

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

John H. Reagan Building  
Room JHR 140  
105 W. 15th Street  
Austin, Texas

December 15, 2016  
9:00 a.m.

BOARD MEMBERS:

J. PAUL OXER, Chair  
JUAN MUÑOZ, Vice-Chair  
LESLIE BINGHAM ESCAREÑO, Member  
T. TOLBERT CHISUM, Member (Absent)  
TOM H. GANN, Member  
J.B. GOODWIN, Member (Absent)

STAFF:

TIMOTHY K. IRVINE, Executive Director

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- p) Presentation, Discussion, and Possible Action on: first, an order adopting the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single

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- q) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*
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EXECUTIVE SESSION none

OPEN SESSION 151

ADJOURN

P R O C E E D I N G S

1  
2 MR. OXER: Good morning, everyone. I'd like to  
3 welcome you to the December 15 meeting of the Texas  
4 Department of Housing and Community Affairs Governing  
5 Board.

6 We begin with roll call. Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. OXER: Mr. Chisum is not with us today.

9 Mr. Gann?

10 MR. GANN: Here.

11 MR. OXER: Mr. Goodwin is not with us. And I  
12 might note today that Mr. Gann is taking his birthday off  
13 since today is his birthday.

14 MR. GANN: Not mine.

15 MR. OXER: I'm sorry. Mr. Goodwin's. He's  
16 over there; no wonder I got them confused.

17 MR. GANN: I will leave if you'd like.

18 MR. OXER: I think we'd have a quorum issue if  
19 you left.

20 MR. GANN: All right. I'll stay.

21 (General laughter.)

22 MR. OXER: Dr. Muñoz?

23 DR. MUÑOZ: Present.

24 MR. OXER: And I'm here, so that gives us four.  
25 We have a quorum, we're in business.



1 Tim, lead us in the pledges.

2 (The Pledge of Allegiance and the Texas  
3 Allegiance were recited.)

4 MR. OXER: Michael, have we got any guests we  
5 need to recognize? I didn't see anybody.

6 MR. LYTTLE: Actually, one person I wanted to  
7 introduce, if I may. TDHCA has hired a new senior  
8 communications advisor who will be our main media person  
9 and working in my area and I want to introduce her today.  
10 Kristina Tirloni is here; she started this week.

11 MR. OXER: Your official rank will be  
12 Lieutenant Tweety.

13 Thank you, Captain Tweety.

14 If nothing else, let's get down to work here.  
15 I think we have a resolution recognizing today. Do you  
16 want to read that, Michael?

17 MR. LYTTLE: Yes, sir.

18 TDHCA Resolution:

19 "WHEREAS, 23,678 persons experiencing  
20 homelessness were counted in Texas during the last two  
21 weeks of January 2016 as reported in the Point-in-Time  
22 count;

23 "WHEREAS, the Texas Department of Housing and  
24 Community Affairs (the "Department") works to improve the  
25 living conditions of persons who experience or are at risk

1 of homelessness;

2 "WHEREAS, the Department's homeless programs  
3 assisted 33,297 persons throughout the year to move toward  
4 housing stability after experiencing or being at risk of  
5 homelessness in State Fiscal  
6 Year 2016;

7 "WHEREAS, the Department commends all those who  
8 serve persons experiencing or at risk of homelessness to  
9 gain stable housing and move toward self-sufficiency;

10 "WHEREAS, the Department encourages Texas  
11 communities to create and strengthen local partnerships  
12 that can prevent and minimize homelessness;

13 "WHEREAS, December 21, 2016, is National  
14 Homeless Persons' Memorial Day, which annually falls on  
15 the longest night of the year;

16 "WHEREAS, the Department expresses its  
17 commitment to persevere in efforts to address the issues  
18 of homelessness;

19 "Now, therefore, it is hereby RESOLVED, that  
20 the Governing Board of the Texas Department of Housing and  
21 Community Affairs does hereby commemorate and recognize  
22 December 21, 2016, as Homeless Persons' Memorial Day in  
23 Texas and encourages all Texas individuals and  
24 organizations, public and private, to join in this  
25 observance of National Homeless Persons' Memorial Day.

