



OHIO FACILITIES CONSTRUCTION COMMISSION

**Ohio School Facilities Commission
January 28, 2016 Meeting
William McKinley Room, Statehouse
1:30 PM**

MINUTES

Chairman Keen called the meeting to order at 1:32 PM.

Roll Call

Members present: Chairman Keen, Vice Chair Blair, Dr. Lonny Rivera, Representative Ramos, Taylor Stepp for Representative Smith, Katherine Ternes for Senator Manning and Scott Stockman for Senator Sawyer.

Election of the Chair and Vice Chair

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

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

Approval: Vote 3-0.

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

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

Approval: Vote 3-0.

Adoption of the October 22, 2015 Meeting Minutes

Vice Chair Blair moved to approve the October 22, 2015 meeting minutes. Chairman Keen seconded the motion.

Approval: Vote 3-0.

Authority to File Administrative Rules Approval – Sarah Spence –
Resolution 16-01

Sarah Spence provided Administrative Rule Approval authorizing the executive director to file administrative rules that govern the personal information systems of the Ohio School Facilities Commission. The Commission rules for accessing confidential, personal information are due for their 5 year rule review before JCARR. These rules are required for all state agencies and commissions by ORC Section 1347.15. The rules set procedures for employee access to personal information systems with an agency and are pretty standard across agencies and commissions; however, they do allow for specific instances that can be unique to an agency or commission to be addressed. Our current rules spell out ways for access to personal information when employees are dealing with certified payroll, any type of background checks and compliance with worksite drug safety policies. Staff reviewed our current set of rules and recommends making no changes. If the resolution is approved, the rules will be submitted to JCARR as is, which will then begin JCARR's jurisdiction over the rules.

Vice Chair Blair moved to approve Resolution 16-01.

Dr. Rivera seconded the motion.

Approval: Vote 3-0.

Community Schools Grant Agreement Template Approval – Jeff Westhoven
Resolution 16-02

Jeff Westhoven presented the Community Schools Grant Agreement template for Commission approval. In June 2015, HB 64 authorized creation of this program and created an appropriation of \$25M. The law allows the state to reimburse eligible high-performing community schools for construction projects that increase seats in effective schools, service unmet needs and show innovation and design. The law further required the Commission to create guidelines. In October 2015, the Commission approved guidelines for project approval and those guidelines outlined a competitive process for schools to apply and receive grants. The guidelines also included a requirement for the approval of the agreement. Mr. Westhoven pointed out some of the substantive items that are specific to this agreement.

- Identification of the community school for the agreements between the Governing Authority of the community school and the School Facilities Commission.
- Identification of the scope which is a description of the project.
- Funding section requires that there is a local funding 50% match and for full funding before the grant is approved.
- Real Estate and Construction Sections are where the schedule comes into the grant agreement – contracts and permits. There is also a disclosure of who the owner of the building is. If the school is the owner, that is disclosed. If they are a tenant, that is disclosed.
- Restrictions of Record on the Property. The owner of the property has to place a restrictive covenant on the property so that the property is used for educational purpose for at least 10 years after receiving the grant funds.
- Operation and Maintenance. Once the grant funds are disbursed it is up to the school to maintain the property. They are required to have property liability. The term is 10 years.

- Legal Requirements. There is a prohibition against the school who receives a grant to transfer or assign that property to someone else during the term of the agreement. If there is a lien or a mortgage on the property that is closed and approved by the Commission that is included as supplemental terms.
- Default and Remedy. There is a section on the event of default and should one of those events occur, that triggers one of the remedies. Things that could trigger a default in the agreement would be if the school fails to maintain its charter, could abandon the project and become insolvent or change the use of the facility so that it is no longer an educational facility. Those would all be considered events of default under this agreement. The remedies that the Commission would use is to recover the unused balance of the grant amount. If the school is a tenant and owns property and is half way through the grant agreement, if the school defaults and is no longer financially solvent, then the attachment for educational purpose is still on the property owner. So that survives this agreement. That is the protection the State has and continues to use for educational purpose.
- The contract is subject to approval of the executive director of OFCC, superintendent of instruction and the controlling board.

Should Commission approve the grant agreement, the eligibility for this program is determined by the Department of Education. Once the information becomes known, then that triggers the opening of the application process. That is expected to be mid-March. The applications would be open for 90 days. Grant applications would be due in June. It usually takes 30 – 60 days to evaluate, then it would go to the Controlling Board for approval in October-November timeframe.

