

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
OCTOBER 16, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Mr. Brown.

I. Roll Call

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

Mayor Starr was absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Mayor DePiero moved and Mr. Liberatore seconded that the minutes of the October 2, 2008 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised the Board that Mr. Norman Edwards registered to speak at Public Session on the topics of safety and the Mill Creek project; however, these items are not action items nor do they pertain to the agenda. Mr. Brown advised that the Board will hold Mr. Edwards' comments until the Public Session which includes discussion on any subject matter.

IV. Executive Director's Report

Executive Director Ciaccia moved discussion to the first report item regarding the Small Business Enterprise (hereinafter "SBE") program. Staff is making progress with its SBE program including the adoption of a conceptual work plan. Executive Director Ciaccia advised that the target date for implementation of the SBE program will be in sometime

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February 2009. Program elements are being developed including the District's goals and objectives, eligibility requirements, certification, compliance procedures, outreach methods and program assessment. Executive Director Ciaccia informed the Board that meetings will be scheduled with prime contractors and subcontractors to discuss subcontracting procedures for District projects.

Executive Director Ciaccia indicated that the District cannot model its entire program after agencies which engage in different types of work compared to the District, and it is important to tailor the SBE program to meet the needs of the District.

Executive Director Ciaccia advised that the Requests for Proposal (hereinafter "RFP") for the disparity study have been issued. The disparity study results will determine if race and gender set asides can be added to the District's SBE program. It is anticipated that the disparity study will take several months to complete.

Mr. Brown mentioned that staff informed the Board that entities such as the Urban League would be involved with the development of the District's SBE program, and he questioned if staff had the opportunity to collaborate with these entities. Executive Director Ciaccia advised that these agencies have been included in the discussions, but the District has not yet contracted with them.

Mr. Brown commented that he is concerned about "barriers to inclusion" such as a contractor's inability to obtain bonding. He indicated that it would be advantageous for the District to advise subcontractors as to their eligibility requirements to ensure a better understanding of the District's SBE program. Although he is not advocating for an advisory committee, Mr. Brown stressed the need for connectivity between the District and Minority Business Enterprises (hereinafter "MBE") and Women's Business Enterprises (hereinafter "WBE"). Executive Director Ciaccia indicated that the staff is desirous of pursuing the advisory committee approach. This method is being used for the Stormwater Management Program (hereinafter "SMP") which has proven to be effective.

Executive Director Ciaccia reminded the Board that the District will continue to use its existing MBE/WBE program during the developmental phase of the SBE program.

Executive Director Ciaccia informed the Board that fifteen (15) of the resumes received for the Contract Compliance Officer position were from qualified candidates. Interviews are underway and the positions are expected to be filled by November 3rd.

Executive Director Ciaccia moved to the next report item regarding the Mill Creek Tunnel – 3 (hereinafter MCT-3) project dispute. In 2004, there was a significant gas intrusion into the tunnel during construction resulting in a seven (7) month delay in the project while the gas was mitigated from the tunnel. Executive Director Ciaccia

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indicated that this delay led to a substantial amount of overpayments to the contractor for the MCT-3 project. The District stopped paying the contractor in 2007 after audits showed the overpayments to the contractor during the shutdown period. Executive Director Ciaccia advised that the work has slowed significantly and litigation is pending between the contractor and the District.

Executive Director Ciaccia referred to a letter dated February 11, 2008 from KMM&K – contractor for MCT-3 – which made assertions to the amount of gas in the Mill Creek tunnel. Executive Director Ciaccia chose two passages from the correspondence to read aloud to the Board. The first quote referring to the work being performed stated, “Over the last several months, KMM&K has repeatedly advised NEORS D that the work KMM&K can safely and efficiently complete is coming to an end.”

The second quote stated, “KMM&K strongly recommends against placement of the lid and supporting beams because of the strong possibility of additional gas buildup in the tunnel.” Executive Director Ciaccia advised that the second quote referred to Shaft 9 which will be discussed further as it pertains to putting a cover on the shaft and finishing the project.

The third quote stated, “any such direction by NEORS D and Montgomery Watson Harza (hereinafter “MWH”) – the consulting engineer – should include the engineering analysis substantiating that the work can be performed safely and that there is no risk of injury to persons or property in the work performed as directed.”

