

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
OCTOBER 20, 2016

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

I. Roll Call

PRESENT: D. Brown
R. Sulik
W. O'Malley
J. Bacci
T. DeGeeter
S. Dumas
R. Stefanik

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

II. Approval of Minutes

MOTION – Mayor Bacci moved and Mr. O'Malley seconded to approve the minutes of the October 6, 2016, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

There were no items.

IV. Chief Executive Officer's Report

CEO Ciaccia began his report by stating that the finances through three-quarters of the year are right on target. He wanted to recognize Chief Financial Officer Jennifer Demmerle because earlier in the year he thought the budgeting for revenues was a little aggressive. He anticipates the financials remaining strong through the end of the year.

Eric Luckage, Chief Legal Officer & General Counsel, explained that a case was initiated against the City of Parma involving heavy rain and basement flooding that occurred. The Court of Appeals essentially rendered a decision that shifts the burden of proof on sovereign immunity cases to the city's side, so there is a general presumption that the political subdivision has immunity and the plaintiff has the burden of proving an exception and showing negligence on the part of the City to overcome the immunity.

Mr. Luckage further explained that in this case the plaintiff presented very little evidence of negligence and the court essentially said the City had to prove there was not negligence instead

of the plaintiff proving there was negligence. The City of Parma is appealing to the Supreme Court and number of entities are submitting Amicus briefs urging the court to take the case so this can be reversed. District staff thought it would be wise to submit an Amicus brief given that the case involves stormwater and sewers and general sovereign immunity issues.

Mayor DeGeeter appreciated the willingness of District legal counsel and other entities to step up on this issue because it affects all municipalities and villages in the State of Ohio, and he remains hopeful that the Supreme Court will overturn what he believes is the lower court's wrongful opinion.

V. Action Items

Authorization to Advertise

Resolution No. 291-16 Publish notice calling for bids in accordance with Ohio Revised Code Section 6119.10 for Construction of the Westerly Low Level Relief Sewer Project with an Engineer's Opinion of Probable Construction Cost at \$13,400,000.00.

Resolution No. 292-16 Publish notice calling for bids in accordance with Ohio Revised Code Section 6119.10 for the Dille Avenue Pump Station Replacement Parts Purchase Project with an Anticipated Expenditure of \$60,000.00.

MOTION – Mayor Stefanik moved and Mayor DeGeeter seconded to adopt Resolution Nos. 291-16 through 292-16. After discussion and without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 293-16 Issue RFPs in accordance with Ohio Revised Code Chapter 153 for professional materials Testing and Construction Inspection Services on District Construction projects in years 2017 – 2021.

Resolution No. 294-16 Issue RFPs in accordance with Ohio Revised Code Chapter 153 for Design and Construction Administration/Resident Project Representation Services for the Doan Valley Regulators/Relief Sewers Project.

MOTION – Ms. Dumas moved and Mr. Sulik seconded to adopt Resolution Nos. 293-16 through 294-16. After discussion and without objection, the motion carried unanimously.

Mr. Brown stated that both engagements will be for a five-year period so folks overseeing the construction admin? James Bunsey, Director of Engineering & Construction, affirmed and explained that construction/inspection services contracts are inspectors hired through third-party consultants to supplement staff. Staff found that method cost-effective in the past and eliminates the need to worry about peaks in construction.

Mr. Brown wanted to make sure staff includes in its review process that much of this work will be long-term construction projects and staff with competent engineering expertise who understands the value of good customer care and engagement is a critical piece.

Authorization to Enter Into Agreement

Resolution No. 295-16

Authorize the District to Sponsor the Beck Fen Expansion Project by Western Reserve Land Conservancy and Geneva Swamp Lake Plains Wetlands Project by the Cleveland Museum of Natural History Under the 2016/17 Ohio Environmental Protection Agency's Water Resource Restoration Sponsor Program.

Resolution No. 296-16

Authorize a Cooperative Agreement with the City of Cleveland for the Transfer of the roadway asphalt resurfacing work on the Dugway West Interceptor Relief Sewer Project and to reimburse the city for such costs in the amount of \$300,000 (Cleveland Water Department).

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 295-16 through 296-16. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation regarding Resolution No. 295-16. Frank Greenland, Director of Watershed Programs, advised that there are two preservation projects. Beck Fen is on Tinker's Creek and drains into the District's service area. Eventually they will preserve about 59 acres with high-quality wetlands on the property. The Geneva Swamp is a larger Lake Erie protection project that preserves land along two streams with high-quality wetlands projects. Staff's preference is to sponsor within the service area first, then to areas draining to the service area and projects near Lake Erie. These are the projects that scored high enough and implementers came to the District to sponsor the projects.

Mr. Greenland explained that there may be a slight bias for urban projects because high-quality wetlands projects tend to score very highly on the EPA scale. Staff will work with watershed groups to try and bring money into the District service area.

Mr. Brown stated that problematic areas in the service area should be competitive with these

types of projects. Mr. Greenland advised that such projects were competitive early in the program and a lot of work was performed on West Creek and Euclid Creek.

The District receives a discount on Ohio EPA and implementers get a source of funding from the Ohio EPA.

