

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
OCTOBER 2, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Mr. Brown.

I. Roll Call

PRESENT: D. Brown
T. Longo
D. DePiero
G. Starr
R. Sulik
S. Kelly
A. Liberatore

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

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Liberatore seconded that the minutes of the September 18, 2008 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Mr. Norman Edwards registered to speak at public session regarding safety and diversity. Mr. Richard Jones registered to speak at public session on the topic of fraud. Executive Director Ciaccia advised that neither topic was related to any agenda action items. Mr. Brown advised that at the appropriate public session the Board will entertain the comments from Mr. Edwards and Mr. Jones.

IV. Executive Director's Report

Executive Director Ciaccia advised that in follow-up to the last Board meeting, he would like to discuss a few topics. Presentations will be made later in the meeting to discuss other pending issues as well.

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Executive Director Ciaccia advised that staff looked into the issues brought forth at the previous Board meeting concerning Adrian Maldonado, his involvement with the company, Logik, and the School District contract. Staff inquired as to the signature on the School District contract and Executive Director Ciaccia advised that Mr. Maldonado indicated that he does recall signing the document. Executive Director Ciaccia advised that staff does not foresee any tasks being assigned to Mr. Maldonado at this point therefore making it a moot issue. In the event the District deems it necessary to use Mr. Maldonado's services in the future, it will not do so without seeking Board approval and also presenting the Board with a full explanation as to why such professional services would be within the best interest of the District.

Mayor Starr questioned what the "number one allegation" against Mr. Maldonado was. Executive Director Ciaccia stated that at a prior meeting it was alleged that Mr. Maldonado completed \$20 million worth of work with the Cleveland School District, but the District was unable to determine whether this allegation was accurate. The District did however receive confirmation that Logik did complete an \$8,000 contract with the school district.

Mayor Starr questioned which entity Mr. Maldonado performed work for wherein Executive Ciaccia indicated that it was the Cleveland Public School System.

Executive Director Ciaccia stated that at the prior Board meeting it was alleged that although Logik did not complete \$20 million worth of work, they are affiliated with a company named New Era Construction. Executive Director Ciaccia indicated that the District was unable to confirm this and is unsure as to how this is relevant since the District will not be utilizing Mr. Maldonado's professional services at this point.

Mayor Starr asked Executive Director Ciaccia if he proposes the Board repeal the previously authorized contract with Adrian Maldonado in the amount of \$72,000. Executive Director Ciaccia advised that he may address this issue at a subsequent meeting and does not have this information presently available for the Board. Executive Director Ciaccia reiterated that staff does not anticipate any additional tasks to be performed by Mr. Maldonado, and that staff would seek Board approval if it were deemed necessary to retain Mr. Maldonado's professional services in the future. Executive Director Ciaccia advised that he may request the Board repeal the contract but would like to discuss this issue internally prior to moving forward on this issue.

Executive Director Ciaccia moved discussion to the allegations made at the September 18th Board meeting regarding Kenmore Construction (hereinafter "Kenmore") resulting in the Board holding Resolution No. 226-08 to authorize the District to enter into contract with Kenmore. Executive Director Ciaccia advised that Kenmore was the lowest bidder

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on the primary settling tank rehabilitation project at the Easterly plant, and Resolution No. 226-08 is on the agenda again for Board approval.

Executive Director Ciaccia stated that staff researched the allegations made. Some of the documentation was received late and Executive Director Ciaccia apologized to the Board, but explained that staff wanted to conduct a complete analysis of the materials received prior to submitting them to the Board.

Executive Director Ciaccia reminded the Board that at the September 18th meeting it was alleged that Kenmore was involved in the "Nate Gray fiasco". Executive Director Ciaccia advised that staff did not determine any link between Kenmore and a federal criminal investigation relating to Nate Gray. However, the District did find that Kenmore was involved in a civil claim filed with the U.S. government under the "False Claims Act" against Choice Construction (hereinafter "Choice") and Kenmore in which Kenmore utilized Choice as a subcontractor on an Ohio Department of Transportation (hereinafter "ODOT") project. In this lawsuit, it was alleged that Kenmore and Choice conspired to receive road construction contracts through fraudulent representation that Choice was a legitimate disadvantaged business enterprise (hereinafter "DBE"). Furthermore, there was a charge that Choice was a "front company" in this particular project. In May 2005, the Ohio Department of Justice dismissed the complaint pursuant to a settlement agreement reached with Kenmore and Choice in which there was a substantial monetary settlement. In the District's research it was determined that Kenmore fully complied with the settlement agreement and was not debarred or prohibited from bidding on ODOT or any other government contracts as a result of the matter.

Executive Director Ciaccia advised that the Law Department reviewed the issue and can find no legal basis to deny Kenmore, the low bidder, the award of the District's primary settling tank rehabilitation project. Kenmore's bid proposal was substantially lower than the other bids received and it is within the best interest of the District from a legal and monetary standpoint to proceed with the award of this contract to Kenmore.

Executive Director Ciaccia stated that the situation with ODOT and other agencies underscores what he previously stated at a prior meeting, which is that the problem with "front companies" and "pass-throughs" is not unique to the District. This has been an ongoing problem for most, if not all, programs throughout this region. Executive Director Ciaccia advised that it is the District's challenge to create a program that includes controls to assure that "fronts" and "pass-throughs" and prime contractors using "fronts" and "pass-throughs" cannot take advantage of the District's subcontracting program. Executive Director Ciaccia stated that the District intends to aggressively monitor this contract as well all others. Executive Director Ciaccia stated that he wanted

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to address these issues because the authorization to award the contract to Kenmore, Resolution No. 226-08, is on the agenda for Board approval.

Executive Director Ciaccia advised that all other report items will be discussed in the forthcoming presentations.

Mayor Starr stated that since allegations are being made involving a contractor in which the Board is considering awarding a \$2.5 million contract, he was interested if finding out if any representatives from Kenmore were present at the meeting to be introduced to the Board, customary with past practice. Mayor Starr indicated that rather than the District defending Kenmore, Kenmore's representatives should be available to speak on its behalf to the Board at its public meeting regarding these allegations. Executive Director Ciaccia advised that due to the allegations, he requested Kenmore representatives be present at the Board meeting, and Mr. Bill Scala and Mr. Paul Scala are both in attendance.

Mayor Starr advised that at the September 18th Board meeting, Mayor Longo made a motion to table this issue allowing additional time for the District to research these alleged claims. He felt it important that the Board hear this information. Mr. Brown requested one of Kenmore's representatives to proceed to the podium.

Mr. Bill Scala introduced himself as the president of Kenmore. Mr. Brown explained that the Board held the resolution to award a contract to Kenmore because of allegations made that this company was under investigation as it relates to the Nate Gray case. The Board held this resolution and requested staff to conduct due diligence in this regard, and to Mayor Starr's suggestion, it is important for Kenmore to address these allegations directly to the Board so it may make an informed decision.

Mr. Scala stated that regarding the Nate Gray allegations, Kenmore has no knowledge of or involvement in an investigation. Kenmore's legal counsel confirmed this matter with the District's Law Department. Mr. Scala stated he had nothing more to "add to these false allegations...we were not involved in any way, shape or form."

Mayor DePiero requested Mr. Scala address the allegations regarding the "front company." Mayor DePiero cited that the complaint alleged that "although Choice was owned by a female minority, Gale Perkins, the company had few employees and equipment of its own and was merely a 'front company' for work that was actually performed by Kenmore." The complaint further alleged that "Choice was using Kenmore employees and equipment to complete the work on its awarded contracts." Mayor DePiero inquired if Mr. Scala wanted to comment on this issue. Mr. Scala stated that "Choice has had its own set of problems" and that "Kenmore and numerous contractors used Choice for period of time." Mr. Scala advised that Kenmore's "involvement with Choice ended when they got into trouble." According to Mr. Scala, Kenmore worked

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with the government and state of Ohio, and Kenmore was ultimately dismissed from this case receiving "a clean bill of health from the state of Ohio and the federal government to continue bidding and working on projects." Mr. Scala believed Kenmore resolved this matter, and some issues from this case were sealed at the request of Kenmore or the federal government. Mr. Scala stated that Kenmore is permitted to bid, has never been debarred, and completed numerous projects for ODOT and the District. Kenmore has never failed to complete a project or has had any issues with its subcontractors, DBE or otherwise.

Mayor DePiero inquired if Mr. Scala had any knowledge of a "front company" being used with regards to this contract that was under investigation. Mr. Scala stated that to the best of his knowledge, "we all thought that Choice was a legitimate company. They did a lot of work for a lot of different owners."

Mr. Liberatore stated that moving forward with the current project under consideration he recalled requesting that representatives from Pro Construction indicate whether they intend to use minorities and residents in which they agreed to do. He then questioned if Mr. Scala can speak to M & R Enterprise (hereinafter "M & R") and its background as a minority business enterprise (hereinafter "MBE"). Mr. Scala stated that Kenmore has used M & R for a number of years and just completed an ODOT project with them. Mr. Scala explained that according to his research, M & R worked at the Easterly plant with Kokosing Construction on a \$1 million project. Presently, M & R is working on a \$400,000 project for the District at the Westerly plant for Marra Construction. Mr. Scala stated that they worked for the Shook Kokosing Company on a project estimated over \$1 million for the Cleveland Water Department at Nottingham. M & R also worked at the Baldwin Plant for the City of Cleveland Water Department on a project totaling nearly \$1 million. Mr. Scala stated that the Kenmore's "track record" with M & R has been "very good."

