

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
SEPTEMBER 16, 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
S. Kelly
W. O'Malley
G. Starr

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

II. Approval of Minutes

MOTION – Mr. Sulik moved and Mr. O'Malley seconded that the minutes of the September 2, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Laura Hauser initially registered to speak at Executive Session regarding Resolution No. 260-10, but she withdrew her request to speak.

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") and he advised that there has been no new developments since the last Board meeting. A conference call is scheduled with the state and federal governments on September 17th and a meeting is scheduled for September 27th. Executive Director Ciaccia advised that the language for the "green for gray" issue continues to be discussed.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). The meeting which was previously scheduled between the Cuyahoga County Mayors and Managers Association and Board members Mayor Bacci, Mayor DePiero and Mayor Starr was cancelled. The reason given to Executive Director Ciaccia for the cancellation was that there are ongoing settlement discussions, but District staff was not aware of a settlement.

Executive Director Ciaccia advised that the District's legal counsel, Mark Wallach, inquired from one of the attorneys representing one of the 12 communities in opposition to the SMP what they would like to include in a possible settlement. They indicated that they would consider this and follow up with the District in which they have not done so at this point.

Executive Director Ciaccia explained that a City Manager of one of the communities indicated to him that there were ongoing settlement discussions. Executive Director Ciaccia advised the City Manager that he was not aware of those discussions. The City Manager responded that the District needs to tell them what we want. Executive Director Ciaccia replied that the SMP is our plan and that they need to tell the District what they want as it pertains to a settlement. The City Manager indicated that "it would be impossible to get 13 communities together to decide what they want."

Executive Director Ciaccia advised that a mayor of one of the 12 communities in opposition to the SMP advised him that his community was just "passively sitting back and waiting to see what happens" in reference to the opposition to the SMP. Executive Director Ciaccia commented that this community is in opposition to the SMP and that his and other communities have filed a large discovery request and are in the process of securing expert witnesses. These communities may not realize their involvement in this process.

Executive Director Ciaccia believed that there is confusion amongst the suburban communities as to what their approach and standing is as well as the direction of this case, and this is going to hamper identifying any common ground. Judge Pokorny has set a court schedule and the District is hopeful that there will be no additional stalling tactics placed upon us by the communities. The District intends moving forward with the discovery process and securing its own expert witnesses.

Executive Director Ciaccia advised that District staff continues to fine-tune the SMP as well as meet with various service directors and engineers from the suburban communities. The District has been well-received at said meetings and staff is obtaining a lot of good information.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 3 of 19

Executive Director Ciaccia moved to the next report item regarding the Capital Improvement Program (hereinafter "CIP") and Program Management (hereinafter "PM"). The date to advertise bids for the Euclid Creek Tunnel (hereinafter "ECT") project will be pushed back a couple of weeks from September 30th in order to conduct some revisions to the project's specifications, which will be discussed during Kellie Rotunno's monthly report to the Board. The District will be required to obtain Section 401 permits from the Ohio Environmental Protection Agency (hereinafter "OEPA") and possibly a 404 permit for the United States Army Corps of Engineers (hereinafter "USACE") for the reason that wetlands have been discovered at the Nine Mile Creek (hereinafter "NMC") site.

Executive Director Ciaccia moved to the next report item regarding the City of Cleveland Division of Water (hereinafter "CWD") billing system. The District engaged IBM to help with re-creating and fixing problems with the financial reporting systems. Executive Director Ciaccia anticipates completion of this project by the end of October 2010. The District will be receiving reports on cash receipts, the Summer Sprinkling Program, suppressed bills and adjustment details.

Executive Director Ciaccia moved to the next report item regarding the Small Business Enterprise (hereinafter "SBE") program. Deputy Executive Director, F. Michael Bucci, has been charged with leading this effort to modify the District's SBE program to incorporate Minority Business Enterprise (hereinafter "MBE") and Women's Business Enterprise (hereinafter "WBE") components into the SBE program, which will be based on the results of the disparity study. Executive Director Ciaccia advised that staff anticipates having a draft program available to the Board for consideration sometime in January 2011. This will be quite an effort but we will strive to get this program running as soon as possible since the District has a lot of upcoming construction projects. Executive Director Ciaccia advised that a facilitated session will be held with Attorney Colette Holt and the Board members are encouraged to attend said meeting.

