

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
DECEMBER 18, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:32 p.m. by Mr. Brown.

I. Roll Call

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

Mr. Liberatore was absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the December 4, 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 Resolution Nos. 322-08 (#16) and 327-08 (#21), Board of Trustees' Bylaws, and Independence Excavating. Executive Director Ciaccia advised that Resolution Nos. 322-08 and 327-08 are on the agenda for Board consideration, however, the remaining issues do not pertain to the agenda. Mr. Brown requested Mr. Edwards come forward to address his comments to the Board on the agenda items. All other comments will be held for the appropriate public session.

Mr. Edwards stated that "item #16 is for professional services for diversity and inclusion with the Kaleidoscope Group at a cost not to exceed \$70,000" which is a "waste of taxpayers' money." Mr. Edwards claimed that there are enough sources within the City of Cleveland which "clarify and verify that we have not had inclusion in the City of

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Cleveland and Cuyahoga County.” Mr. Edwards believed that the District is “making a mistake and giving taxpayers’ money away unnecessarily once again.”

Mr. Edwards moved discussion to item #21 regarding the authorization to move forward with the disparity study. Mr. Edwards stated that “these were done by the City of Cleveland and the County.” Mr. Edwards stated that “if you put a program in place, and you are challenged, like other cities have been challenged, and you have legal representatives working for you, and you put something in there that is going to work.” Mr. Edwards stated that the District was wasting \$672,000 of taxpayers’ money, and this is “a lot of money to be put into a disparity study.” Mr. Edwards stated that, “regardless of how this gets put back into the City of Cleveland, there are so many variations and versions” once it is concluded. Mr. Edwards alleged that the District is “throwing away almost three-quarters of a million dollars on something that could be constructed by the Law Department whether it is a MBE or a DBE program.”

Mr. Edwards argued that the District should implement the program first, and then see if it is “challenged by the court system, if it’s wrong.” Mr. Edwards stated that “with the demographics of Cuyahoga County, we have been excluded.” Mr. Edwards claimed to have “enough data to show that we have been excluded from District projects.” Mr. Edwards claimed that NOACA has either an MBE or DBE program and stated that he “does not understand where the exchange of communication is if NOACA and some of your members are on the Board.” Mr. Edwards alleged that “they have done disparity studies, and you are like a subsidiary and you’re interacting and working together, too much monies being spent unnecessarily.” Mr. Edwards stated that the disparity study and inclusion survey are “totally worthless.”

Mr. Brown suggested that staff include an explanation in its presentation as to why the District requires its own disparity study. Mr. Brown advised Mr. Edwards that the District’s geographic area differs from other entities such as the City of Cleveland, but these issues will be addressed and the Board will be given the opportunity to engage in this discussion as well.

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the disparity study presentation agenda action item be moved to the front of the agenda in order to allow the presenter an opportunity to entertain questions from the Board. Without objection, the motion carried unanimously.

Mr. Brown advised that agenda item #21 (Resolution No. 327-08) will be moved and requested that staff and the consultant come forward to make the disparity study presentation.

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Director of Law, Marlene Sundheimer, thanked the Board for granting the motion to move this item to the front of the agenda for the reason that Collette Holt, Esq. from the NERA Economic Consulting (hereinafter "NERA") team is present but will be leaving shortly to catch a scheduled flight. Ms. Sundheimer stated the District is seeking Board authorization to negotiate and award a contract with NERA. The District will engage NERA to conduct a disparity study as well as the consulting services of Collette Holt, Esq. to advise the District during the development of its Small Business Enterprise (hereinafter "SBE") program. Ms. Sundheimer advised that the disparity study will take approximately 12 months for completion.

Ms. Sundheimer advised the Board that included in their packets of information is an outline of the competitive selection process used to determine and make its recommendation for the disparity study consultant. Resolution No. 151-08 passed by the Board in June 2008, authorized the District to issue request for proposals (hereinafter "RFP") to engage consulting firms. Ms. Sundheimer advised that of the 24 firms invited to submit proposals, six responded. The selection team which evaluated the proposals consisted of Tiffany Jordan, Contract Compliance Manager, Katarina Waag, Assistant Director of Law, Jacqueline Williams, Purchasing Manger, Charles Burkett, outside consultant, and Ms. Sundheimer. After rating the six (6) firms on their qualifications, BBC Research and Consulting and NERA were selected to make verbal presentations to the team. Based upon those presentations, Ms. Sundheimer advised that the team selected NERA as the firm to conduct the District's disparity study.

Ms. Sundheimer advised that the NERA contract will be administered by the Law Department under her direct supervision. The internal team overseeing the disparity study includes the departments of Information Technology, Finance, Purchasing, Engineering and Construction, Legal and the Contract Compliance Office.

Ms. Sundheimer explained that the disparity study is a legal initiative. If any component of the District's SBE program is challenged, the disparity study results used for setting the policies and goals, the basis for determining the lowest and best bids, and contractor performance could be tested in a court of law. The disparity study is the legal underpinning for the District's SBE program. Staff plans to update the Board monthly on the developments of the disparity study.

Ms. Sundheimer stated that the disparity study will utilize a law and economics approach which has been successful for other such programs. This approach consists of two (2) components: 1) an experienced legal counsel provides the governing framework and legal defensibility analysis; and 2) a qualified economist provides statistical and expert defense to the study.

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Ms. Sundheimer informed that "NERA Consulting was founded in 1961 and is an international firm of economists that perform economic impact studies and has expertise in the public contracting and procurement markets. It is one of the nation's leading providers in studies related to minority- and women-owned businesses." It is a global firm having 600 economists and other professionals employed in 20 offices throughout the regions of America, Europe and Asia-Pacific.

Ms. Sundheimer advised the Board that Dr. Jon Wainwright is the project director of this initiative and has 19 years of experience conducting research related to disadvantaged business enterprises in the United States. Dr. Wainwright holds a Master's Degree and Doctorate in economics from the University of Texas at Austin. He has been affiliated with NERA since 1995.