Ms. Kelly questioned Mr. Scala if he had an opinion as to why Kenmore has been implicated in the Nate Gray situation, to which Mr. Scala stated "absolutely none" and is unsure as to why Kenmore was named in the allegations.

Executive Director Ciaccia assured the Board that if Kenmore is awarded the District contract, there will be extensive pre-contract signing conversations between the District and Mr. Scala as to how subcontractors will be used. The District intends to aggressively monitor the performance on said contract. In response to Executive Director Ciaccia's comment, Mr. Brown stated that he expects these discussions to be held with every contract the District engages in. Executive Director Ciaccia agreed.

Ms. Kelly inquired as to the District's past relationship and experience with Kenmore. Executive Director Ciaccia stated that according to the records, dealings with Kenmore

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seemed to have been positive, and the work completed by Kenmore appears to be good. Executive Director Ciaccia advised that he did not find any situations resulting in significant cost overruns, and Kenmore appeared to have completed its project on time and within the budget.

Mayor Longo commented that Kenmore is presently working on Interstate 480 under a contract with ODOT. The City of Garfield Heights agreed to a staging location within its jurisdiction so that the project could be completed sooner. Mayor Longo stated that Kenmore has made extraordinary efforts to address the issue of increased truck traffic due to the construction project even though the City has no dealings with this contract. Furthermore, Mayor Longo added that from his observation, Kenmore has always met its commitments with the District, and changes have always "been right on the money." Mayor Longo stated that it is disheartening when allegations are made and he wanted to see what, if any, concrete evidence would be discovered. Mayor Longo stated that the Board gave an additional two (2) to three (3) weeks to have all information presented to the Board for its review. Mayor Longo stressed if anyone was in possession of documentation that is not desirous of presenting the Board with a copy, staff will make a copy of the documentation so the Board can complete its due diligence on any unresolved issues. Mayor Longo stated "if things are going to be said, then lets put them right on the table."

Executive Director Ciaccia stated that it was public knowledge from the September 18th Board meeting that the staff was going to take the additional two (2) weeks to investigate the facts surrounding the allegations, and no external documentation was submitted within that two (2) week period. Executive Director Ciaccia advised that the information the Board has in its possession is all of the information the District had surrounding these issues. Staff conferred with Kenmore's attorneys and scanned the court documents in an effort to find the facts relative to the allegations made. Executive Director Ciaccia stressed that no external members submitted any additional documentation.

Mr. Brown stated that the District has a history of providing quality construction contracts, and the issue is not the quality of the work, rather it involves the engagement of minorities on District projects. Mr. Brown agreed with Executive Director Ciaccia's earlier comment that many entities involved with construction projects have had to deal with the same challenges facing the District with regards to a credible subcontracting program. The District will need to implement a credible project monitoring program in order to deal with these challenges to prevent being inundated with the same discussions. However, these discussions are not meaningless or fruitless, and they address concerns of past practices and expectations of the District going forward. Mr. Brown stressed that this is "not business as usual." The Board is "committed to moving the agenda of the District forward and getting the lowest and best price for the quality" of construction and design work. The Board also must ensure the work is complete in compliance with all

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prerequisites in order for business to take place. Mr. Brown advised that there have been some questionable dealings that have led to the current predicament. Mr. Brown stated that rather than rely on the testimonies or records of other individuals, the District needs to conduct its own due diligence and establish a monitoring protocol to ensure that contractors are complying with the District's procedures. Mr. Brown stated that these are not requests, they are contractual obligations. Mr. Brown stated to Mr. Scala that this message not only applies to Kenmore, but it applies to all contractors interested in doing business with the District. Mr. Brown explained that the Board continuously reverts back to these discussions because in the past people were not providing levels of due diligence, transparency or supporting documentation, and he indicated that this is an ongoing concern.

Mayor Starr stated that he agreed with what Mr. Brown stated and it was not the intent to address all of the issues that have been raised over the last several years including waste, fraud and abuse. The District has been engaged in many wonderful projects and its focus has been mainly on procurements and contracting. Mayor Starr advised that the District is continuing to "try to get a handle on" its contracting and millions of dollars that is still unaccounted for. Mayor Starr stated that Kenmore's bid on the primary settling tanks rehabilitation project was for \$2.5 million whereas the engineer's estimate was \$3.4 million, which is 25% or \$865,620 lower. Mayor Starr asked Mr. Scala if he could explain why Kenmore's bid was 25% less than the engineer's estimate. Mr. Scala stated that is "how their bid worked up and costs came in." Mayor Starr asked "if this is a solid bid?" Mr. Scala stated that it was. Mayor Starr questioned Mr. Scala if he foresees any major cost overruns or change orders. Mr. Scala stated "not at this time, no."

Mayor Starr stated that there are members of the audience that wished to address the Kenmore issue at this portion of the meeting. He stated that if they have evidence, then he would like to hear from them so he can make an informed decision. Mr. Brown inquired if they had evidence pertaining to this contract. Mayor Starr stated that Mr. Jones raised this issue about Kenmore at the last meeting and inquired if he had any evidence.

Mr. Jones was asked to report to the podium. Mr. Jones stated that Executive Director Ciaccia failed to mention with regard to the lawsuit who Kenmore was accused of "ripping off...the Northeast Ohio Regional Sewer District." Mr. Jones stated that the District did not receive the money and that this is indicated in the complaint.

Mr. Jones stated that he spoke with the federal prosecutor this morning and he stated that "somebody at ODOT dropped the ball, somebody at ODOT did not do their job, they did not follow up on compliance." According to Mr. Jones, he was advised that the federal government informed Kenmore that they had to stay in compliance or else they would no

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longer be able to receive any contracts involving federal dollars. They were required to turn in compliance forms which Mr. Jones had in his possession.

Mr. Jones stated that the company used to defraud the District and the Board was Choice Construction. Choice then transferred all of its assets to McTech. Mr. Jones stated that he told the federal prosecutor this information and he agreed that if "ODOT sends it back, he is going to reopen the federal investigation and bar them." According to Mr. Jones the federal prosecutor's exact words were "I'm going to come down on them with both feet. ODOT should have let us know the minute the word McTech came up on a form." Mr. Brown asked Mr. Jones for the name of the federal prosecutor. Mr. Jones stated U.S. attorney Alex Rokakis.

Mr. Jones reiterated that the same company defrauded this Board and took money from the taxpayers. He questioned why Executive Director Ciaccia did not bring this information forward because in this lawsuit the District was being "ripped off." Mr. Brown inquired if the Board could receive copies of Mr. Jones' documents in which Mr. Jones stated "yes".

According to Mr. Jones, at the prior Board meeting Executive Director Ciaccia indicated that there were no stories in *The Plain Dealer*. Mr. Jones had in his possession a story dated April 2, 2008 which "mentions everything he said the last time." Mr. Jones questioned "Who do you think Choice is? Who do you think Choice was...Nate Gray. That is exactly who that comes back to." Mr. Brown stated that if Mr. Jones could please provide the Board with a copy of his documentation it would be appreciated.

Mr. Jones stated that ODOT called him four (4) different times "begging them not to go on the radio and release this information." He referred to the last compliance form turned over to ODOT in 2007 by Kenmore, and listed on the form is McTech, Choice and three (3) other "front companies" identified in *The Plain Dealer* as "out and out fronts within the last month." Mr. Brown requested Mr. Jones hand the documents to Mr. Bucci so the District can make copies of the documents.

Mr. Jones stated that according to the federal government, Kenmore "may not even be eligible for any of these contracts and they may have to pay back every penny that your organization and ODOT has given them over the last three (3) years."

Mr. Jones stated "did you get that on the record Don Ciaccia". Mr. Brown reminded Mr. Jones that he must address the Board.

In response to Mr. Jones' comments, Mr. Scala stated that there has been "no conversation with the District attorney handling this matter...all of the information submitted to ODOT they had in different forms...and we are very confident that

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everything is just fine.” Mr. Scala stated that any and all of the subcontractors used that were mentioned are on the District and ODOT’s approved subcontractor lists, so “until someone takes them off the list, we are entitled to use them.” Mr. Scala stated that if they are on the list, then the contractor is entitled to use them. With regards to the referenced project, Kenmore sent out over fifty-five (55) emails or faxes requesting quotations from all companies certified by the District. Ten responses were received and Kenmore used four to six on the project. Mr. Scala stated to tell the Board “that someone is going to do something in the future that will impact the awarding of this contract is completely out of line” and against Kenmore’s rights and the District’s rights. The subcontractors used are presently reflected on the District’s list. If the District desires to remove these subcontractors, then Kenmore will use a different subcontractor. Executive Director Ciaccia added that on this particular procurement, McTech is not listed as subcontractor in the bid proposal.

V. Consent Agenda

No Discussion ensued on Resolution Nos. 229-08 through 230-08.

Resolution No. 229-08

Authorization to pay dues for Water Environment Research Foundation Subscription. Cost is \$92,583.00.