Executive Director Ciaccia moved to the next report item regarding District finances. He referred to a chart which he includes in the Board packets each month. The District's projected budgeted revenue for 2010 was \$171 million which is approximately a 3% increase over 2009. Executive Director Ciaccia explained that although there was a 9% rate increase, revenues went up only 3%. The District factored in a 3% uncollectible amount and 5% consumption loss. Consumption loss is typically calculated at 2% but given the current economic conditions, the District factored in a 5% decrease at the beginning of 2010. Executive Director Ciaccia stated that halfway through 2010, the District's auditors thought it prudent to adjust the uncollectible amount to 5%. Therefore, the projected budgeted revenue for 2010 is actually \$168 million.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 4 of 19

Executive Director Ciaccia stated that the projected actual revenue through the end of 2010 is approximately \$165 million, which is about \$6 million less than the original budgeted projection and \$3 million less when factoring in the decreased uncollectible amounts. Executive Director Ciaccia stated that the projected actual revenue of \$165 million is a conservative number and this amount is close to where the District was last year.

Revenues will remain flat regardless of the rate increase due to the economy and consumption drop. In addition, we continue to look at what role the CWD billing system comes into play on the revenue side. Executive Director Ciaccia advised that records seem to show that the District lost 8,000 accounts between 2008 and 2009 and that we have not yet extracted those numbers for 2009 through 2010.

The District anticipates being under budget on its operating expenses. Projected budgeted expenses were \$102 million, but we anticipate ending the year at \$100.6 million. Executive Director Ciaccia clarified that the District did not budget any capital expenses from its operating account.

Executive Director Ciaccia advised that the projected operating expense amounts listed in the Board members' booklets differed because staff initially projected that \$5.7 million of payroll would be capitalized, but we are now projecting in 2010 the amount of \$3.6 million of our payroll can be capitalized.

The cash in the District's capital account decreases as we continue to spend money on big capital projects. The District is moving forward with a bond issue to replenish its capital account and therefore continue to carry out the CIP. We will incur additional debt and have debt service payments throughout the year. Our current annual debt service payment is approximately \$58.6 million and this amount will increase next year due to the bond issue.

If you subtract the amount of \$100.6 million in projected operating expenses from the \$164 million in projected operating revenue, you arrive at the net revenue of \$64.2 million. Our debt service is about \$58.6 million. The District's key financial indicator and obligation is to meet our debt service ratio of 1.00; and therefore, our net revenue has to be at least \$58.6 million. Currently, our ratio is at 1.09. In 2009, our ratio was 1.34. Executive Director Ciaccia stated that things are starting to tighten down as we move through the end of this five year rate cycle. Our projected revenue is conservative so we are hopeful that the ratio will be better. The District's goal ratio is 1.05 and it illustrates how critical it will be for us to manage our finances prudently. We are hopeful that there will be an economic turnaround.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 5 of 19

Executive Director Ciaccia intended to clarify the District's current financial situation. With one quarter remaining in 2010, staff has been advised to remain fiscally tight through the remainder of this year as well as during their budget preparations for 2011. In addition our debt service requirements will likely increase as we go to the bond market.

Ms. Kelly inquired with one quarter remaining, what is the likelihood of potential emergency situations that could compromise our debt ratio. Executive Director Ciaccia replied that there is always the potential for emergency situations and that the District keeps certain reserve funds including the equipment replacement reserve fund, insurance reserve fund and rate stabilization account. Executive Director Ciaccia explained that some of those reserve funds could be used to pay off some of the debt early or we can use it for the expense itself depending on the type of emergency.

Mayor Starr inquired about the factors which contribute to consumption loss. What has changed? Executive Director Ciaccia replied foreclosures and as mentioned previously, there are 8,000 accounts no longer active in our system from 2008 to 2009. Executive Director Ciaccia advised that this has not yet been fully analyzed but we assume that some of the consumption loss resulted from a decrease in commercial manufacturing accounts.

Mayor Starr referred to the terms "consumption loss" and "uncollectibles" and he inquired how they differ. Executive Director Ciaccia explained that the District bills based on water consumption. The rate study which supported the timeframe of 2007 through 2011 projected a 2% decrease in consumption each year. Consequently, rates were established accordingly to make up for that 2% loss. Executive Director Ciaccia explained that a 2% decrease in consumption is normal and factors in water conservation from residential customers and recycling from our commercial customers. However, the District experienced an additional 3% consumption loss which resulted from foreclosures and commercial industries no longer operating primarily the steel mills and automobile plants. Conversely, uncollectible amounts result from customers not able to pay their bills and some of those amounts remain as unpaid balances on foreclosed properties. We initially anticipated this being a 3% decrease but it is more likely 5% decrease.

