Ohio School Facilities Commission
January 23, 2014 Meeting
William McKinley Room, Statehouse
1:30 PM

MINUTES

Chairman Keen called the meeting to order at 1:31 PM.

Roll Call

Members present: Chairman Keen, Vice Chair Blair, Dr. Richard Ross arrived at 1:33 PM, Steven Alexander for Representative Johnson, Representative Ramos, Rebecca Cochran for Senator Manning and Cindy Peters for Senator Sawyer.

Election of the Chair and Vice Chair

Director Keen called for the nomination of Chair. Vice Chair Blair nominated Director Keen. Director Keen seconded.

Director Keen closed the nominations and called for the vote for Director Keen as Chair of the Ohio School Facilities Commission.

Approval: Vote 2-0.

Chairman Keen called for the nomination of Vice Chair of the Commission. Chairman Keen nominated Bob Blair as Vice Chair and Director Blair seconded.

Chairman Keen called for the vote for Director Blair as Vice Chair of the Ohio School Facilities Commission.

Approval: Vote 2-0.

Adoption of the October 24, 2013 Meeting Minutes

Chairman Keen asked if there were any questions, comments or additions to the October 24, 2014 minutes that were distributed. Hearing none, Chairman Keen called for the vote.

Approval: Vote 3-0.

Accelerated Urban School District Update and Approval – Bill Ramsey
Resolution 14-01 and Resolution 14-02

Bill Ramsey presented two amendments for Cincinnati Public School District Segment 2b-3 and Segment 3b-2 for Commission approval. The Commission approved a Master Facilities Plan in 2002 for $915 M that included 66 buildings housing 42,165 students, with the scope divided into 4 segments. Subsequent MFP adjustments and project agreements have adjusted the Cincinnati City schools program to its current $879.5 M, with 49 buildings housing 32,687 students across 5 segments.

Resolution 14-01 Cincinnati Segment 2b-3

Segment 2b Amendment 3 will decrease the budget of this segment by removing the scope of demolition for the Hughes Center High School which will be added to scope of Segment 3b. Moving the scope from this segment facilitates the closeout process for this segment. Cincinnati's Segment 2b budget is decreased by $1.5 M for an updated budget of $120.6 M.

Vice Chair Blair moved to approve Resolution 14-01.
Chairman Keen seconded the motion.
Approval: Vote 3-0.

Resolution 14-02 Cincinnati 3b-2

Segment 3b Amendment 2 will increase the budget of this segment by adding the scope of demolition for the Hughes Center High School, previously included in Segment 2b, and increasing the allowance for the abatement and demolition of Heinhold and Burton elementary schools. Cincinnati's Segment 3b budget is increased by $2.3 M for an updated budget of $202.3 M.

Vice Chair Blair moved to approve Resolution 14-02.
Dr. Richard Ross seconded the motion.
Approval: Vote 3-0.

Fiscal Year 2014 Projects Approval – Bill Ramsey
Mr. Ramsey presented the Fiscal Year 2014 projects for the Commission's conditional approval.

CFAP Lapsed Approval – *Resolution 14-03*

Mr. Ramsey presented a Master Facilities Plan and a Segment Facility Plan for two school districts for the Classroom Facilities Assistance Program for Commission approval.

Norton City School District was successful at the November 2013 election and is ready to move forward with their 1st segment of work. This includes a new high school and demolition of 2 buildings. The July 2013 Commission Meeting approved the project scope and budget for this district.

School District	County	State Share	Local Share	Total Budget
Norton CSD	Summit	$16,354,813	$15,713,448	$32,068,261

For the second time in the Commission's history, we are seeking approval of a Segmented 1990 Lookback project. In 1995 Federal Hocking was approved by the Ohio Department of Education for a $9.8M project. The project included work at the 2 elementary schools and the high school. In accordance with ORC 3318.034(C), the Commission may assist a 1990 Lookback district with a segment to renovate or replace work performed on a facility under the district's prior project if the work is necessary to protect the facility. Commission staff has determined the work requested (chiller replacement at all buildings, and roof replacement at the high school) is necessary to protect the project.

School District	County	State Share	Local Share	Total Budget
Federal Hocking LSD	Athens	$567,145	$279,340	$846,485

Vice Chair Blair asked if there was a concern that a school district builds a building and then does not have the operating money to open it properly. Director Hickman responded that it is the school district's responsibility to take care of the operating costs for their educational programs and building operations. Most districts are reluctant to go forward with a capital building levy and at the same time go forward with an operating levy and because of that districts place priority on the operating levy and the capital building levy becomes a second priority for them.