Ms. Sundheimer informed the Board that Ms. Holt is the principle of Colette Holt and Associates which is a Chicago based law practice specializing in public sector affirmative action programs. Ms. Holt received a Bachelor of Arts Degree in Philosophy from Yale University and a Juris Doctor from the University of Chicago School of Law. Colette Holt and Associates is a certified minority- and women-owned law firm providing legal and consulting services to governments and businesses on procurement, contracting, employment discrimination, regulatory compliance, organizational change, program development, evaluation and implementation on issues relating to inclusion, diversity and affirmative action. Ms. Holt is general counsel to the American Contract Compliance Association, and is nationally recognized as an expert in defining, implementing and defending affirmative action programs. Ms. Sundheimer advised that for the past 15 years, Ms. Holt concentrated her practice in the area of affirmative action after serving in a senior legal and government management position.

Ms. Sundheimer stated that based on NERA's and Ms. Holt's credentials, the team is confident that the disparity study will support the District's policy and other decision-making activities during the development of the SBE program.

Ms. Sundheimer turned discussion over to Ms. Holt to expound on NERA's involvement with the disparity study and development of the SBE program, and to entertain any questions from the Board.

Ms. Holt thanked the Board and stated that she enjoys visiting Cleveland. Ms. Holt advised that she worked for the transit authority years ago and is thrilled to be invited to conduct the District's disparity study. Ms. Holt explained that NERA, in which she is a team member, conducted dozens of studies for various agencies throughout the country. Ms. Holt stated that programs have been challenged, but NERA established a methodology that has been upheld in the federal court thus far. Ms. Holt stated that she is confident that it "fits within the parameters the federal judges like to see in terms of the

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quality of evidence that meets accepted standards in economics and social policy analysis.”

Ms. Holt advised that NERA plans to collect data from the District regarding prime and subcontractor utilization, and then make estimates of the availability of minority and women firms in the geographic and private markets. Ms. Holt advised that NERA will recommend narrowly tailored measures that it believes “would survive judicial scrutiny.”

Ms. Holt expressed her satisfaction that the disparity study will be managed by the Law Department which indicated that the District understood that the “studies are directed towards meeting a set of constitutional requirements” if it plans to utilize “race and gender conscious measures to address barriers to full and fair inclusion in its contracting process.”

Ms. Holt commented that NERA was delighted to have met the District’s team, is looking forward to working with them, and that their quality and professionalism is evident. Ms. Holt advised that NERA is confident that it will provide a product that the District “will be proud of” which addresses any complex legal and administrative issues related to minority and women business programs. Ms. Holt stated that she understands implementation challenges because she faced them while developing the first minority business program for the Chicago parks system.

Ms. Holt advised that she is excited to work with the District on its development of an SBE program, which she explained to be an important initiative. NERA will include any data generated from the disparity study for the reason that the federal court is interested in this evidence. The study will take approximately one (1) year for completion, but this is contingent upon the state of the District’s data and how quickly NERA can retrieve this information. Ms. Holt stated that NERA has “always stayed on budget and has never asked for a contract increase.” Ms. Holt stressed that NERA is confident it can present the District with the “type of evidence that the courts are going to look for.”

Mr. Brown requested clarification as to NERA’s inability to use data from other entities such as the City of Cleveland or Cuyahoga County. Ms. Holt stated that agencies desirous of incorporating race- and gender- neutral components into its affirmative action program need to “look at its own behavior.” Ms. Holt indicated that she is unaware of any case suggesting that an organization could rely on the contracting records of another agency for the integration of MBE/WBE components into its program. Although data from other agencies would be helpful, Ms. Holt advised that “it is not a substitute for a full and thorough analysis” of the District’s prime and subcontractor data. It is more difficult to obtain information on minority and women contractors because there is no direct contractual relationship between them and the District. Ms. Holt indicated that ensuring complete agency records is a major factor in her firm’s litigation success. They

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have the ability to show federal judges that they thoroughly looked at the data and have a sound availability analysis.

Ms. Holt advised that another contributing approach that attributed to her firm's success in litigation is that they look within the "barriers in the wider economy." Barriers exist to minority and women firms outside of the District's contracting activity, and if those barriers are "large and statistically significant," it could successfully be argued in court that this "provides an additional basis on which you can have an affirmative action program." Ms. Holt stated that the legal test is whether the District is a "passive participant in a discriminatory marketplace," and she indicated that there is no reason to believe that the District has been involved with discriminatory practices against firms. If the marketplace has discriminatory barriers, and nothing is done to reduce this problem, then it becomes more difficult for the District to contract with firms.

Mayor Starr questioned if the "guiding principle" in federal law is the Supreme Court decisions? Ms. Holt affirmed.

Mayor Starr inquired if Ms. Holt noticed any recent trends that either support or strike down SBE programs. Ms. Holt stated that the Sixth Circuit was a "hot bed" in the 1990's. Mayor Starr asked "where is that?" Ms. Holt advised that the Sixth Circuit "is the federal circuit court that covers Ohio."

Ms. Holt stated that there isn't much new case law although there is plenty of old case law from the Sixth Circuit, and that MBE/WBE programs were "falling like dominos" and nobody's program was being upheld in court. In 2000, Ms. Holt's firm was the trial team for the City of Denver which became the first program to be upheld. According to Ms. Holt, cities have become "more sophisticated" than it was in 2000.

Ms. Holt reiterated that although there may be city and economy-wide barriers for minorities and women, governmental agencies can address these issues and do not have to be passive. Ms. Holt advised that her firm won the Denver case which was affirmed on appeal.

In Chicago, Ms. Holt advised that they proved satisfactorily to the judge that there is plenty of discrimination against minority and women firms in Chicago's construction industry. The City of Chicago was using the same affirmative action program in 2003 that was designed by Ms. Holt in 1990. The judge held that a 13 year old program needs to be reviewed and allowed six (6) months to do it. As a result, Chicago since reinstated its MBE program.

Ms. Holt stated that the trend is on federal programs. She restated that her firm won all disadvantaged enterprise cases that it tried. Programs can be run effectively so long as

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there is a study and evidence supporting it. If there is a good evidentiary basis and a narrowly tailored program, then the District can run a legal and effective minority and women business program. According to Ms. Holt, the overall trend is good.

