

SCHOOL FACILITIES BOARD
 October 2, 2008
 Phoenix, Arizona

The School Facilities Board held a Board meeting at the State Capitol Executive Tower, Suite 312, in Phoenix, Arizona. The meeting began at approximately 10:05 A.M.

<u>Members Present</u>	<u>Guests Present</u>
Davidson, Frank, Chair	Dale Genger, Lake Havasu USD
Keenan, Brooks, Vice-Chair	Joe Stella, Lake Havasu USD
Allee Taylor, Penny (via telephone)	Marsha Crockett, DLR Group
Ortega, David	Chuck James, Squire Sanders
Marks, Gary	Vispi Karanjia, Orcutt/Winslow
Gober, Patricia	Jim Mosley, Gila Bend USD
Corcoran, John	Robin Berry, Palo Verde ESD
	Cathy Rex, So. AZ School Facilities Group
<u>Members Absent</u>	Bob Young, Dysart USD
Rushin, Tom	
Salazar, Vicki (non-voting member)	
<u>Vacant Board Positions</u>	
Private Business Owner Representative	
<u>Staff Present</u>	
John Arnold, Executive Director	
Kerry Campbell, Public Information Officer	
Dean Gray, Deputy Director	
Amber Peterson, Finance Specialist	
Debra Sterling, Attorney General's Office	

- I. Call to Order
 Dr. Frank Davidson called the meeting to order at approximately 10:05 A.M.

- II. Roll Call
 There were seven Board Members present at this meeting, with Penny Allee Taylor participating via telephone and the newest member, John Corcoran, arriving just prior to the vote for agenda item VI.b.

- III. Welcome and Introduction of New Board Member
 John Arnold provided a brief biography of the newest Board member, John Corcoran, and in anticipation of his arrival suggested returning to this agenda item later in the meeting.

- IV. Approval of Minutes
 - a. Approval of Minutes of September 4, 2008
 David Ortega moved that the Board approve the Minutes of September 4, 2008. Gary Marks seconded. The motion passed with a 6-0 voice vote.

- V. Consent Agenda
 - a. Consideration of Preventative Maintenance Plans

Brooks Keenan moved that the Board ratify the plans listed in agenda item Va. Dr. Patricia Gober seconded. The motion passed with a 6-0 voice vote.

VI. Director's Report

- a. Call for Entries-Governor's Achievement Award for Innovative School Design
John Arnold explained that over the last year, since the SFB published the 21st Century Schools report, staff has been working on ways to implement the recommendations described in the report and recognize those schools that have already put them into practice. We have been working with the Governor's Office to develop an achievement award program to recognize these schools and their successes. The awards are based on seven categories of excellence in school design, which are listed in the application. Applications were due September 29, 2008. We received 58 nominations, consisting of 41 schools representing 27 districts in 6 counties. Eight architectural firms submitted nominations. We have established a panel of five judges; Marlene Imirzian, an architect with Marlene Imirzian & Associates, LLC, Lauren Kielsmeier, the Governor's Policy Advisor on Education, Tom Rushin, SFB Board Member and retired school administrator, Michael Schroeder, AIA architect, and Arlen Solochek, AIA, Maricopa Community Colleges, District Director of Facilities Planning and Development. The panel will present award recommendations to the Board in November, for final recommendation to the Governor, who plans to present the awards at the ASBA conference in December.

David Ortega suggested that since this is the first year of the awards and we have opened the criteria to any school ever built with or without SFB funding, we also make exception for honorable mentions should there be a qualifying nomination.

Mr. Arnold responded that this was an excellent suggestion and that he would advise the panel.

- b. Building Renewal Grant Fund Policy
John Arnold informed the Board that there have been no changes made to the Building Renewal Grant Fund Policy since it was presented to the Board last month. We did, however, receive a couple of comments, which had more to do with the legislation than implementation of the policy.

Brooks Keenan asked if there has been any expressed interest by districts in this grant fund.