1 "Signed this Fifteenth Day of December 2016."

2 MR. OXER: Good. We have to have a motion to  
3 formally resolve.

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. OXER: Motion by Ms. Bingham to adopt the  
6 resolution as Michael has just read into the record.

7 MR. GANN: Second.

8 MR. OXER: Second by Mr. Gann.

9 Is there any question, any comment by the  
10 Board?

11 (No response.)

12 MR. OXER: Okay. Motion by Ms. Bingham, second  
13 by Mr. Gann. Those in favor?

14 (A chorus of ayes.)

15 MR. OXER: And opposed?

16 (No response.)

17 MR. OXER: There are none.

18 With respect to the consent agenda, any Board  
19 member care to pull any item? Fairly extensive consent  
20 agenda here. Raquel, it looks like you were pretty busy  
21 this month.

22 DR. MUÑOZ: Move the consent agenda.

23 MS. BINGHAM ESCAREÑO: Second.

24 MR. OXER: Motion by Dr. Muñoz, second by Ms.  
25 Bingham to approve the consent agenda. There's no request

1 for public comment.

2 Motion by Dr. Muñoz, second by Ms. Bingham to  
3 approve the consent agenda. Those in favor?

4 (A chorus of ayes.)

5 MR. OXER: And those opposed?

6 (No response.)

7 MR. OXER: There are none. It's unanimous.

8 Okay. Tim, I think you're up talking about  
9 what's going on in the equity markets.

10 MR. IRVINE: First of all, as everyone knows,  
11 developing affordable multifamily housing is a very  
12 complex process, it has a lot of aspects in the financial  
13 structures, but the linchpin in so many of these deals is  
14 the tax credit piece, and as with all financial markets,  
15 there are things that occur out there that create  
16 uncertainty or instability, markets are inherently  
17 variable, and right now we are experiencing some of that  
18 variability.

19 I think that the value of an investment in a  
20 limited partnership doing multifamily development is  
21 harder to value when there's uncertainty as to what the  
22 marginal tax rate will be or as to what the treatment of  
23 operating losses of depreciation will be, and some  
24 syndicators are experiencing this uncertainty and taking  
25 it to heart and revising the terms on which they will

1 syndicate or even pulling back from current activity.  
2 Despite things that we've heard, this is not uniform  
3 across the board. We certainly know of syndicators that  
4 are moving forward and honoring their commitments.

5 Individual tax credit developments that have  
6 received tax credit awards and have not yet closed,  
7 they're operating under some of this uncertainty. They  
8 are looking for tools that can help them ensure that they  
9 get their deals across the line and get them done. Staff  
10 has spent a lot of time talking with various members of  
11 the development and investor communities to understand  
12 these issues. We've looked at what our arsenal of  
13 possible tools to address or accommodate these situations  
14 might be, and I would break them into basically four  
15 categories.

16 One, people, obviously, the first thing they  
17 ask for is can we have more tax credits to make up for the  
18 loss in value in the tax credits that have been awarded.  
19 And my response to that would be, first of all, if you  
20 were honest about your numbers, you probably don't have  
21 eligible basis to support those additional tax credits,  
22 but even if you did, we already gave them away. So even  
23 if there were available tax credits that could be used to  
24 address this situation, the complexities of Chapter 2306  
25 are such that we just would have a really hard time doing

1 that. The statute requires that tax credits be awarded to  
2 the fullest extent possible by the end of July, and any  
3 remaining pieces or returns are handled in accordance with  
4 our established wait list, we've got regional allocations,  
5 we've got deal caps, we've got aggregate caps, we've got  
6 set-asides to meet and so forth. And so the answer, in  
7 short, is I don't see how we could really accommodate that  
8 under our current structure.