Executive Director Ciaccia advised that copies of KMM&K’s correspondence were sent to the fire and police officials in the cities of Cleveland, Garfield Heights and Maple Heights.

The District had greater knowledge of what was actually going on at the site and responded to KMM&K in correspondence dated February 15, 2008. In response to the District’s correspondence, Executive Director Ciaccia read aloud from a letter dated February 19, 2008 authored by the contractor. The first quote from KMM&K stated that, “the concerns that KMM&K raised in its February 13th letter arise from the completion of capping of Shaft 9, which will severely restrict the present ventilation system.” Executive Director Ciaccia indicated that KMM&K’s original letter pertained to Shaft 9, which was the completion of the job.

The second quote from KMM&K stated “please let KMM&K be clear that KMM&K does not presently see these issues for reasons clearly stated to be safety issues for KMM&K employees.” Executive Director Ciaccia stated that according to the contractor’s first correspondence, it was assumed that they were referring to two (2) separate issues, safety of employees and Shaft 9. However, in their February 19th

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correspondence, KMM&K clarifies that their post-construction concern is buttoning up Shaft 9, not the safety of the employees. Executive Director Ciaccia stated that he reported to the Board on February 29th that it was a post-construction concern that KMM&K was raising, and the District continued pressing KMM&K on this issue.

Executive Director Ciaccia read aloud from the District's March 3, 2008 correspondence. The first quote stated that "the District notes you have acknowledged that there is no current or immediate concern over excess concentrations of methane gas in MCT-3 tunnel that represents a hazard to KMM&K's employees or the public at large."

The second quote declared that at "a special safety meeting held on February 14, 2008, you stated that there are no current excess concentrations of methane gas in the tunnel and KMM&K's current safety plan was more than adequate to address any likely conditions in the tunnel through completion."

The third quote from the District's letter stated, "In addition, you rejected as unnecessary the District's suggestion that OSHA be invited to the MCT-3 tunnel."

Executive Director Ciaccia referenced a letter dated March 24, 2008 from KMM&K which stated that "NEORSD, not KMM&K, raised statements and allegations regarding imminent risk and harm to employees or others." The second quote indicated that "the timeframe of perceived risk was always clear in KMM&K's letters," meaning post-construction. Executive Director Ciaccia stressed that the issues raised in KMM&K's correspondence refer to post-construction matters, not safety of employees.

Executive Director Ciaccia wanted to clarify these issues, and he advised the Board that the District instructed the contractor to cap Shaft 9. He speculated that their delay in finishing this project is merely a litigation strategy. Furthermore, Executive Director Ciaccia advised that the District informed the suburban fire departments as to the status of the situation, which included meetings with them.

At the request of the District, MWH prepared a letter, which Executive Director Ciaccia read aloud. The letter indicated that:

We see no indication that the amount of methane entering the completed MCT-3 tunnel will be greater than what might be expected for this or any other NEORSD tunnel in rock.

Based on a long history of safe operation of other NEORSD tunnels in rock, we expect that the natural ventilation of the tunnel, due to wind, barometric pressure

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changes, and filling and draining of the system will dilute and remove methane gas which may enter the completed tunnel. This should be more than sufficient to prevent the accumulation of methane gas at hazardous concentrations.

For these reasons, it is our opinion that the construction of the MCT-3 tunnel and shaft should be completed as designed. The contractor has been responsible for construction of other NEORS D tunnels in this geology, specifically MCT-2, which also had methane gas during construction. The MCT-2 tunnel and vent structure designs are very similar to the MCT-3.

We are unable to understand why the contractor did not raise these identical concerns with post-construction ventilation of MCT-2 as he now has with MCT-3 given the similarity of the conditions.

Executive Director Ciaccia wanted to enlighten the Board and the public of these issues because he believes that this tactic is being used as a litigation strategy. The contractor's past correspondence does not indicate that there were any safety issues relative to the employees, for which the contractor would have been responsible; therefore, the District believes the contractor's concerns are invalid.

Executive Director Ciaccia moved discussion to entertain any questions from the Board. Mr. Brown questioned if MWH is the District's tunnel expert in which Executive Director Ciaccia affirmed. MWH's tunnel expert was present at the meeting to address any questions or concerns from the Board.

