

Ohio Facilities Construction Commission
April 25, 2019 Meeting
William McKinley Room, Statehouse
1:30 PM

MINUTES

Madam Chair Murnieks called the meeting to order at 1:30 PM.

Madam Chair Murnieks welcomed everyone to the April 25, 2019 meeting of the Ohio Facilities Construction Commission.

Roll Call

Members present: Madam Chair Kimberly Murnieks, Vice Chair Matthew Damschroder, Director Mary Mertz, Representative Jones, Representative Sobiecki, Senator Fedor and Heather Plahuta for Senator Manning.

Adoption of the March 28, 2019 Minutes

Vice Chair Damschroder moved to approve the March 28, 2019 minutes. Director Mertz seconded the motion.

Approval: Vote 3-0.

Fiscal Year 2019 Project Approval
Presented by Melanie Drerup – Resolution 19-11

Melanie Drerup presented a Master Facilities Plan for the following school district for the Classroom Facilities Assistance Program Renewal Project for Commission approval.

Pursuant to ORC 3318.054 the Commission is charged with establishing the new scope, estimated basic project cost (project budget) and estimated school district portion (local share) for a lapsed project if the school district desires to seek a new conditional approval of its project. Triway LSD (Wayne) 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 which includes the construction of one new PK-12 facility and abating/demolishing 5 buildings with a project cost of \$53M will be valid for thirteen months. If the district obtains the local share and maintenance requirement within the thirteen months, the district shall be given priority for project funding as such funds become available. The project will be presented to the Commission and Controlling Board for approval when the Commission determines funds are available.

School District	County	State Share	Local Share	Total Budget
Triway LSD	Wayne	\$17,006,452	\$36,138,711	\$53,145,163

Madam Chair Murnieks asked Ms. Drerup if Triway LSD will be placed in the queue for upcoming funding? Ms. Drerup responded that once the district has secured their local funding, Commission staff will bring Triway LSD back to the Commission for approval. First, Triway LSD will be compared to other lapsed districts and Commission staff will use the Priority Order of Assistance Guidelines to determine who would actually receive funding and in what order. Madam Chair Murnieks sought clarification that the district would still have to pass their local share? Ms. Drerup responded that this is correct, the district would still have to obtain their local share.

Vice Chair Damschroder moved to approve Resolution 19-11.
Director Mertz seconded the motion.

Approval: Vote 3-0.

Ohio School Design Manual Update Approval Presented by Melanie Drerup – Resolution 19-12

Ms. Drerup provided Commission members with a brief overview of the Ohio School Design Manual (OSDM). The OSDM is a comprehensive set of standard guidelines for the design of school facilities. The OSDM was created to address the classroom facility needs of inadequately housed students, to reduce design time and to ensure equity. One of the early challenges was to strike the proper balance between statewide standards and the desire for local flexibility. As written, the initial OSDM defined necessary space and systems within a classroom facility, while allowing districts the desired flexibility to develop facilities that would respond to their educational delivery methods and their community.

Originally approved in 1997, it remains today one of the most comprehensive and frequently cited state program reference manuals for public school design. Wyoming, Washington and Arkansas utilized the OSDM as the baseline for their guidelines. After its original publication in 1997, the OSDM has continued to evolve to respond to an ever-changing world. The OSDM has been updated every year but 1998, as it had been less than a year since the original publication.

Highlight of Major Changes to the Guidelines

2001 Career Technical School Guidelines were developed and added to the manual

2008 Update included a chapter on Daylighting to respond to the adoption of LEED for schools' guidelines by the Commission in 2007

2011 The Student-Centered Learning Environments chapter was created in response to 2009 Commission request to define 21st Century Learning Environments

2014 Volume One Educational Facility Planning Guide was developed to provide School Administrators an overview of the planning process and to guide them through a community engagement and educational visioning process

2017 Performance based specifications were developed for technology

For 2019, we started the update process in January with a kick off meeting followed by outreach to our stakeholders which include the Ohio Department of Education, architects, engineers, technology consultants, interior designers, construction professionals and school districts.

Routinely as a part of this annual process the OSDM costs are updated. The cost update includes a review of the regional cost factors, non-construction costs, square foot costs and the assessment cost guidelines.