Vice Chair Blair moved to approve Resolution 14-03.
Dr. Richard Ross seconded the motion.
Approval: Vote 3-0.

Master Facility Plan Amendments Approval – Bill Ramsey
Resolution 14-04

Mr. Ramsey presented Amendments to the Master Facility Plans for two school districts for Commission approval.

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Niles CSD (Trumbull) Amendment 1	The project budget is insufficient for the design and construction work required to meet design and building code standards due to: New Elementary 1 (K thru 2) unsuitable soils and market conditions and increased allowance for swing space; New Elementary 2 (3 thru 5) unsuitable soils and market conditions, relocation of undocumented 60" storm sewer line and increased allowance for swing space; New High School modification of enrollment and square footage, unsuitable site soils, relocation of undocumented sanitary sewer line and market conditions.	$595,679 State Share $243,306 Local Share **$838,985 TOTAL**

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Wheelersburg LSD (Scioto) Amendment 3	In August, J&H submitted a $2.4M claim related to the new K thru 12 building alleging delays, disruptions, scheduling conflicts and work accelerations. The claim was not resolved at the project level and J&H filed suit in May, 2010. The owners counterclaimed for remediation of J&H's masonry work on the project. The trial court ruled in favor of J&H on part of their claim and the Court ruled in favor of the owners counter-claim, with a net decision of approximately $780,000. Both parties appealed the decision to the Court of Appeals. The Court of Appeals decision was issued on September 5, 2013 essentially upholding the lower court decision. This amendment is to satisfy the judgment resulting from that litigation. The owners intend to seek recovery from the Construction Manager, who, per the trial court, exhibited non-professional behavior towards the contractor, mismanaged the schedule, acted with a lack of good faith and fair dealing or failed to act on matters that resulted in the owners waiving their rights to assert procedural deficiencies on the behalf of J&H in the Article 8 process.	$162,797 State Share $57,203 Local Share **$220,000 TOTAL**

Vice Chair Blair moved to table Resolution 14-04 until we hear Resolution 14-11 Authority to File Suit for Wheelersburg.
Dr. Richard Ross seconded the motion.
Approval: Vote 3-0.

Fiscal Year 2014 Segmented Project Agreement Templates Approval –David Chovan
14-05

Mr. Chovan presented the Project Agreement Templates for Fiscal Year 2014 for the Classroom Facilities Assistance Program (CFAP), Classroom Facilities Assistance Program (CFAP) Segmenting, Exceptional Needs Program (ENP) and Vocational Facilities Assistance Program (VFAP) for Commission approval.

All OSFC programs require the Commission and the school district to enter into a project agreement once funding has been approved by the Commission and Controlling Board. The project agreement defines the scope of the project, the project budget, and other requirements. Each completed project agreement must be approved by the Commission and the local school board. This resolution approves the standard language or template to be used in future project agreements. For FY14 two changes were recommended to reflect recent law changes and to improve the agreement:

1. Specify that any school district shall offer any unused school facilities it owns for lease or sale to community schools and to any college-preparatory boarding school that are located within the territory of the district. The latest law change added the option of leasing the facilities and added the college-prep boarding school.

2. Specify that any federal grant moneys that impose separate spending requirements, such as federal prevailing wage, shall be maintained in a segregated fund account so that the spending of such funds is easily verifiable. This gives the Commission more flexibility and options to mitigate potential effects of federal requirements.

This language will be included in all future project agreements associated with any Commission program.

Dr. Richard Ross moved to approve Resolution 14-05.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Settlement Agreement Approval - Jon Walden - *Resolution 14-06*

Jon Walden presented a settlement agreement with Geo. P. Frueh Company for the Cambridge City School District project for Commission approval. Issues arose relating to HVAC work performed by the contractor. There was improper installation that led to damage to the project of approximately $80,000. Several efforts were made to resolve this issue without litigation, but we were unable to do so. The School Facilities took assignment of that claim from the Cambridge City Schools and proceeded with the litigation on their own to help mitigate costs for the district. A settlement of $40,000 was reached.

Vice Chair Blair moved to approve Resolution 14-06.
Dr. Richard Ross seconded the motion.
Approval: Vote 3-0.