Mr. Liberatore inquired about the District's monitoring system which gauges the amount of methane gas in the tunnels, and questioned if these are remote readings taken daily. Director of Engineering and Construction, Kellie Rotunno, explained that the District monitors and tracks gas concentrations by taking constant readings in the tunnels in several locations and the data is downloaded weekly. The contractor's employees working in the tunnel wear personal gas monitors at all times, which measure the levels of gas that they are exposed to.

Mr. Liberatore inquired if a warning device is activated when increased amounts of methane gas are encountered. Ms. Rotunno advised that the devices have warnings and "set points" which are activated when the gas reaches a certain level. Mr. Liberatore asked "who gets warned first?" In response, Ms. Rotunno stated that "the person who is closest to the source would get warned first." Mr. Liberatore inquired if workers outside

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of the tunnel receive warnings. Ms. Rotunno indicated that upon an alarm going off, an employee is obligated to immediately evacuate the tunnel and report this to the supervisor on site, and the person ultimately responsible is the site safety person.

Mr. Liberatore questioned if there is warning prior to the workers entering a tunnel. Ms. Rotunno clarified that the air space is checked, prior to entering the tunnel, by lowering a meter into the tunnel to measure the gas conditions. If they are acceptable, the worker enters the tunnel wearing gas monitoring equipment that measures personal exposure at all times. Ms. Rotunno stressed that the warning devices are activated when low levels of methane concentrations are detected, and not just right before an explosive condition. Therefore, there is no imminent danger to workers when personal monitors are activated.

Mr. Liberatore questioned if gas monitors are presently in the tunnels in which Ms. Rotunno confirmed they are. Mr. Liberatore inquired as to how these "signals are sent." Ms. Rotunno explained that the signals are downloaded on a weekly basis while gas concentrations are monitored by District staff. Ms. Rotunno stated that post-construction, there will be a dedicated gas monitoring system which has the telemetry ability to report any problems in the tunnel. Ms. Rotunno informed the Board that no gas concentrations have been detected from the District's monitoring system since the gas shutdown.

At this point, Mr. Brown acknowledged that Mr. Edwards was raising his hand to be recognized. He explained to Mr. Edwards that this portion of the meeting does not allow for "dialogue with the public," and that comments are specific to the Board and staff. He suggested that if Mr. Edwards had comments pertaining to this specific discussion, then they can be addressed during Public Session. Mr. Edwards inquired if the comments had to be held even though he registered to speak on these issues. Mr. Brown indicated that the comments can be addressed during the appropriate public session.

Mr. Brown inquired if work continues to be performed in the Mill Creek tunnel. Ms. Rotunno confirmed that work is ongoing in the vicinity of Shaft 9.

Mayor Longo commented that the District worked closely with the contractor for MCT-3, and strict protocols were established for emergency situations. The fire chief would be notified first and then the mayor would be made aware of the situation. Mayor Longo remarked that "they have been on top of this extremely well," and all three (3) affected communities follow the same protocol.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Plan. Staff will make a SMP presentation to the Board. SMP discussions include feasible fees and the program implementation timeline. The target date for SMP implementation will be pushed back from April 2009 because the District needs to coordinate its schedule with its billing agent, the Cleveland Division of Water

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(hereinafter "CWD"). CWD anticipates going live with its new billing system in May 2009. The District wants to ensure that CWD's new billing system is running successfully prior to incorporating the SMP, therefore, SMP will commence several months after May 2009. Executive Director Ciaccia explained that this allows the District more time to address additional details of the SMP. Furthermore, the District may want to engage CWD's consultant as it moves forward with the integration of its fees into the new billing system. Staff will discuss further, at a subsequent meeting, engagement with Bearing Point, the new billing system implementer.

Mayor Longo inquired if SMP is incorporated into the Combined Sewer Overflow Long-Term Control Plan (hereinafter "CSO LTCP"), or if this program is considered a separate issue. Executive Director Ciaccia replied that SMP is a separate issue; however, its program components include a customer's ability to pay, which is a portion of the District's negotiations with the government. If customers are charged for SMP, then this amount is calculated towards the percentage of household income and will be incorporated into the discussions held between the District and the government. As it pertains to permitting, the CSO LTCP and SMP are two (2) separate programs. Executive Director Ciaccia advised that if the District can incorporate SMP into the affordability or ability-to-pay issue with the ongoing federal government negotiations, this would alleviate some financial burden being placed on the customer.

