

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
SEPTEMBER 2, 2010

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
W. O'Malley
G. Starr

Ms. Kelly was absent.

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

II. Approval of Minutes

MOTION – Mayor DePiero moved and Mayor Bacci seconded that the minutes of the August 19, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak at Public Session.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") which will be called "Project Clean Lake." This week, District representatives met with state and federal government officials to discuss how green infrastructure language can be incorporated into the CSO LTCP consent decree. The consent decree, which was initially planned for discussion at a Board meeting sometime in September, will be postponed until October. At that time, staff will present the Board with its recommendations on the consent order.

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The terms of the CSO LTCP have not been finalized and therefore have not been brought to the public.

Executive Director Ciaccia advised that he discussed CSOs with a reporter from *The Plain Dealer* and that he anticipates a report based on those discussions. Executive Director Ciaccia refrained from discussing anything that has not already been publicly disclosed since some information still remains privileged and confidential.

A conference call is scheduled with the governments on September 17th and Executive Director Ciaccia indicated that “we are getting close to the alignment of the actual language of the agreement.”

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter “SMP”). On August 24th, Judge Pokorny met with District representatives and attorneys representing all suburban communities. There was much discussion about discovery timetables and Judge Pokorny requested that discovery be completed. A hearing date on the Motion for Summary Judgment has been scheduled for March 2011.

Executive Director Ciaccia advised that the District agreed to provide the communities with a 60-day advance notice prior to instituting a stormwater fee, which can be established at anytime between now and March. This probably will bring an injunction filing, but this is something we have to consider on this case.

Executive Director Ciaccia stated that through extensive research and opinions, the District continues to argue that we have the legal authority to implement the SMP. The District preemptively took this matter to court to have a judge make a determination on our legal authority.

The arguments raised by the 12 Cuyahoga County communities in opposition to the District’s authority to implement the SMP contend there are factual issues that need to be determined; and therefore, a massive discovery request has been submitted to the District by them. The District has turned over thousands of documents to those attorneys and they have also spent a significant amount of time at the District examining our records. If we continue, then depositions will be scheduled and expert witnesses will be hired and this will get expensive. According to Executive Director Ciaccia, at the meeting with Judge Pokorny, the other attorneys mentioned that they were “lining up experts” and the District will be doing the same. Executive Director Ciaccia advised that this may not be necessary depending on Judge Pokorny’s ruling; however, much money will be spent on both sides in order to prepare for this case.

Executive Director Ciaccia stated that the Cuyahoga County Mayors and Managers Association (hereinafter “Mayors & Managers”) has requested that Mayor Bacci, Mayor

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DePiero and Mayor Starr participate in a conference call to discuss this issue. Executive Director Ciaccia advised that Mayor Starr had informed him of some of their questions which included: 1) Where do the three mayor representatives stand on this lawsuit? 2) Where the lawsuit is currently in the proceedings? 3) Can we help get it resolved? 4) How can we accomplish that?

Executive Director Ciaccia held discussion with Mayor Licastro of Bratenahl, president of the Mayors & Managers Association, and he indicated that many of the suburban communities are "being pulled in different directions" and he is hopeful that we can reach a compromise and resolution.

Executive Director Ciaccia also spoke with Mayor Leiken of Shaker Heights, president of the Suburban Council of Governments (hereinafter "SCOG"), who indicated that he also talked with Mayor Licastro. Executive Director Ciaccia appreciated the attempts made by both Mayor Licastro and Mayor Leiken to facilitate in this matter.

Executive Director Ciaccia provided the Board with a brief overview of the history of the stormwater process. Between 1997 and 2007 the District spent nearly \$9 million to study stormwater management and prepare for the SMP. After joining the District, Executive Director Ciaccia had this investment examined. The District needed to ensure that it has the legal authority to move forward with the SMP. Director of Law, Marlene Sundheimer, and the District legal staff researched this issue and rendered the opinion that the District does have the authority to implement the SMP. The District engaged AMEC, a consultant who completed the stormwater road map development study in 2006, to carry out a SMP implementation plan and this cost the District \$3.8 million. Therefore, the District has already significantly invested in the SMP.

The District held multiple meetings with member communities over a two-year period to discuss stormwater and in turn received a lot of good information to incorporate into the SMP. The District was made aware that two communities, the cities of Lyndhurst and Cleveland Heights, were going to take action against the District from moving forward with the SMP. Consequently, the District decided to preemptively bring this matter to court in an attempt to define the issues.