Mr. Arnold responded that a number of districts have expressed interest in applying for this funding. To date, staff has received applications for about \$3.5 million in project requests. We are in the process of determining whether these will be brought to the Board as Emergency requests or Building Renewal Grant requests. Currently, they are all in the investigation stage. We anticipate receiving several more applications as well as a steady interest in the grant fund. Staff is taking a very strict approach to the interpretation of the statute that established the grant fund; these have to be existing deficiencies. We are ensuring that these monies are spent correctly. While we have \$3.5 million in applications, it is unlikely we will have \$3.5 million in awards.

Dr. Frank Davidson opened the floor to Robin Berry, Superintendent of Palo Verde Elementary School District, who had requested to address the Board.

Ms. Berry commended Mr. Arnold for making himself available to work with districts and helping to make them aware of opportunities such as the Building Renewal Grant fund that are available to them. She asked the Board to consider the building renewal needs and challenges of small districts such as Palo Verde Elementary, who patch deficiencies while trying to save enough building renewal dollars to correct them. These temporary fixes could cause districts to be denied Building Renewal Grant funds.

Mr. Arnold commented that staff is considerate of district building renewal needs and that the applications for the Building Renewal Grant Fund will be reviewed on a case-by-case basis to make wise use of those dollars. Our biggest concern is the approximate 118 million square feet of academic space in the State and the fact that we have \$20 million in the Grant fund to keep that space operational over at least this year and perhaps over the next two years. We will bring borderline or questionable applications to the Board to establish a precedence that is appropriate for expenditure of these dollars.

Dr. Davidson commented that the application for a Building Renewal Grant requests information from the district on their planned building renewal expenditures for the balance of the year. This information will provide staff with an understanding of the district's building renewal needs and projects.

Gary Marks thanked Ms. Berry for her comments and expressed his understanding of the challenges that districts face in maintaining their facilities while managing their building renewal budgets, as well as his confidence that staff will consider these challenges.

At this time, Dr. Davidson welcomed John Corcoran as the newest member of the Board. Each Board Member introduced themselves. Mr. Corcoran expressed his honor to serve on the Board.

Gary Marks moved that the Board adopt the new Building Renewal Grant Fund Policy as recommended by staff. David Ortega seconded. The motion passed with a 7-0 voice vote.

c. Lease-to-Own Resolution

John Arnold provided the Board with the background on the lease-to-own legislation. He explained the lease-to-own structure is the same as that used by the SFB in the past referring to the diagram provided in the board packet. Also provided is a draft list of those projects to be included in this transaction. The total value of these projects is \$667,700,990, which is more than the \$593 million authority. This over-collateralization will allow for flexibility in the event a project has to be removed from the transaction during bonding or at any point over the next fifteen years. As part of the lease-to-own transaction the Board is required to approve a resolution authorizing the Board Chair and/or Executive Director to enter into the lease agreements with the trustee and the districts. There are provisions in the resolution that set limits on the amount of interest we are able to promise and the amount of dollars we are

authorized to raise, and it is within these parameters that the resolution gives the Chair and Director the authority to finalize the lease agreements. With Board approval of the resolution, the transaction is scheduled for review by JCCR today, as well as the AG's Office. The current schedule is to go to market the week of November 10, 2008, with the dollars coming to the State the week of Thanksgiving. We may have to adjust this schedule slightly due to market conditions or other factors. JCCR only agendaed \$585 million; the committee chairman does not want to include the \$8 million for full day kindergarten in the committee's review. When it becomes more clear as to what this means, staff will report back to the Board.

Dr. Patricia Gober asked what effect the uncertainty in the capital market will have on our ability to move forward with this transaction.

