

**Ohio School Facilities Commission
October 27, 2016 Meeting
William McKinley Room, Statehouse
1:30 PM**

MINUTES

Chairman Keen called the meeting to order at 1:30 PM.

Roll Call

Members present: Chairman Keen, Vice Chair Blair, Mr. James Quinn for Mr. Paolo DeMaria, Taylor Stepp for Representative Smith and Goran Babic for Senator Manning.

Adoption of the July 14, 2016 Meeting Minutes

Chairman Keen moved to approve the July 14, 2016 meeting minutes.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

Accelerated Urban School District Agreement Approval – Melanie Drerup - Resolution 16-47

Melanie Drerup presented the Akron School District Segment 6 Final for Commission approval. The Commission approved a Master Facilities Plan in 2002 for \$693M divided into an estimated 4 segments for 57 buildings to house 30,971 students. The Commission has approved 5 segments to date. The Commission amended the Master Facilities Plan in 2014 for 19,452 students. The current projected enrollment of 19,564 is holding steady with a slight increase of 112 students.

School District	County	State Share	Local Share	Total Project Cost	Program
Akron Public School District – Seg. 6F	Summit	\$34,532,262	\$23,996,897	\$58,529,159	Accelerated Urban

Vice Chair Blair moved to approve Resolution 16-47.

Mr. Quinn seconded the motion.

Approval: Vote 3-0.

Fiscal Year 2017 Projects Approval – Melanie Drerup

CFAP Amended Approval – Resolution 16-48

Melanie Drerup presented an amended Classroom Facilities Assistance Program project for Commission approval. Shaker Height’s complete project was originally approved at the July 2016 Commission Meeting. Since the time of the original approval, the district has completed their community engagement process and the community requested the project be segmented. Under this segment the district will complete construction of one new middle school and demolition of the existing.

School District	County	State Share	Local Share	Total Budget
Shaker Heights CSD – Seg. 1	Cuyahoga	\$6,294,507	\$19,932,604	\$26,227,111

Vice Chair Blair moved to approve Resolution 16-48.
Mr. Quinn seconded the motion.
Approval: Vote 3-0.

CFAP Reapproval Approval – Resolution 16-49

Melanie Drerup presented a Classroom Facilities Assistance Program reapproval project for Commission approval. The Chippewa Board of Education did not accept the Resolution of Acceptance for its segmented project within 120 days as required by ORC Section 3318.05. The project scope and estimated costs established will be valid for thirteen months from the original certification of approval dated February 23, 2016.

School District	County	State Share	Local Share	Total Budget
Chippewa LSD – Seg. 1	Wayne	\$10,270,819	\$14,779,959	\$25,050,778

Chairman Keen asked how often does a reapproval occur. Ms. Drerup responded that it has occurred three times in the history of the Commission.

Mr. Quinn moved to approve Resolution 16-49.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

CFAP 1990 Lookback Approval – Resolution 16-50

Melanie Drerup presented a Classroom Facilities Assistance Program 1990 Lookback project for Commission approval.

School District	County	State Share	Local Share	Total Budget
Twin Valley Community LSD – Seg. 1	Preble	\$732,643	\$649,702	\$1,382,345

Chairman Keen moved to approve Resolution 16-50.
 Vice Chair Blair seconded the motion.
 Approval: Vote 3-0.

ENP Renewal Approval – Resolution 16-51

Melanie Drerup presented an Exceptional Needs Program Renewal project for Commission approval. The district has requested a new conditional approval, and the master facilities plan has been developed by Commission staff and the local school district. The project scope and estimated costs established will be valid for thirteen months.

School District (County)	State Share	Local Share	Total Budget
Mathews LSD (Trumbull)	\$3,975,667	\$20,872,251	\$24,847,918

Vice Chair Blair moved to approve Resolution 16-51.
 Mr. Quinn seconded the motion.
 Approval: Vote 3-0.

Master Facilities Plan Amendments Approval –William Ramsey
Resolution 16-52

William Ramsey presented Amendments to the Master Facility Plans for five school districts for Commission approval.