Judge Pokorny is the third judge assigned to this matter and he is a visiting judge. Judge Pokorny has taken on this case and has set a hearing schedule.

Executive Director Ciaccia stated that he was hopeful that the suburban mayors can reasonably negotiate these issues before a lot more money is spent on litigation.

Mr. Brown referred to Executive Director Ciaccia's comments regarding the discovery requests and he inquired if there were any overlapping themes or particular information that those 12 communities are looking for which may signify as to why they believe the

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District may not have the legal authority to implement the SMP. Mr. Brown indicated that he did not want those questions answered today but he requested Executive Director Ciaccia's insight on this inquiry in the future.

Mayor Starr commented that he "has no issue with discussing why we arrived at the conclusion of voting for the stormwater district and the public policy reasons," but he is "hesitant about the questions they were asking." With respect to the question posed as to the stand Mayor Bacci, Mayor DePiero and himself will be taking on the lawsuit, Mayor Starr indicated that he is supporting the District's side. The lawsuit's current proceedings were already discussed. Mayor Starr advised that he is not a lawyer representing the District and therefore he could not provide any insight as to how to resolve this matter.

Mayor Starr inquired if Executive Director Ciaccia or one of the District's attorneys will participate in the upcoming telephone conference. Executive Director Ciaccia advised that no attorneys will be present the meeting which is good since there are at least 50 attorneys involved in this matter and by allowing attorney participation could decrease the productivity during this meeting. Executive Director Ciaccia explained that it is common for parties to meet and reach some sort of consensus during contract disputes and he anticipates that this process will be similar. The SMP is good program and everyone agrees that something needs to be done to address stormwater, but we need to reach a resolution and find some middle ground.

Mayor DePiero viewed these discussions as an opportunity to hear the mayors' concerns and he stated that they are concerned with spending a lot of money on legal fees. Mayor DePiero suggested that we will listen and "let them know that we understand." Mayor DePiero stated that "we are 100% behind the program but we would like to help find them a way out of this if it's reasonable and it makes sense." Mayor DePiero commented that he is "not into rewarding communities who have taken this position over one's that have gotten on board but maybe there is a way to resolve some of their concerns."

Mayor Bacci stated that he and Mayor DePiero are using the phrase "stop the presses" and he commented that "we are putting the cart before the horse." Mayor Bacci stated that the judge has to make a determination as to the District's authority and then we can proceed from there.

Executive Director Ciaccia stated that it would have been less costly had we just debated the legal points and the question is whether the District wants to get involved with discovery which is going to increase expenses. Executive Director Ciaccia explained that "they still have reams of documentation from us to go over from a factual basis."

Mayor Bacci stated that we need to help them understand that they either "slow the train now or eventually the train will be unstoppable." We are all concerned with the dollar

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amounts that are continuing to add up and that the District has already invested over \$12 million “to come to the understanding.”

Mayor Bacci referred to previous comments made in reference to “stopping the press,” and he inquired if this kind of program has been seen not only regionally, but statewide and nationwide. Executive Director Ciaccia affirmed. Mayor Bacci stated that “our argument is simple; this is how it is done everywhere” and we need to find out if we have the authority.

Executive Director Ciaccia moved to the next report item regarding the City of Cleveland Division of Water (hereinafter “CWD”) billing. The District received a report today indicating that as of August 30th, the suppressed bills have significantly decreased to 12,000.

Our cash from remittances is down by about 10% over last year. When considering the rate increase we instituted this year, factoring in consumption drop and unstable economy we are more likely down by 17% for the year on our cash from remittances. Executive Director Ciaccia explained that the numbers have stabilized over the last two months and it appears that there is some type of turnaround.

Our accounts receivables are significantly higher. Last year at this time we were at \$56.9 million and for 2010 we are at \$81.1 million. Executive Director Ciaccia advised that the \$81.1 million is \$1 million less than what he reported last month. We are headed in the right direction but it is too soon to call it a trend.

Executive Director Ciaccia advised that the CWD billing issues are challenging but we will continue to apprise the Board of any new developments.

Executive Director Ciaccia moved to the next report item regarding performance management. Non-union staff members have their performance management plans in place and we have moved into our mid-year reviews. According to Executive Director Ciaccia, the performance management process is going well and will be very fruitful for us.