Resolution No. 230-08

Authorization to pay Ohio EPA annual discharge fees for the Easterly, Southerly and Westerly Wastewater Treatment Plants. Cost is \$108,700.00.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 229-08 through 230-08. Without objection, the motion carried unanimously.

VI. Action Items

Authorization to Advertise

No discussion ensued on Resolution No. 231-08 through 233-08.

Resolution No. 231-08

Requirement contract through the end of 2009 to purchase laboratory chemicals for the Analytical Services Department.

Resolution No. 232-08

Overhead door maintenance for plants, EMSC, and pump stations. Expected expenditure is \$35,000.00.

Resolution No. 233-08

**Easterly WWTP Final Clarifier
Rehabilitation Contract FCR-5.
Engineer's estimate is \$4,500,000.00.**

Resolution No. 234-08

**Dugway East Interceptor Relief Sewer.
Engineer's estimate is \$23,000,000.00.**

Mayor Starr requested someone from staff give explain to the Board the Dugway East Interceptor Project.

Executive Director Ciaccia stated that this is the Dugway Interceptor Relief Sewer Project and is an early action item of the Combined Sewer Overflow (hereinafter "CSO") Long-Term Control Plan (hereinafter "LTCP"). The project design was completed by DLZ-Ohio, Inc. (hereinafter "DLZ"). The bid specifications are complete and the District is ready to advertise for bids on 12,000 feet of 24 inch to 78 inch diameter open cut sanitary sewer construction, 132 feet of 78 inch diameter pipe and tunnel, and 183 feet of 42 inch diameter jack pipe, 955 feet of 48 inch diameter pipe and microtunnel, and involves major connections to Easterly interceptor sewer junction. This project is a substantial undertaking. Executive Director Ciaccia advised that this project is part of the Easterly CSO LTCP and should not be confused with the Dugway tunnel project, which will be discussed during the Nine Mile Creek property presentation.

Mayor Starr questioned if the District is attempting to separate storm and sanitary or use this as a holding tank to be released for treatment at the Easterly plant. Executive Director Ciaccia stated that this is not a separation or storage; rather it is an interceptor to convey CSOs to the Easterly plant. Executive Director Ciaccia indicated that it will ultimately shift to the tunnel systems for storage, once they are built.

Director of Watershed Programs, Frank Greenland, stated that this is a relief sewer project providing more capacity to convey wet weather flows downstream which activates overflows less frequently. The District is taking advantage of the capacity at Easterly interceptor that this ties into to convey those flows to the plant with a future CSO tunnel along Dugway Brook to "take us to the end point" for controlling overall overflows in the Dugway system. This is considered step one, to reduce overflow fairly significantly, removes regulators so the District does not have to maintain as many facilities, and then the District follows-up with the Dugway tunnel to obtain the control level endpoint.

Mayor Starr questioned if it reduces overflows by storage and time. Mr. Greenland stated that it is a bigger pipe which allows the flow to proceed downstream to the plant resulting

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in less overflow because there is less back-up. Mr. Greenland advised that it conveys the flow to the plant and so much storage.

Mayor Starr inquired if customers were experiencing backed up basements and flooded streets or streams. He questioned what was being flooded and why the District is doing this. Mr. Greenland stated that the combined sewer regulator structure was being flooded. There are structures in the system to allow wet weather flow to overflow into the environment in order to prevent street and basement flooding. The regulators were overflowing, and the District's intent is to ensure this happens less frequently.

Mayor Longo inquired as to the construction timeframe once the contract is awarded. He questioned if the construction interval was 30 months. Executive Director Ciaccia affirmed. Mayor Longo stated that "it is going to take longer than that." He stated that there had to be basement back-ups in older sections because the sewer system did not have the capacity for the conveyance.

Mr. Liberatore stated that he looks forward to "seeing these projects built." He commented that although the District does "have faith in its engineer's estimate; perhaps Kenmore Construction can save us another 25% as well."

MOTION – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution Nos. 231-08 through 234-08. Without objection, the motion carried unanimously.

Authorization to Re-Bid

No discussion ensued on Resolution No. 174-08a.

Resolution No. 174-08a

**Southerly Wastewater Treatment Center
Digester Dome Removal, Contract 28C1.
Revised engineer's estimate of
\$500,000.00.**

MOTION – Mr. Liberatore moved and Mayor Starr seconded to adopt Resolution No. 174-08a. Without objection, the motion carried unanimously.

Authorization to Award

No discussion ensued on Resolution No. 235-08.

Resolution No. 235-08

**Division Avenue Pump Station Building
Restoration, Contract PS-3 to VIP
Restoration, Inc. Cost not to exceed
\$75,526.00.**

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MOTION – Mayor DePiero moved and Mayor Longo seconded to adopt Resolution No. 235-08. Without objection, the motion carried unanimously.

Resolution No. 226-08

**Primary Settling Tanks Rehabilitation,
Contract PST-2 to Kenmore
Construction, Co., Inc. Cost not to exceed
\$2,574,380.00.**

Mayor Starr stated that evidence was provided to the Board regarding allegations of Kenmore Construction, and he suggested that prior to the vote, he would like an explanation of the evidence.

Mr. Brown suggested separating the prior motion moved by Mr. Liberatore and seconded by Mayor Longo in order to vote on each resolution separately, or to defer the vote in order to provide the Board and staff the opportunity to review the information produced by Mr. Jones. He questioned staff if there is an urgency to move forward with the vote.

MOTION - Mayor Longo moved and Ms. Kelly seconded to hold Resolution No. 226-08. Without objection, the motion carried unanimously.

Authorization to Purchase

No discussion ensued on Resolution Nos. 236-08 and 237-08.

Resolution No. 236-08

**Moyno pipeliner parts from sole source
vendor Schultz Fluid Handling
Equipment for Easterly, Southerly and
Westerly WWTPs. Cost not to exceed
\$75,000.00.**

Resolution No. 237-08

**Rescinding Resolution No. 140-08 and
purchasing five (5) replacement
motorized carts from Chagrin Pet,
Garden & Power Equipment Supply,
Inc., under the Ohio Department of
Administrative Services State
Procurement Program for Easterly and
Southerly WWTP and Fleet Services.
Cost not to exceed \$62,429.15.**

MOTION – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution Nos. 236-08 and 237-08. Without objection, the motion carried unanimously.

Authorization of Contract Modification

No discussion ensued on Resolution No. 129-08a.

Resolution No. 129-08a

Additional expenditure to the United States Geological Survey for additional source tracking and research at Villa Angela Beach. Cost of additional expenditure is not to exceed \$5,000.00.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 129-08a. Without objection, the motion carried unanimously.

Resolution No. 238-08

Effluent Screw Pump Rehabilitation, Contract ESPR-2, Contract No. 3350. A time extension is requested at no cost to the District.

Executive Director Ciaccia advised that the District is withdrawing Resolution No. 238-08 because the contract does not provide for a time extension. Resolution No. 238-08 was withdrawn.

VII. Information Items

1. Government Finance Officers Association Distinguished Budget Presentation Award for 2008 Annual Budget.

Director of Finance, Jennifer Demmerle, presented the information to the Board. She indicated that in July the Board was provided the District's annual budget document submitted to the Government Finance Officers Association for the Distinguished Budget Presentation Award. In order to receive this award, four (4) nationally recognized guidelines must be met. An entity's budget document must be a policy document, financial plan, operations guide and communications device. Ms. Demmerle advised that the District was found proficient in all four (4) categories, therefore, the District received the Distinguished Budget Presentation Award for the second consecutive year.

The Board congratulated Ms. Demmerle and her staff on a "job well done."

2. Presentation on the Long-Term Control Plan.

Executive Director Ciaccia stated that the District has been in significant discussions with the federal government, federal Environmental Protection Agency (hereinafter "EPA"), and Ohio EPA regarding the LTCP. Discussions are moving forward and projects are

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underway. Executive Director Ciaccia advised that he requested Director of Engineering and Construction, Kellie Rotunno, provide the Board with a brief overview of the presentation given to the government. This presentation was a proposal to the government as to how the District would like to proceed with its LTCP at the Easterly and Southerly WWTPs.

Ms. Rotunno advised that she would inform the Board as to the status of its negotiations with federal agencies regarding the LTCP.

Ms. Rotunno advised that she wanted to discuss the key negotiation strategies. First, is framing a sense of urgency to reach an agreement between the District and the government. Second, framing the reasonableness of the District's recommended LTCP and No Feasible Alternatives (hereinafter "NFA") including its comparison to other proposals and precedence in Ohio as well as Region 5. Third, balancing the water quality benefits with cost burden to District customers, which can be argued as the number one negotiation strategy since the District relies on providing the benefit with the smallest burden to District customers. Fourth, demonstrating flexibility and a willingness to move toward agreement through enhancements to the proposed LTCP and NFA.