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Carrollton EVSD (Carroll) Amendment 1	Build one new middle/high school section to house Grades 6-12 & Career Tech of the new elementary/middle/high school.	\$5,687,141 State Share
		\$8,183,936 Local Share
		\$13,871,077 TOTAL

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Maplewood LSD (Trumbull) Amendment 2	Reconciliation of the project fund for closeout.	\$100,825 State Share
		\$13,848 Local Share
		\$114,673 TOTAL

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
SouthWestern CSD (Franklin) Seg. 1, Amendment 1	Budget adjustment due to grade configuration change from PK-4 to PK-5, enrollment and market conditions at Highland ES and Richard Avenue ES. Eliminating East Franklin Elementary and Kingston School from the allowance to abate and demolish.	(\$210,349) State Share
		(\$210,349) Local Share
		(\$420,698) TOTAL

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Streetsboro CSD (Portage) Amendment 1	The final ELPP Closeout Credit Report was executed May 11, 2016 in the amount of \$13,945,408, an increase of \$905,557 from the estimated amount. The School District Board is required to transfer the amount of \$316,945 out of the Project Construction Fund.	\$316,945 State Share \$588,612 Local Share \$905,557 TOTAL

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Switzerland of Ohio LSD (Monroe) Seg. 1, Amendment 2	<ul style="list-style-type: none"> Budget adjustment due to market conditions for: Powhattan ES/MS, Skyvue ES/MS, Beallsville ES/MS/HS and Monroe Central HS. Add allowance for site safety for Woodsfield ES/MS. Renovations/addition to River HS to house Grades PK-12 and add allowance for site safety and market conditions. Remove allowance to abate and demolish Hannibal, Powhattan, Sardis, Skyvue & Woodsfield ES, Beallsville K-12 and River HS. Delete scope for Hannibal Sardis ES/MS. 	(\$299,726) State Share (\$176,030) Local Share (\$475,756) TOTAL

Chairman Keen asked how many segments is Switzerland. Mr. Ramsey responded that at most is should be a 2-segment program. They are still working through some of the enrollment changes that are going on in that district. There is one building left to complete. Chairman Keen asked if they were a one high school district. Melanie Drerup responded that they have River High School, Beallsville has a K-12. They are a district that has three or four communities and it was important for them to have a high school presence.

Mr. Quinn moved to approve Resolution 16-52.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

VFAP ELPP Master Facilities Plan Amendment and Project Agreement Amendment Approval
William Ramsey – Resolution 16-53

William Ramsey presented a VFAPP ELPP Master Facilities Plan Amendment and a VFAP ELPP Project Agreement Amendment for one school district for Commission approval. The 2008 ELPP master plan for the Warren County JVSD included the renovations and additions for 649 career Technical Students. The District and Commission have updated the master plan to account for increased enrollment and cost updates, and the master plan will include renovations and additions for 725 students.

Master Facilities Plan Amendment:

School District (County)	Master Facilities Plan Scope	Project Budget
Warren County Career Center (Warren)	Renovations/additions to house 654 full time and 71 half time career technical students grades 11 through 12 th grade career technical students 2016 OSDM Cost Update.	\$22,296,277

Project Agreement Amendment:

School District (County)	Discrete Portion	Project Budget
Warren County Career Center (Warren)	Partial renovations to house 654 full time and 71 half time career technical students in grades 11 and 12. Full building addition of 20,964 sf.	\$7,772,559

Vice Chair Blair moved to approve Resolution 16-53.

Mr. Quinn seconded the motion.

Approval: Vote 3-0.

CFAP Segmenting Policy Guidelines Approval – David Chovan – Resolution 16-54

David Chovan presented the CFAP Segmenting Policy Guidelines for Commission approval. Current law allows a school district to divide its entire classroom facilities needs into discrete segments. The Commission has maintained a policy on segmenting. S.B. 310, the current capital bill, reduced the minimum size of a segment of a state-assisted school facilities project from 2 percent of the district’s tax valuation to one or more entire buildings or a stand-alone segment of a K-12 facility. This change will be put into place for all future school district projects that choose to segment.