Settlement Agreement Approval - Jon Walden - *Resolution 14-07*

Jon Walden presented a settlement agreement with Alvada Construction, Inc. for the Crestview Local School District project for Commission approval. This is the second settlement on this project. The Commission approved the initial settlement in April 2012. This resolution concerns issues that arose related to supplemental work on this project. The original settlement dealt with issues related to adhesion of the flooring to the concrete. There was some additional work that was done, known as betterment; that would have been above and beyond the work in the original contract. Through the remedial work there were issues related to potential damage to some of the work that was already in place, and also whether the work was properly defined as original work or remedial work. Those disputes led to the school district withholding some portion of the additional funds set aside as part of the settlement agreement and dispute with the contractor, Alvada Construction, Inc. After several attempts at negotiating, it was resolved short of litigation, which resulted in the approximately $30,000 that was held back, a release of approximately $13,000 of the remaining funds to Alvada Construction, Inc. and allowing Alvada's sub-contractor to retain $7,900 that was part of a credit for materials returned.

Vice Chair Blair asked when a company screws up are they penalized and not used in future contracts. Jon Walden responded that for contracts bid out there is a process that takes place

under the Ohio Revised Code 9.312 that looks at a contractor's responsibility and that takes into all kinds of factors, such as performance of the contractor, financial wherewithal and a variety of other factors. Part of the process for any contractors, for our staff and the consultants is to evaluate past performance. We do take into account past performance as part of any evaluation.

Dr. Richard Ross moved to approve Resolution 14-07.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Settlement Agreement Approval - Jon Walden - *Resolution 14-08*

Jon Walden presented a settlement agreement with Staffco Construction, Inc. for the Huber Heights City School District project for Commission approval. Staffco Construction, Inc. served as the general trades contractor on the Weisenborn Junior High School. On that project there were some issues related to schedule that caused Staffco to seek additional compensation in the amount of $800,000. Some of the scheduling impact was tied to the demolition of an existing facility and Staffco also raised issues with abnormal weather conditions. From the co-owners perspective, issues were raised about Staffco's performance and failure to meet certain milestones throughout the project, which led to withholding liquidated damages under the contract. Ultimately the contract finished on time for the school year although it missed other scheduled milestones after opening. After several negotiation efforts among the parties, the school district and the Commission reached a settlement which would allow the owners to release the contract balance totaling approximately $220,000 and pay Staffco an additional $180,000 on its time related damages.

Vice Chair Blair moved to approve Resolution 14-08.
Dr. Richard Ross seconded the motion.
Approval: Vote 3-0.

Authority to File Suit Approval – Jon Walden – *Resolution 14-09*

Jon Walden presented an authority to file suit against Hummel Construction Company, the K Company, Mike Coates Construction, and Myers Associates Architects on the Southeast Local School District project for Commission approval. Southeast Local School District had issues related to two buildings. One of the buildings was the construction of a new middle school and the primary issues for that school were roofing and HVAC issues. The roofing issues required the replacement of the roof and that contract was with Hummel Construction Company. The issues with the HVAC were with the K Company. Those issues were previously brought to the Commission in part as part of a Corrective Action Grant Program that the Commission granted to the Southeast Local School District. Under the former Corrective Action Grant Program, the remedial work was funded by the State of Ohio with the state covering the school district's portion. The second building was the high school renovation with Mike Coates Construction, the general trades contractor, requiring replacement of the roof. There were numerous costs in excess of $2 M for that replacement. There was additional work done dealing with the K Company correcting HVAC work. The Commission staff has been working with district counsel to seek to recovery of those claims and to date have been unsuccessful and are now seeking

authority to file suit, not only against the contractors that were named, but also the architect for the district related to certain design issues that our consultants have indicated are part of the roof problem and any other parties that are additionally responsible, such as the sureties and/or insurance companies.

Vice Chair Blair asked if the bonds are still in force. Mr. Walden responded that the performance bond will be part of the litigation that we will seek to recover against the contractor. If the contractor is unavailable and there is a judgment against the contractor, the bonding company will be responsible. With the Attorney General's assistance, we will be going after the bond.