Ms. Rotunno enlightened the Board as to the sense of urgency on moving forward with the LTCP quickly. She stated that each day of delay results in significant cost escalation ultimately absorbed by the customers. Ms. Rotunno presented a graph which indicated CSO control costs across the Y-axis and a timeline across the X-axis wherein the dots represent the average program cost escalation. Ms. Rotunno advised that the increase is approximately \$300,000 per each day of delay. Ms. Rotunno stressed that the District needs to reach a resolution quickly. Furthermore, there are significant environmental costs that continue with each day of delay. Ms. Rotunno presented a graph to the Board wherein the Y-axis indicated the Easterly CSO volume and the X-axis represented the timeline. Ms. Rotunno stated that if the District moved forward with its LTCP when initially proposed, in 2012 the Euclid Creek Storage Tunnel (hereinafter "ECT") would capture CSO that would otherwise flow into Lake Erie. Consequently, due to delays an additional 4.5 billion gallons are being discharged into Lake Erie that is 800 million gallons per day for each day of delay. Ms. Rotunno advised that there is a significant impact to the customers and the environment for each day of delay.

Ms. Rotunno explained that the timeline is incorporated into the negotiations, initiated in 2002, when the District submitted its CSO facilities plan, to the present. The District is desirous of reaching an agreement quickly and the frequency of meetings between the District and government agencies increased to twice a month through the end of the year with an effort to reach a collaborative agreement expeditiously.

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In an effort to explain the reasonableness of its LTCP, Ms. Rotunno referred to a graph which indicates the maximum proposed percent capture of CSOs. The four (4) cities in blue represented the proposed plans of Ohio cities Toledo, Akron, Cincinnati and Columbus. These percentages are not agreed upon and are still under negotiations. At 97% CSO capture, the District's proposed LTCP is reasonable and aggressive. The USEPA presumptive approach for CSO is 85% capture.

Ms. Rotunno moved discussion to the balance of water quality benefits beyond the District's LTCP proposal will increase financial burden to District customers. She referred to a graph which indicates the annual CSO activation level of control along the Y-axis. The District's plan is at four (4) overflows per year which is a practical program at a reasonable cost. Ms. Rotunno showed that program costs increase as the levels of control increase from 3, 2, 1 or zero annually. Four (4) overflows per year is a reasonable level of control to ensure program costs are kept in balance.

The District offered the government an enhanced NFA proposal on September 9th to allow for flexibility. The top portion of the graph depicted Easterly CSOs and the lower section represented Southerly CSOs. The items in gray represented the projects the District plans to proceed with. The projects highlighted in blue were the add-ons at a fairly low cost which would benefit the environment. The District proposed to add \$23 million to the Easterly plant NFA to allow for the disinfection of CSO-001. This includes the use of chlorine which is a high rate treatment technique used throughout the country and in Region 5. In addition, the District would request chemically enhanced treatment for the primary. This was "put on the table" to the government as a "first gesture."

Ms. Rotunno moved discussion to address the challenges facing the District. Lake Erie Water Quality is not currently meeting Ohio's water quality standards and is classified as an impaired body of water. The Ohio EPA has the ability to request permit recipients to meet a higher level of control. Ohio EPA designated Lake Erie as a 'sensitive receiving water'. Ohio EPA's level of control transcends the federal standards. The second challenge is the financial capability assessment. The EPA's policy is that program costs are 2% of median household income. If program costs are less than 2% of the median household income the government may authorize the District spend additional funds to obtain higher levels of control. The District is collecting data to ensure its accuracy for its financial data assessment. The third challenge is the environmental cost benefit. Ms. Rotunno advised the Board that the government may require the District to increase its levels of control or implement high rate treatment at the Easterly plant for CSO-001 which would be the largest high rate treatment in the U.S. and possibly the world. The estimated cost of this undertaking would be \$250 million.

Ms. Rotunno advised that the government is returning to the District to tour the WWTPs on October 16th. The District anticipates receiving feedback from the government

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regarding its September 9th proposal. The District will make a technical presentation on items requested by the government. Around October 30th the District will discuss its water use with the government. In December, discussions regarding the financial capability assessment will be held.

Mayor Longo inquired if the September 9th proposal was incorporated in the presentation and if this was made to USEPA and Department of Justice (hereinafter "DOJ"). Ms. Rotunno indicated that it was. Executive Director Ciaccia advised that the District is proposing demonstration projects first rather than committing to the dollars associated with some of these projects. The EPA has not yet entertained this type of proposal, but the District is desirous of assessing whether projects are successful prior to making the commitment.

Mayor Longo referred to page six (6) of the presentation regarding the reasonableness of the maximum proposed percent capture of CSO. He questioned if the District's proposal of 97% capture was if the government agreed to the initial proposal wherein Ms. Rotunno affirmed. Mayor Longo questioned if the EPA strives for 85%. Ms. Rotunno stated that in its negotiations it strives for a percentage of capture exceeding 85%.

Mayor Longo stated that if he was involved with the EPA, he would question why the District has not begun implementing these projects during its negotiations. Ms. Rotunno advised Mayor Longo that the District requires a permit to install (hereinafter "PTI") issued by the EPA prior to project commencement. The District received a PTI from the EPA to begin the Dugway project which was brought to the Board for approval. Executive Director Ciaccia added that the District applied for the PTIs for the ECT and dewatering pump station. Ms. Rotunno stated that the government agreed to negotiate these projects at this point. Deputy Executive Director, Michael Bucci, advised that the District applied for the Westerly CYSTOF PTI, which was denied by the EPA.

Mayor Longo inquired if PTIs are issued by the state or federal EPA wherein Ms. Rotunno replied that PTIs are issued by the state. Mayor Longo questioned the federal government's role, and Executive Director Ciaccia advised that the federal and state governments are "at the table together." Mayor Longo inquired if Ohio established benchmarks for response time or if it is considered "a floating target." Mr. Greenland advised that the state has 180 days to approve or deny the PTI from the time of its submittal. Mayor Longo questioned, "what normally happens?" Mr. Greenland stated they approve the plan if it is consistent with what was initially proposed. Mayor Longo questioned if things have slowed due to the ongoing negotiations. Mr. Greenland stated that the District never submitted the ECT PTI. Discussions "started to get rocky" and the government was not going to approve additional CSO projects because they did not have an 'approved plan' for Easterly, Westerly or Southerly WWTPs. Mr. Greenland stated that PTIs would not be granted until the government approved the District's LTCP. As a

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result of the negotiations, the District anticipates that the government will now grant the PTIs for the ECT and dewatering pump station project because the government essentially agreed with those program components of the Easterly plan.

Mayor Longo commented that benchmarks are determined contingent upon the negotiations. Mr. Greenland stated that the government is interested in whether the LTCP has been submitted and approved, and projects can be submitted so long as they are consistent with the plan.

Mayor Longo questioned if the District's LTCP is approved and "something comes up outside of the plan," would the District seek the 180 day approval. Ms. Rotunno stated that the EPA would have to approve any additional required projects outside of the LTCP. Subsequent to the EPA's approval, the District would submit its PTI subject to the 180 day review timeframe. The PTI would be granted if the project is approved as a part of the LTCP.

Mayor Longo questioned if emergency projects outside of the LTCP require PTIs. He referred to the CMHA interceptor on the hillside. Mr. Greenland advised that the CMHA interceptor does not qualify. Mr. Brown added that it is an existing facility.

Mr. Brown inquired about the demonstration projects and if those would measure the impact on water quality. Ms. Rotunno stated the District is demonstrating the "efficacy of the treatment technology." For example, the NFA treatment enhancements will include more solids removal and disinfection prior to discharging water into Lake Erie. The District desires the ability to demonstrate sufficient solids removal and disinfection as opposed to moving forward with costly projects such as high rate treatment. The District would like to determine that it obtains the same environmental benefit for a substantially lower cost. Executive Director Ciaccia advised that presently this is a proposal and it has not been approved yet.

Mr. Brown inquired if the demonstration approach is being used by other communities. Mr. Greenland stated that EPA ascribes to this approach and is considered watershed management which includes taking steps to reach water quality expectations prior to investing public monies that may ultimately not be warranted. The District is desirous of its demonstration meeting the water quality standards satisfying the objectives of the District as well as the EPA. Mayor Longo stated that this approach "makes sense" and in the private sector they also "test the market."

Mr. Brown commented that there are number of approaches to reach the water quality standards and his concern is whether or not this demonstration approach will be approved by the government. Executive Director Ciaccia advised that is being negotiated and the

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District will have “to give to get”. Executive Director Ciaccia stated that staff will continue to update the Board on the LTCP developments.

Mr. Brown questioned how long the District has been involved with its LTCP negotiations. Mr. Greenland stated that the final facilities plan was submitted in 2002. The District initially met with Ohio EPA in 2004, and discussions shifted to the USEPA in 2005. Mr. Brown expressed his concern with the timeline and its costs to the customers. He questioned if the government is taking any responsibility for the costs associated with the delay due to the ongoing negotiations. Ms. Rotunno referred to slide #5 which is a detail of the timeline. Executive Director Ciaccia stated that it appears that the government is working towards finalizing the negotiations.

Mr. Brown stated that he is desirous of staff identifying the current financial impact of the CSO LTCP. Mr. Bucci stated that staff is currently working on the affordability issue of this program.

3. Presentation on Nine Mile Creek.

Executive Director Ciaccia advised that the Nine Mile Creek (hereinafter “NMC”) purchase was highlighted on Fox 8 news and in *The Plain Dealer*. Staff researched this issue and wanted to present the Board with its findings.