Chairman Keen asked about recovering the unused portion of a grant, are they able to pay back a portion of the grant and would that be an acceptable recovery under the terms of the agreement. Mr. Westhoven responded if there are 5 years left on a 10 year agreement, the pro-rated portion of the grant is half of it, so the school would pay back the remaining half or a third party under a guarantee would pay back the remaining half. Chairman Keen added if there are no resources, we have the lien and we could insist on the lien but we also have an option of recovering half of the funds. Jeff Westhoven responded that was correct. Additionally as part of the application process, part of the competitive process of the award is financial security on behalf of the state and so in the financial consideration some of the points we would award for the grant have to deal with third party guarantee. So if a school has a separate entity from themselves a sponsor or property owner or if someone that is going to provide a third party guarantee that in the event that they become insolvent, they would pay the difference. That is considered and part of the grant award and extra points are awarded for that. We are taking a risk tolerance view from the standpoint of the State and if there were a third party guarantee that would be an exhibit to this agreement.

Vice Chair Blair asked Mr. Westhoven to provide some idea of the people involved to characterize the discussion for us. Mr. Westhoven responded that in the development of the grant agreement, we had both legal representation and representation on behalf of those who could be applicants. The approved guidelines were published October and were posted on the website. We also presented at a conference of charter schools where we publicized those and entertained questions on how the grant agreement would look. We received input from potential

grantees for that process. We also used the legal resources of the Department of Education, ourselves and OBM on how the grant should be structured.

Vice Chair Blair asked if there was unanimous agreement. Mr. Westhoven responded that in the development of any agreement there is active discussion, diversity of opinions and there will be pros and cons to different elements in the agreement. Presented to you are the essentials for the state. We are trying to make a project that is simple, standardized, but still protects the interest of the state and ensures that the funds are consistent with legislative intent.

Representative Ramos thanked the group for all their hard work that the many people put into this. He thought the restrictive covenant was a very good idea to make certain that the public’s investment does keep an educational purpose on the buildings that we are paying for. He asked what sort of teeth do we have in the covenant to push the landowner to find a new tenant that would provide an educational service and as I have seen in my area if a charter school closes another one does not always open tomorrow. If there is six months or a year between old tenant and new tenant, does that 10 years include that gap period or is there a pause in the 10 years so that we actually get 10 years of educational service out of the building. Mr. Westhoven responded saying if a school would default on the agreement we would be in the market for a replacement tenant. If the new tenant couldn’t sign it directly we would have the new tenant sign the agreement and that would be for the educational purpose for the remainder of the term and so if there was a one year gap it could be for the remaining 5 years once they signed the agreement.

Vice Chair Blair moved to approve Resolution 16-02.

Dr. Rivera seconded the motion.

Approval: Vote 3-0.

Fiscal Year 2016 Projects Approval – Melanie Drerup

CFAP Approval – Resolution 16-03

Melanie Drerup presented the Master Facilities Plan for one school district for the Classroom Facilities Assistance Program for Commission approval. Mason City School began their partnership with the Commission in 2000 through the Expedited Partnership Program. Mason has constructed a high school, early childhood center, and has completed work at their intermediate facility.

School District	County	State Share	Local Share	Total Budget
Mason CSD – Seg. 1	Warren	\$33,426,591	\$100,279,773	\$133,706,364

Chairman Keen what does the \$133M represent. Ms. Drerup responded that the \$133M is the total project cost which includes \$103M that Mason has already expended under the Expedited Local Partnership Program (ELPP). Vice Chair Blair asked if Segment 1 was one school. Ms. Drerup responded that there is an addition to the early PK-2 building, which was built under ELPP, the renovation of the Mason 7-8 building and the Mason HS that was built under ELPP.

Dr. Rivera moved to approve Resolution 16-03.
 Vice Chair Blair seconded the motion.
 Approval: Vote 3-0.

CFAP Renewal Approval – Resolution 16-04

Melanie Drerup presented a Classroom Facilities Assistance Program renewal project for one school district for Commission approval. Pursuant to ORC Section 3318.054, the Commission is charged with establishing the new scope, estimated basic project cost and estimated school district portion for a lapsed project if the school district desires to seek a new conditional approval of its project. This district has requested a new conditional approval and the master facility plan has been developed by Commission staff and the local school district. The project scope and estimated costs established will be valid for one year. This district is on the May ballot.

School District	County	State Share	Local Share	Total Budget
Clear Fork Valley LSD – Seg. 1	Richland	\$15,615,530	\$9,983,699	\$25,599,229

Chairman Keen asked how many segments there were for this school district. Ms. Drerup responded they are completing two new elementary schools under this segment. The final segment will be the high school work.