- The regional cost factor and new school construction costs were updated to reflect changes in the current market.
- We solicited input from construction professionals on the current market.
- Commission staff works annually with IHS Markit (an Economic Research and Analysis Firm) to determine the inflation factor. The 2019 recommended inflation factor is 4.34%.
- No changes were made to the non-construction cost percentages (permit & architectural fees).
- 15 of the 22 systems listed in the Assessment Cost Guidelines were updated ranging from HVAC to Technology. The Assessment Cost Guidelines are utilized to define what the need is when we go out and assess facilities. The costs are associated with furnishings, general finishes, and structure.

Programmatic Changes - Career Tech

The OFCC planning team worked with Mr. Kevin Williams, Assistant Director, Career-Technical Education with the Ohio Department of Education to update the CTE program list. Cybersecurity was the only program added to the list.

The OSDM was originally available in hard copy of all 2,400 pages, then we offered a CD because it made it easier to carry and now it is published on our website. In 2020 Commission staff plans to undertake a comprehensive update to the manual. We will be looking at our cost set, technical specifications and our space plates.

Madam Chair Murnieks asked Ms. Drerup when was the last comprehensive update on the OSDM? Ms. Drerup responded that the last comprehensive update was in 2014.

Vice Chair Damschroder moved to approve Resolution 19-12.
Director Mertz seconded the motion.

Approval: Vote 3-0.

**Master Facilities Plan Amendment Approval
Presented by Steve Roka – Resolution 19-13**

Steve Roka presented a Master Facilities Plan Amendment for the Warren LSD (Washington) for Commission approval.

This is the third amendment for the Warren LSD CFAP project. Mr. Roka acknowledge that Warren LSD Superintendent Kyle Newton, Melcie Wells, District Treasurer, and OFCC Project Manager Christine Chidister were present in the audience today.

The first amendment, approved by the Commission in April 2018, changed the ES grade configuration from a PK-4 to a PK-5 and added Storm Shelter Allowances to the plan. The second amendment, approved by the Commission in January 2019, removed the Storm Shelter Allowances added by the first amendment.

This amendment is a budget adjustment due to market conditions. The proposed change in the Master Facility Plan budget is an increase of \$1.6M to the ES budget.

Additional budget requests are contemplated for the Warren LSD HS and MS portions of the project as well. These will be brought forward after the value engineering process has run its course and the project team is confident the resulting budget is enough to complete the Master Facility Plan for Warren LSD.

The budget increase for the ES project is being requested after the OFCC and district went through a thorough review of the building design to reduce cost. The building will meet OSDM requirements.

School District (County)	Recommended Modifications to the Master Facilities Plan	Recommended Modifications to the Project Budget
Warren LSD (Washington) Amendment 3	Budget adjustment increase due to market conditions to build one new ES to house Grades PK-5 to meet Design Manual standards.	\$1,155,096 State Share
		\$449,204 Local Share
		\$1,604,300 TOTAL

Vice Chair Damschroder moved to approve Resolution 19-13.
 Director Mertz seconded the motion.

Approval: Vote 3-0.

**ELPP Master Facilities Plan and Project Agreement Approval
 Presented by Steve Roka – Resolution 19-14**

Mr. Roka presented a Master Facilities Plan and Project Agreement for the Lexington LSD (Richland) to participate in the Expedited Local Partnership Program or ELPP.

Lexington LSD is a school district in the OFCC planning queue and is not expected to be served under the Classroom Facilities Assistance Program (CFAP) within 2 years. After passing a ballot in November 2018 for a school building project, the Lexington LSD requested to participate in the ELPP program.

The district-wide Master Facility Plan for Lexington LSD includes: building a new ES to house grades PK-6 and a new MHS to house grades 7-12. In addition to the new builds, the district master plan includes the abatement/demolition of the following existing buildings: Central ES; Eastern ES; Western ES; Lexington Jr. High; and Lexington HS.

Under the ELPP Agreement discrete portion, Lexington LSD intends to build one new MHS to house 1,049 students grades 7-12. The district also plans to abate/demolish the Lexington Jr. High and Lexington HS.