Mayor Starr inquired as to what steps can be taken to collect on our uncollectible amounts. Executive Director Ciaccia explained that if the amounts are determined to be uncollectible then they are written off, and he advised that there is a much larger accounts receivable balance that we are pursuing.

Mayor Starr inquired as to why these amounts are not assessed on property tax bills since there is priority given to liens. Executive Director Ciaccia stated that we do certify unpaid amounts to the tax bills. He explained that customers are first given reminder

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 6 of 19

notices of past due bills. Customers are then given a three-day notice advising them that their water service will be terminated. The water is then terminated. A lien is then placed on their property for arrearages. Thereafter, the amount becomes uncollectible and those amounts are written off so they are no longer in our accounting books. In addition, we turn the amounts over to a collection agency.

Mayor Starr inquired as to how the District's percentage of uncollectible amounts compare with other sewer districts. Executive Director Ciaccia explained that the District has not conducted this type of comparison and that this was a good suggestion. Executive Director Ciaccia speculated that we can draw some good conclusions and most likely we will find that we are not much different from other agencies located in the Midwest and near the Great Lakes.

Mr. Brown commented that by examining what is occurring throughout the country, the question is whether the 5% will level off in terms of this decline in consumption. Mr. Brown recalled making a comment during a past Board meeting wherein he predicted that consumption would decline between 5% and 8% based on the information given to him. In reference to Mayor Starr's inquiry regarding the trends throughout the country, Mr. Brown commented that some agencies have adjusted their rate structures, but the District's rates are based on consumption. Most government agencies are changing their rate structure to a cost of service model and the fees are based on operating costs rather than consumption. The fluctuation in consumption is not strictly a Midwest phenomenon. It has become a national trend.

Mayor Starr inquired whether this information regarding the current state of the District's finances was shared with the federal government during the CSO negotiations. Executive Director Ciaccia affirmed, and he stated that the governments were provided with financial reports, affordability information and the District's ability to pay.

Executive Director Ciaccia referred to the previous comments made by Mr. Brown regarding the cost of service model, and he advised that we need to examine this option during our rate study. We may have to back away from the consumption charge in order to ensure that we are covering our fixed costs. Consumption is ruling our entire financial picture and this makes us vulnerable especially during recession periods.

Executive Director Ciaccia moved to the next report item, and he advised that the District has submitted its audit to the Auditor of State of Ohio and that we are awaiting their feedback.

Executive Director Ciaccia moved to the next report item, and he advised that the rate study is ongoing and is expected to be completed by the end of 2010. One of the tasks charged to our consultant is to identify affordability programs. Large rate increases are

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 7 of 19

expected during an economic downturn, and we understand that we will need to develop an affordability program available for our customers who cannot afford their sewer bills. CWD offers an affordability program but the District does not. Executive Director Ciaccia proposed that staff bring the affordability program to the Board for consideration prior to discussing the proposed rate increases. This would provide an opportunity to discuss the affordability program without it being buried in the rate increases discussion.

Mr. Sulik commented that this entire region is suffering and that the Board eagerly anticipates the affordability program discussions. He was hopeful that staff would develop a program that would "ease the rate increase."

Mr. Sulik questioned how the five year rate period factors into the CSO settlement negotiations. Executive Director Ciaccia stated that the two are intertwined and that the rate period of 2012 through 2016 is mostly dominated by projects currently underway. The Renewable Energy Facility (hereinafter "REF") will cost over \$100 million. The Euclid Creek Tunnel (hereinafter "ECT") will cost over \$200 million and is a CSO LTCP project but is not currently operated under a consent decree. The Tunnel Dewatering Pump Station (hereinafter "TDPS") is a CSO LTCP project and is currently under design. The TDPS will be bid either in 2011 or 2012. Executive Director Ciaccia stated that a majority of the consent decree projects will exceed that 5-year window.

Executive Director Ciaccia stated that the projected rate increases will be 15% to 18% a year during that 5-year period and that most of the initial projects of the CSO LTCP will be under construction.

Mayor Starr referred to discussion held during the September 2nd Board meeting wherein Executive Director Ciaccia advised the Board that the Department of Engineering and construction would provide any interested Board members with a copy of their binder of information. Mayor Starr expressed that he would like a copy of that binder.