The current financial crisis and how it has impacted the District is being examined closely. According to Executive Director Ciaccia, the impact to the District has been minimal thus far. The District makes interest payments on its debt issuance, and its current 30-year bond rate is at 4.51%, which is the average on the open market. Entering into the bond market now would result in a 5.38% interest rate. Executive Director Ciaccia does not foresee the District returning to the bond market for another two (2) years. The District will be accessing OWDA loans which remain favorable.

Executive Director Ciaccia advised that 40% of the District's investments are in "highly liquid investments including Star Ohio and certificates of deposits, which are safe and covered by obligations of the US government. Sixty percent of the District's portfolio is in Freddie Mack and Fannie Mae federal home loans which would be of concern; however, the government is taking these over and guaranteed the monies in these investments.

Executive Director Ciaccia advised that the District will continue to watch its spending, and that an area of concern includes the District's outstanding accounts receivables, which will increase as people struggle to pay their bills. In the past, CWD has collected 95% to 97% of the bills, and according to Commissioner Nielsen of CWD, 91% of the outstanding accounts receivables have been collected to date. Additional resources will be utilized to increase this number.

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Mr. Brown questioned if more accounts are being certified with the county as a result of the financial situation. Director of Finance, Jennifer Demmerle, indicated that there is a slight increase, but the average is \$2.5 million. Consequently, the increase of certification with the county has not been dramatic.

Executive Director Ciaccia moved to the next report item pertaining to a memorandum authored by Deputy Director of Law, Lawrence English, regarding Kenmore Construction (hereinafter "Kenmore"). At the past two (2) Board meetings, the resolution authorizing the award of the primary settling tank rehabilitation contract to Kenmore was held. The District researched the records including the information provided to the Board by Mr. Jones, and discussed the allegations made against Kenmore with the Ohio Department of Transportation (hereinafter "ODOT") and the federal prosecutor assigned to the case. Executive Director Ciaccia stated that the District sees no reason to continue to hold this resolution, and staff recommends the Board award the contract to Kenmore. Furthermore, Executive Director Ciaccia stated that Kenmore complied with the government's request, and exceeded the goals and objectives from a performance standpoint.

Executive Director Ciaccia informed the Board that Bill Scala from Kenmore and his attorney, Patrick McLaughlin, were both present at the meeting to address any questions from the Board.

V. Consent Agenda

No discussion ensued on Resolution Nos. 239-08 through 244-08.

Resolution No. 239-08

Authorizing SSCBOUTS Application No. 1350 for Developers Diversified Realty, 3300/3400 Enterprise Parkway, Beachwood, Ohio 44122, Referenced Accounts: 50-473-805-005 and 50-496-374-005. Estimated savings to customer is \$1,438.00.

Resolution No. 240-08

Authorizing SSCBOUTS Application No. 1351 for Ferrous Metal Processing, 11103 Memphis Avenue, Brooklyn, Ohio 44144, Referenced Account: 53-419-951-008. Estimated savings to customer is \$15,140.00.

Authorization to Issue Request for Proposal

Resolution No. 247-08

General engineering services contract for on-call specialty technical assistance, including emergency design services, to the engineering and construction department. Cost not to exceed \$2,000,000.00.

Mayor DePiero stated that it seems the District engaged four (4) firms for these types of services, and he questioned if the District's intent was to use only one firm. Ms. Rotunno stated that the District anticipates entering into a single contract with a "prime consultant team, which will be comprised of multiple subconsultants" for diversification of the services requested.

Mr. Brown inquired about MBE/WBE participation with regard to this contract. Ms. Rotunno stated that she did not have the exact numbers, however, previous procurements did not "engage the full contract amounts" for minority and female owned businesses because MBE/WBE were contracted separately. Ms. Rotunno explained that MBEs "were not necessarily given their fair share of work under the previous contract arrangement," which is why the District is modifying its procedures. Executive Director Ciaccia added that he was not comfortable with the previous arrangement of utilizing four (4) firms at the discretion of the Director of Engineering and Construction. He noticed what appeared to be an imbalance of how the work was distributed. Executive Director Ciaccia advised that he is not implying that this was mishandled, however, it may not have been perceived well, and there is a better way of handling this matter.