Mayor Starr inquired if Ms. Holt or one of her associates will be representing the District. Ms. Holt replied that it would generally be herself and that there is a part-time attorney on her staff as well. Ms. Holt indicated that she is unsure of her part-time attorney's status for the reason that she recently applied for a position in President-elect Obama's administration.

Ms. Holt advised that she prefers to have a "hands-on ability to interact directly with staff" and that she personally conducts the business owner interviews. Ms. Holt explained that this provides her with an opportunity to assess the potential witnesses in the event the District was challenged. Ms. Holt advised that her firm conducts two (2) to three (3) studies per year for the reason that they want to truly focus on each study.

Mayor Starr inquired if there is internal expertise available to conduct the disparity study. Ms. Sundheimer stated that the District does not have the "internal expertise to conduct a disparity study that would hold up in court," or give us the confidence that the program is legally defensible. Ms. Holt added that in 1993 or 1994 a case was filed against the City of Columbus and its WBE program wherein the court advised that "studies need to be done by people who have the credentials and are objective." Although an agency may have the internal expertise, the court may discount its findings. Ms. Holt explained that NERA is one of the largest economic consulting firms in the world, and she accredited its success to its independence and objectivity. NERA chooses to be independent for the reason that it is desirous of ensuring that its credibility is maintained and is not "the result of politics or patronage." Ms. Holt stated that "people have decided that in-house studies are really not an option."

Ms. Kelly inquired if Ms. Holt's firm participated in any studies of entities in the greater Cleveland market. Ms. Holt replied that it has not. The City of Cleveland and a consortium conducted a disparity study years ago. Ms. Holt was contacted by the Greater Cleveland Regional Transit Authority (hereinafter "GCRTA") to provide an outside legal opinion on some concerns GCRTA had pertaining to the study's results. Ms. Holt expressed her enthusiasm in becoming involved in this region again for the reason that a difference can be made within this community. Ms. Holt stated that it was an enjoyable experience conducting the disparity study for the Minnesota Department of Transportation, but the demographics differ from Cleveland's. She is hopeful that NERA can assist in meeting the needs of this community.

Mayor Longo inquired if NERA plans to update the Board on its finding and stated that he is concerned that smaller companies may not be aware that they qualify for the

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District's SBE program. He inquired how the Board will be kept apprised as to the status of this plan over the next year. Ms. Holt replied that NERA plans to present regular progress reports to the study team and will defer to Ms. Sundheimer as to how the information will be presented to the Board. Ms. Holt recommended that the disparity study be presented to the Board altogether for the reason that the "methodology builds on itself" similar to building a house.

Ms. Holt stated that NERA sends out large-scale mail surveys and interviews business owners to retrieve data from local firms. Past experience has proven that the interview letter receives greater response if it is signed by the president or the Board, and NERA will look to the District for its support in recruiting local business participation.

Mayor Longo stated that when completing an in-depth analysis of a department or city function, it is important to identify and remedy any problems that may potentially expose the District to legal liability. He suggested that any potential issues be brought to the Board's attention. Ms. Holt agreed and advised the Board that the District built into its RFP hours for general consulting and legal counsel on SBE program operations, and she will advise staff as necessary. Ms. Holt assumed that the Board will receive its advice under the protection of the law director.

Mayor Longo stated that as the program develops over the next year, "things uncover" and there may be no "glaring weaknesses and everything is copasetic." A recommendation is then made to the Board, and the implementation process may take 18 months to two (2) years. Mayor Longo stated that if something needs to be addressed, he wants "to make certain that we're moving on it and clearing up any discrepancy that needs to be addressed immediately."

Ms. Holt stated that she is helping the District with development of its SBE program, and she will advise staff of any concerns as the program advances.

MOTION – Mayor Longo moved and Mr. Sulik seconded that the SBE presentation agenda information action item be moved to follow the disparity study presentation.

Mayor Longo inquired if Ms. Holt would be available during the SBE presentation. Executive Director Ciaccia advised that Ms. Holt will need to leave the Board meeting by 1:30 p.m. to report to the airport for a 2:15 p.m. flight.

Executive Director Ciaccia inquired if the Board would be willing to consider Resolution No. 327-08 at this point of the meeting. Mr. Brown stated that the Board motioned to take this action item out of sequence; therefore, he suggested that the Board first consider Resolution No. 327-08, and then entertain the motion to hear the SBE presentation.

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Resolution No. 327-08

Negotiate and contract with NERA Economic Consulting for disparity study services and related subcontracting program consulting services. Cost not to exceed \$672,661.00.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution No. 327-08. Without objection, the motion carried unanimously.

MOTION – Mayor Longo moved and Mr. Sulik seconded to move forward with the SBE presentation. Without objection, the motion carried unanimously.

IV. Information Item

Executive Director Ciaccia introduced Contract Compliance Manager, Tiffany Jordan, and explained that Ms. Jordan is heavily involved with the development of the SBE program. Ms. Jordan and Mr. Willie Franklin of CH2M Hill, who is also a member of the Program Management (hereinafter “PM”) team, presented the SBE Program to the Board.

1. Small Business Enterprise Program.

Ms. Jordan began the presentation and advised the Board that discussions will include the conclusion of the last Board meeting, business case, objectives and opportunities, development, disparity study, monitoring and compliance, information technology solutions, implementation, reporting and the next steps. Ms. Jordan thanked senior staff and Executive Director Ciaccia and advised that the SBE presentation was a collaborative effort.

Ms. Jordan stated that at the December 4th Board meeting, Director of Engineering and Construction, Kellie Rotunno, and John Barron of CH2M Hill updated the Board on Phase 1 of the Capital Improvement Program (hereinafter “CIP”). The SBE program is Task B-3 of PM. The CIP along with other bidding opportunities will provide benefits to some outstanding prime contractors as well as create contracting opportunities for small businesses. Ms. Jordan stated that this complimentary approach will ensure the District’s initiative to benefit the residents of northeast Ohio.