Dr. Richard Ross moved to approve Resolution 14-09.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Authority to File Suit Approval – Jon Walden – *Resolution 14-10*

Jon Walden presented an authority to file suit against Mike Coates Construction Company and MKC Associates on the Springfield Local School District project for Commission approval. This matter involves the construction of a new high school that was part of the Exceptional Needs Program (ENP). At the October Commission meeting, there was a master plan amendment and a budget adjustment to address the issues related to this project. During that time, the investigation was still ongoing. This resolution seeks to recover costs that we do not believe are the responsibility of the co-owners. About half way through the construction of this high school, the building experienced significant vibrations on the second floor classrooms. Two mass dampers were installed and those helped to offset those vibrations. Since those two mass dampers weren't in the original design, adding them caused delays in the construction of the project and also additional costs to make sure there was appropriate engineering to insure proper installation. Those costs to date are in excess of $3 M. The investigations have determined primarily that we have defective design on this project and we have been trying to work with the architect and its insurance carrier to address those issues. It was also determined that Mike Coates Construction Company had both loaded the floor too early and had not poured the concrete in the appropriate depth for the building. So we have both a design and a construction issue in play. The parties are working to schedule the mediation to address these issues. There are also claims by Mike Coates Construction Company for delay. We hope that at the next Commission meeting we will have a resolution, but in the meantime we need to seek authority to work with the Attorney General's Office to prepare litigation in case the settlement does not occur.

Dr. Richard Ross moved to approve Resolution 14-09.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Authority to File Suit Approval – Jon Walden – *Resolution 14-11*

Jon Walden presented an authority to file suit against Bovis Lend Lease, Inc. on the Wheelersburg Local School District project for Commission approval. On the Wheelersburg Local School District PK-12 Project, the general trades contractor, J&H Reinforcing (J&H), submitted a claim seeking additional compensation totaling $2.4 M due to alleged delays, disruptions, scheduling conflicts and work accelerations. The claim was not resolved at the project level and J&H filed suit in May of 2010. OSFC brought a counterclaim due to defective work by J&H on the project. Following trial, in 2012 the court ruled in favor of J&H for a portion of its claim and awarded J&H $959,232. The court also ruled in favor of the OSFC on its counterclaim and awarded OSFC $252,624. The net decision, factoring the $72,291 withheld on J&H's contract, resulted in the project owing J&H an additional $778,899 plus interest. Part of the court's decision found that Bovis Lend Lease, as agent of the Wheelersburg Local School District and OSFC (co-owners), had exhibited a non-professional and hostile behavior towards J&H, had changed or altered the schedule without informing the contractors, and had committed numerous actions that resulted in the co-owners waiving their rights to assert any procedural deficiencies against J&H in the Article 8 process. That decision was upheld on appeal. OSFC now seeks authority to file suit to recover in excess of $775,000 in additional project costs attributable to Bovis Lend Lease's actions and inactions. OSFC attempted to resolve these issues informally with Bovis Lend Lease, but have had no success to date. The co-owners have already resolved a claim against the project architect.

This resolution relates to Resolution 14-04 that was tabled regarding the Wheelersburg Local School District project master facility plan amendment. The $220,000 tabled master plan budget adjustment in Resolution 14-04 is to cover the difference between the judgment plus interest from what remained in the project fund. What we are seeking by the budget adjustment is the amount that we have to pay to cover the judgment until we are able to process litigation or seek any recovery from any available parties.

Chairman Keen summarized that we have $220,000 increase, if we were to prevail to the tune of $775,000 in this legal action, we would recoup the $220,000 and more and that would be proportionally allocated back to the state and the district. Mr. Walden responded if we prevail, the project balance would go into the fund and then the fund at closeout would come back as the statute allows. Chairman Keen asked what our chances of prevailing are. Mr. Walden responded our chances are good.

Dr. Richard Ross moved to approve Resolution 14-09.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Master Facility Plan Amendments Approval – Bill Ramsey
Resolution 14-04

Chairman Keen moved to take from the table for Commission consideration Resolution 14-04.
Approval: Vote 3-0.

Chairman Keen stated that the resolution was now before the Commission for consideration. Chairman Keen asked if there any further discussion or questions on the resolution. Hearing none the resolution was moved to approve.

Dr. Richard Ross moved to approve Resolution 14-04.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Security Grants Update – Presented by Jeff Westhoven

Mr. Westhoven presented an update on the Security Grant Program.

- 2,292 applications (as of 1/15/14)
- 53% first responder communications / 47% secure building access
- $ 6,565,893 in grants approved
- $ 1,068,610 in grants reimbursed
- Average approval processing time: 8 days
- Average reimbursement time: 5 days
- Counties served: 84
- Districts served: 426
- Students affected: 874,514

An online survey was developed to get feedback from the school districts that have gone through the program. There were 62 districts that have gone through the entire process and 28 of the 62 districts responded. Four questions were asked: was the program easy to use, what was the level of service, how was the reimbursement process and what were the districts overall experience with the program. Most agreed or strongly agreed. We would also like to follow-up to have the districts share with us how the money was used in the schools and how it has improved their school security. Nine districts that have submitted the survey are interested in sharing their stories. We hope to share that with you at a future meeting.