Mr. Brown questioned if the District's current proposal incorporates MBE/WBE components and goals that can be monitored. Executive Director Ciaccia affirmed.

No discussion ensued on Resolution Nos. 248-08 through 249-08.

Resolution No. 248-08

Building exterior wall panel restoration at the Southerly WWTP. Estimated contract amount is \$400,000.00.

Resolution No. 249-08

Analysis of long term options for the Westerly Low Level Interceptor.

MOTION – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution Nos. 247-08 through 249-08. Without objection, the motion carried unanimously.

Authorization to Award

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 DePiero referred to the October 4th Board meeting discussions pertaining to Kenmore wherein some Board members had questions pertaining to certain allegations. Mayor DePiero appreciated the October 9th correspondence from Mr. English which addressed these allegations made against Kenmore. Mayor DePiero read aloud passages from the correspondence:

It indicates that Kenmore Construction did formally adopt an affirmative action program. Investigators officially confirmed Kenmore's compliance with that program on March 22, 2007, and the official investigation found no deficiencies and made no recommendations.

There was a conversation with the Assistant US Attorney, Alex Rokakis, and Mr. Rokakis confirmed that he was aware of no evidence or noncompliance with the ODOT DBE program. There was no case opening regarding Kenmore and that Kenmore was not debarred from ODOT projects.

Mayor DePiero stated that having reviewed these contracts and materials supplied, it appears that the "District has no apparent proper basis for delaying or withholding the award to Kenmore." Mayor DePiero concluded by stating that he is "comfortable with this company being the lowest and best bid."

Mr. Brown showed his appreciation to Mayor DePiero for recapping the correspondence for the Board and general public because the Board will be taking action on this issue in a public meeting. Mr. Brown stated that it was indicated in a past meeting that contractors must use subcontractors on the District's MBE/WBE certification list, however, in doing so it must be in a manner conducive and in accordance with the "actual intent" of the District. If contractors are listed on the certification list as a legitimate MBE or WBE, then they must utilize their own resources for carrying out contracts. This would alleviate the concern of contracting with a "front company" that uses another's equipment or personnel. Mr. Brown stated that this issue is not specific to the District and other agencies within the region struggle with this issue as well. Mr. Brown expects all contractors to comply with the District's program goals and its intent for each project.

He suggested staff promptly implement its SBE program and secure its contract compliance personnel.

Resolution No. 250-08

Spring-Jennings Stormwater Outlet Replacement bid to Kenmore Construction Co., Inc. Cost not to exceed \$736,800.00.

Ms. Kelly requested clarification as to why the Spring-Jennings Stormwater Outlet Replacement project had to be rebid. Executive Director Ciaccia explained that the bids received were 10% higher than the engineer's estimate, which according to state law the project must be rebid. Executive Director Ciaccia advised that the engineer's estimate and project scope were revised. The lowest bid received after the second engineer's estimate was from the same lowest bidder. This company's bid was less than the previous bid; therefore, it is a good bid.

Ms. Kelly questioned if the engineer's estimate decreased. Executive Director Ciaccia affirmed and explained that the previous engineer's estimate did not incorporate the escalation of some of the project materials. Consequently, it was modified to accommodate this variable.

No discussion ensued on Resolution No. 251-08.

Resolution No. 251-08

Audit professional services. Cost not to exceed \$299,800.00.

MOTION – Mr. Liberatore moved and Mr. Sulik seconded to adopt Resolution Nos. 226-08, 250-08 and 251-08. Without objection, the motion carried unanimously.

Authorization to Enter into Agreement

No discussion ensued on Resolution No. 252-08.

Resolution No. 252-08

Water Pollution Control Loan Fund (WPCLF) loan agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority, for partial WPCLF financing of the Southerly Incineration Procurement project, Contract 28B. Cost is \$28,536,224.00, financed at the interest rate of 3.52%.

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MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 160-08a and 257-08. Without objection, the motion carried unanimously.