Master Facilities Plan:

School District (County)	Project Scope	Project Budget
Lexington LSD (Richland)	Build one new ES to house Grades PK-6, and one new MS/HS to house Grades 7-12. Abate/Demolish: Central ES, Eastern ES, Western ES, Lexington Jr. HS and Lexington HS.	\$40,350,002 State Share
		\$35,782,077 Local Share
		\$76,132,079 TOTAL

Project Agreement:

School District (County)	Discrete Portion Project Scope	Discrete Portion Project Budget
Lexington LSD (Richland)	Build one new MS/HS to house Grades 7-12 and Career Tech. Abate/Demolish: Lexington Jr. HS and Lexington HS.	\$42,680,628 TOTAL

Vice Chair Damschroder moved to approve Resolution 19-14.
Director Mertz seconded the motion.

Approval: Vote 3-0.

Guidelines and Policies Approval
Presented by Jon Walden – Resolutions 19-15, 19-16 and 19-17

Jon Walden presented the Priority Order of Assistance Policy, VFAP Program Guidelines and Segmenting Projects Policy for Commission approval.

As you will recall from last month’s meeting, I discussed broadly some proposed changes for these guidelines and that we would seek your approval at a future meeting. To date, we have not received any comments related to the drafts proposed.

To refresh with a little background, two years ago, as part of the Commission staff’s effort to reformat the documents as part of the consolidation from two commissions into just one, we reformatted the guidelines and policies and started to place the guidelines and policies on a two-year review cycle modeled on the 5-year administrative code rule review process. With the change in administration and new Commission members, we have accelerated that review with some direction from the Commission.

As part of the overall task and a desire to make our outward facing guidelines and policies more transparent for staff, Commission members and stakeholders, much of the modifications to date include those discussed today, are recommendations for when its Commission staff action versus action requiring a Commission vote or Resolution. With that direction, in all the policies brought today, we work from this model (as noted first at the February meeting).

- Where the Commission typically takes voted action, the edits will denote by resolution or similar language.
- If the action is typically and specifically done by Commission staff, that notation has been added.
- Finally, in some places the guidelines more broadly retain “Commission.” This broader use of Commission remains in locations where it is reflective primarily of Commission statutory duties under ORC 3318. For example, the overview portion (which is an introduction) of policies often speaks to the Commission broadly.

Priority Order of Assistance Policy

When the Commission first started in 1997 as the then Ohio School Facilities Commission, there was essentially only one assistance program, which is the Classroom Facilities Assistance Program (CFAP). With just CFAP, the priority for funding was easily managed with the equity list. As the legislators added additional programs through the years, keeping the order of priority list as set forth in the code, has been more challenging for Commission staff, especially with the addition of segmenting and other programs. The statute is not always clear on who retains priority. In 2009, the Commission added a priority order assistance policy to better identify the use of Commission funds for projects based on the various programs provided by the legislature. This includes which programs were granted specific priority to use available and appropriated funds.

The majority of the edits in this policy consist of the Commission staff versus Commission action. The more substantive edits align with the presentation made by my colleagues at last month’s meeting to describe the school project funding process.

With the heavy demand from districts and the state, and because of the success of the program, Commission staff felt the edits on pages 3 and 4 of the policy are more transparent in explaining the process portion of the program. These edits will assist staff, especially finance and planning staff to communicate better with districts on how to account and/or plan for use of available funds. The edits will also help guide district expectations, including the bond counsel that works with the districts.

Another proposed edit adds clarity to when lapsed school district priority offers will occur. As the Commission members are aware, lapsed districts which stated broadly are those districts offered funding but that failed to raise their local share initially have priority under the Revised Code. The proposed edits clarify how that priority works in practical terms. For example, if Commission staff have notified districts that their projects will be recommended to the Commission for conditional approval, any lapsed districts with priority that subsequently renews its interest will receive priority status at the next funding cycle. Again, within the statutory authority available to the Commission, this allows more certainty for the Commission and Districts.

Madam Chair Murnieks thanked Mr. Walden for the additional updates and clarity that have been made to the policy.

Vice Chair Damschroder moved to approve Resolution 19-15.
Director Mertz seconded the motion.

Vocational Facilities Assistance Program Guidelines

In June 2004, the Commission first issued its VFAP Program Guidelines after it was added as a program in 2003. Similar to the Priority Order Policy that was just approved, the redline version includes many edits throughout to address Commission staff action versus action taken by Commission vote/resolution.