Ms. Jordan and Mr. Franklin updated the Board on the direction of the SBE program and explained how the program was developed. Data was collected from small minority-owned business enterprise (hereinafter “MBE”) and women-owned business enterprise (hereinafter “WBE”) firms throughout the country to ensure that the District developed the most comprehensive and innovative SBE program, and to provide the tools and

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resources needed in order for small businesses to grow independently and successfully as prime contractors or consultants. Ms. Jordan stated that the SBE program is grounded in competitive bidding principles to ensure customers that this program is legally defensible and cost effective.

Ms. Jordan stated that Mr. Franklin is “an expert in the development of fully compliant contracting programs,” and that he crafted a SBE program for the City of Aurora, Colorado’s \$700 million Prairie Waters Program. Ms. Jordan turned discussion over to Mr. Franklin. Mr. Franklin stated that he manages the diversity and SBE program for CH2M Hill.

In June 2008, the Board approved Resolution No. 151-08 to establish a SBE program to provide opportunities for small businesses to participate on District procurements. Resolution No. 151-08 adopted a subcontracting model that allowed for outreach, mentoring and training programs as well as conducting a disparity study.

Mr. Franklin defined a small business to be a business that is “not dominant in the field of their industry.” The measurement used to determine whether a business is large or small is based on the company’s revenue or number of employees. Mr. Franklin stressed that in all cases, a SBE program is all inclusive of everyone and not contingent upon whether the firm is operated or owned by a minority or female.

Mr. Franklin advised that 99% of all businesses within the United States (hereinafter “U.S.”) are small and diverse, provide over 50% of employment within the U.S., and create 60% to 80% of all new jobs annually. Based on this information, a substantial amount of District customers own or work for small businesses. Mr. Franklin stated that the economic vitality of industries and communities is held together by small businesses; therefore, the District is pursuing implementation of a SBE program.

Mr. Franklin moved discussion to the objectives of the SBE program and stated that the focus will be on small businesses within the region, specific gross revenues and employment size. Mr. Franklin advised that the SBE program will be race- and gender-neutral until completion and the results of the disparity study are received. The District is desirous of establishing goals to provide increased subcontracting opportunities to the small business community.

Mr. Franklin moved discussion to expound on the opportunities provided by the SBE program. The District will establish overarching SBE goals for its construction projects, goods and services, and professional services. Mr. Franklin explained that the District will identify a pool of certified, qualified and responsible SBE companies that are willing to bid on District projects, goods and services, or professional services. Subsequently,

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the District will consider utilizing these companies and adjust its goals accordingly on a project-by-project basis.

Mr. Franklin informed the Board that the boxes on the forthcoming slides were used to indicate a timeline for a particular task or event.

Mr. Franklin moved discussion to the establishment of the District standards from October 2008 through January 2009. The team began with a baseline and analyzed information to define what the District would prefer to accomplish. The team researched and organized six (6) years of data in order to identify the District's purchasing trends.

A standard of measurement was needed to distinguish small from large businesses. Mr. Franklin advised that the U.S. federal government utilizes the North American Industry Classification Standards (hereinafter "NAICS") system for all of its procurements. The NAICS system, developed by the United States Small Business Administration (hereinafter "USSBA") and United States Census Bureau (hereinafter "USCB"), identifies all industry, construction, goods and services, and professional services procurements. A six-digit code is assigned to all items purchased. The NAICS code for heavy construction is 237110 and for professional engineering services is 541330.

Mr. Franklin moved discussion and advised that the team reviewed the District's current MBE/WBE database and assigned each company a NAICS code depending on the type of work or services provided to the District. In an effort to establish the NAICS codes, the team researched local businesses. The information obtained from December through January is being compiled to determine and evaluate the size standard for the District. Mr. Franklin advised that this information will be shared with NERA in order to establish a defensible size standard for the District's SBE program. Mr. Franklin stressed that either a company's gross annual revenue or number of employees will be considered, as well as geography.

Mr. Franklin stated that the federal size standard for NAICS code 237110 (heavy construction, water and sewer lines) is \$33.5 million, which is based on a company's three (3) year gross revenue average. The NAICS code for engineering services is 541330. If a company's three (3) year gross revenue average is \$7.1 million, then it is considered a large business.

Mr. Franklin stated that the size standards for the state of Ohio were determined to be \$3.5 million for heavy construction services and \$2.8 million for engineering services. According to Mr. Franklin, the range identified for the District's service area is between \$1.7 million and \$3.5 million for heavy construction, water and sewer lines and \$1.3 million and \$2.8 million for engineering services. Mr. Franklin explained that the District's service area "touches seven (7) counties" but does not include the whole

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county. He recommended that the District factor in all seven (7) counties when determining the District's area.

Mr. Franklin moved discussion and explained that according to the USCB, there are over 13,700 companies that provide water and sewer line services of which 453 of these companies are located within the state of Ohio. Mr. Franklin advised that in breaking this down further, it was discovered that 114 companies have a gross revenue average between \$1.7 million and \$3.5 million, therefore, 114 companies within the seven (7) county area could potentially become certified SBEs with the District. Mr. Franklin advised that the intent is to create a large database of companies willing to participate on District procurements.

According to the USCB, 57,000 companies nationwide provide engineering services. Of the 57,000 companies, 1,788 are located within the state of Ohio. Mr. Franklin advised that located in the District's seven (7) county area are 576 companies with average gross revenues between \$1.3 million and \$2.8 million.

Mr. Franklin moved discussion to explain the proposed communications strategy. There have been many changes in the District's procurement process, and in an effort to provide information on how to become a certified SBE with the District and the goals and size standards, the District is reaching out to prime contractors, potential contractors, small businesses, District employees, the business community, and advocates for these business organizations. Public outreach includes the development of websites and brochures and will commence in January and continue after the SBE program is implemented. Mr. Franklin stressed the importance of communicating and educating the business leaders, and responding to their questions and concerns as it pertains to the SBE program and the benefits it will provide the District and small business community.