Mayor Starr referred to the CSO LTCP. He commented that staff has earnestly been negotiating this issue and that the Board was provided with a limited amount of information. Mayor Starr advised that before making an informed vote on the CSO LTCP he would like to receive a “sufficiency of information” provided in a timely manner.

With respect to the sufficiency of information, Executive Director Ciaccia requested some feedback from the Board as to what additional information they are looking for. Attorney Craig White had sent them binders of information on the draft consent decree

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which also included the PowerPoint presentation given during Executive Session. Executive Director Ciaccia advised that the Department of Engineering & Construction has a binder of information of the proceedings and that staff would be happy to share this information with any Board member upon their request. Executive Director Ciaccia indicated that he would appreciate feedback from the Board members as to what additional information they would like to see and the sooner he receives this information the quicker staff can forward the information to the Board. Executive Director Ciaccia advised that if Mayor Starr would like to see the Engineering binder then staff can forward this information to him as well. He also noted that Board member Ron Sulik had already supplied him with a list of questions that will be responded to with a copy to all Board members.

Mr. Brown commented that Mr. White compiled the data and presented the Board members with the information so that the Board can better understand the principles behind this proposal. Mr. Brown commented that there is a great deal of information available and he suggested that staff provide the Board members with a summary of the important issues that the Board should be aware of prior to making an informed decision. We want to ensure that at the end of the day we have gotten the best value and that the ability for us to meet those requirements is reasonable.

Executive Director Ciaccia invited Board members to provide him with their questions and that he will respond accordingly.

V. Action Items

MOTION – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 249-10 through 256-10. The motion carried with one abstention from Mr. O'Malley on Resolution No. 253-10.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 249-10

RFPs for Radiation Consulting Services.
Cost not to exceed \$100,000.00.

Authorization to Enter Into Contract

Resolution No. 250-10

Contract with The Kaleidoscope Group, L.L.C. for professional services for diversity and inclusion curriculum. Cost: \$141,102.00.

Authorization to Enter Into Purchase

Resolution No. 251-10 Direct purchase from sole source vendor QMation/Wonderware North, software and support services for various District facilities. Cost: \$47,162.00.

Authorization to Enter Into Agreement

Resolution No. 252-10 Facility Encroachment Agreement between the District and CSX Transportation, Inc. for the Euclid Creek Tunnel Project. Cost: \$50,550.00.

Authorization of Contract Modification

Resolution No. 253-10 Modify Contract 09001782 with Bay Mechanical & Electrical Corporation for the Easterly Substation Replacement (ESR-1) Project. Cost: time extension of 122 days.

Authorization to Certify Delinquent Sewer Accounts

Resolution No. 254-10 Certify delinquent sewer accounts to the Cuyahoga County Auditor for 2010.

Authorization to Write Off Uncollectible Debt

Resolution No. 255-10 Authorization to write-off uncollectible debt of General Environmental Management, LLC. Cost: \$39,511.79.

Authorization to Amend Settlement Agreement

Resolution No. 256-10 Authorization to amend Settlement Agreement with Guaranteed Finishing Unlimited, Inc. and write-off Uncollectible Debt. Cost: \$54,275.00.

VI. Information Item

There were no information items.

VII. Open Session

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 one matter for discussion in Executive Session.

MOTION – Mayor Bacci moved to enter into Executive Session to discuss settlement of the Bureau of Worker’s Compensation claim 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 without objection, the motion carried unanimously.

The Board met in Executive Session from 12:58 p.m. to 1:11 p.m.

X. Approval of Items from Executive Session

Add-On

Resolution No. 257-10

Authorizing a Settlement of Industrial Commission of Ohio Claim No. 07-890008 (Workers’ Compensation Claim of Ernest Troy).

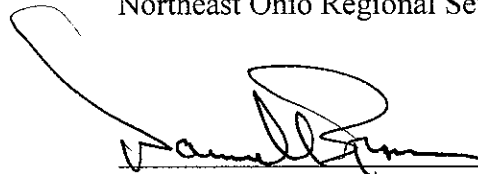
MOTION – Mayor DePiero moved and Mr. O’Malley seconded to adopt Resolution No. 257-10. Without objection, the motion carried unanimously.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. O'Malley seconded the motion to adjourn at 1:12 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