Chairman Keen commented that we have likely reached the end of our ongoing amendment of the Segmenting Statutes with this resolution. We will not need to adopt a policy like this again because not be a segment less than a whole building. Mr. Chovan responded that is correct. We want to make sure that a district can get their worst buildings taken care of and we understand that the tax valuation situations does lead to higher millage for districts. This does give more flexibility for many districts.

Mr. Quinn moved to approve Resolution 16-54.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

Priority Order of Funding List Approval –David Chovan – Resolution 16-55

David Chovan presented the Priority Order of Assistance Policy for Commission approval. The Commission has in place a Priority Order of Assistance Guidelines which specifies an orderly process in the priority of awards within and between school funding programs. The Commission also maintains a Priority Order of Assistance List based on those guidelines. This list was last updated and approved by the Commission in October 2015. The amended list removes 21 districts awarded new projects in the past year, adds 13 newly outreached districts, adds 5 districts that have lapsed in the past year, adds 4 newly outreached vocational districts and adds 3 districts that started a segmented project. This list will guide the funding order of districts from this point forward.

Mr. Quinn moved to approve Resolution 16-55.
Vice Chair Blair seconded the motion.
Approval: Vote 3-0.

Settlement Agreement Approval – Jon Walden – Resolution 16-56

Jon Walden presented a settlement agreement with Brewer-Garrett Company on the Madison Local School District in the new elementary/middle school for Commission approval. Brewer-Garrett served as the Commissioning Agent for the District and Commission on the new elementary/middle school project. Following completion of the project, the district experienced HVAC issues. As part of the ongoing discussions that have been had, the District and Commission raised concerns that Brewer-Garrett did not complete certain requirements. Brewer-Garrett disputed that position, but ultimately the parties decided to resolve the dispute with Brewer-Garrett returning fees totaling \$65,000 in exchange for a partial release of claims.

Vice Chair Blair moved to approve Resolution 16-56.
Mr. Quinn seconded the motion.
Approval: Vote 3-0.

Executive Director's Report

Director Williamson announced that Mr. Ramsey is departing the OFCC Commission effective 10-28-16. We wanted to acknowledge his long term of service with us and recognize the exceptional job that he has done as the Chief of the Planning Division. We wish him the best of luck in his new job. Director Blair added that it has been fantastic to work with Bill over the years, he always go the extra mile and wanted to wish him good luck in his future endeavors. He will be missed. Chairman Keen associated himself with Director Blair's remarks. It has been a pleasure to work with him and thanks much.

Director Williamson reported since the last meeting there were 6 groundbreakings, 27 dedications and 15 projects were closed out. Director Williamson also reported on contracts executed since the last meeting: 39 agreements, 29 amendments and 5 locally funded initiatives for a total of \$178.9M. Director Williamson concluded his report with an update of the status of the 659 school districts to be served. We have currently served 361 districts with 298 districts remaining to be served.

Director Williamson introduced OSFC Project Manager Kim Magovac who presented on the Ridgemont Local School District. Ridgemont LSD was funded in 2012. It consisted of a demo and abatement of two existing buildings, build one new PK-12 to serve approximately 520 students. Total co-funded budget was \$20M. It was a 76% State Share and 24% Local Share. The new building is approximately 88,000 sf. Since opening their doors a little more than a year ago, they have given about 25 tours to various groups, organizations and many school districts including: Upper Arlington, Dublin and delegates from Columbus City Schools. Ms. Magovac closed her presentation by sharing a video from the district Superintendent, Emmy Beeson, who was unable to attend the meeting.