VII. Information Items

No items on agenda.

VIII. Open Session

On behalf of the District, Mr. Brown acknowledged Mayor Longo's twenty (20) years and Mr. Sulik's fifteen (15) years of dedicated service to the District and clean water. He expressed his congratulations and appreciation for their long and tendered service with the District.

IX. Public Session

Mr. Norman Edwards began his discussion by stating that "Richard Jones is not a member of the Black Contractors Group," and he does not condone Mr. Jones' feeling and sentiments. Mr. Edwards stated that at the previous Board meeting, Mr. Jones made comments against his friends, the Perkins family, which "are not true." Mr. Edwards indicated that "he is a loner" and tries "to do his homework" and research, and that he wanted the record to reflect that Mr. Jones' comments were not from his organization.

Mr. Edwards moved discussion to his concerns involving the Mill Creek project which include the methane gas levels and the delay in project completion. Mr. Edwards stated that his friend, Victor Thompson, is "one of only two black insurance underwriters in the state of Ohio," and that he worked for Travelers Insurance for approximately twenty (20) years. Mr. Edwards stated that he was made aware that the District filed "a claim against the contractor doing the project," and that Travelers Insurance indicated that the claim was filed "without any validity." Mr. Edwards declared that he has "been out on jobs...and can't understand why the job wasn't completed or worked out until it got to a point to being stopped where it is now."

Mr. Edwards stated that he "has a problem with methane gas" and was subjected to work around it. Mr. Edwards alleged that in Mayor Longo's community, Garfield Heights, a Wal-Mart was closed due to high levels of methane gas. Mayor Longo interjected and stated that "it didn't close because of that." Mr. Edwards stated that the EPA found "explosive levels..." Mayor Longo reiterated that "it did not close because of that." Mr. Edwards stated "the explosive levels"... "I'm just saying..." Mayor Longo stated "it did not." Mr. Edwards stated that according to Wal-Mart officials this is why it closed. Mayor Longo stated "Wal-Mart officials never said that." Mr. Edwards stated "here you

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can read it for yourself.” Mayor Longo declared that he “knows what they said.” Mr. Edwards alleged that there “is a problem with methane gas,” and Wal-Mart’s report claims that “there can be explosions on their project.” Mr. Edwards advised Mayor Longo that he was willing to provide him with a copy of the report in which he was referring to. Mr. Edwards implied that Garfield Heights Fire Lieutenant Dave McKee indicated that “it can be explosive on that site.” Mayor Longo assured that Mr. Edwards was wrong. Mr. Edwards replied that there are two sides to every story, and that he does not agree with Mayor Longo’s interpretation of this property not being volatile or combustible.

Mr. Edwards stated that the Mill Creek tunnels are located within a “black neighborhood” and questioned whether if this was a “white neighborhood would the safety issues be different?” Mr. Edwards stated that it would be different, and he is “tired of the black community and the minority community being kicked to the curb. There is a hazard and methane gas is combustible.”

Mr. Edwards commented that he is “listening to a bonding surety guy, his explanation from what he is telling me from another point of view, and my point of view, from me doing my homework.” Mr. Edwards referred to the previous comments made by Ms. Rotunno regarding the gas monitors located within the tunnels. He questioned what happens if the monitors failed, and he stated that “they do fail.”

Mr. Edwards’ suggestion was to complete the project so “you wouldn’t have to worry about the problem. The project should not be stalled. It should be going forward.” Mr. Edwards indicated that he encountered problems while working on jobs and that his “bond company was called to the floor” but a job has to be completed first, and you cannot “leave the job.” Mr. Edwards stated that in his “38 years in the game” he has “never seen anything like this.”

Mr. Edwards stated that he would like his “problem addressed in the black community” and that he is a “fighter for blacks and minorities” and he would like his concerns and “the concerns of residents” that he spoke with addressed. Mr. Edwards stated that if you “bring somebody else in; we can have four different people in this room with four different variations of methane gas.”

Mr. Brown advised Mr. Edwards that he has reached the five (5) minute time limit. Mr. Edwards stated that he will address his last comment with Mr. Brown after the meeting.