Mr. Arnold responded that despite current market conditions, there has been some activity in the municipal market, but we are seeing deals either postponed or considerably downsized. Typically, institutional investors such as large insurance companies buy municipal bonds, but we have recently seen an increase in the number of retail buyers or individuals buying municipal bonds, which are a safe investment with a good return. This will affect our marketing strategy, and fortunately, the banks we have chosen have a substantial retail presence. In addition, interest rates have recently risen and if they get any higher, we will have to make a decision about meeting the State's cash flow needs. Our economic advisors think the market should stabilize over the next few weeks, but there is a chance we may have to downsize the transaction to \$200 or \$300 million rather than the entire \$593 million. The bulk of the \$593 million authority is to reimburse the General Fund, while the SFB cash flow need is approximately \$130 million for the current fiscal year. If need be, it will be up to the State Comptroller and Budget Director to decide on the downsized value of the transaction, and we will work closely with them to help resolve the cash flow needs of the General Fund.

Dr. Gober asked if the legislature or staff put the 6% yield limit in the resolution.

Mr. Arnold answered that he and bond counsel decided upon this number. It is the limit the Board has always used in every resolution, but the Board may adjust the number if they choose.

Brooks Keenan moved that the Board approve the resolution authorizing the Board Chair and Executive Director to proceed with the lease-to-own transaction and lease agreements as recommended by staff. David Ortega seconded. The motion passed with a 7-0 voice vote.

d. Moratorium Impact

John Arnold updated the Board on the continuing discussions regarding the moratorium impact and potential reimbursement for districts that use local funds to construct an SFB awarded project during the moratorium. A couple of districts have expressed an interest in proceeding with construction using local funds to some degree. Last month, we reached a conclusion that pre-construction expenditures would be fully reimbursable under current law,

provided the legislature lifts the moratorium and provides new school construction funding. Over the last month, we have taken input from districts and the Governor's Office regarding staff's position that an SFB awarded project becomes a locally funded project when the construction contract is signed. Having weighed the pros and cons of this argument, staff now agrees that a project becomes locally funded when it reaches Substantial Completion. A project is not considered a school until it reaches Substantial Completion and the district takes ownership. We think that while a project is in construction, it retains its eligibility for SFB funding should it become available. Staff is recommending the provided Policy Statement to clearly define the SFB's position regarding reimbursement for new school construction during the moratorium. While this policy does not guarantee any type of reimbursement, it keeps the window open for them to be eligible for reimbursement about nine months longer than it otherwise would be.

David Ortega asked about the moratorium impact on land acquisition and district acceptance of land donations.

Mr. Arnold responded that the moratorium places a freeze on all SFB land acquisition activities including testing and appraisals. However, districts may choose to fund the necessary testing and appraisal of a donation and the SFB would review and provide the district with Board action regarding the suitability of the site for a school. The district may then choose to proceed with closing on the donation using district funds. The SFB will not reimburse any of these expenditures or provide a 20% donation factor on a donation during the moratorium. Districts may also choose to accept a donation without SFB review. With or without SFB review, the site will be considered district-owned when it becomes time to build the school. We are working with the Land Department to establish protocols to allow districts to proceed with their multi-year process and prepare them to go to auction when the New School Construction Program is reinstated. A district may proceed with going to auction on a State land parcel provided they are prepared to pay for the entire lease amount with local funds.

Dr. Patricia Gober clarified that until a district takes control of a school facility, it is still eligible for reimbursement.

Mr. Arnold explained that Substantial Completion is an absolute date that is certified by the architect in writing. On this date, title of the school transfers from the contractor to the district.

Dr. Gober asked if the project becomes locally funded, does the district then forfeit the building renewal, emergency and preventative maintenance funding that would be available if the project were SFB funded.

Mr. Arnold confirmed that newly constructed locally funded space does not qualify for SFB building renewal, emergency or preventative maintenance funding and that once the project reaches Substantial Completion the district must take responsibility for the facility for the long term if the moratorium has not been lifted and new school construction funding is not provided. These are local decisions to construct under the moratorium or to wait until it is lifted.

Brooks Keenan asked if it was necessary to achieve Substantial Completion before a school can be occupied.

Dean Gray answered that the Substantial Completion date is part of the project and design review and is established prior to contract signing. If the contractor does not reach Substantial Completion by the date established, he may be assessed fines. The date may not be delayed arbitrarily.