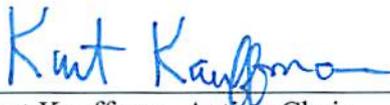
Public Testimony

Bruce Willingham, Jr., Superintendent of the Midview Local School District, Dr. T.C. Chappellear, Superintendent of the Indian Creek Local School District and Beth Kummerer, Board Member of the New Riegel Local School District presented public testimony regarding the defective design and construction on their OSFC projects. Their written comments are incorporated into the minutes. Chairman Keen noted that he had been advised by our attorneys that there is pending litigation regarding these matters. Chairman Keen referred to Mr. Tom Ash, Director of Governmental Relations for the Buckeye Association of School Administrators (BASA), who was included in the letters of each of the school districts and noted that it is highly unusual that we have testimony raising issues with school facilities projects yet today we have three school districts that have come before us to talk about this and asked Mr. Tom Ash if he could enlighten the Commission why that might be the case. Mr. Ash responded that he was approached by these districts a few months ago. BASA does not get involved in litigation. He asked them to share information with the members of the Commission staff and with the Commission. We have enjoyed a very positive and long-standing relationship with the Ohio School Facilities Commission at BASA. All we simply tried to do was to put them in a position that they could share information, nothing more. Chairman Keen thanked Mr. Ash.

Senator Manning appreciated Supt. Willingham for driving here. She had the opportunity under his predecessor, Supt. Goggin to see the facilities and can imagine their frustration. As they move into their property, they are frustrated and doing what they can to protect the residents of Midview. Senator Manning acknowledged that the Commission could not talk about it, but wanted to tell how much she appreciated them coming in. Chairman Keen thanked Senator Manning. We always encourage and appreciate public testimony on matters of concern.

Chairman Keen thanked the three school districts for their appearance at the Commission meeting and the opportunity to hear their testimony about the issues and concerns of their districts.

The meeting was adjourned at 2:52 PM.



Kurt Kauffman, Acting Chair



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



Ohio School Facilities Commission
30 W. Spring Street, 4th Floor
Columbus, Ohio 43215

John R. Kasich
Governor

David M. Williamson
Executive Director

Testimony Request Slip

Commission Meeting Date October 27, 2016

Please return the completed form and fourteen (copies) of your testimony and materials to the Commission Secretary prior to the start of the meeting.

Name: Bruce Willingham, Jr., Superintendent

Title/Organization Representing: Midview Local Schools

Address: 13050 Durkee Road

Grafton, Ohio 44044

Phone: 440.748.5353 E-mail bwillingham@midviewk12.org

Topic to be addressed in testimony:

Defective design and construction on OSFC project

Check if handouts or materials are provided

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THE MIDVIEW SCHOOLS

Expecting More, Achieving More

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Ohio School Facilities Commission

Defective Work Testimony

October 27, 2016

Good afternoon Chairman Keen and members of the Ohio School Facilities Commission (OSFC). My name is Bruce Willingham. I am the Superintendent of the Midview Local School District. Joining me today for this testimony and in answering your questions is Tom Ash, Director of Governmental Relations for the Buckeye Association of School Administrators.

As you may know, the District has identified significant building defects in our three elementary school buildings, which were constructed as a part of the Ohio School Facilities Commission ("OSFC") Expedited Local Partnership Program ("ELLP"). The OSFC, however, is refusing to provide the District with financial and administrative assistance to correct these defects.

By way of background, as a part of the OSFC's initial classroom facilities assessment, the District was to receive co-funding from the OSFC for the construction of three new elementary schools, one new middle school and one new high school (collectively, the "project"). Because of the District's need to move quickly to provide adequate classroom facilities, the District chose to participate in ELLP.

As you are aware, ELPP allows school districts to begin building part of their project before state financing becomes available under the Classroom Facilities Assistance Program ("CFAP"). Here, the District opted to move forward with the three elementary schools. ELPP, however, is not a program that is meant to reduce the scope of the District's co-funded building program, or to reduce the financial obligation of the OSFC to the project. The purpose of ELPP is to allow the District to get ahead of the CFAP schedule to address classroom facilities needs identified in the OSFC's original assessment. But, as will be discussed, the OSFC is using the District's decision to participate in ELPP as a justification for refusing to co-fund remediation of the building defects, despite co-funding defect remediation for numerous other similarly situated school districts, including Geneva Area City School District, Ashtabula Area City School District, Tri Valley Local School District, and Jonathan Alder Local School District.