Mayor Longo stated that “he wanted to set the record straight.” He lives within 200 to 300 feet of the Mill Creek tunnel, and the shaft is visible from his property. Safety is of the utmost importance in Garfield Heights. The tunnel is located beneath many different neighborhoods, housing, businesses, residents, and many different cultural groups.

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Mr. Brown advised that he is desirous of meeting with Executive Director Ciaccia and the MWH tunnel expert after the Board meeting to address some of these concerns. Executive Director Ciaccia advised that the tunnel expert is present and Mr. Brown's request to meet will be accommodated. Furthermore, Executive Director Ciaccia stated that he did agree with Mr. Edwards' comments regarding the need for the contractor to complete the MCT-3 project.

Mayor Longo moved discussion back to the methane gas issues in Garfield Heights in which he stated that the City is "intimately familiar" with this topic. He advised that the City "knows how it explodes," and past accidents included kids being "burned to death" while lighting cigarettes in abandoned buildings containing methane gas. Homes were also vacated around the landfill due to significant levels of methane gas. The City's experience goes back many decades, and he challenged any agency in Northeast Ohio to "match the performance" of his city's "ability to measure and account for safety."

Mayor Longo advised that Wal-Mart designed, approved and owned its plans, which are public record. The plans specified that PVC piping would be used under the building to allow for movement if the landfill shifted, however, cast iron pipe was installed. An odor was detected when the cast iron pipe on the sewer separated which resulted in a reading, but this situation was resolved two (2) years ago.

Mayor Longo stressed that the City is extremely sensitive to this issue and held many meetings with its residents. Pipes were installed within thirty (30) feet of a home where there was blasting to remedy the situation. The District has "gone over and above what anyone would deem reasonable" to ensure confidence and safety within the community.

Mayor Longo commented that "he has been through too much of this scare stuff to be backed off from it now." He alleged that he understood what the "EPA is trying to do at City View," and questioned the lack of presence during the blasting at the Mill Creek tunnel. Mayor Longo explained that they have "lived with it" and all concerns have been addressed. He commended the District and contractor for handling these concerns.

Mayor Longo advised that children and political officials toured these tunnels, and classes were developed due to the uniqueness of the location, terrain and geology to entice students desirous of studying architecture or engineering.

Mayor Longo commented that this subject matter is "near and dear" to his city and that this project has saved the community millions of dollars on flooding and basement backups. Furthermore, it has improved the quality of life of his residents and Mayor Longo concurred that the project should be completed.

X. Executive Session

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

MOTION – Mayor Longo moved and Mr. Sulik seconded to adjourn to Executive Session. Mayor Longo stated that the matters discussed in Executive Session are protected from public disclosure pursuant to Ohio Public Records Act. Mayor Longo moved to specifically designate that the discussions in Executive Session be kept confidential pursuant to Ohio Revised Code Section 102.3(B) and/or as attorney/client privileged communications. The issues to be discussed in Executive Session, which ought to be kept confidential, include the Executive Director's contract, the hiring of a new Assistant Director of Law, and the BCI-3D litigation. The secretary called a roll and without objection, the motion passed unanimously.

The Board met in Executive Session from 1:32 p.m. to 1:47 p.m.

XI. Approval of Items from Executive Session

No discussion ensued on Resolutions 258-08 and 259-08.

Resolution No. 258-08

Modification of District Contract No. 3027 with Metcalf & Eddy of Ohio, Inc., for additional design and construction administration for the BCI-3D Sewer. An increase of \$215,281.00; bringing the total not-to-exceed contract price to \$1,357,205.30.

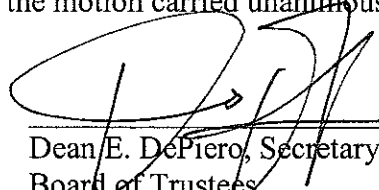
Resolution No. 259-08

Modification of District Contract No. 3387 with Julius Ciaccia, Jr. to extend for two (2) months from November 1, 2008 through December 31, 2008.


MOTION – Ms. Kelly moved and Mr. Sulik seconded to add and adopt Resolution Nos. 258-08 and 259-08. Without objection, the motion carried unanimously.

XII. Adjournment

MOTION – Mr. Brown stated business having been concluded, the meeting was adjourned at 1:49 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