In addition, the Guidelines have many additional redlines as we attempted to better coordinate the language included in the VFAP ELPP Guidelines approved by this Commission at the February meeting. The edits primarily start on page 4, starting briefly with the Master Facilities Plan heading, but with the most significant edit being the wholesale change on page 5 of the redlines that added an entire section from VFAP ELPP and deleted a section so that there is better consistency between the two similar program guidelines.

On redline page 12, under the Project Delivery section, there is a change to make it clearer that procurement for the programs occurs after the Project Agreement is executed. This clarification is consistent with Commission staff direction and ensures more appropriate budget management, but it is an area challenged by many of our partners.

Vice Chair Damschroder moved to approve Resolution 19-16.
Director Mertz seconded the motion.

Segmenting Projects Policy

On or about 2008, the legislature added ORC 3318.034, which provided non-urban districts the opportunity to address facility needs through a segmented process whereby a school district can opt to divide its entire classroom facilities needs into discrete segments. Originally, only certain urban districts were able to use the segmenting process. This code section allows districts to better determine and manage the portions of its local share that needs to be raised in order to participate in CFAP. Once again, a majority of the proposed edits focus on Commission staff versus Commission voted or Resolution action.

In addition, starting on the first page of the proposed edits, there are four recommended edits that propose removing the references to 1990 lookback. The 1990 look back is a designation for those districts served from a 1990 program when the school assistance was housed with the Ohio Department of Education in a less formal state. When the 1990 look back was housed at the Ohio Department of Education they often

did not always provide a whole district solution. As a result, the revised code includes statutory carveouts for the 1990 districts from the general 20-year prohibition from receiving additional state assistance. The 20-year prohibition is now expired for these districts and the 1990 lookback district language is no longer necessary.

On page 3, we also recommend adding a section titled Project Agreement that makes this policy more consistent with other policies/guidelines that we have brought to the Commission recently.

Additional edits are included to make it clearer that future funding of segments are subject to the Priority Order Assistance Policy and the ORC and that segmented districts are not treated as lapsed districts but instead remain on the segmented priority list. Finally, under the current statutory scheme, districts served by segment are not eligible for future ELPP consideration.

Vice Chair Damschroder moved to approve Resolution 19-17.
Director Mertz seconded the motion.

Guidelines and Policies Update Presentation Presented by Jon Walden

Madam Chair Murnieks remarked that the guidelines presented today will return for a vote at the next Commission meeting.

Mr. Walden presented potential edits to the STEM Program Guidelines, the Exceptional Needs Program (ENP) Guidelines, and the Hardship Loan Program Guidelines.

STEM Program Guidelines-Required under ORC 3318.70 and 3318.71

The STEM program (Science Technology Engineering and Mathematics) under ORC 3318.70 and ORC 3318.71 is the Qualifying Partnership STEM program. A Qualifying Partnership is made up of multiple school districts that oversee the STEM program.

Once again, the primary edits address Commission staff versus Commission voted resolution action is included throughout the recommended edits. Also, throughout the guidelines for STEM, we added Qualifying Partnership language throughout the guidelines for more clarity.

Exceptional Needs Program Guidelines (ENP)-Required under ORC 3318.37

ENP program guidelines were originally issued in 1999. Exceptional Needs is a program outside traditional CFAP that allows assistance to a district to address a compelling need of the facility in lieu of receiving assistance based on the traditional equity list.

Recommended edits include the Commission staff versus Commission vote/Resolution action. In addition, several clean up edits to remove references to specific legislation. Also edits for cleanup and clarity. No substantive program edits.

Hardship Loan Program Guidelines-Required under ORC 3318.042

The Hardship Loan Program Guidelines were originally issued in 2006. The Commission can authorize a loan up to 10 years to a District participating in CFAP or ENP if the district has an unanticipated increase in costs resulting from additional circumstances set forth in 3318.042 or resulting from the Corrective Action Program under ORC 3318.49.

Recommended edits include the Commission staff versus Commission vote/Resolution distinction. We also recommended deletion of a quote of ORC Section 3318.42 for clarity. In addition, on page 5 of the redline document, we recommend modification to the dates in the examples to make the guidelines more current, so you can easily determine how districts will be funded, but it has no substantive impact.

