracting program and indicated that his concern was whether prime contractors utilized the same subcontractors on projects because they have reached a level of comfort. Mr. Brown commented that the District has "introduced a lot of potential new players to the game" and he questioned if the District has any metrics in place to track which subcontractors are working with prime contractors on District projects. Mr. Brown explained that he participated in a presentation given by MMPI to the Cleveland City Council. MMPI discussed their outreach process and encouraged prime contractors to consider engaging with other subcontractors who have demonstrated both the capability and the capacity to conduct certain work.

Ms. Rotunno indicated that although the District does not have a formal policy to incentivize creative teaming; there have been instances where out-of-town prime contractors have taken chances and risks on subcontractors they are not familiar with. For example, Walsh Construction, the prime contractor on the REF project, subcontracted a significant portion of the project to ROMA designs and that arrangement has been going remarkably well for both ROMA and Walsh. Ms. Rotunno reiterated that there have been some successful engagements, but the District does not have a formal policy to incentivize creative teaming.

Mr. Brown questioned whether the District was tracking the prime contractor and subcontractor engagements. Ms. Rotunno turned discussion over to Contract Compliance Manager, Tiffany Jordan.

Ms. Jordan advised that on Monday the District held a breakfast meeting with the small business community. Deputy Director of Engineering, James Bunsey, and other District

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employees were present. Discussions at said meeting included how prime contractors can engage with subcontractors that they do not typically work with. One suggestion was made that contractors engage in vendor rotation. Ms. Jordan acknowledged that continued business arrangements result from great business practices and companies typically are not interested in switching to a new subcontractor if business engagements are positive. The problem is that smaller companies new to the business may not be provided the same opportunity to work with prime contractors. Ms. Jordan advised that per Ms. Rotunno's suggestion, the prime contractor from the ECT project was invited to the meeting and the subcontractors were able to demonstrate the types of work they do. With respect to the TDPS meeting on August 10th, the subcontractors are invited to gain a greater understanding of the project from an engineering and contract compliance perspective. The subcontractors will familiarize themselves with the necessary documents needed in advance in order to gain a greater understanding of the project prior to the close of the bid.

Mayor Starr referred to Ciuni & Panichi's letter regarding the District's audit wherein they referenced considerations that the District should look into with respect to terms of compliance with applicable laws, regulations, grant agreements, contractor provisions and internal controls. Mayor Starr stated that this relates to grants and internal controls as it pertains to Engineering and Watershed departments monitoring grant requirements and initiating grant filings. According to the letter, "the two departments are integral in monitoring the overall grant specific compliance and performance requirements, but lack the financial expertise in preparing, reviewing and submitting reimbursement requests." Mayor Starr stated that while this is not a violation, it is a recommendation that has been made repeatedly in order to correct and improve the system. Mayor Starr inquired if someone from the District would like to address that comment.

Ms. Demmerle stated that the comment Mayor Starr was referring to was in last year's audit report. The District made improvements to the processes and can now identify all grants. The comment applied to the U.S.G.S (United States Geological Survey) grants which are \$50,000.00 or less. Ms. Demmerle reiterated that the District now has a process in place to identify all grants. The requesting department has typically completed the reimbursement requests and the Auditor has indicated that it would prefer the Finance Department to make those requests for reimbursements.

Mayor Starr suggested that this issue be discussed further during the upcoming Audit Committee meeting.

Mayor Starr referred to the June 24, 2011 correspondence wherein it indicated that "due to the limited nature of our audit, we have not fully assessed the cost-benefit relationship of implementing these recommendations." Mayor Starr referred to the use of the wording "limited nature" and he questioned what does that mean with respect to the audit?

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Deputy Executive Director, F. Michael Bucci clarified that in a financial audit it comes down to the materiality, and grants that are less than \$50,000.00 are not material; and therefore, they do not spend as much time on those as they would on capital construction costs and cash. Mr. Bucci advised that the auditor will be present at the next Audit Committee meeting and he suggested that Mayor Starr address his question to the auditor at that time.

Ms. Kelly referred to prior discussions held concerning RFPs (Requests for Proposals) that are generating less competition than would be expected in this current economic environment. She questioned what is preventing these companies from competing?

Executive Director Ciaccia advised that the District examined bids that were in question which were for goods and services. After surveying a number of bidders, it was discovered that smaller companies were prevented from bidding on goods and services projects due to the performance bond requirement. Executive Director Ciaccia advised that the District is not obligated to require performance bonds on those types of procurements and has therefore eliminated performance bond requirements on smaller projects. Executive Director Ciaccia was unsure as to whether this change would increase the number of bidders on goods and services projects. Executive Director Ciaccia noted that the District is required by State law to have performance bonds on some large construction projects.

Ms. Kelly suggested that the District notify the contracting community of the change wherein Executive Director Ciaccia advised that the Purchasing Department is handling that task.

VII. Open Session

There were no items for discussion.

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 to enter into Executive Session to consult with legal counsel and the District administration regarding authorization of a partial settlement of the *Northeast Ohio Regional Sewer District v. 3320 Woodland Avenue Ltd., et al.*

litigation matter. Mayor Bacci indicated that those discussions held in Executive Session are permitted as a specific exception to the Public Meeting Act pursuant to Ohio Revised Code §121.22(g)(3), and he specifically designated that all matters discussed in Executive Session be protected from public disclosure in accordance with Ohio Revised Code §121.22(g) 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 2:01 p.m. to 2:15 p.m.

X. Approval of Items from Executive Session

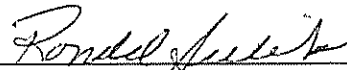
Resolution No. 186-11

Authorizing Partial Settlement of *Northeast Ohio Regional Sewer District v. 3320 Woodland Avenue Ltd., et al.*, Consolidated Cases 07-CV-643897 and 08-CV-650695.

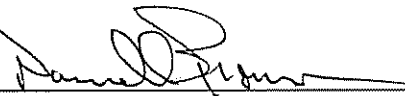
MOTION – Mayor DePiero moved and Ms. Kelly seconded to add and adopt Resolution No. 186-11. Without objection, the motion carried unanimously.

XI. Adjournment

MOTION – Mr. Brown stated that business having been concluded he would entertain a motion to adjourn. Mr. Sulik moved and Mayor Bacci seconded the motion to adjourn at 2:15 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