Dr. Rivera moved to approve Resolution 16-04.
 Vice Chair Blair seconded the motion.
 Approval: Vote 3-0.

CFAP Lapsed Approval – Resolution 16-05

Melanie Drerup presented two school districts with a lapse of one year certification for participation in the Fiscal Year 16 Classroom Facilities Assistance Program for Commission approval. Both school districts were successful at the November 2015 election. One district Harrison Hills City School District was originally approved for the Exceptional Needs Program in 2003 and then for Classroom Facilities Assistance Program in 2006. The district was unable in either case to pass a levy. In October 2015 the Commission established the scope and budget. This district is constructing a PK-12 facility and demolishing the three existing buildings.

School District	County	State Share	Local Share	Total Budget
Chippewa LSD – Seg. 1	Wayne	\$10,270,819	\$14,779,959	\$25,050,778
Harrison Hills CSD	Harrison	\$25,170,645	\$19,776,935	\$44,947,580

Chairman Keen asked if both of these are districts were offered funding, accepted that funding offer, but were unable to get their local shares, and Harrison Hills after some number of years is now ready to go. Ms. Drerup responded that both districts were successful at the November ballot.

Vice Chair Blair moved to approve Resolution 16-05.
 Dr. Rivera seconded the motion.
 Approval: Vote 3-0.

Global Impact STEM Academy Approval – Resolution 16-06

Melanie Drerup presented the Global Impact STEM Academy for Commission approval. ORC 3318.70 provides for assisting regional STEM schools with the acquisition of classroom facilities. The Global Impact STEM Academy indicated their interest in receiving assistance under this program in spring of 2011. Commission staff have worked with GISA since August 2011 to develop a comprehensive master facility plan consistent with the guidelines revised by the Commission October 22, 2015.

School	County	State Share	Local Share	Total Budget
Global Impact STEM Academy	Clark	\$6,303,844	\$6,303,844	\$12,607,688

Vice Chair Blair asked how many STEM schools do we have and how many do we expect. Ms. Drerup this is the second Stem School that the Commission has approved. The first one was in Dayton. The future is bright for STEM schools and you will be seeing in April or July another STEM school which is Tri-Star STEM Academy and it is vocational in nature. I would expect that we are going to continue to see these. Chairman Keen commented that the total dollar amount for the State is \$6.3M and the Academy’s share is \$6.3M and this is the old South High School in Springfield. Ms. Drerup responded that was correct.

Vice Chair Blair moved to approve Resolution 16-06.
 Dr. Rivera seconded the motion.
 Approval: Vote 3-0.

Master Facilities Plan Amendment - Resolution 16-07

William Ramsey presented an Amendment to the Master Facility Plan for one school district for Commission approval.

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Barberton CSD (Summit) Amendment 1	<ul style="list-style-type: none"> Decrease budget due to change in enrollment. Delete renovation of 2 ES. Increase size of 2 remaining ES (1 new & 1 renovation). Add Abate/Demo allowance for Johnson & Woodford ES. Decrease in ELPP Credit 	(\$1,445,442) State Share
		(\$963,628) Local Share
		(\$2,409,070) TOTAL

Chairman Keen moved to approve Resolution 15-08.
 Vice Chair Blair seconded the motion.
 Approval: Vote 3-0.

Settlement Agreement Approval - Jon Walden – Resolution 16-08

Jon Walden presented a settlement agreement with Giambrone Construction on the Maple Heights City School District project for Commission approval. Giambrone served as the General Contractor on the new Maple Heights High School project. During the course of construction Giambrone had responsibility for installing spray-on fireproofing in the facility. When it was put on wet it had failed to dry before it started to mold and ultimately that mold and issues tied to it caused us to have to remediate the project while it was ongoing. The owners thereafter held Giambrone accountable for that and had withheld money from its contract during the course of the project. Giambrone filed suit against the Commission for breach of contract. The Commission filed a counter-claim against Giambrone and its surety for breach of contract and breach of warranties. Per the settlement, the Commission and the School District shall retain the Giambrone contract balance of \$1.25 million and the surety shall pay the sum of \$900,000 to the Commission and the School District in exchange for the full release of Giambrone on the project.

Vice Chair Blair asked how could they possibly argue against this. Mr. Walden responded as you probably understand from having us up here a lot, there is always at least two views to how anything occurs and each side with their able counsel are always able to find consultants who might be able to give a different opinion about ultimate responsibility for issues that occur. In this case, we felt pretty confident in our position. We actually went through what was known as a non-binding arbitration, but there was a fact finding early on in the case that responsibility did lay with Giambrone Construction. So we felt pretty comfortable going forward with the progress. We prefer not to let the decisions be made by other parties and that is why we always look to settle and work with who we think are the responsible parties to reach a resolution, but while we may feel comfortable with any of these matters where the responsibility lies there is often someone with equally strong opinion the other way.