Discussion was turned over to Ms. Jordan who thanked the Board for authorization to negotiate and enter into contract with NERA for the completion of the disparity study. Ms. Jordan stated that an RFP was issued and reviewed and staff made its recommendation to the Board. The study will be conducted through December 2009. A typical disparity study lasts for about one (1) year, and most entities conduct disparity studies every three (3) to five (5) years.

Ms. Jordan moved discussion and stated that information technology is significant in the development of the SBE program. It is important to track the program's progress into the future. The existing MBE/WBE database was modified. An assessment was made which identified functional business requirements, determined reporting needs and reviewed high level system demonstrations. This information will be provided to NERA.

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Ms. Jordan advised that staff is in the process of reviewing an RFP for the selection of a new system and its implementation. Data migration is expected to occur in April 2009, and the targeted deployment date is June 2009 for the SBE program.

Ms. Jordan moved discussion to the monitoring and compliance of the SBE program. Compliance policies and procedures are underway and will be completed by June 2009. The Contract Compliance Office will distribute, receive and process applications, and companies are certified through one (1) year. Certified contractors will be sent a recertification letter forty-five (45) days prior to the expiration date. Application information will include ownership, operational and managerial controls. On-site visits will be conducted on all applicants in order to determine physical location as well as review administrative documents. Contract Compliance Officers will also check for equipment and perform random on-site visits at the locations of business owners. Engineering and Construction will provide daily monitoring of SBE contractor participation and provide regular reporting to the Contract Compliance Office. Furthermore, the Contract Compliance Office will determine good faith efforts at the time of the bid, review subcontracting plans, invoices and payroll, research the goals versus actual performance on the contract, and conduct random construction site visits.

Ms. Jordan stated that the SBE program will commence June 1, 2009. Solicitations will incorporate SBE subcontracting goals for construction, goods and services and professional services procurements within the District. In order to meet its annual goal, the District intends to utilize methods that will increase its pool of small businesses that are willing to bid on District projects.

Ms. Jordan advised that monthly reports will be provided to the Board including SBE goals versus actual performance; District overall goals in the construction, goods and services and professional services procurements; advise of any new SBE applicants; and provide a total number of certified SBEs within the District's database.

Ms. Jordan concluded the presentation by advising that the next steps include continuing efforts with SBE program implementation; expand outreach development; encourage SBE certification; phase out current MBE/WBE program; and track and report the program's progress.

Mayor DePiero stated that, in his role, he has not had many dealings with SBE and MBE programs. He inquired if MBE programs target minority-owned businesses to increase participation, and SBE programs focus on increased contracting opportunities for small businesses, but are not race-based. Mr. Brown affirmed.

Mayor DePiero requested clarification as to how the District is ensured that it will receive the lowest and best bid. He questioned if we are trying to "marry small businesses with a

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bigger contractor.” Mayor DePiero stated that he is “trying to figure out how it is going to work.”

Ms. Jordan replied that the District’s existing MBE/WBE certified database includes 207 companies, and this number will increase with the development of the SBE program. The SBE program is a race- and gender-neutral based program at this time. The growing database provides greater subcontracting opportunities for prime contractors which benefit the District by creating competition amongst prime contractors and subcontractors.

Mayor DePiero inquired if the District does not expect small businesses to bid on District projects, rather prime contractors are required to “deal or solicit bids” from MBEs or SBEs making them “part of the team.” Ms. Jordan advised that prime contractors are required to select a company from the District’s certified SBE database.

Mayor DePiero posed that whatever deal is made, “if I’m the prime contractor, so long as they’re on that list, they are part of the team that bids on the project?” Ms. Jordan stated that the subcontractor must be certified as a SBE with the District, and that the prime contractor must select a certified SBE from the District’s list.

Ms. Sundheimer clarified that the District will set SBE participation goals on an individual project basis, and that prime contractors would select subcontractors from the District’s registry of certified SBEs. Ms. Sundheimer explained that the mechanics of the SBE program are the same as the existing MBE/WBE program but subcontractors are small businesses instead of MBEs or WBEs.

Mr. Brown referred to an earlier comment made by Ms. Holt pertaining to researching the District’s procurement history in an effort to gain a better understanding as to the market for particular commodities, and then setting specific goals based upon market availability. Ms. Sundheimer affirmed and added that the District will identify small businesses willing to provide needed services on District contracts, and set realistic goals for SBE participation on a project-by-project basis. The District will set an overall annual goal which may be smaller or larger depending on the project.

Ms. Kelly questioned how the District plans to expand its pool of certified contractors. Ms. Jordan replied that the District is desirous of working with other entities around or outside of Cleveland that also certify small businesses. The intent is to incorporate the District and other agency’s certified lists in order to increase its vendor pool. The District’s goal is to work with local prime contractors, but prime contractors do not have to be locally based.

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Ms. Kelly stated that small businesses sometimes encounter challenges such as not being able to obtain the proper insurance which prevents them from becoming certified. Ms. Kelly expressed her desire for the District to put forth "real effort to assist these contractors in getting qualified" so they may become competitive certified contractors in the marketplace. Ms. Jordan replied that the SBE program includes a "wrap-around service" and community outreach program to encourage meetings between prime and subcontractors. The District is interested in identifying the strengths and weaknesses of prime and subcontractors, and to provide the types of services needed for assisting subcontractors in obtaining the goal of becoming a prime contractor on a project. Executive Director Ciaccia added that this will not be handled internally by the District, but the District will work with outside entities that supply these types of services.

Ms. Kelly stated that some contractors feel they will not be competitive or received in the marketplace. Ms. Kelly inquired as to how the District intends to create an inclusive environment so "people feel they are part of the community and that they do have an opportunity" to overcome some of these "challenges and obstacles" preventing them from being active in the marketplace. Ms. Jordan responded that this objective is being worked on presently. The intent is to create a transparent SBE program which invites the community to inquire about bidding opportunities for prime and subcontractors. Ms. Jordan stated that "the ultimate goal is to provide a benefit for the customers as well as the District which will ultimately be a trickle down effect to the prime contractor as well as the subcontractor."