9 The second possibility is additional cash  
10 infusions. We have programs, the HOME program, the TCAP  
11 loan repayments, that do provide a fairly significant  
12 source of lendable or grantable funds that could be used  
13 to enhance the financial structures of these deals. We  
14 overwhelmingly, as a staff, support the use of repayable  
15 structures. Repayable structures aren't just that we like  
16 to get repaid, it's that we use those repayments, and one  
17 of the key sources that we've dedicated the TCAP loan  
18 repayments to is the supportive housing initiatives of  
19 Texas. So the concept of re-investable funds is really  
20 key to the way that we administer our lendable funds  
21 programs.

22 Another possibility is that people could pursue  
23 the material amendments process to find ways to make  
24 adjustments to their deals to live within the available  
25 cash that would be raised through syndication at reduced

1 rates. The problem there is, again, keeping it in sync  
2 with your ability to claim eligible basis to support those  
3 credits, and also, frankly, as your structures change, you  
4 don't just have to keep your tax credit piece in place,  
5 you've got to keep it harmonized with your lending  
6 structures and your other activities, and frankly, your  
7 contractual undertakings.

8           The fourth process that we can use as a tool,  
9 and frankly, I think it's the one that from a practical  
10 point of view is the most responsive, is if you truly  
11 encounter a situation that's beyond your control that you  
12 couldn't anticipate that rises to the level of a force  
13 majeure event, there's the possibility of a return and a  
14 reissuance, giving you additional time for your deal to  
15 stabilize. But don't forget, as I said at the outset,  
16 this is not something that's occurring in all situations  
17 and we do have a wait list behind deals that if somebody  
18 can't move forward, perhaps someone on the wait list is in  
19 a position where they can move forward.

20           You know, I think that force majeure is one of  
21 those sort of Pandora's boxes, once you open it, you do  
22 not know for sure what will come flying out, but it is a  
23 potential way that some of these things might have longer  
24 to play out.

25           The tax credit investor world is a very large

1 industry. Just my 40-plus years in financial markets, I  
2 can't see major players simply taking themselves out of a  
3 market for an extended period -- that's how you kill your  
4 business. But I can see them sitting on the sidelines for  
5 a reasonable time to allow things to stabilize, and more  
6 importantly, to have enough ability to make some  
7 reasonable assumptions and come up with a revised pricing  
8 model, and then we would obviously have to react to  
9 address how that revising pricing model affected these  
10 deals.

11 We've got a lot of people that we've been  
12 talking to and I know that some of them are here to  
13 provide some testimony to you, so I think I've set the  
14 stage, and unless you have any questions for me.

15 MR. OXER: I have a question. What is the  
16 prospect that the human construct, such as the equity  
17 markets, would rise to the caliber of a force majeure?

18 MR. IRVINE: I think that a force majeure would  
19 contemplate that an actual change in law would be such an  
20 event. I think that when you get away from that hard  
21 bright line and you get into more subjective things, it  
22 gets really challenging. How do you say to somebody who's  
23 provided you a commitment to syndicate and then have that  
24 person back off on that commitment to syndicate, how do  
25 you really assimilate and digest all of that and figure



1 out what has actually occurred? You don't really have an  
2 objective third party verifiable source to say exactly  
3 what has occurred. It's a challenge to treat it as a  
4 force majeure event.

5 DR. MUÑOZ: Tim, is that a withdrawal to  
6 syndicate altogether, or is it to do so at a lower value?

7 MR. IRVINE: I believe it would be on a case-  
8 by-case basis, depending on the syndicator. I mean, we  
9 certainly do know of large syndicators that are honoring  
10 their existing commitments, and we know of others that are  
11 coming back with revised pricing.

12 MR. OXER: So the syndicators provide the  
13 pricing on it and then it's their job basically to sell  
14 the tax credits out in the market at a discount to their  
15 syndication price which is how they make money.