Ms. Rotunno began discussion regarding the engineering history and stated that the Easterly CSO facilities plan identified several projects. She referred to a map indicating the projects proposed for the Easterly drainage area. The green triangle on this map represented a tunnel dewatering pump station. In accordance with the plan, the tunnel dewatering pump station is located adjacent to the Easterly WWTP, and estimated 4.5 acres is required for the facility’s location, which was enumerated as number 1 on slide #2. Executive Director Ciaccia stated that this is the White City Beach property. The Easterly WWTP is located to the east, and to the west is the City of Bratenahl.

Ms. Rotunno stated that area #2 depicted on the map is the space required for the Euclid Creek and Dugway storage tunnels, and approximately 4.5 acres were estimated during the planning stages as a requirement for the mining site. Ms. Rotunno stated that “it is important to note that in the facilities plan, these facilities were conjoined at the hip.” Planners initially located the facility at this location because nine (9) acres of real estate was needed to locate the facility, and this property seemed large enough to accommodate this.

Mayor Longo questioned if White City was the location where the District encountered some problems with nuclear waste. Mr. Brown inquired if Mayor Longo was referring to the “cobalt”. Mayor Long affirmed he was speaking of the cobalt-60. Ms. Rotunno

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advised that the cobalt-60 issue occurred at Southerly. Executive Director Ciaccia stated the cobalt-60 came from Easterly. Mayor Longo recalled having to clean a section of real estate along Lake Erie which was owned by the District. Mr. Bucci advised that there were sections at Easterly and Southerly that had to be cleaned, and the District used the ash lagoon and fill at different construction sites. Director of Operations and Maintenance, Dave McNeeley, advised that a small section at Easterly that had to be cleaned more specifically the north side of the Easterly property line. Mayor Longo questioned if this was cleaned up years ago. Mr. McNeeley affirmed.

Ms. Rotunno stated that the mining site was decoupled from the pump station because it was determined to be active for approximately ten (10) years, and having an active mining site adjacent to the plant would be risky. Ms. Rotunno presented the Board with an aerial photograph of the Mill Creek Tunnel (hereinafter MCT-3) mining site at Kerruish Park, which is approximately five (5) acres. Ms. Rotunno stated that this site is comparable to what the District will need for the ECT and Dugway tunnels. This photograph depicts the activity level of a mining site.

Ms. Rotunno advised that the advanced facilities plans included alternative locations for the mining site and tunnel dewatering pump station. Five properties were identified for the new location: 1) White City Beach (initially recommended); 2) Easterly breakwall; 3) front lawn of the Easterly plant; 4) McElhatten property, north of I-90; and 5) Nine Mile Creek. NMC became the preferred location because the District already had infrastructure located at this site. Ms. Rotunno presented the Board with an aerial image of the potential site locations. She stated that the green border outlines the property boundary for the NMC site, and located within the footprint are the Easterly and Heights Hilltop interceptors depicted by red lines "running north through the property." The black lines indicate the proposed ECT (upper) and Dugway (lower left) tunnels, and the mining site would be located in between these two (2) tunnels. Ms. Rotunno stated that with the existing and proposed infrastructure, the NMC site became the acquisition target.

Mayor Starr referred to the slide which showed the alternative property locations, and he asked who owned sites 1, 2 and 3. Ms. Rotunno stated that the sites were owned by the District. Mayor Starr asked who owned site 4. Ms. Rotunno stated that she was "not sure" who owned site 4. Mayor Starr questioned if it was a private owner. Ms. Rotunno stated that it was a private owner, and site 4 would also require the purchase of at least ten (10) privately owned homes. Mayor Starr inquired as to who owned site 5. Executive Director Ciaccia stated site 5 was owned by Sunrise Development.

Ms. Rotunno continued discussion of the NMC site and informed the Board that this site included an access roadway to East 140th Street, which was desirable because the mining site would require truck traffic and access. Future easements along the north edge of the

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industrial properties will be necessary in order to create an access roadway. Presently, the property does not accommodate for truck access.

After the NMC became an acquisition target, an environmental investigation was completed by the District's tunnel design consultant, Hatch, Mott, MacDonald (hereinafter "HMM"). Ms. Rotunno presented the Board with an image that depicted all the boring sites and its contamination findings. The highest contamination level reported was 23 milligrams of arsenic. Under Ohio's Voluntary Action Plan, residential use of this property would require the land to be "cleaned up," but in this scenario it would be used for industrial purposes. According to the Ohio EPA, 80 milligrams per kilogram is acceptable, and the current contamination levels fall below that measure, making it suitable for an industrial, construction and excavation site location.

Mayor Starr questioned whether the arsenic found at the NMC site was considered non-harmful so long as the property was used for industrial or non-residential use. Ms. Rotunno affirmed. Mayor Starr inquired if this contamination level would be unacceptable for residential use. Ms. Rotunno stated "that's correct" per Ohio EPA's Voluntary Action Plan limits.

Mayor Starr referred to a memorandum dated June 7, 2007, issued by the District's Law Department. He stated that the Board was not provided a copy of said correspondence at the time it was issued. The memorandum alerted the arsenic problem and indicated that resale of this property would be significantly reduced if the land were to sell for residential use, more specifically, the memorandum stated that 'it may require a little extra caution, the contaminants do somewhat limit other potential uses of the property and would, therefore, affect our ability to sell it later.'

Mayor Starr questioned "at the time Wes Baker did the appraisal, the 2006 phase II by HMM was not complete?" Ms. Rotunno responded that the timeline of the activities that transpired would be addressed by Director of Law, Marlene Sundheimer, who is more suited to address Mayor Starr's inquiry.

Ms. Rotunno moved discussion to the timeline and stated that the Advanced Facilities Plan was conducted in December 2004, which evaluated the alternative sites. ECT designer, HMM, was retained in December 2005. It was decided in October 2006 to uncouple the mining site from the pump station because of its activity level over the next ten (10) years. At this point, the NMC was identified as the desired property and the phase II assessment was conducted wherein its findings were submitted in a report format to the District in March 2007.

Ms. Rotunno moved discussion to the acquisition timeline which indicated the activities occurring between February 2007 and July 2007. On February 9, 2007 the District met

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with Sunrise Development to discuss the purchase of NMC property. On March 6, 2007, both 1999 environmental site assessments (hereinafter "ESA") were sent to the appraiser. On March 8, 2007, the District received an appraisal of \$1.55 million to purchase the NMC property. On April 11, 2007, the District received an appraisal of \$1.3 million to obtain the easements required to construct the tunnel on the NMC property. On April 12, 2007, the prior Director of Engineering and Construction submitted a Board report to the previous Executive Director recommending a purchase. On April 12, 2007, the Board approved the purchase of the NMC property. On April 20, 2007, the District made an offer to Forrest City Enterprises for the purchase of the NMC property. On June 7, 2007, the environmental review letters were received by the District and forwarded to the appraiser. On July 12, 2007, the Board approved the NMC purchase for \$1.55 million under Resolution No. 180-07. On July 23, 2007, the purchase agreement for the NMC property was signed. Ms. Rotunno stated that this is timeline staff was able to resurrect regarding the NMC property acquisition.

Ms. Rotunno stated from 2010 to 2020, the NMC property will be an active construction site. ECT construction is slated to begin as early as July 2010, and upon its completion the Dugway Storage Tunnel (hereinafter "DST") construction and East 140th Relief Sewer project will utilize the same site as well. The NMC property is more conducive for the location of the mining equipment and construction than the original property sited in 2002.

Mayor DePiero inquired as to why the previous staff chose to purchase the NMC property for its use rather than utilize property already owned by the District. Ms. Rotunno speculated that the NMC property was chose for the mining site because it will be active for the next ten (10) years. Had an alternative site been selected, contractor staging and laydown areas would need to be created adjacent to the Easterly plant for the benefits of the tunneling project, and this would impede the District's ability to complete other construction projects in the vicinity of the plant. It was more prudent to locate the mining operations remote from the Easterly plant in an effort to keep Easterly's real estate available for other projects including the LTCP.

Mayor DePiero questioned if active construction would interfere with the residential properties at alternative locations. Ms. Rotunno stated that tunneling projects create an abundance of truck traffic needing access to the site, which could become a problem. Furthermore, the pump station location has yet to be determined. It would be a problematic situation to require the tunneling contractor and pump station contractor to share the same "postage stamp" real estate for each construction project.

Mayor DePiero inquired if there are residential homes located within the vicinity of the NMC property. Ms. Rotunno indicated that there are residential homes located northeast of the property in the City of Cleveland. Backyard and street frontage are located on a

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portion of the area designated as the proposed access roadway. Ms. Rotunno stated that these residents would be affected by the access roadway, and the District would need to address this issue with those residents. However, the District is hopeful that it will successfully gain easements on the north side of the industrial property, which would minimize impacts to local residents.

Mayor Starr stated that Sunrise Development and the appraiser identified "deficiency and defect" of the NMC property that there was "only a 50-foot easement." Mayor Starr questioned if a 50-foot easement was sufficient for the District's use. Ms. Rotunno stated that she was not familiar with the document Mayor Starr was referring to. Mayor Starr questioned if Ms. Rotunno was aware of the 50-foot access. Ms. Rotunno stated that she was not and would defer Mayor Starr's question to one of her colleagues.