Executive Director Ciaccia moved to the next report item regarding the audit being conducted by Bricker & Eckler LLP (hereinafter "Bricker & Eckler"). This process is nearing completion and a report is being compiled for future discussion with the Board.

Executive Director Ciaccia moved to the next report item and he advised that the District reached a settlement agreement on the terms which were presented to the Board during Executive Session. Said agreement is being circulated for review and signature.

Executive Director Ciaccia congratulated the Human Resources Department on their organization of the service awards reception which took place at the Natural History Museum last week. Awards were presented to employees having 5, 10, 15, 20 30 or 35 years of services and retirees. The reception was well attended and Board members Ms.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 8 of 19

Kelly, Mr. Sulik and Mayor Bacci were present. Executive Director Ciaccia thanked Sandi Boing, Yvonne Koklauner, the HR staff, and Director of Administration & External Affairs, Constance Haqq, and her staff on their efforts in making this reception successful. Executive Director Ciaccia stated that this is the second year for holding this type of event and it was good way to honor our employees.

Executive Director Ciaccia advised that on the front page of the Metro Section in *The Plain Dealer* was an article featuring the Charity Choice Community Shares Program. The District was mentioned in this article and has reached its goal of \$52,000. Executive Director Ciaccia thanked Sandi Boing for leading this initiative as well as the entire HR staff and District employees for helping us to achieve our goal.

V. Action Items

Authorization to Advertise

Resolution No. 258-10

Authorizing the advertising for bids for the Nine Mile Electrical Substation (NMES) Project. Engineer's opinion of probable construction cost: \$6,000,000.00.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 258-10. Without objection the motion carried unanimously.

Authorization of Easement

Resolution No. 259-10

Acquire from Brown Properties Holdings, LLC Parcel 2P permanent easement (Part of Cuyahoga County Permanent Parcel Nos. 116-19-001 and 116-19-002) necessary for the construction of the Euclid Creek Tunnel Project. Consideration: \$15,000.00.

MOTION – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution No. 259-10. After discussion, the motion carried unanimously.

Ms. Kelly inquired as to why the District is settling on an amount that is seven-and-a-half times the value of the appraisal. Executive Director Ciaccia requested that Assistant Law Director, Julie Blair, report to the podium to address Ms. Kelly's question. He explained that the District can negotiate up from the appraised values, but not lower. Director of Law, Marlene Sundheimer, added that this it is covered by statute.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 9 of 19

Ms. Blair stated that the property's appraised value was \$2,000 and that the District agreed to the settlement amount of \$15,000 after negotiations with the property owner. The property is located directly adjacent to the shaft site and his business due to the proximity will be affected. Also by settling at \$15,000 would prevent the District from having to incur costs of going to trial as well as time delays and the uncertainty of the jury's value.

Ms. Kelly indicated that her concern was that the owner could "hold us hostage and ask for anything" and that the value of the inconvenience to the business should have been considered in the appraisal value.

Ms. Blair replied that the business losses are not considered in the appraisal. The option of going to court was something to consider. The jump from \$2,000 to \$15,000 was within the realm of possibility within that appraisal.

Ms. Kelly inquired as to projected amount of going to the court. Ms. Blair could not speculate.

Ms. Sundheimer explained the District's appropriation policy has changed from that of the former administration. In the past, the District entered into extended negotiations with property owners prior to filing appropriation action in the court. This resulted in many delays and the appraised value becoming stale during that process. The District's current policy is to get the appraisal; make an offer; wait 30-days which is required by statute; obtain the authority to file an appropriation action in probate court; and then go through the mediation or negotiation process. This process gives the District more leverage.

The appropriation process is currently being managed in-house. Going to court would result in the added expenses for attorneys' time and the hiring of additional experts to address evaluations.

Ms. Sundheimer explained that our decision to settle is impacted by the necessity of the acquisition and our policy is to minimize the time it takes to acquire necessary easements in order to lessen the impacts on our projects.

Ms. Kelly questioned that if the District did not have the actual cost of going to court then how did we reach a settlement of \$15,000? Ms. Sundheimer stated that the \$15,000 value was based on the appraised value for the real estate and any other incidental damages to that property owner.

Ms. Blair added that the significant factor during the negotiations was that the property owner's bank threatened to pull his financing because the District's tunnel project would be built underneath his property. The property owner originally proposed a greater settlement amount so that he could pay off his financing with his bank, but we were able to negotiate that amount down.