Mayor Starr stated that the District has had a subcontracting program for "a good number of years" and it is moving into the "next phase" of "reform and administration." He questioned if the District successfully identified its "past problems" with "clear understanding." Mayor Starr stated that the SBE presentation was "quite impressive," and questioned if the District is on the "right road to reform and to correct it." Ms. Jordan stated that since joining the District in August 2008, she noticed issues with the existing MBE/WBE program. It has been a collaborative effort between Ms. Jordan, the Legal Department and senior staff to address obstacles pertaining to subcontracting. Ms. Jordan advised that minimal companies received subcontracting opportunities within the District, and the goal is to increase this number. Executive Director Ciaccia added that understaffing weighed heavily on the District's MBE/WBE program, and the staffing issues have been rectified. The District faced similar problems with its program like most agencies, more specifically, front companies and pass throughs.

Mayor Starr commented that page four (4) of the presentation indicated that providing contracting and subcontracting opportunities to SBEs is an objective, and he inquired if the District intends to identify minority- and women-based general contractors. Mayor Starr commented that "it would be refreshing to see general contractors that are minority based and women based."

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Ms. Sundheimer advised that after reviewing the District's past program, the District did not provide adequate documentation of this program, more specifically, the demographics of subcontractors and prime contractors. The new SBE program will focus on capturing data to identify the minority, women and small businesses the District is contracting with. The District will closely monitor dollar values of contracts to ensure that prime contractors are following through with the subcontracting goals. The monitoring, reporting and documentation processes will determine if the new SBE program is successful. Ms. Sundheimer assured Mayor Starr that the District "is taking a different approach."

Mr. Bucci stated that the District's past program focused mainly on construction and engineering. The new SBE program includes goods and services which provides greater subcontracting opportunities.

Mayor Starr commented that the biggest problem facing implementation and administration of subcontracting programs is front companies. He inquired how the District defines minority- or women-based companies, and if it is based on the number of employees or stock control in equity. Ms. Jordan replied that the SBE program is race- and gender-neutral, and that there must be 51% minority or women ownership to be considered a MBE or WBE.

Mayor Starr stated that the District will spend billions of dollars over the next 20 to 30 years, and that the SBE program was voluntarily adopted by the Board and staff. The District is identifying important public policies and trying to employ people and companies. The information presented to the Board was very thorough and detailed compared to past practice. Mayor Starr complimented staff on its presentation and stated that the "this is a good program and a new beginning."

Mr. Sulik commented that he is pleased to see that the new SBE program includes goods and services procurements in addition to construction projects for the reason that there are many opportunities for small businesses to become involved with the operations of the District including providing office supplies and chemicals. Mr. Sulik added that this can be "a real boost" to SBEs. Executive Director Ciaccia stated that the District is making a concerted effort to ensure that this is happening, and he complimented Purchasing Manager, Jackie Williams on her efforts in this regard.

Mayor Longo inquired about the steps needed and what information must be provided to the District in order to become a qualified SBE. Ms. Jordan stated that a contractor seeking certification as an SBE with the District must provide documentation of ownership, day-to-day operation and tax information. An on-site visit and interview will be conducted by a Contract Compliance Officer to determine that the owner is within the

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District area. The Contract Compliance Officer must also observe tools and equipment needed to complete the project in which they are seeking certification for.

Mayor Longo questioned if the District will research a contractor's performance on providing goods and services or construction services to determine its capabilities. Ms. Jordan affirmed and stated that this is incorporated into the "wrap-around component." The District's goal is to work with companies by providing them with the "structure and capacity" to "ultimately grow as a prime contractor."

Mayor Longo stated that there are "emergency-lists and call-out lists, and businesses that are on those, have had a history or that we've dealt with them." Mayor Longo suggested that as the District develops certified lists and services, information be provided so that "everybody understands the capabilities." Mayor Longo commented that this may be a subjective process for prime contractors as they make their subcontractor selections. Ms. Jordan replied that the District is hopeful that prime contractors will select multiple subcontractors when meeting the SBE goals rather than "revisiting the same subcontractor" on projects.

Mayor Longo inquired if the District possesses the work history and credentials of the applicants. Ms. Jordan affirmed and stated that the District reviews contracts and invoices to ensure that the subcontractor is capable of doing the work in which they are seeking certification for.

Mayor Longo congratulated Ms. Jordan and Mr. Franklin.

On behalf of the Board, Mr. Brown expressed his appreciation and gratitude to Executive Director Ciaccia, Ms. Jordan, Mr. Franklin and staff on the PM and SBE presentations, and its thoroughness on addressing the dialogues and discussions held regarding the District's subcontracting program and "where it needs to be going." Mr. Brown stated that "having a good plan is obviously a good initial step." Mr. Brown referred to a previous comment made by Mayor Starr and stated that "the real proof comes through the implementation and the execution thereof and where do we go thereafter." The Board will now have the ability to be updated on milestones and benchmarks. Mr. Brown stressed the importance of accountability.

Mr. Brown indicated that he is concerned with the long-term issues and the two extremes involving primes and subcontractors and financial limitations. After getting beyond the financial capacity, you may be in the "big fish pond" but still not able to compete at the level of projects. Mr. Brown suggested a transition phase be implemented so as the District employs people, they are growing in their capabilities and capacities. Mr. Brown suggested that the District consider a mentor-protégé program similar to City of Atlanta to bridge the gap between prime and subcontractors and eliminate the "two extremes."

As SBEs demonstrate their capacity and competency, they need to grow and develop as prime contractors in order to compete for “work that might be of a larger magnitude.” Mr. Brown advised against thinking that because a plan has been developed for this portion, “it is the panacea” because “it is not” but is a “good start.”

Executive Director Ciaccia stated that this will be an evolving program included in his performance plan for 2008, 2009 and thereafter. Performance plans are a means of maintaining accountability.

V. Executive Director’s Report

Executive Director Ciaccia publicly thanked the Board for approving his employment contract with the District, and advised that he will work hard toward reaching all mutually agreed upon goals set for the District. Included in the Board packets for review was Executive Director Ciaccia’s 2009 Performance Plan. This plan is similar to the 2009 Strategic Business Plan and the desired accomplishments for the 2009 Organizational Strategic Business Plan. Executive Director Ciaccia encouraged the Board to provide any input or suggestions to this plan, and he intends to update the Board as it progresses through the year.