Assistant Director of Law, Julie Blair, stated that she handles property issues for the District. She stated that there is a 50-foot easement or access located off of Kuhlman Avenue. The District would have access via an easement along former Gilbert Avenue, which is also the location of the Easterly interceptor. Ms. Blair explained that this easement continues along the southern edge of the property cutting across the abutting property, owned by BM Dictor, to the Coit Road access point. The railroad tracks would need to be crossed as well.

Mayor Starr questioned how many feet wide this access is. Ms. Blair stated that she did not have the precise description of the access, but stated that it is essentially the width of a vacated street.

Ms. Kelly requested Ms. Rotunno be more specific as to the how the District is going to "deal with" the inconveniences to the residents located on Argus, Eaglesmere and Deise. Ms. Rotunno stated that the inconvenience would be the truck traffic utilizing the street adjacent to the residential properties similar to the MCT site. Ms. Rotunno stated that the District works with communities housing active mining sites to ensure that residents gain a better understanding as to what the project entails and to also minimize disturbances. Ms. Rotunno stated that she incorporated a slide identifying the residential properties to inform the Board that the District is currently and has been working with the residents in this capacity.

Ms. Kelly questioned if there will be any additional inconveniences other than traffic. Ms. Rotunno stated traffic noise resulting from increased traffic.

Mayor Longo questioned if the tunneling and mining will take place behind the homes. Executive Director Ciaccia stated "no". Mayor Longo inquired as to the how the ECT and Dugway projects will proceed. Ms. Rotunno stated the shaft size is 24 feet in diameter. As the ECT is constructed, there will be a mining shaft at the NMC site. Upon

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completion of the ECT, the DST contractor would begin construction, which will also require a mining shaft. Construction for the DST would commence upon completion of the ECT.

Mayor Longo questioned if there will be use of control gates to keep the sewage down. Ms. Rotunno advised that the tunnels will "butt up together through a structure," and she deferred Mayor Longo's question to Manager of Sewer Design, Rick Switalski.

Mr. Switalski stated that DST is an extension of the ECT and all controls will be housed in the pump station. The pump station will be located where everything is collected, lifted and taken to the Easterly interceptor ultimately ending at the Easterly plant. Mr. Switalski stated that this is a continuation similar to MCT-3 which has necking and a 10-foot section to be utilized. Mayor Longo stated that it goes from 20 to 10 to 20. Mr. Switalski stated "this is one straight 20."

Mayor Longo stated that there are control gates at MCT-3 and questioned if ECT and DST will use the same mechanisms. Mr. Switalski stated that after ECT is constructed the District will insert a bulkhead to protect the upstream work so the DST can be built. Mayor Longo questioned if it will be "free flow." Mr. Switalski stated that presently a bulkhead is located between 2 and 3 on MCT. Once ECT is constructed, CSO will be collected for treatment while DST construction takes place.

Mayor Longo inquired if DST will require a tunnel boring machine. Mr. Switalski indicated that it will be a 24-foot bored tunnel.

Mayor Longo questioned if DST will utilize the same shaft as ECT. Mr. Switalski affirmed.

Mayor Longo inquired about the East 140th Street relief sewer. Mr. Switalski stated that the East 140th Street relief sewer easement is located along the access driveway and will ultimately tie into the tunnel. Mayor Longo questioned if this will be an "open cut" or if this would require mining as well. Mr. Switalski stated that it is probably open cut. Mayor Longo commented that this would present additional problems for the residents. Mr. Switalski stated that the East 140th Street relief sewer should not be a difficult project and does not take place in the street.

Mr. Switalski explained to the Board that the NMC is similar to the MCT site, and after a berm was built as a seal for the residents, very little complaints were received from the residents.

Discussion was turned over to Ms. Sundheimer to address questions pertaining to the acquisition, fair market value and appraisal of the NMC property.

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Ms. Sundheimer stated that questions she wanted to address with the Board are: 1) Did the District pay fair market value for the NMC property; 2) Was Wes Baker's appraisal legally defensible; and 3) What steps are being taken to answer these and other questions?

The purchase of NMC property was made in July 2007 for a fair market value appraisal of \$1.55 million based on an appraisal made by Wes Baker, the District's former appraiser. Wes Baker was the sole proprietor of Wesley Baker & Associates, employed for appraisal services on an as-needed basis from 1984 through January 2008, the only appraiser the District engaged with during that timeframe. Mr. Baker retired in January 2008, and his last appraisal for the District was for the Dugway East Interceptor Relief project. This appraisal was submitted to the District in January 2008. Mr. Baker presented himself as a certified general appraiser, the highest level of state licensing in the state of Ohio. The District's research indicated that, in 1994, Mr. Baker's license lapsed which was verified by the state and federal tracking websites.

Ms. Sundheimer stated that Mr. Baker's appraisal of the NMC property was based on Uniform Standards for Professional Appraisal Practices, which are acceptable. Mr. Baker valued the fee simple estates subject to existing on site easements and used a market data of comparable sales approach, which was applicable to this appraisal. Mr. Baker indicated that the best use of the property was light industrial, and researched nine (9) comparable sales considered over a five (5) year period. Ms. Sundheimer stated that this approach is acceptable for completing comparable sales.

Mr. Baker's valuation conclusion indicated that "with a net upward adjustment, because if there was a freeway access or exposure, he valued the range of the value of the property to be \$55,000 to \$60,000 per acre," which correlated to the \$1.55 million fair market value.

Referring to the next slide, Ms. Sundheimer advised the Board that the District has to pay fair market value for property acquisitions according to state law. Ohio Revised Code (hereinafter "ORC") §6119 gives the District the authority to acquire property for projects. ORC §163 gives the District authority to acquire property by acquisition or appropriation. ORC §163.04 sets forth that public entities, when acquiring property, must make a good faith offer to purchase, and based upon a fair market value. The fair market value is based upon an appraisal. Ms. Sundheimer stated that this slide is the legal authority that is the basis for Wes Baker's appraisal. The federal authority also reflects state law in that regard.

Ms. Sundheimer stated that fair market value can be defined in many ways, and there is no exact or definite definition. Ms. Sundheimer's stated that based on the Ohio Jury

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Instructions, if the District were to go to Court to appropriate property, instruction would be provided to the jury as to the definition of fair market value. There are additional definitions of fair market value including Mr. Baker's definition based on the Uniform Standards of Professional Appraisal practices.

Ms. Sundheimer moved discussion to address the amount reported in the news media regarding the NMC property. The media reported the tax valuation of the property in July 2007 to be \$286,000. Ms. Sundheimer explained that the amount of \$286,000 was tax valuation based upon records in the Cuyahoga County Auditor's records. Tax valuation falls under a different part of the state code which defines how the county auditor is to determine tax valuations for property, which is based on sales prices. The auditor shall consider the sale price "subject to an arm's length sale between a willing seller and buyer within a reasonable length of time, either before or after the tax lien date. So this is not a fair market value determination."

Ms. Sundheimer researched the ownership of the property to provide the Board with a different perspective. Prior to the freeway installation, between 1924 to 1957, this property was owned by various owners, including the Mathers. In the early 1950's the freeway went through the property and a transfer is reflected in 1957 to two (2) New York real estate holding companies. These parcels were held by the aforementioned holding companies until 2000 at which time they were then sold or transferred to Sunrise Development Company, an affiliate of Forrest City Enterprises. This is from whom the District purchased the NMC property.

Ms. Sundheimer stated that the District's review of the deed from the holding company of Sunrise Development found that there was a conveyance fee noted on the deed. They paid \$800 as a conveyance fee. The conveyance fee was based upon a \$4.00 charge per \$1,000 purchase price. Based upon this conveyance, it was determined that Sunrise Development paid \$200,000 for this property. This is not a fair market value rather it is an indication of purchase price between two (2) private entities. Ms. Sundheimer advised that private entities may purchase or sell property above or below fair market value. Therefore, this sale price is not relevant as to whether the District paid a fair market value for the property.

Mayor Longo questioned that when the property was transferred or sold, the actual sale price is unknown. Ms. Sundheimer affirmed and explained that the calculation was made based upon the stamp on the deed which indicates what was paid as a transfer fee. The District does not have the actual sales agreement identifying the actual sales price. Mayor Longo questioned if this amount was actually recorded with the auditor. Ms. Sundheimer affirmed. Ms. Kelly added that many times people pay a conveyance fee that does not represent the actual sale price of the property. Mayor Longo questioned if

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this was for tax purposes. Ms. Kelly replied that this happens for whatever purpose the parties intend.

Ms. Kelly moved discussion to Mr. Baker's appraisal wherein it was indicated that a "net upward adjustment" was made for the freeway exposure. She questioned if staff was aware of the actual monetary value. Ms. Sundheimer stated that Mr. Baker's appraisal did not identify a monetary value adjustment, but indicated that by these parcels being located in close proximity to the freeway adds positive value to the property. Ms. Kelly stated that generally when there is a positive or negative adjustment, the dollar amount is identified. Ms. Sundheimer agreed with Ms. Kelly's comment and moved to discussion to the next slide to further explain the steps taken by the District to validate Mr. Baker's appraisal and the fair market value he submitted.