Ms. Kelly indicated that her concern was establishing a precedent and then property owners will begin to "pull a number out of the air to satisfy whatever needs to happen." Executive Director Ciaccia indicated that Ms. Kelly raised a good point. He explained that the District has gone to court and started appropriation proceedings on other matters. In this instance, Ms. Blair negotiated the settlement and although the amount was not close to the appraisal amount, the District believed that \$15,000 was not too much to pay to keep the ECT project moving.

Authorization of Appropriation

Resolution No. 260-10

Appropriation of one permanent easement (SEA-2A-SWO-1P) and two temporary easements (SEA-2A-SWO-1T & 2T) across Cuyahoga County Auditor's Permanent Parcel No. 522-12-004, owned by 3320 Woodland Avenue Ltd, which is necessary for the construction of the Southerly CSO Early Action Project. Fair Market Value to be deposited with the Cuyahoga County Probate Court: \$13,550.00.

MOTION – After discussion, Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 260-10. Without objection the motion carried unanimously.

Executive Director Ciaccia stated that Laura Hauser initially registered to speak at public session regarding Resolution No. 260-10 but chose to withdraw her request.

Ms. Blair explained that this property is related to the Southerly Early Action Project and involves property owned by 3320 Woodland Avenue Ltd. located in the Village of Cuyahoga Heights at the end of Chapek Parkway. The District installed a new regulator, MC-47, at the end of the Chapek Parkway. We needed to install a new SWO for the stormwater outlet. The original SWO ran north and south but there was a problem with the amount of fill and the lack of stability within the fill. The project was re-designed with an SWO that ran east and west. Since the District is involved with another matter

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 11 of 19

involving these property owners, we were unable to reach a resolution for the SWO easement and therefore are requesting the appropriation.

Ms. Kelly inquired whether Wes Baker performed appraisals for the District in the past and whether those appraisals are being re-evaluated since this person is under scrutiny. Ms. Kelly stated that she was concerned about the amounts we may have paid on past easements. Ms. Sundheimer advised that the District examined all appraisals conducted by Wes Baker. The former general counsel only used Wes Baker to perform real estate appraisals. This issue involving Wes Baker arose during the appraisals for the NMC site. We examined all major appraisals and acquisitions that were already completed. The District ordered new appraisals for each major project that Wes Baker had provided appraisals for.

Ms. Sundheimer advised that another policy change instituted is that we now obtain an appraisal and an appraisal review which is similar to the process used by the Ohio Department of Transportation.

Ms. Sundheimer advised that the appraisal was made in 2008 and at that time the District offered the property owners \$89,000, which they rejected. Given the time lapse, market change and relationship the Thompsons had with the former general counsel and Wes Baker, the District ordered another appraisal. The District went forward with Dean Smith's appraisal.

Ms. Kelly commented that there seems to be two issues: Wes Baker's appraisal of the Thompson's property and past appraisals completed by Wes Baker. She requested clarification on the latter.

Ms. Sundheimer stated that the District examined Wes Baker's appraisals and additional reviews were ordered on some of those. For the most part, the District believed that Wes Baker's appraisals were accurate and that there were not many outliers that would make us take action to undo those transactions. Ms. Sundheimer advised that the acquisition of easements and other rights were appropriate under the circumstances.

Ms. Kelly questioned if the property owners rejected the offer of \$13,550. Ms. Sundheimer affirmed and she explained that the property owners were given 45 days to propose a counteroffer before the District files its appropriation action with the court. Staff is requesting Board authorization to file an appropriation action to move forward with the court filing if a reasonable settlement cannot be reached within that 45 day time period.

Mayor Starr commented that staff requested authorization for the appropriation in 2008 and he questioned as to the date of the appraisal. Ms. Blair stated that it would have taken place within 2007 to 2008.

Authorization of Contract Modification

Resolution No. 261-10

Modify Contract No. 3542 with Medical Mutual of Ohio authorizing an additional expenditure for the employer contribution premium cost. A cost increase of \$784,000.00 bringing the total contract price to \$5,759,000.00.

MOTION – After discussion, Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 261-10. Without objection the motion carried unanimously.

Mr. Sulik inquired if this amount was accounted for in our projections through the end of 2010. Director of Human Resources, Douglas Dykes, affirmed.