Executive Director Ciaccia moved discussion to the Combined Sewer Overflow Long-Term Control Plan (hereinafter “CSO LTCP”). Staff met with the federal government and Ohio Environmental Protection Agency (hereafter “EPA”) on Friday, December 12th. The focus of this meeting was the Financial Capability Analysis (hereinafter “FCA”), and the District provided the government with its findings. Executive Director Ciaccia indicated that the FCA is contingent upon whether a region is defined as a high, medium or low burdened community or system. According to staff, the District should be considered a high burdened community, which means that sewer bills are more than 2% of the median average income of residential customers. Staff provided the government with consumption statistics as it relates to residential customers.

The Cleveland Water Department (hereinafter “CWD”) does not distinguish between residential, commercial and industrial use rather they use meter size; therefore, the District conducted a survey to extrapolate usage information. The results were unusually low resulting in the validity of this survey being questioned. Executive Director Ciaccia speculated that a reason for the invalid results could be meter slippage due to CWD’s aging metering system, and the government has been informed of this issue. Executive Director Ciaccia stated that the government “may try to hold” the District to these results, and he stated for the record “that we do not believe the results.” According to the government’s Guidance Manual, the consumption calculation must include the effects of the residential inflow infiltration (hereinafter “I & I”). Executive Director Ciaccia advised that based on the information obtained from Ms. Rotunno and her staff, 75% of I

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& I is attributable to residential usage. According to the consumption calculation of residential usage, the CIP at an estimated cost of \$7 billion, plus escalation, to be spent over the next 30 years on CSO and non-CSO projects, and the results obtained from the developing financial strategic plan, the District exceeds the 2% threshold. Executive Director Ciaccia speculated that the government may not concur with this assessment, however, and the District is awaiting their response.

Executive Director Ciaccia moved to the next report item regarding the proposed economic stimulus bill. Government Affairs Specialist, Darnella Robertson, and Engineering Planning Manger, Greg Binder, attended the Build up Greater Cleveland meeting held December 18th. Ms. Robertson and Mr. Binder presented four projects: 1) the fluidized bed incinerator installation (\$82 million); 2) the substation replacement at Southerly WWTP (\$14 million); 3) Dugway East Interceptor (\$23 million); and 4) the Lee Road Relief Sewer (\$25 million). Those four (4) projects are being considered along with other agency projects as part of Build up Greater Cleveland. Executive Director Ciaccia advised that the District intends to pursue this option.

Executive Director Ciaccia moved to the next report and advised that from a financial standpoint, the District continues "to look good." Revenues are slightly off, however, because the District has not yet received its reimbursement from the state of Ohio for the West Creek Stream Restoration project. Expenses are projected to be slightly lower than the budgeted amount. The operating budget, at 92% of the year, indicates that the District is at 85% of operations and maintenance.

The rate study versus actual indicates that the District is ahead on its revenue and behind on its operations and maintenance, which is a good sign, however, Executive Director Ciaccia advised that the District will continue to be strained in this regard due to the CSO LTCP projects that received government approval including the Euclid Creek Tunnel, Dugway Tunnel and the Dewatering Pump Station at Easterly.

Executive Director Ciaccia advised that the District is experiencing some financial challenges notwithstanding the fact that it is doing well as it relates to the projected rate study period.

VI. Consent Agenda

No discussion ensued on Resolution Nos. 302-08 through 306-08.

Resolution No. 302-08

Acceptance of Hearing Examiner Findings regarding Cleveland Black Oxide, Northeast Ohio Regional Sewer District Case No. 08-001.

consolidate types of goods and services into requirement contracts for competitive bidding purposes. According to Executive Director Ciaccia, many items have not yet been consolidated, and some probably never will, however, it “makes sense to keep them on open market.” Executive Director Ciaccia explained that open market means that the District intends to buy \$25,000 or more of these particular items but probably not from one individual company. Consequently, staff is requesting Board authorization to purchase up to \$25,000 for any one company. If the amount exceeds \$25,000, then staff will request Board authorization for the additional monies at that time. Executive Director Ciaccia advised that although this is not a sealed bid, it is mandatory for staff to obtain three (3) documented quotes for each desired purchase which are kept on file until they can be packaged and bundled into bid documents for the normal competitive bidding process. Executive Director Ciaccia advised that fuels or other items subject to volatile prices are kept in an open market because companies are not interested in bidding one (1), two (2) or three (3) year contracts due to the inconsistency of pricing on such commodities.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 314-08 through 321-08. Without objection, the motion carried unanimously.

Authorization to Enter into Contract

No discussion ensued on Resolution Nos. 322-08 through 326-08.

Resolution No. 322-08

Professional services for Diversity and Inclusion Survey with the Kaleidoscope Group, LLC. Cost not to exceed \$70,020.00.

Resolution No. 323-08

Authorizing contracts with ERA, Fisher Scientific, HACH Company, Jade Scientific and VWR for laboratory chemicals for the Analytical Services Department. Total cost not to exceed \$83,370.06.

Resolution No. 324-08

Three (3) year contract for the provision of cellular phone equipment and service (voice and data) with Sprint Nextel. Cost not to exceed \$379,500.00.

Resolution No. 325-08

Contract renewal for District liability and property insurance in 2009 with Chisholm & Associates. Projected cost not to exceed \$400,000.00.

Resolution No. 326-08

Contract with Cintas Document Management, LLC for offsite storage of inactive electronic media, hardcopy records and in-house document shredding services in 2009. Cost not to exceed \$32,100.00.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 322-08 through 327-08. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 328-08

Authorizing modified Title I of the Northeast Ohio Regional Sewer District's Code of Regulations.

Mr. Brown requested an overview of the proposed changes to the District's Sewer Use Code of Regulations (hereinafter "Code"). Executive Director Ciaccia advised that the Code governs a significant amount of District operations, and upon review of the Code, certain changes are being recommended for Board consideration. Executive Director Ciaccia advised that the majority of these modifications are operational, and that staff intends to discuss fees with the Board at a later date.