Settlement Agreement Approval Presented by Jon Walden – Resolution 19-18

Jon Walden presented a proposed settlement on a project the Commission administered for the Ohio Department of Youth Services (DYS). Specifically, this project concerns the construction of the DYS Circleville Housing Project. On this project, K2M Architecture served as the Architect and Sands Decker served as the engineering consultant.

As a result of design issues, the project encountered delays, additional costs and failed to complete by the planned completion date. OFCC and DYS made a claim against the architect due to alleged errors and omissions by the architect and its consultant. As a result of the claim, OFCC and DYS withheld payment to K2M under the contract. The parties had multiple mediation efforts to reach a resolution. After the first mediation, certain portions of the retained contract funds were released. With the resolution, OFCC and DYS will release the remaining portion and the architect and engineer will pay DYS their respective portions of the settlement of \$110,000. As part of the settlement, there is a limited release of claims against the A/E. Senior Legal Counsel Matt Westerman and Commission staff worked with DYS staff and counsel and recommend approval of this settlement and Resolution.

Director Mertz asked Mr. Walden what was the extent of the delay? Matt Westerman, Senior Legal Counsel for OFCC responded by indicating there was a 4-month delay in the completion date of the project. During the 4-month period, concurrent work was done at the election of DYS related to the project.

Senator Fedor asked Mr. Walden to elaborate more on the proposed settlement where the Commission agreed to release certain claims against K2M related to the project? Mr. Walden stated that the release of

the claim is limited to the claim that we were making for the delay and damages. OFCC and DYS have retained rights to recover for latent defects or anything that might occur later in the project.

Representative Jones inquired about the increased project cost being over \$500,000, but the Commission is only going to settle for \$110,000? Mr. Walden responded that defenses were raised about additional costs as to whether the costs were incurred by the project or direct cost that were going to be incurred anyway. We rarely get the entirety of what we are asking for in a settlement. Mr. Westerman added that some of the claims asserted during mediation, in the approximate amount of \$540,000, are mostly considered omissions. For example, if I design a project and I forget to put in a door, but the owner was going to pay for the door anyway. This adds additional cost to the project budget and this is something we expected to pay anyway. Approximately \$175,000 of the claims are related to omissions. The things the architect missed on this project is typical for an architect to miss on a large project. A specific issue missed on this project involved the placement of the fire lane. The fire lane was originally supposed to go behind the 6 housing units for the juvenile inmates, but ultimately ended up running in a circle in front of the 6 housing units. While it had to be built differently than originally designed, we ended up with a very nice quasi running track in front of the 6 juvenile housing units that provided better access for fire and safety personnel.

Representative Jones asked what is the total cost of this project? Mr. Westerman indicated that the total cost of the project was approximately \$32M.

Vice Chair Damschroder asked if we have a dispute with a contractor, a sub-contractor or an architect, does that have any future impact on evaluating whether to use that vendor in the future? Mr. Walden responded by explaining that part of the selection process is evaluating past performance. Unless a vendor becomes debarred, this would become part of the scoring process.

Vice Chair Damschroder moved to approve Resolution 19-18.
Director Mertz seconded the motion.

Executive Director Report

David Williamson reported since the last meeting there were 2 school district dedications. 8 school district project agreements were closed out. The Commission had 1 School Performance Contracting program for HB264.

The combined Agency, Higher ED, K-12 and Cultural Facilities Grants contracts executed since the January 2019 meeting approximately total \$290M. To date, 1,699 facilities have been constructed or renovated between Agencies, Higher ED, K-12 and Cultural Facilities Grants. There are 194 projects currently in construction with a total dollar value of \$2.29B.

The Director concluded his report by acknowledging that Madam Chair Murnieks attended her first OFCC groundbreaking ceremony for the Warren LSD (Washington).

Heather Plahuta, on behalf of Senator Manning, asked for an update on issues with the Tipp City Exempted Village School District (Miami).

Madam Chair Murnieks remarked that she became aware of a situation with the Tipp City Exempted Village School District and asked Director Williamson to follow-up to make sure we are all well informed regarding issues with the district.

Public Testimony

No public testimony.

The meeting was adjourned at 2:22 PM.



Kimberly Murnieks, Commission Chair



These meeting minutes were prepared by
Elizabeth Perry, Secretary to the Commission (Interim)