Mayor DePiero commented that this is a 15% increase in addition to what was projected for 2010. He questioned as to what factors are contributing to this increase. Are there a lot of claims? Mr. Dykes replied that we over-projected the Kaiser premium since at the beginning of the year we were not sure who was going to sign up for Medical Mutual. A formula is used every year and there is a lot less people choosing Kaiser.

Mayor Starr inquired about the terms of this contract whether it is a two-year, three-year of four-year contract. Mr. Dykes replied that the contract is bid annually.

Authorization to Enter Into Contract

Resolution No. 262-10

One (1) year contract with Precision Multimedia, Inc. for audio/visual maintenance services. Cost: not to exceed \$60,440.00.

Resolution No. 263-10

Contract with The Great Lakes Construction Company for the East Branch Euclid Creek Dam Removal and Stream Restoration Project (EBDR-SR). Cost: \$381,584.95.

- Resolution No. 264-10 Contract with Kenmore Construction Company, Inc. for the Westerly 700 Building Improvements Project. Cost: \$629,617.40.
- Resolution No. 265-10 Contract with Cleveland Freightliner and Valley Ford Truck for the replacement of seven vehicles for use at various District departments. Cost: \$82,063.00 to Cleveland Freightliner and \$164,334.84 to Valley Ford Truck.
- Resolution No. 266-10 One (1) year requirement contract with Motornostix (USA) limited for the lease of predictive maintenance equipment and services at the Southerly Wastewater Treatment Plant. Cost: \$67,920.00.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 262-10 through 266-10. Without objection the motion carried unanimously.

VI. Information Items

1. East 55th Street and Saint Clair Avenue – Emergency Force Main Repair

Deputy Executive Director of Operations & Maintenance, Ronald Czerski, advised that a leak developed in the District's sludge line located between Easterly and Southerly. The sludge line was replaced in the mid-1990s. This line runs down East 140th down St. Clair, down East 55th and East 49th to Southerly.

The leak appears to be located in the area of St. Clair and East 55th which is a congested intersection. Also located at this intersection are a lot of utilities including electrical lines, communication lines, fiber optic lines, water line, sewer line and vaults.

Mr. Czerski explained that it was difficult finding the leak and that Easterly showed no changes in pumping. The leak is intermittent. The District was made aware of the leak late last year when AT&T contacted us to complain about sludge being in six of their vaults. Those vaults are connected through a series of underground ducts and therefore if sludge gets in one vault it will overflow into another vault making it more difficult to find. The leak is so small that it was not noticeable when the sludge line is on and this line runs 24/7.

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 14 of 19

The District took a number of actions to remediate this situation including contacting the CWD to conduct an underground ultrasonic test, but we could not find the leak. We conducted exploratory dye testing and digging in the area of the valve, which failed in the past. This cost the District approximately \$12,300 and we still could not locate the leak.

In August, the leak worsened and the vault filled up every four days. Our testing become more sophisticated and we installed a number of level monitors. A video was used inside the vault and we were able to see the levels. Extra dye was added to the force main and we were able to pinpoint the area of East 55th and St. Clair. Mr. Czerski referred to an image and he explained that the leak is most likely located at those couplings.

Multiple vendors were contacted for the repair of this leak and possible extra digging. The lowest base price was submitted by Marra Services for \$16,000. Marra Services is also an SBE firm. The District elected to use Marra Services for this emergency contract. Mr. Czerski explained that the base price is \$16,000 but also included was time and materials at the emergency contract rate for another \$26,000 in the event more digging is required. After the leak is repaired, staff will come back to the Board for ratification of payment.

Mr. Brown inquired if the leak is located on one of the couplings rather than pipe. Mr. Czerski stated that we cannot make this determination until we dig in this area. The District "found a void" under the pavement. We believe it is a failed coupling.

Mr. Brown commented that the pipe should last longer than 15 years and he was interested in learning whether the pipe is defective or the coupling.

Mr. Czerski stated that there is a study for this particular force main and that Engineering is looking into this matter and plans to evaluate this pipe.

2. Program Management Status Report and Update – August 2010.

Ms. Rotunno referred to an image depicting the first fluidized bed incinerator being installed at Southerly. The shell was constructed on site.

The ECT bid date will be extended to mid-October for the reason that a new site development was brought to the District's attention. A wetland was located at the NMC site, which is the primary location for ECT tunnel shaft site ECT-1. The tunnel boring machine will be launched at this site and therefore it is the hub of operation for the mining activity.