Executive Director Ciaccia advised that the Superintendent of Environmental Services, Frank Foley, will provide the Board with a brief overview of the requested changes.

Executive Director Ciaccia informed the Board that sections 1.0804 through 1.0810 relate to Sewer Service Charge Based On Use of The System (SSCBOUTS), non-user, and non-discharge status. These matters are typically brought to the Board for consideration as Consent Agenda items, and staff requested that the Board consider delegating the authority to Executive Director Ciaccia to confer such status. Consequently these matters will no longer be formally brought to the Board for consideration. Executive Director Ciaccia advised that these items are administrative, and he is unaware of the Board ever rejecting any of these matters.

Mr. Foley stated that the District periodically reviews the Code and makes any necessary changes. The last modification to the Code was in 2007 when the rates were changed.

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Mr. Foley advised that many definitions throughout the Code were either cumbersome or unclear, and changes were made to improve clarity and provide greater understanding.

Mr. Foley advised that the version of the Code to be approved is for the years 2009, 2010, and 2011, therefore, the rate information provided for the years 2007 and 2008 was removed. These changes were made in Chapter 5 sections 1.05 through 1.0507, and in Chapter 6 sections 1.0601 through section 1.0603.

Mr. Foley stated that in Chapter 5 section 1.0509, the minimum bill for domestic sewer services will be 1 MCF. In Chapter 6, a factor in the calculation for surcharge and master meter communities was eliminated.

Mayor Longo requested that Mr. Foley specifically point out the critical issues. Mr. Foley corroborated with Executive Director Ciaccia's assessment and stated that the critical issue is requesting that the approval of surcharges, non-discharge statuses and non-user statuses be delegated to the Executive Director in lieu of the Board. The remaining modifications are operational in nature.

Mayor Longo inquired as to how often these issues arise annually. Mr. Foley stated that SSCBOUTS items average a few per month, and non-discharge status issues average a few per year.

Mayor Starr questioned if customers having both a septic tank and well are charged by the District. Mr. Foley replied if a customer has a septic tank that is not discharging to the District, then there is no charge. Mr. Bucci added that if a customer has a well, then according to the Code, they are charged 1 MCF per month.

Mayor Starr stated that he received an inquiry from a single individual who claimed that the District based their charge on a family of four. Mayor Starr questioned if this assumption is accurate. Mr. Bucci stated that he is unsure as to the basis, but the well is not metered and according to the Code the charge is established at 1 MCF per month, and he suggested this matter be addressed during the upcoming rate study discussions. Mr. Bucci advised that the 1 MCF per month average was based upon the typical customer, and this could be considered a family of four, however, he speculated that this average could be less now. Furthermore, the District does not agree with the recent sewer study, therefore, this will need to be addressed further in the next rate study.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 328-08. Without objection, the motion carried unanimously.

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VIII. Open Session (no items for discussion)

IX. Public Session (any subject matter)

Mr. Edwards stated that he does not feel the [SBE] program is going to work, and that he "has been around long enough." Mr. Edwards advised that there are over 600 contractors affiliated with the Black Contractors Group in which some were certified with the city, county and other entities. Mr. Edwards stated that "when you have a crew that works for you, a tradesman and you are not a member of the building trades in the City of Cleveland, which has never had a black business manager or even a black executive on their board. Our guys can't get in the projects so we are totally excluded. So all of the surveys and all of the monies that you're getting ready to spend, in my estimation, it would be better for you to keep the MBE/FBE, let somebody take you to court rather than spend a million dollars because if they sue them anyway, you still got to pick up the tab." Mr. Edwards claimed that "her services are not going to be included."

Mr. Edwards inquired if the \$8.5 million Flats East Bank project was bid or was it "given to Independence Excavating." Mr. Brown stated that he will defer to Executive Director Ciaccia or Ms. Sundheimer to discuss the contracting; however, there was no direct contract between the District and Independence Excavating. Mr. Brown advised that this project was "done in cooperation with the Port Authority."

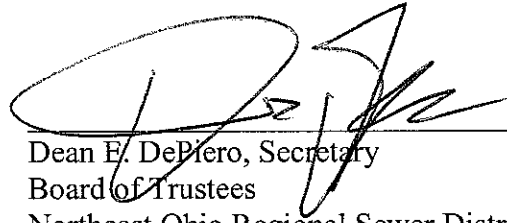
Ms. Sundheimer clarified that the District, Port Authority and City of Cleveland entered into a funding agreement for the Flats East Bank project, and the contractor was hired by the developers for said project. Mr. Edwards stated that he "contacted the Wolsteins and they said that was not true." Mr. Brown stated that "without contradiction, it is true" for the reason that the City of Cleveland, District and Port Authority decided it "would be more expeditious and easier to manage all projects on the site if there were a central construction manager and one entity that did the contracting for the infrastructure work." Mr. Edwards stated that this is a "terrible contract" as far as hiring minorities.

Mr. Edwards stated that regarding the inclusion of the ongoing projects, federal dollars are allocated to include 16.9 and 6.9 MBE and WBE participation requirements. Mr. Edwards stated that "nobody is mentioning minority participation. Forget about the contracting. There are no black tunnel contractors out there of significant size. There are only ten black and minority contractors in Cuyahoga County that can get a bond above \$1 million. So we are strictly at a disadvantage. All of these contractors assistance programs, all of these have failed us, and the building trades is a big proponent."

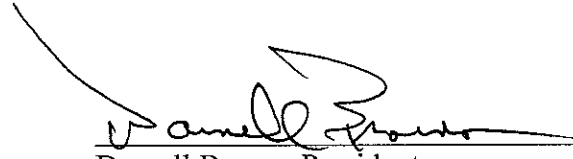
Mr. Edwards stated that he is in possession of a copy of the Board's Bylaws, and he questioned if these are the new Bylaws. Mr. Brown stated that the Bylaws were modified in June 2008.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. Sulik seconded the motion to adjourn at 2:21 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