Vice Chair Blair moved to approve Resolution 16-08.

Dr. Rivera seconded the motion.

Approval: Vote 3-0.

Settlement Agreement Approval - Jon Walden – Resolution 16-09

Jon Walden presented a settlement with Lend Lease Construction Inc. formerly known as Bovis Lend Lease who served as the Commission's construction manager on the Ohio School for the Deaf and the Ohio State School for the Blind residential facilities project. Issues arose on this project that ultimately led to two contractors filing lawsuits against the Commission seeking additional compensation due to alleged failures by Lend Lease, the owners and the architect SHP on the project. One of those matters went to trial last spring and we currently have a referee's decision in judgement against the Commission in favor of that company. That process is still a long way away and we are trying to resolve it. There are still potential appeals to occur. The other lawsuit was filed by the electrical contractor and is set for trial this coming August. In both law suits, the commission filed a third party claim against Lend Lease seeking indemnification and breach of contract related to any potential liability found against the Commission. The parties attempted several mediations and efforts at negotiation and in the most recent round the mediation brought a proposed settlement with Lend Lease paying the Commission \$500,000 and the Commission releasing Lend Lease for the pending litigation. In addition, as a result of how the Court of Claims treated the caption because when the lawsuit was filed they actually

converted one part of the name on the pleadings to OFCC. We are actually going to be bringing consideration of the resolution both at OSFC and OFCC. The settlement agreement with Lend Lease does not release any claims against other parties.

Vice Chair Blair moved to approve Resolution 16-09.

Dr. Rivera seconded the motion.

Approval: Vote 3-0.

Settlement Agreement Approval – Jon Walden – Resolution 16-10

Jon Walden presented a settlement agreement with Ohio Farmers Insurance Corporation (OFIC), surety to Staggs Roofing, contractor on the Waverly City School District project for Commission approval. This project consisted of four buildings built in a campus style for the Waverly City Schools. Construction issues occurred related to the roof and some other portions of the facility ultimately leading to remedial work needing to be done. Related to this settlement which is with the surety to Staggs Roofing Company who was the roofer on the project. It related to the fair and constructive roof pursuant to the contract documents. Litigation is still pending and set for trial on September 2016. There are several parties still in the litigation including the construction manager, general trades contractor and the mason on the project. We are hoping to continue to have discussion with those parties. We also have a pending fraud claim against the sub-contractor of Staggs Roofing, Inc. which provided blemished products instead of new ones as required by the contract. The Commission staff is working hard with the Attorney General's Office to try to resolve this complex litigation with the remaining parties. In the meantime, this settlement will allow the co-owners to collect \$1.5M from the surety company without settling any additional claims.

Dr. Rivera moved to approve Resolution 16-10.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

Executive Director's Report

Director Williamson reported since the last meeting there were 4 school dedications and 8 projects that were closed. There were 3 projects that were amended under the delegation of authority to the Commission with no change in the master plan or no additional dollar costs. There were 2 projects that were initiated under the HB264 energy savings program. Director Williamson also reported on contracts executed since the last meeting: 35 agreements initiated, 14 amendments, 5 local funded initiatives for a total of \$47M.

Director Williamson introduced Todd Hager, an OSFC Project Manager for 15 years, who gave a presentation on South-Western City School District, Segment 1. Mr. Hager introduced Dr. Bill Wise, Superintendent at South Western CSD. The scope of the project is \$263M – 50% state funded and 50% local funded. There is an additional \$21M in locally funded initiatives. There are 15 PK-4 elementary schools and one new high school that are being built. It has been a very aggressive schedule. Phase 1 – we broke ground in the spring of 2013 on 4 buildings and this coming fall we will open the last 4 elementary schools. South Western is located southwest of Columbus. The project specifics are: 15 elementary schools – 6 different general contracts and the high school used construction manager at risk for their delivery model. Ruscilli is the owner

agent on the project. There was district wide furniture and flooring packages to leverage volume pricing. SHP Architects had the majority of the design work. The elementary schools were implemented with what was called a kit of parts and so essentially a lot of the buildings are the same, but can be configured in different models like a T and L. That helped us go from a 6.5% fee with SHP down to 5.5% fee. It also created parity across the district so all got similar schools. Mr. Hager shared pictures for the elementary schools showing tall front entrances with open views into the cafeteria, typical classrooms, sloped ceiling allowing natural light in, rubber and carpet for the floors, cafeteria and gymnasium. In the gymnasium there are translucent panels that allow the light in, but does not reflect the glare. We still have middle schools, intermediate schools to renovate and build and high school renovations with a master plan of \$183M. Potentially 2017-18 for Segment 2 and potentially 2022 for Segment 3 depending on the funding. Mr. Hager ended his presentation by sharing a short video of the buildings completed to date and the last 4 buildings in construction. He stated that all buildings to date have opened on schedule. The last 4 are on track to open on time and are projected to be under budget.