Over the last month, the District has worked closely with the Ohio EPA and U.S. Army Corps of Engineers. Two independent wetland scientists have mapped out the wetlands at the NMC site.

Ms. Rotunno referred to a graphic depicting the NMC site and subsurface issues and site constraints. The NMC site is 27 acres. The wetlands were depicted as the green shaded area and there is approximately 8 acres of wetlands at this site. The Heights Hilltop Interceptor borders the site on the east and the Easterly interceptor borders this site on the west. The TDPS and tunnels were cited for this location given its close proximity to the Easterly interceptor. The dark shading to the right of the figure represented the remaining open segment of NMC which is a 100-flood plan and therefore we cannot build at that location.

Ms. Rotunno stated that the District wedged its facilities tightly into this site to avoid disturbing the wetlands as much as possible. The District's construction will impact approximately 4 acres of the wetlands.

The District may have to have to constrain the contractors' access to this site until we are able to obtain a 401 permit, which Ms. Rotunno speculated will be obtained by March 1st. Ms. Rotunno explained that there are four other shaft sites and that the overall construction schedule should not be interrupted.

Ms. Rotunno acknowledged Robin Halperin and Kyle Dreyfuss-Wells and other staff members that assisted with the Ohio EPA process.

Mr. Sulik inquired if the District was aware of the wetlands on this property when they initially considered the NMC site for these projects. Ms. Rotunno replied that she did not believe that was part of the analysis when the property was initially purchased. Ms. Rotunno advised that this purchase took place prior to her joining the District but that she recalled seeing a Phase 1 Environmental Site Assessment and a Phase 2 Environmental Site Assessment. However, she did not recall seeing anything regarding the wetlands.

Executive Director Ciaccia stated that "it was not done."

Mr. Brown commented that wetlands are visible. At times wetlands were developed however that area stays wet because of flow and holding water and eventually become overgrown. At some point, the area is designated as a wetland. It is not as if these wetlands "just popped up."

Ms. Rotunno indicated that they did not and in fact a biologist classified these wetlands as "high quality category 2 wetlands" which means that it is a "matured forested wetland"

BOARD OF TRUSTEES

Regular Meeting

September 16, 2010

Page 16 of 19

having large-diameter trees, salamanders, exfoliating bark trees and a bat habitat. The Ohio EPA considers this area to be a very high quality wetland.

According to Ms. Rotunno, "we are treating this very seriously and doing our due diligence. We are prepared to mitigate for the impacts we are going to need to make in order to construct this environmental project for the community that's going to benefit the community on the Lake Erie watershed and we are committed to mitigating it."

Ms. Rotunno explained that we are exploring whether similar forested wetlands might be present in the NMC watershed area, Euclid Creek watershed area and Lake Erie watershed. The Ohio EPA prefers, at a minimum, that you mitigate 2.1 acres to every one acre of impact. Ms. Rotunno advised that we have to check the availability of mitigation projects in this area.

Executive Director Ciaccia acknowledged Government Affairs Specialist, Darnella Robertson, on her efforts in contacting Senator Voinovich's office who was very helpful to us. Executive Director Ciaccia explained that the District's goal is to complete our projects and keep our permitting timelines narrow so we do not impact the project. Executive Director Ciaccia advised that he has been in personal contact with Chris Korleski, Director of the Ohio EPA, and that everyone seems to be working towards a common goal of timing, but we are going to have some mitigation.

Ms. Rotunno addressed Mr. Brown's previous comment about the wetlands and she advised that ideally the wetlands would have been identified as part of the permitting evaluation and early design of the project, but it was not done for this particular site. However, we are fortunate to have caught it before the bids were advertised. According to Ms. Rotunno, the District has a good, solid permitting approach which will not impact the cost of the ECT project.

Ms. Rotunno moved to the CIP delivery process. She advised that we continue to refine our business processes in an effort to improve the delivery of our CIP projects.

Ms. Rotunno moved to the Key Performance Indicators (hereinafter "KPIs") through August 2010. CIP awards are at 64% and we are running behind. Our KPI is to award 38 projects by year-end. We are behind on three design projects and nine construction projects. There is typically a three-month lag between corrective action measures and results and therefore Ms. Rotunno expects changes during fourth quarter.

Ms. Rotunno advised that we are \$10 million behind on design projects and \$26 million behind on construction projects. This has resulted from low bids and some projects not getting out. If the ECT is awarded in 2010, we will meet our KPI of \$268 million.