16 MR. IRVINE: They've already closed on an  
17 investor pool and they've obviously got a product they  
18 need to be delivering.

19 MR. OXER: Any other questions?

20 Peggy, did we have anybody who wanted to speak?

21 Now, Granger, you're not a rookie at this, you  
22 know if you want to talk, you're supposed to be sitting up  
23 here in this front row.

24 MR. MacDONALD: You move too fast.

25 MR. OXER: Maybe you move too slow.

1 MR. MacDONALD: I've been accused of that in  
2 the past.

3 (General laughter.)

4 MR. OXER: All right. For the record, for some  
5 housekeeping, hold your fire there, on an item, when we  
6 want to speak on this, when we're working on this, those  
7 who wish to speak have the front up here to our stage  
8 left. We'll take it from the aisle out that way.

9 Mr. MacDonald, welcome back. Nice to see you  
10 again. Happy holidays to you.

11 MR. MacDONALD: Thank you, sir. Same to you,  
12 same to all of you.

13 I think the executive director really summed up  
14 the state of the union of where we are in the tax credit  
15 business fairly accurately. I'd like to add to that and  
16 then go a little further, if I could.

17 First of all, I think if you're going to do  
18 anything for the people that are in trouble with the 2016  
19 round, perchance what you ought to do is just say: Bring  
20 your credits in immediately, turn them in and we won't put  
21 a penalty on you in future years, basically man up and say  
22 you can't get the deal done. That would allow some of us  
23 who are on the wait list who are ready to go, to go.

24 I personally have a deal in Fredericksburg,  
25 Texas, Rolling Hills. I can pro forma it at 90-cent

1 credits which is below the current market rate, I can make  
2 the deal work at 5 percent interest. If you gave me the  
3 go-ahead on that today, I could make carryover by December  
4 31, I could have the deal closed in 120 days and hand you  
5 the keys in a year.

6 And so you have to think of the unintended  
7 consequence. When you go and do extraordinary measures  
8 for someone else, you might be hurting someone else. And  
9 it's not fair to those of us who've been at this and have  
10 the wherewithal to close our deals, to stand behind folks  
11 that might be from out of state or not experienced enough  
12 to get the job done.

13 And frankly, those folks who expected dollar  
14 five credits to last forever, shame on them. Those folks  
15 who thought interest rates were going to stay low forever,  
16 shame on them. The National Association of Homebuilders  
17 has been saying construction costs are going up for the  
18 last 18 months, so that's not a valid excuse. These  
19 factors have been there. Those factors were there when  
20 they filed their applications, and they should have known  
21 that.

22 Now, I can understand using the HOME funds, the  
23 TCAP funds that have been returned. And you're welcome.  
24 I've returned a lot of the TCAP funds. I can see doing  
25 that, but bear in mind, some of these very novice

1 developers who are having trouble will then be forced to  
2 use Davis Bacon if they use HOME funds, and most of them  
3 don't know the problems that occur with Davis Bacon. They  
4 don't know Davis-Bacon from Oscar Mayer Bacon.

5 (General laughter.)

6 MR. MacDONALD: It's really an intricate  
7 process.

8 And frankly, there's nothing in Section 42 or  
9 the QAP that says a developer has to make a profit. And  
10 we take a big risk.

11 MR. OXER: From what I hear, there's several of  
12 you here that haven't as a consequence of that.

13 MR. MacDONALD: I understand. But you're going  
14 to have bad times, you're going to have bad times you need  
15 to live through. This is part of the learning curve. And  
16 if this washes out a few developers, it washes out a few  
17 developers. I'm sorry to say that, but that's just the  
18 reality of the market taking care of the market.

19 I like the track that Mr. Irvine is on track.  
20 Speaking as the 2017 chairman of the National Association  
21 of Homebuilders, I want to tell you the tax credit  
22 business is in trouble.