Vice Chair Blair asked Dr. Wise how this construction worked for South Western City School District. Dr. Wise responded we have actually benefited from the alternative delivery models. We are very pleased with that over multi-prime. We think it shifts risk where it belongs. It moves the responsibility to the right place and allows the process to move very quickly. Through that process it also if you have done it right as it was with us with the Commission, where we have had a lot of conversation about that beforehand, you know who you are and you know what the fit is. We know we like to have control. We know we like to be deeply involved and so there were certain elements where single prime just made a lot of sense for us. When you get to a size and capacity and bonding issues for a large high school and the sophistication of Construction Manager at Risk, so if there would be any question of whether we would stay with this model and not go back to multi-prime, no question we are very comfortable with the models and what they have allowed us to do in that process. We are grateful for that change.

Chairman Keen asked if there are 4 more high schools after this. Dr. Wise responded that we actually did a project on our own in about 2000. We did \$128M in construction in 7 facilities to add our 4th high school, which was Central Crossing High School at that time, we also have our own career center. So when you really look at our district at this point, the next phase is what Mr. Hager has listed as 2022 looking at Westland and Grove City High School, those were opened in 1971 and we are running into space limitations on those facilities as well as becoming very expensive to maintain. So the thought process for us is if interest rates stay where we want, we will be able to do a middle school segment and do that for no new millage opportunity for our community in that 2017-18 timeline and then we will be able to go back for the high schools assuming interest rates and a variety of other factors and go back for no new millage opportunity in that mid 2022 – 23 range for the high schools and perhaps some even minor renovations to the other intermediate schools which for our district are 5-6th grades that are included in our master planning when we did that in 2008. Chairman Keen asked if a levy was passed for Segment 1. Dr. Wise responded that they did. Chairman Keen asked what was that levy. Dr. Wise responded that it was no new millage, it was about 2.3 mils in order to pull off this portion of the project. Chairman Keen asked how there were no new mils. Dr. Wise responded that they had existing debt that was retiring and restructured some debt, as we will do in 2019 and again in 2022. Chairman Keen asked in each segment will you be able to do it with no new millage. Dr. Wise responded that is the hope. Interest rates are going to drive that, but that is the ultimate

hope that we would be able to do that. Chairman Keen said that it seemed like a great project. Dr. Wise responded that it has been. The support of the Commission has been outstanding. Chairman Keen added that we are real pleased to hear of a success story and the process. Chairman Keen thanked Mr. Hager for his presentation.

Director Williamson concluded his report with the Commission by saying that even though he has only been in the position for 3 months, the staff has done wondrous jobs in moving the process along. One of the things that we have been focused on is the future and looking forward to where we want to take the Commission and the steps that are going to be necessary. We have built two major initiatives:

- A comprehensive program review where each of the division chiefs was able to look out at 2, 4 and 6 year time periods as to where they wanted to be or needed to be in order to provide the level of customer service and focus to the schools, state agencies, colleges and universities that the Commission desires.
- They identified as part of that review 158 tasks that are going to be essential to move forward, elevate the level of service and to expedite and provide more timely and responsive services by the Commission members to our clients, customers, vendors and school districts. That is a wish list and was an unrestricted wish list. From that we tied it to the budget planning process looking at 3 budget cycles commensurate with those 2, 4 and 6 year time periods in that the current budget cycle would be our near term, the next budget cycle would be the mid-term and the budget cycle after that would be the long term. We have identified and placed those 158 tasks requirements into a comprehensive strategic plan that we have put together in this first draft and are working on finalizing that draft. Each of these 158 tasks has a separate data page that looks extensively at the purpose, the stakeholders, the internal delivery methods, the funds, the facts and figures and any training and development requirements that would be associated with moving that task forward.

Director Williamson commended the staff, it has put us on a good course and provides a good roadmap for us to move forward in meeting your goals and objectives of the Commission.

Chairman Keen responded that you are off to a good start.

There was no public testimony.

The meeting was adjourned at 2:32 PM.



Timothy S. Keen, Commission Chair



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