Dr. Frank Davidson clarified that if a district were to be found deficient of space and awarded a new school, chose to proceed with construction during the moratorium and reached Substantial Completion prior to the lifting of the moratorium and appropriation of new school construction funding, the new school would be considered invisible space by the SFB.

Mr. Arnold confirmed that the newly constructed space would be considered invisible to the SFB and that the district would retain their eligibility for the previously awarded SFB space.

Dr. Davidson asked if the opportunity still exists for a district to receive reimbursement for the cost of a new school that is constructed by a developer prior to qualifying for new SFB awarded space, noting that this scenario does not have a Substantial Completion date trigger.

Mr. Arnold confirmed that if the district is able to construct the space, whether it is a SFB approved project or not, with private funds, then they are eligible for reimbursement in perpetuity until SFB funds become available.

Dr. Patricia Gober moved that the Board approve the new construction moratorium policy statement as recommended by staff. David Ortega seconded. The motion passed with a 7-0 voice vote.

e. Litigation Update

John Arnold provided a brief update for the Board on Roosevelt Elementary School District No. 66 v. State of Arizona (Building Renewal Case). There was a hearing held on September 22, 2008. The case is not on active calendar at this time. The Plaintiff is moving to place the case back on active calendar, while the Defense is moving for dismissal of the case all together. The Plaintiff is also moving that Tempe Union be able to join as a Plaintiff and the Defense is countering with the motion to dismiss. The court heard argument from both sides regarding whether the Plaintiff had provided sufficient evidence to the court that substantiates the claim that lack of building renewal funding has violated the constitutional rights of the districts involved. The court is taking this information under advisement. There is no established timeline for a decision, but we do expect to hear from the court within the next 60 days. The Attorney General's Office believes there will be no trial this fiscal year regardless of the court's decisions on these motions.

VII. Consideration and possible vote on Emergency Deficiency Requests

John Arnold explained that Bicentennial Union has a failed fire alarm system and intercom/bell system at Bicentennial High School. The district has been cited by the Fire Marshal and is on count down to a full 24/7-fire watch system. Staff has

reviewed the district's available building renewal funds, of which there are none, and is requesting pre-approval of funding prior to having contractor estimates in-hand due to the urgent need to make these systems functional. We estimate the repairs will cost approximately \$20,000. Once the actual cost is established we will bring this request back to the Board for final approval and any excess monies will be returned to the Emergency Fund. Gila Bend Unified also has failed intercom systems at both Gila Bend Elementary and Gila Bend High Schools. The district is currently using whistles, cell phones and a bullhorn to change classes, signal for lunch and communicate with teachers and staff. The district has \$57,189 in building renewal funds available. The total cost of the intercom replacement will be \$120,821. Therefore, the SFB portion of the costs is estimated to be \$63,632.

Gary Marks moved that the Board approve the requests as listed below:

1. Board approval to grant **Bicentennial Union** emergency funding in the amount of \$20,000 for the repairs of the existing fire alarm and intercom systems.
2. Board approval to grant **Gila Bend Unified** emergency funding in the amount of \$63,632 for the replacement of the existing intercom systems. This cost includes a \$10,000 contractor contingency and a \$10,000 SFB contingency, both of which will only be used with SFB staff approval.

Brooks Keenan seconded. The motion passed with a 7-0 voice vote.

VIII. School Facilities Board Policy Review

John Arnold reminded the Board of the current policy review process wherein proposed changes are brought to the Board for review and a one-month public comment period. The next policy to be reviewed is policy I. Board Governance Procedures. The proposed changes are mostly minor, including an update to the hearing process, removal of repetitive language and aligning policy language with our current practices.

Brooks Keenan asked about the legislation that was being considered last session to change the Board member appointment language.

Mr. Arnold responded that the legislation failed.

IX. Future Agenda Items

There were no future agenda items requested.

X. Public Comment

There were no additional requests to address the Board.

XI. Adjournment

There being no further business, Dr. Frank Davidson adjourned the meeting at approximately 11:00 A.M.

Approved by the School Facilities Board on November 6, 2008

Frank Davidson
Chair