Specifically, the work on the three elementary schools was completed in or around 2005. Shortly after, we began observing various ice-damming and air/water infiltration problems with the building envelopes of the three schools. The OSFC was made aware of these roofing defects.

In July 2009, the Board and the OSFC entered into a CFAP agreement, transitioning the project into the first segment of the CFAP phase, which was to construct the new middle school. As part of that transition, the OSFC was required to conduct a new assessment of the District's classroom facilities needs. The OSFC, however, purposefully omitted consideration of the elementary school defects in the new assessment of the District's classroom facilities needs.

On September 12, 2013, the Board brought the matter to the attention of the OSFC again and expressly requested that assistance be provided under CFAP to correct the defects. In a response dated October 10, 2013, the OSFC denied the Board's request based on an internal guideline, stating that "consistent with [the OSFC's] long-standing belief, with certain few exceptions...ELPP projects are district projects and remedial work and recovery for ELPP issues is a school district responsibility...." There is, however, no such "long-standing belief," nor is there statutory authority for such a belief. In fact, as noted, the OSFC provided funding to numerous other similarly situated school districts.

The Midview Local School district only asks that it be treated like other similarly situated school districts. The Midview Local School District is certainly grateful for the state's participation in the District's school building program; but, the District and the OSFC must work together to ensure that the residents of the Midview Local School District get adequate classroom facilities contemplated by the state of Ohio's building program. At this time, the District has not received these adequate classroom facilities.

We are asking the OSFC to stand by the District to ensure that we receive what the District and OSFC set out to accomplish with the District's building program. For this to happen, the District and OSFC must work together and pay our original percentage shares towards the repairs necessary to make our building sound, and recover the costs from the responsible parties.



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Testimony Request Slip

Commission Meeting Date October 27, 2016

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Name: Dr. T.C. Chappellear, Superintendent

Title/Organization Representing: Indian Creek Local School District

Address: 587 Bantam Ridge Road

Wintersville, Ohio 43953

Phone: 740.264.3502 E-mail tc.chappellear@ielsd.org

Topic to be addressed in testimony:

Defective design and construction on OSFC project

Check if handouts or materials are provided

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Indian Creek Local School District

Board of Education

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740-264-3502

Office of the Superintendent

587 Bantam Ridge Road
Wintersville, Ohio 43953
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Office of the Treasurer

587 Bantam Ridge Road
Wintersville, Ohio 43953
740-266-2912

Indian Creek High School

200 Park Drive
Wintersville, Ohio 43953
740-264-1163

Indian Creek Middle School

2379 Wilson Avenue
Mingo Junction, Ohio 43938
(740) 282-0834

Hills Elementary

2281 Wilson Avenue
Mingo Junction, Ohio 43938
740-283-2479

Wintersville Elementary

100 Park Drive
Wintersville, Ohio 43953
740-264-1691

District schools are dedicated to providing equal admission opportunities, educational opportunities, and equal employment opportunities to all regardless of race, color, national origin, sex, or handicap or any other basis of unlawful discrimination.

Ohio School Facilities Commission

Defective Work Testimony

October 27, 2016

Good afternoon Chairman Keen and members of the Ohio School Facilities Commission (OSFC). My name is T.C. Chappellear. I am the Superintendent of the Indian Creek Local School District. Joining me today for this testimony and in answering your questions is Tom Ash, Director of Governmental Relations for the Buckeye Association of School Administrators.

As you may be aware, the District has identified significant design and construction defects associated with our new middle school project, which was constructed as a part of the Ohio School Facilities Commission ("OSFC") Exceptional Needs Program ("ENP") where the OSFC co-funds and administers the construction of school facilities such as the District's. These defects occurred under the watch of the OSFC. The OSFC, however, is refusing to provide the District with an adequate remedy to address these defects.