The Grant Program next steps are to: continue customer feedback survey, complete Round 1 – 3/15/14, decide on Round 1 Priority 2 projects – 4/15/14 (13% of approved grants are Priority 2) and if funding is still available, open Round 2 on 6/15/14.

Vice Chair Blair asked if was right to believe that every school district assumption would be to submit an application. Mr. Westhoven responded that school districts designed since 2009 under the Ohio School Design Manual would have already had the features that we would be reimbursing under the program. Other schools may already have their own communication system perhaps and so for those that haven't applied yet, it could be that they already have something. One of the simplifications is a district applies on behalf of all the schools in their district and so some of the larger ones may be compiling all their information to submit all at once. That could explain some of the ones that we don't have.

Dr. Ross added that 800,000 students represent probably 45% of our public school students in the state. There is a lot to be acknowledged as positive because there are more in existence because of the efforts of the Facilities Commission. There are a lot of school buildings and the projects through the state, so these add ons for security are pretty impressive.

Executive Director's Report

Director Hickman then asked Jeff Westhoven to report on approved HB 264 projects since the last meeting. Mr. Westhoven reported on 5 projects that had gone through the process, had been reviewed by the Energy Services team and submitted to Director Hickman for approval. There was a law change effective in September which required all projects from here on to have a guarantee. These 5 projects do contain a guarantee that in the event of a shortfall if the project does not generate the energy savings, then there is a remedy for the school to recover its money. Mr. Westhoven pointed out that as we look at ways to improve this program is to make sure that we collaborate with industry and find out from those that are doing business with us what is important to them, what is a standard way of doing business because if we can make this program consistent with the way industry works we think it will reduce the risks, reduce the costs and get better projects. Next week we are creating an industry forum inviting members of energy services industry to come in and talk about potential improvements that they would like to see in the program. We are also on the school side doing some outreach to the schools. We are doing a webinar in March. We are also going to be presenting at the BASA Conference in March on Energy Performance Contracting so that those schools that are interested in this type of program can be fully educated on the ins and outs of it.

HB 264		
School District	**Total Project Cost**	**Payback Period**
Bethel-Tate LSD	$1,002,035	14.84 Years
Butler Tech JVSD	$2,414,222	11.95 Years
Kettering CSD	$3,045,336	13.02 Years
Springfield-Clark CTC	$1,131,490	13.2 Years
Sylvania LSD	$7,138,625	14.2 Years
Total	$14,731,708	

Director Hickman highlighted two dedications from the groundbreaking and dedication report. Dayton Stem School that has been completed and is fully occupied and that school is functioning with almost 600 students in it. It is a 6-12 facility and it is a renovation of a former Value City Department Store. A project that we were a little apprehensive at the beginning, but it has really turned out to be a fabulous facility that supports the educational needs of the students attending the school. He also attended the dedication ceremonies for the Ohio School for the Blind and the Ohio School for the Deaf late last year with Dr. Ross.

Director Hickman also stated that in the meeting materials are a listing of contracts that we have executed for design professionals, construction managers and owners agents for K-12 Construction, as well as, 36 trade contracts covering 12 school districts $30,322,855 in construction. In the case of those trade contracts, we awarded one contract to the second low because the original bidder for the concrete work on one of the schools withdrew his bid, 3 contracts that were awarded that paid Federal Prevailing Wage as required because the school accepted the Qualified School Construction Bond federal grant money that requires the payment of the federal prevailing wage and also we executed 2 contracts with Project Labor Agreements (PLA). Both those contracts were executed for the Akron Public School. PLAs for the Akron Public School District were executed on a project by project basis and as we go forward, I think that would be the last PLA that we would see on buildings for that district.

Director Hickman concluded his report with upcoming events. We are working with the Cleveland Municipal School District to finalize Segment 6. We expect to bring that for the Commission's approval in April. We have several construction mediations that we are currently working through issues with and hope to achieve settlement on those issues and bring back settlement agreements for Grand Valley, Jefferson and St. Mary's School Districts.

There was no public testimony.

The meeting was adjourned at 2:29 PM.

Timothy S. Keen, Commission Chair

Carolyn L. McClure

These meeting minutes were prepared by
Carolyn L. McClure, Secretary to the Commission