Ms. Rotunno referred to a graphic depicting the design projects. The projects represented in blue have been processed and awarded by the Board. The projects represented in green received Board authorization to issue RFPs but have not yet been awarded. We are currently evaluating and negotiating many professional services contracts, and over the next several months, Ms. Rotunno anticipates coming to the Board for consideration to award those contracts.

We currently have 11 construction projects to be awarded by year-end. The bars in green have received Board authorization to issue RFPs but have not been awarded. The projects shown in blue have been awarded. The projects in red have not been advertised or awarded and there are four of those.

Ms. Rotunno moved discussion to the KPI for the engineer's estimate of probable cost. Three bids were opened in August and two of those came in substantially under the engineer's estimate, but we are still within our KPI range of plus or minus 10%. The average of our bids was 8.5% under the average of the engineer's estimate.

Ms. Rotunno stated that "the execution of our construction program continues to be a strong point of our CIP execution." Ten out of eleven projects closed out under the base contract amount.

Ms. Rotunno moved discussion to the MBE/WBE subcontracting goals. The primary settling tank project closed out in August. At completion Kenmore Construction met their contract-committed MBE goal but was short of the District's goal of 15%. They missed their WBE subcontracting goal as well as the District's goal.

The contractors' SBE bid commitments are exceeding the District's goals by 3.4%. The contracts seem to meet or exceed the goals of our SBE program.

This completed Ms. Rotunno's presentation and she turned discussion over to the Board.

Mayor Starr referred to charts 2.1 and 2.2 and he questioned if those represented a "summary of everything we are doing?" Ms. Rotunno affirmed.

Mayor Starr requested that Ms. Rotunno interpret this in layman's term.

Ms. Rotunno stated that the status of the budgeted funds that have been assigned to the contracts and the financial condition of contracts when compared with budgeted funds under 100% means we are doing great. Depicted in column J is the estimated percent of the contract to be used. As long as we are projecting numbers that are under 100%, then we are managing our fiscal obligations well.

Mayor Starr commented that he did not see anything at 110%, 115% or 120%. Ms. Rotunno replied that we are not estimating to use any more than what we contracted. If we came back to the Board specifically for a contract modification for additional funds it would be flagged, but that has not been the case. Ms. Rotunno explained that we may have exceeded our goal to only use 50% of our general allowance, but we have not exceeded our contract caps on any construction projects.

Mayor Starr commented that Ms. Rotunno used words such as “value and contracting” but not “administration” and he stated that he was certain the “administration has something to do besides value and construction contracting, the atmosphere in getting lower bids because of the economy.” He inquired if the administration has played a role in this. Ms. Rotunno replied that it is about the administration and its paperwork and bookkeeping.

Mayor Star questioned whether this is positive news. Ms. Rotunno affirmed and stated that it is positive news that she can provide the Board with this information on a project by project basis and that all of those numbers are less than 100%.

Mayor Starr commented that he was impressed. Ms. Rotunno appreciated Mayor Starr’s compliment and she acknowledged the “whole army of people in the audience” that help make this happen each month.

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 the status of the 3320 Woodland Avenue litigation and waiver of privileges on certain documents related to the KMM&K 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 attorney-client privilege. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 1:51 p.m. to 2:21 p.m.

X. Approval of Items from Executive Session

Add-On

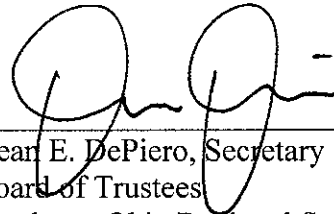
Resolution No. 267-10

Authorizing the waiver of the Northeast Ohio Regional Sewer District's privileges by the Board of Trustees relative to certain documents for use in *KMM&K, Joint Venture v. Northeast Ohio Regional Sewer District litigation*.

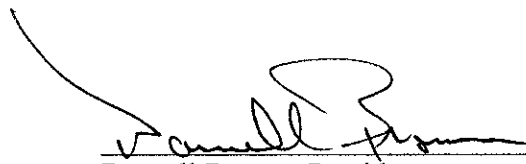
MOTION – Mr. Sulik moved and Mayor DePiero seconded to add and adopt Resolution No. 267-10. Without objection, the motion carried unanimously.

XI. Adjournment

MOTION – Mr. Brown stated that business having been concluded, he would entertain a motion to adjourn. Mr. Sulik moved and Mayor DePiero seconded the motion to adjourn at 2:22 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