During the project, the OSFC and the District, as Co-Owners, asserted claims against the general trades contractor for defective work associated with defective grading, topsoil, seeding, and lawn maintenance; defective concrete floor work; defective concrete sidewalk work; and defective work associated with the middle school's parking lot. The Co-Owners also asserted a claim against the project's architect for defective design associated with the middle school's parking lot for failing to design an underdrain system. As a result of the defects, the Co-Owners have withheld contract funds from both the general trades contractor and the architect pending a resolution of the claims.

A mediation was held between the Co-Owners, the general trades contractor, and the architect. This mediation was not successful.

Given that negotiations between the Co-Owners and the responsible parties failed, the Co-Owners decided to move forward with corrective work, with the intention of providing the District with a project that meets the requirements of the Contract Documents, and to move forward to recover the costs incurred from the responsible parties. Moving forward with corrective work requires that the OSFC obtain a

budget amendment to cover the state's share of the cost, which the District expected the OSFC to do.

In the meantime, instead of filing a lawsuit against the OSFC as required by Ohio law, the general trades contractor proceeded to sue the District directly, and the District is currently defending itself against this lawsuit.

The Indian Creek Local School District is not a wealthy school district. In order to cover its local share, the OSFC and the District agreed that the District should submit an application for Hardship Loan. Based on the financial history of the District, there was an understanding between the OSFC and the District that qualifying for a Hardship Loan was not going to be an issue. So, the District submitted the Hardship Loan application well in advance of the April 2016 Commission meeting, which was the meeting at which the OSFC was going to request the budget amendment needed to move forward with the corrective work. The OSFC, however, then requested that the District submit an application for the Corrective Action Program.

The District informed the OSFC that its own guidelines for the Corrective Action Program excluded corrective work for parking lots. Moreover, the program, once a program that provided grants to school district, was modified to not provide grants, but provide the OSFC a source to fund the state's share of corrective work. So, it is the state that benefits from the Corrective Action Program, not school districts. The OSFC, however, insisted that the District submit a Corrective Action Grant Application anyway.

The District complied with the OSFC's request and submitted the Corrective Grant Program Application on April 20, 2016, in advance of the April 28, 2016, Commission meeting. The OSFC, however, did not put the Indian Creek Local School District's budget amendment on the April 2016 agenda as originally planned. The reason cited by the OSFC was that the District did not submit the Corrective Grant Program Application in time for the Commission meeting.

In May 2016, the OSFC denied the District's Corrective Grant Program Application because the OSFC indicated that parking lots and exterior work replacement do not qualify for the program. So, the OSFC did not timely seek a budget amendment because it demanded that the District submit a Corrective Action Program Application that the District did not want or need to submit, and that was doomed from the start.

The OSFC also failed to place the District's budget amendment on the agenda for the July 2016 Commission meeting.

In August 2016, the OSFC denied the District's Hardship Loan application, stating that a Hardship Loan cannot be provided to correct defective work or design, and that a Hardship Loan can only be granted for deficiencies in the OSFC's initial assessment. As a result, the OSFC is cutting off important funding sources for the District to fund its local share for corrective work.

In addition, the OSFC is refusing to provide the state share for corrective work. The OSFC's justification for not moving forward with all of the corrective work is that it is in the best interest of all parties involved to use the defective and unsafe parking lot instead of spending the money to fix it. The District strongly disagrees with the OSFC's position. The District is incurring expenses in the ongoing maintenance of its parking lot to remove dangerous conditions resulting from spot failures and water emanating from the parking lot that creates slippery conditions, especially in the winter months when the water freezes.

Moreover, by concentrating on the parking lot, the OSFC is ignoring the other items of defective work that need to be addressed. And, even though the OSFC has taken a strict position with regarding to not moving forward with corrective work, in May 2016, the OSFC indicated that a staff member would be contacting the District to discuss options for moving forward. The District, however, has yet to be contacted to discuss these supposed options.