Ms. Sundheimer stated that on September 15, 2008, the District engaged appraiser, Dean Smith, to review Mr. Baker's appraisal. Mr. Smith found the value to be reasonable and supportable, however, he did note deficiencies that would not impact the reasonableness of the value conclusion. Mr. Smith noted that there was no discussion of sale and marketing history of the property including listing activity and prices, offers, active purchase agreements and market exposure. No sufficient data was found relative to comparable sales in the report for verification.

Ms. Kelly inquired if Dean Smith could not verify comparable sales. Ms. Sundheimer clarified that Mr. Baker did not include sufficient data in his appraisal report, therefore, Mr. Smith could not verify Mr. Baker's comparable sales. Ms. Kelly questioned how Mr. Smith was able to compare the property to the comparable sales to justify his value. Ms. Sundheimer deferred Ms. Kelly's question to Ms. Blair.

Ms. Blair stated that the information supplied by Mr. Baker's report listed the sale, date of the sale, size of the sale, the location and the purchase price. Enough information was provided in Mr. Baker's appraisal report, and Mr. Smith was familiar with those sales. Information not incorporated into Mr. Baker's appraisal report included grantor and grantee information, verification with one of the representative parties, deed information and a map. Mr. Baker noted in his reports that this information was "available within his own records" and not included within the appraisal report provided to the District. Ms. Kelly questioned if the appraisal report included all relevant information for the basis of a comparison in which Ms. Blair affirmed.

Ms. Sundheimer informed the Board that since deficiencies were found by Mr. Smith's appraisal review, the matter needs to be researched further. On September 26, 2008, the District engaged Emily Braman to conduct new appraisals to include the March 2007 purchase value indicated by Mr. Baker, and further, to provide a fair market value appraisal of the property in January 2000 when Sunrise Development purchased the

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property. Furthermore, the District engaged Ms. Braman to complete a new appraisal of the easement value of the NMC property to verify fair market value. Ms. Sundheimer advised that these results are due October 22, 2008. Ms. Sundheimer informed the Board that Mr. Baker's past appraisals beginning with the past five (5) years will be revisited including fee simple purchases, easements and any other acquisitions. Requests have been issued for qualifications to the ODOT reviewer appraiser prequalification list. Three (3) firms will be selected to conduct these review appraisals. New appraisals may be conducted for these transactions, if a second look is merited. Ms. Sundheimer advised that staff will be reviewing key acquisitions back to 1984 that may "raise some question" about the validity of the fair market value.

Mayor Longo inquired if staff will provide the Board with a list of the acquired properties and staff's findings. Ms. Sundheimer stated "absolutely." Mayor Longo commented that it seems most of these acquisitions made were small. Ms. Sundheimer affirmed. Mayor Longo questioned if staff had an opportunity to review the scope of some of these purchases, and he questioned how many acquisitions were greater than \$500,000. Ms. Sundheimer stated that staff has accumulated a list of the District's acquisitions including the values and reasons for each purchase. Ms. Blair is completing an analysis to identify any problems. Ms. Sundheimer advised that staff is reviewing the appraisals to determine the validity of the fair market value. Mayor Longo stated that he is interested in the "summary of the numbers." Ms. Sundheimer advised that this information will be provided to the Board as soon as it is available.

Ms. Sundheimer stated that in January 2008, the District changed its method of acquiring appraisal services. Requests for Qualifications (hereinafter "RFQs") were issued to six (6) entities including appraisal firms and multi-disciplinary firms offering right-of way acquisition services. The District offered up to \$25,000 contracts to three (3) firms and is utilizing two (2) of these firms for the Wes Baker appraisal reviews. Ms. Sundheimer stated that the District will assure that its appraisers are qualified in accordance with state and federal standards, and is a licensed member of the Appraisal Institute. Ms. Sundheimer stressed that the District is looking for the most qualified appraiser to handle future acquisitions, and staff is reviewing state and federal standards for guidance in its appraisal practices.

Mayor DePiero stated that since the District's former appraiser, Wes Baker, lost his certification in 1994, how does this affect the validity of the appraisal and fair market value for the NMC property acquisition. Ms. Sundheimer stated that the appraiser must state that he or she is certified under state law, and she stated that she could not answer how this would impact the value of the sale. Ms. Sundheimer explained that this is why a new appraisal for the NMC acquisition must be completed. Mayor DePiero agreed with Ms. Sundheimer.

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Mayor DePiero commented that it is troubling that the former administration utilized Wes Baker as its appraiser, and he questioned if Mr. Baker was the only appraiser the District engaged, which raises a "red flag." Mayor DePiero stated that it is a good decision for the District to offer a process in which the opportunity is given to firms to competitively bid for work. This method will provide qualified, licensed appraisers and better prices. Mayor DePiero encouraged the staff to research any deficiencies in the District's past acquisitions thoroughly to ensure that there was not any "foul play."

Mayor Starr stated that after hearing the presentation, he has more questions than answers. He asked staff if the District is defending Mr. Baker's appraisal of \$1.5 million. Executive Director Ciaccia replied that the District would not spend additional monies on new appraisals if it were defending Mr. Baker's appraisal, however, at this time the District "is not in a position to dispute it."

Mayor Starr commented that the property was bought in 2000 for \$200,000. Ms. Kelly interjected and stated that this is not confirmed. Mayor Starr continued and stated that the property was then sold to the District for \$1.5 million, which is an "87% increase in market value in a mortgage meltdown atmosphere and a recession." Mayor Starr stated that the \$200,000 acquisition could be assumed as "an arms length transaction." He questioned why Forrest City would pay more than what the property was worth. Ms. Kelly stated that this was a conveyance fee. Ms. Sundheimer stated that a "conveyance fee does not necessarily reflect the sale price of the property." Mayor Starr questioned if a conveyance fee ever reflects sale price. Ms. Sundheimer stated "maybe."

Mayor Starr stated that the county auditor appraised the property at \$286,000, which was the assessed valuation. Ms. Sundheimer explained that this amount was based upon the auditor's tax valuation and it is not determined when the auditor last updated that valuation. Mayor Starr inquired if Ms. Sundheimer was aware how often the county auditor updates its valuations. Ms. Sundheimer stated "yes". Mayor Starr stated "it's every three (3) years." Ms. Sundheimer replied that the county auditor should update this information every three (3) years, however, upon a sale they should conduct a complete appraisal, and every three years thereafter update the value. Ms. Sundheimer indicated that the requirements are set forth in the county auditor's website. Mayor Starr stated that the county's appraisal form states "market value of \$286,000." Ms. Sundheimer reiterated that it is the tax valuation. Mayor Starr stated "no, it's market value" and stated that is a "big difference." He then questioned Ms. Sundheimer if she was familiar with assessed valuation, and stated it is 35% of the market value. Ms. Sundheimer stated that this is what the county records indicate.

Mayor Starr questioned if staff met with Wes Baker, former Executive Director or General Counsel, Bill Schatz, to inquire as to their reasoning of defending this action. Executive Director Ciaccia stated that this information is being reported to the Board at

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this point, and the next steps will determine whether or not it is prudent to meet with these individuals.

Mayor Starr stated that the comparable sales used by Mr. Baker were from five (5) ago, and usually when determining market value appraisals you use the "freshest information" which is two (2) to three (3) years. He questioned if Mr. Baker used "stale" information. Mayor Starr pointed out that Mr. Baker's comparable sales included west and east side properties, and inquired if comparable sales should be within the direct vicinity of the property being appraised. Mayor Starr questioned as to why the appraisal was not updated after the environmental phase II was completed. Mayor Starr stated that real estate appraisers typically have trade organizations or certificates, and if the Board was provided all pertinent information it would have raised "huge amounts of red flags and questions," which would have prevented him from voting for this proposal.

Mr. Brown stated that he appreciated the staff's due diligence on this issue. The Board is aware that many staff members were not involved with the District at the time of this acquisition. The Board is aware that staff is trying to reconstruct the past based on records to arrive at the scenario which actually occurred. The issue of the fair market value requires closure.

Mr. Brown commented that staff did a "good job" of outlining the present and future use of the NMC property. He stated that although it is advantageous for the District to be located on this site, other construction work will actually take place at this particular location. He reiterated that the fair market value needs closure.

Mr. Brown stated that an additional concern previously mentioned by Mayor DePiero is that the District appears to have "sole sourced" its appraisals over a twenty (20) year period, which is significant. This indicates inherent problems of the previous organizational structure of the senior staff and a relationship between the former Executive Director and General Counsel that may not have been a "subordinate relationship." Mr. Brown stated that it appears that the District authorized an individual who had "some level of autonomy" to sanction work in the interest of the District without the direction of the Executive Director. During the District's transition, it pleased Mr. Brown that the Board decided on direct reporting responsibility from General Counsel to an Executive Director, and as the District moves forward, things will "become more clear."

Mr. Brown stated that he is pleased that a competitive process has been introduced in obtaining appraisals so this situation does not arise again. Mr. Brown stated that he agreed with Mayor Starr on his interpretation that this raises a lot of questions. Mr. Brown requested that staff conduct due diligence to determine if something other than the

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goals and objectives of the District were factored into these acquisitions. Mr. Brown stated that it is unclear and the process needs to be pursued to determine outcome.