Authorization of Contract Modification

Resolution No. 297-16	Modify Contract No. 16000877 with Fabrizi Trucking & Paving, Co., Inc. for the Fairmount Boulevard SSO Relief Sewer Project to Reallocate Monies to the General Allowance Fund with No Change in the Contract Price.
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MOTION – Mayor Stefanik moved and Mayor Bacci seconded to adopt Resolution No. 297-16 through 288-16. After discussion and without objection, the motion carried unanimously.

Property-Related Transaction

Resolution No. 298-16	Authorize One Right of Entry Agreement with Laura L. Banks Necessary for Construction of the Kingsbury Run Preliminary Engineering Project with a Consideration of \$1.00.
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Resolution No. 299-16	Authorize the Acquisition from the East Cleveland Farmers Market Preservation Society of Two Permanent and Two Temporary Sewer Easements Necessary for the Construction of the East 140 th Street Consolidation and Relief Sewer Project with a Consideration of \$6,270.00.
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Resolution No. 300-16	Authorize Relocation Payment associated with the District's Permanent Acquisition of Property in the City of Cleveland Necessary for Construction of the East 140 th Street Consolidation and Relief Sewer Project with a Consideration of \$7,080.00.
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MOTION – Mr. O'Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 298-16 through 300-16. After discussion and without objection, the motion carried unanimously.

Referring to Resolution No. 298-16, Ms. Dumas inquired why there were current negotiations. Mr. Luckage explained that the District needs an easement or to acquire the whole parcel from the property owner. This action allows the project to proceed with a temporary right-of-entry agreement while negotiations continue regarding the parcel acquisition.

Hearing Examiner

Resolution No. 301-16

Adopting the Findings of the Hearing Examiner with Regard to issuance of \$176.94 credit to the Sewer Account of Kelly Moody, Sewer District Case No.16-009.

MOTION – Mayor Bacci moved and Ms. Dumas seconded to adopt Resolution No. 301-16 through 300-16. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Program Management Status Report and Update – September 2016

Mr. Bunsey advised that cash flow improved significantly to 82%. Staff expects to reach the 85% Key Performance Indicator (KPI).

Project Clean Lake is 33% under contract or completed from a cash perspective. There are currently 42 active contracts for a book value of \$580 million. Four new contracts were added over the last quarter and two were completed.

Moving to the Capital Improvement Program, Mr. Bunsey stated that there are 97 open contracts for \$918 million. The number of construction contracts increased by six and closed seven. The number of projects in design increased significantly by 11 projects more than this time last year.

The Business Opportunity Program is 22% of total cash flow. The Sewer System Evaluation Studies and stormwater master plans went out for bids this year, meeting KPI. Mr. Bunsey explained that the District is mandated to meet 11 milestones by the end of 2016 for the consent decree and so far has met 9. He expects to meet all of them by the end of the year. Designs are getting out at 33 days – well within the 60-day KPI. Additionally, staff has realized a value engineering savings of \$2.8 million over the last month, bringing the total for the year to \$9.8 million against the goal of 11.3 million.

Mr. Bunsey advised that there is a very competitive bidding environment and the engineers' opinion remains 11% higher than the average of the three lowest bids. Mr. Brown stated that indicates that either the market is great or staff is a little conservative estimating projects, and the concern would be getting better alignment.

Moving to construction, Mr. Bunsey stated that work is getting done on time at 65 days -- within the goal of 90 days. Contracts are closing under 92% of contract value which is within the 95% KPI.

The Westerly Low Level Relief Sewer was designed and completed within the 23-day KPI. The Kingsbury Run preliminary engineering found \$2.79 million in value engineering savings by relocating the designed structure.

Mr. Brown expressed concern about the significant hydraulic jump in the area that blows manhole covers off sewers in backyards and inquired how soon before that issue is mitigated. Doug Lopata, Program Manager, advised that this project will contemplate rectifying that issue. There are three sites on the project and this one had value engineering savings but there is another structure that will be modified and alleviate some flooding concerns.

Mr. Bunsey stated that the substantial completion was accomplished in September regarding the Chevy Boulevard Detention Basin. The project was completed timely but the first stage improvements lag behind in schedule. That portion does not have consent decree obligations attached.

The Dugway Storage Tunnel is already 50% complete from a cash flow perspective. Its cash flow is \$28 million behind and this project is the significant difference in overall cash flow from where staff planned at this part of the year.

The Euclid Tunneling Dewatering Pump Station is \$6.3 million behind in cash flow and recently had a non-compensable extension of 223 days. The project is 90% complete and staff hopes to get the Euclid Creek Tunnel and pump station operational for environmental benefit.

New projects getting under way include the East 140th Street Consolidation Relief Sewer Project, Dugway South Relief and Consolidation Sewer Project and the Superior Stones Canal Project.

VII. Open Session

There were no items.

VIII. Public Session (any subject matter)

There were no items.

IX. Executive Session

MOTION – Mayor Bacci moved to go into Executive Session pursuant to Ohio Revised Code Section 1212.2(b)(1) to consider the appointment and the employment of a public employee. After discussion and without objection, the motion carried unanimously.

The Board met in Executive Session from 1:08 p.m. to 1:32 p.m.

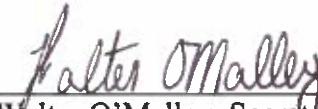
X. Approval of Items from Executive Session

There were no items.


IX. Adjournment

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MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mayor DeGeeter seconded the motion to adjourn at 1:32 p.m. Without objection, the motion carried unanimously.



Walter O'Malley, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District