The OSFC has also suggested that the Co-Owners negotiate with the responsible parties to effect a replacement of the parking lot. The OSFC, however, is ignoring that the Co-Owners have tried just that on multiple occasions, and the contractor and architect have refused to cooperate.

On July 9, 2015, the Commission voted to authorize the filing of a lawsuit against the contractor and architect to seek recovery for the defects. Given that the OSFC has taken a position to not move forward with correcting the defects because it does not want to spend the money, we have requested that the OSFC immediately refer the ongoing dispute to the Attorney General's Office to pursue recovery against the responsible parties. To our understanding, the OSFC has not referred the matter to the Attorney General's Office and has not filed a lawsuit.

We trusted the professionals of the OSFC to stand by the District in the dispute with the contractor and architect, and move forward with corrective work in an expeditious manner. Instead, the OSFC is choosing to sit back and let the District fend off a lawsuit that never should have been brought against the District; is choosing to ignore the District's requests to move forward with corrective work, which is burdening the District with ongoing expenses; and, is refusing to pursue recovery against the responsible parties.

We are asking the OSFC to stand by the District to ensure that we receive what the District and OSFC set out to accomplish with the project. For this to happen, the District and OSFC must work together and pay our original percentage shares towards the repairs necessary to make our building safe, and recover the costs from the responsible parties.



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Testimony Request Slip

Commission Meeting Date October 27, 2016

Please return the completed form and fourteen (copies) of your testimony and materials to the Commission Secretary prior to the start of the meeting.

Name: Beth Kummerer, Board Member

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Topic to be addressed in testimony:

Defective design and construction on OSFC project

Check if handouts or materials are provided

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Ohio School Facilities Commission **Defective Building Testimony** **New Riegel Local School District** **October 27, 2016**

Good afternoon Chairman Keen and members of the Ohio School Facilities Commission (OSFC). My name is Beth Kummerer. I am a Board Member on the New Riegel Local School District Board of Education. Joining me today for this testimony and in answering your questions is Elaine Nye, Superintendent of the New Riegel Local School District, and Tom Ash, Director of Governmental Relations for the Buckeye Association of School Administrators.

As you may be aware, the District has identified significant building defects in our K-12 school building constructed as a part of the Ohio School Facilities Commission ("OSFC") CFAP program. These defects occurred under the watch of the OSFC. The OSFC administration, however, is disavowing any responsibility for addressing these defects, and it is refusing to provide any financial assistance to the District. If the OSFC does not provide the District with financial assistance, the residents of the New Riegel Local School District will be forced to pick up the bill for the repairs, which will have significant detrimental effects on our residents.

By way of background, in 1999, the residents of New Riegel Local School District voted 80% in favor of issuing bonds to fund the local share of an OSFC master plan to build a new K-12 school building. The voters approved a bond levy of \$1,148,000 for the building and \$137,500 to acquire a building site. The total original millage to pay for these bonds was 4.32 mills for 23 years. The total of \$1,285,500 in bonds issued by the district represented 11% of the total cost of the project. The OSFC paid 89% of the project.

On or about February 14, 2000, the board entered into a written agreement with Buehrer Group to provide design professional services to build a new K-12 school building. The building was built and the students of New Riegel began attending in 2003.

During the 2013-2014 school year, our maintenance department began investigating having the brick on our building sealed. After having a company give us a quote, we were told that we may have some structural issues because of some cracking we had in the outside walls and some of the brick face falling off.

In December of 2014, we began working to identify what the building issues might be. After many visits and reports from a third party consultant, Mays Consulting, it was determined that

there are a number of problems with the weather-tightness of the building's exterior facade and roof system. The basic problems are that the roof was not installed weather-tight in certain areas; the flashing at the transitions between the roofs and walls is defective; and the expansion joints are not operating to properly accommodate expansion of the exterior brick.

In April 2015, we filed suit against the OSFC, The Buehrer Group Architecture and Engineering, Inc., The Estate of Huber H. Buehrer, Studer-Obringer, Inc. F/K/A Obringer Construction, Co., Charles Construction services, Inc. F/K/A Charles Associates, Inc. and American Buildings Company D/B/A Architectural Metal Systems in order to request them to develop a plan to remedy the defects on the project.