Mayor Starr advised that he was asked why he voted for this acquisition. It gives the impression that the Board is foolish, but there was a lack of transparency over the past 36 years. The Board should have been provided with the appraisals, environmental reports, e-mails, and caution flags that should have been raised by the previous staff regarding the deficiencies.

Mayor Starr referred to page 10 of the appraiser's report which indicated that the 'highest and best use for this property is light industrial.' Chapter 1159 of Bratenahl's zoning code zones this property as office building use. Furthermore, section 1159.02 of Bratenahl's zoning code does not list light industrial which includes manufacturing, fabrication or stamping. Mayor Starr stated that this affects the market value of the land especially during resale.

Mayor Starr explained that the NMC property is described as a "triangle shaped parcel." He questioned how the District can market a triangle shaped parcel for light industrial use if most commercial buildings are square. Mayor Starr stated that you cannot "put a square building on a triangle with a 50-foot access through a residential neighborhood." Mayor Starr stated that if he was made aware of these issues, he would have rejected this proposal.

Executive Director Ciaccia reiterated that further discussions will be held regarding this issue as staff proceeds with its review of the NMC transaction.

Mr. Brown inquired if the property used for the ECT and DST construction would not be up for resale at project completion. Executive Director Ciaccia assured that the site will be "criss-crossed" with utilities making it unlikely for the District to resell the property. Mr. Brown added that there would be stringent deed restrictions including no construction or no subsurface. Executive Director Ciaccia agreed.

Ms. Kelly inquired if Mr. Baker was a MAI certified appraiser. Ms. Sundheimer advised that he is not.

VIII. Open Session

Mr. Brown stated that in further review of Resolution No. 210-08, which authorized for the purchase of the Southerly WWTP Biosolids Fluidized Incinerator in the amount of \$46 million, he noted that that no MBE or women's business enterprises (hereinafter "WBE") participation was listed. Mr. Brown stated that he understands that the District is procuring equipment from a manufacturer, but \$46 million is "a lot of money." He

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inquired if there will be future opportunity for MBE/WBE firms with associated expertise to participate in work needed for completion of said project. Executive Director Ciaccia affirmed that the fluidized bed incinerator equipment procurement is a bid from manufacturing companies required to build the incinerators, which does not provide for subcontracting opportunities. The District anticipates that at least one (1) to five (5) installation type contracts will result from this project. Each project will have MBE, WBE or small business enterprise (hereinafter "SBE") goals.

Ms. Rotunno stated that she and Mr. Brown had a prior discussion regarding said contract. She assured that the bid documents are being examined closely to determine whether there are opportunities for the separation of some project components that may provide opportunities for subsequent contractors to assist with the assembly. Ms. Rotunno referred to this as "Contract 28" which will assure that labor components are identified to provide opportunity for MBE, WBE or SBE participation goals, and this will be clarified through an addendum. Mr. Brown inquired as to when this would take place. Ms. Rotunno anticipated that an addendum will be issued the week of October 6th.

Ms. Rotunno presented the Board with a summary of the Southerly Biosolids Handling and Incineration projects and stated that it is comprised of seven (7) contracts. The summary lists each project, its construction budget estimate or contract amount, when they were awarded and the operating resolution passed by the Board, and the MBE, WBE or SBE goals associated with each project. Ms. Rotunno advised that this tool will accompany all future resolutions on the incineration project in order to track the District's subcontracting goals. Ms. Rotunno advised that the Board will be authorizing three (3) resolutions for each contract. She wanted to prevent any confusion by the Board as to next two (2) times Contract 28-A will be presented to the Board for approval.

IX. Public Session

Mr. Brown informed Mr. Jones and Mr. Edwards to each limit their discussion to five (5) minutes.

Mr. Edwards stated that he had information that he would like Mr. Bucci to distribute to Board members. Mr. Edwards advised that he highlighted each document. He stated that his character was "attacked" and "assassinated" by Executive Director Ciaccia. Mr. Edwards stated that "he brought documents to show that...even though there is supposed to be a minority MBE/WBE enterprise place that was in effect...back in 2005 and 2006..." He acknowledged that the District is "moving in another direction and trying to change the dynamics," but he wanted to show "a little timeframe of different things."

Mr. Edwards stated that Executive Director Ciaccia had a letter from Adrian Maldonado and he knows "that point is moot" but he may still be utilized in the future. Mr. Edwards

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stated that "he flat out lied" by stating that Logik Construction had "no contract with any local entity, nor is it seeking to do any work locally other than federal markets as the business plan outlines."

Mr. Edwards stated that "we showed you the school board item, the contract is in there when he signed it and the date that he signed it. Logic Construction and New Era Construction, if you look into the Cleveland Municipal School District, they're both in there together. They work hand-in-hand." Mr. Edwards stated that he highlighted Logik Construction's address on Biltmore Avenue which is the "same address as New Era."

Mr. Edwards stated that he does not mind "being talked about" and he takes pride in what he does for African-Americans and minorities. Mr. Edwards stated if "you're going in the right direction...Julius Ciaccia, your executive director, needs to be fired." Mr. Brown interjected and advised Mr. Edwards that he will not allow personal attacks on people's character.

Mr. Edwards stated that he listened to the tapes and Executive Director Ciaccia called him a "liar time and time again on your documents" after Mr. Edwards left or was escorted out of Board meetings. Mr. Edwards stated that Executive Director Ciaccia does not "need to be here."

Mr. Edwards stated that the District is going to the next level covering up by saying "Norm Edwards is crazy," but "everything is documented" or highlighted. Mr. Edwards advised that he highlighted the listing of the addresses. He stated that "if you do your due diligence...I was contacted by Executive Director Ciaccia and Constance Haqq...it's all highlighted there."

Mr. Edwards informed the Board that he "got an email from a young lady" who "asked me to come in and sit down and go over diversity and they wanted to go in a new direction...it's not happening...the lies continue...the films and the slides...it's too much deception this here and it's a continuation now."

Mr. Edwards expressed that he does not "trust or believe anything that I hear or I say here...or hear or see in here...I think everyone is crooked here. I think everything is rigged here. I have sat down, wasted my time, my breath and to be talked about, ridiculed and trying to move something in the right direction. I didn't ask for any money. I said I would give my time free to get the program where it needs to go and it needs to go there. He can't do it. It's obvious. It wasn't done over at the City of Cleveland and it's not being done here now."

Mr. Brown reminded Mr. Edwards to not personally attack anyone.

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Mr. Edwards accused Executive Director Ciaccia of calling him a liar and suggested the Board review the tapes because they "second and third the motions." Mr. Edwards stressed that he is a "man of his word. I don't run. I don't hide. There's no fear factor."

Mr. Brown informed Mr. Edwards that he surpassed the five (5) minutes time limit. Mr. Edwards advised that he will address Chicago diversity and safety issues at the Mill Creek project at the next Board meeting. Mr. Edwards stated that it is unfair to allow Executive Director Ciaccia to speak at the beginning of the meeting. Mr. Brown stated that Mr. Edwards surpassed his time limit and that he is welcome to address any additional comments at the next Board meeting.

Mr. Jones stated that according to Reverend Al Sharpton, they have "tried to work with the Board in the past," but the District decided to involve George Forbes which is a problem. Mr. Jones stated that "they consider Mayor Jackson to be responsible for this. If he isn't going to watch out for the taxpayers, then who is? Not Mr. Longo, obviously if you take into effect City View. So we want Mayor Jackson to watch out for the taxpayers."

Mr. Jones stated that a contractor admitted to "at least three (3) of the people who are certified by this Board are front companies. Yet these people still have a job." He questioned what "they have been doing for the last five (5) years."

Mr. Jones stated that the Board is not desirous of receiving information from an "outside source," and that he is a taxpayer. Mr. Brown stated that the Board requested information be provided to the Board. Mr. Jones alleged that the information should come from the inside and that a "mechanism should be in place where you can get this information from your staff." Mr. Jones accused the staff of being "misleading" and "cannot be trusted with taxpayer dollars." Mr. Jones stated that "if you allow this man to give our tax dollars--" Mr. Brown advised Mr. Jones that there are to be no personal attacks on the staff.

Mr. Jones stated "to give our tax dollars to other gangsters, we promise you a tax revolt, and that's a fact. And you need to send that message to Mayor Jackson. We're going to hold him responsible. He put you on here. You've been on this Board a long time. Nothing has changed. All we hear is rhetoric and talk and more gangsters coming up here to get more contracts."

X. Executive Session

Mr. Brown stated that there is one matter for discussion in Executive Session.

MOTION - Mayor Longo moved and Ms. Kelly seconded that matters discussed in executive session are protected from public disclosure pursuant to the Ohio Public Records Act and attorney/client privilege, and that all discussions held in executive session regarding the renewal of the Executive Director's contract be kept confidential pursuant to Ohio Revised Code Section 102.3(b), and as attorney/client privileged communications.

The Board met in Executive Session from 3:05 p.m. to 3:18 p.m.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Longo moved and Mr. Sulik seconded the motion to adjourn at 3:19 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