As typically happens when an investigation of this type occurs, one problem lead to another, and in March 2016, we began working with a structural engineer, Gautam and Associates, Inc., to further investigate the underlying cause or causes of the masonry distress occurring on the school's interior gymnasium and auditoria walls. This investigation consisted of: performing a site visit to inspect the reported distress; performing a design review of the school's specified architectural and structural design; and performing a review of the structural fabrication and submittal drawings.

A report from the structural engineer provides that there are multiple structural issues with the building; most notably, the building does not have a structural substrate deck or diaphragm present, even though it's mandated by the OSFC's Ohio School Design Manual. Significant cracking has manifested in the upper portions of the gymnasium walls, upper regions of the east-west auditoria walls and along the base of the stage-house walls as a result of an improper design. Specifically, the design currently lacks a proper roof diaphragm, proper anchorage/support at the base and the tops of the masonry walls, and an evident and calculable load path for lateral wind and seismic loads. Some conditions within the school are technically unstable and would become unsafe during any seismic or extreme wind activity. Therefore, taking no action to repair the building is not an option.

The problems are the result of defective design, materials, and installation. So, the responsibility for the defects lies with many companies involved with the project, not the District. The District, therefore, is continuing its efforts to recover from those entities and individuals that created the situation. Nevertheless, the repairs need to move forward.

Projected cost of repairs of the faulty design and construction discussed above is \$6,000,000. Based on our District's taxable valuation of \$52,809,940, to issue \$6,000,000 of bonds, at 4% interest rate, payable over 25 years, will require an approximate 7.2 mill bond levy. That tax, along with the millage already being paid for our K-12 building, the millage paid for the operation of the school, along with a 1.5% income tax would be an undue tax burden on our residents. In fact, real estate taxes would increase 34% if a 7.2 bond levy were to pass. Given the angst within our district about the quality of construction of our K-12 building, passing an additional bond levy will be a very difficult thing to do.

If passing an additional bond levy for the necessary repairs is unsuccessful, the other option for the district is to borrow funds through the Certificates of Participation program. These lease-

purchase payments would be approximately \$380,000 a year for 25 years. The funds for repayment would come from the general fund, causing us to deficit spend every year. This amount of debt on our small district would bankrupt us in just a few years.

Being conservative, responsible caretakers of their own money, our residents truly appreciate the value of the OSFC's contribution towards its construction. But our project was not completed properly, and it should not have been closed. The OSFC has nevertheless refused to reopen our project to address the defects. I understand, however, that the OSFC has provided the financial assistance we are requesting to many other school district's in the past; but, for unknown reasons, the OSFC is not providing New Riegel School District with the same treatment.

While the OSFC certainly has the ability to reopen the District's project and provide assistance, I understand that the OSFC is now reinterpreting its statutory obligations and is saying that it has no "clear legal duty" to reopen the District's project and, therefore, will not be doing so. It is very disheartening and infuriating to now know our District has invested its future in a building that was poorly designed and constructed and is unsafe for our children, and that the OSFC is refusing to reopen the project to address these defects, despite its role in creating this situation.

During construction, we trusted the professionals of the OFSC and the construction manager the OSFC hired to ensure our building was being built in accordance with OSFC requirements and State of Ohio building codes. We are asking the OSFC to stand by the District to ensure that we receive what the District and OSFC set out to accomplish with the project. For this to happen, the District and OSFC must work together and pay our original percentage shares towards the repairs necessary to make our building safe, and recover the costs from the responsible parties.

Thank you for your time today and we will be happy to answer your questions.



OHIO FACILITIES CONSTRUCTION COMMISSION

Ohio School Facilities Commission

Testimony Request Slip

Commission Meeting Date 10/27/2016

Please return the completed form and fourteen (copies) of your testimony and materials to the Commission Secretary prior to the start of the meeting.

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Topic to be addressed in testimony:

Check if handouts or materials are provided