23 MR. OXER: It's actually a question whether or  
24 not it's going to be here in three years.

25 MR. MacDONALD: I think it's a large question.

1 In fact, we've had three reiterations of the rewrite of  
2 the Ryan tax bill which has been adopted by Mr. Trump as  
3 his own, had several meetings with Ways and Means Chairman  
4 Brady, one of which is going on as I speak right now, and  
5 the tax credit program, Section 42 is not -- is not in the  
6 current code. We think it will be there. I don't think  
7 it will be in any way, shape or form what we have today.  
8 I think if it comes back, it will be more like the  
9 exchange program.

10 I think that we need to take a really broad  
11 look at where we're going, and we should be really more  
12 concerned not about 2016 but about the entire procedure  
13 and the entire program.

14 Thank you.

15 MR. OXER: Appreciate your comments, Granger.

16 MS. FLORES: Good morning. My name is Nicole  
17 Flores, and I'm actually here wearing a couple of hats  
18 this morning. I'm here as an executive vice president  
19 with R4 Capital, a nationwide tax credit syndicator. I'm  
20 also here as the president-elect of the TAAHP organization  
21 and the chair of the Governmental Affairs Committee for  
22 TAAHP. And I did have an opportunity to speak with Tim  
23 and staff in the last couple of weeks about the state of  
24 the equity market, and the situation is such that I felt  
25 compelled to stand in front of the Board this morning and

1 also talk.

2 And I think, first of all, thank you, Granger.

3 And I think Granger is correct that we have a bit of a  
4 long term crisis, but I'm here to talk to you about the  
5 unintended consequences of the potential for Tax Code  
6 reform.

7 So realistically, what has happened -- and in  
8 my 25 years in this industry in front of this Board, it's  
9 unprecedented, and I was here in 2008 in front of this  
10 Board testifying about the impending crisis in credit  
11 pricing and I'm here again today just to tell you there  
12 has been an absolute disruption in that market. And  
13 actually, it's not just tax credit pricing, it's what I'm  
14 calling the trifecta, and the trifecta is sometimes a good  
15 thing when you're at the horse track but the last couple  
16 of weeks it hasn't been a great thing for affordable  
17 housing.

18 When I checked the ten-year this morning, it's  
19 at 2.59 which is almost a hundred basis point increase  
20 from where we sat just 30 days ago or 40 days ago just  
21 prior to our election. And certainly we can say shame on  
22 you, developers, you didn't put enough interest rate shock  
23 or you over-assumed your tax credit pricing, but for the  
24 last year and a half we have had historic interest rate  
25 lows and we've had historic high tax credit pricing. So

1 we have seen production from the 4 percent program in  
2 Texas and other states at unprecedented levels, and that's  
3 because interest rates, the ten-year has been at 1.50, and  
4 that's because tax credit pricing in key markets was a  
5 dollar ten.

6           So the first two weeks after the election,  
7 myself and many of my colleagues and most of the  
8 developers in the room absorbed the shock of hundreds of  
9 thousands of dollars of interest rate reduction in their  
10 borrowing capacity, and that was on both 9 percent deals  
11 and 4 percent deals. But as many of you know, the  
12 dynamics of a 4 percent transaction is that it's very debt  
13 heavy, so if you have a 50 or 100 basis point swing in  
14 interest rates, you're having hundreds of thousands, in  
15 some cases a million dollar reduction in your borrowing  
16 capacity. And as you know, again, we've seen  
17 extraordinary production out of the bond program, so just  
18 that reduction in interest rates.

19           And then the tax credit crisis hit, and it hit  
20 so swiftly, as I would reiterate, to be unprecedented in  
21 my career. On the Monday after Thanksgiving, within 48  
22 hours I had listened to 20 different developers tell me  
23 their deal had either been repriced, they had been rocked.

24           And standing here as a syndicator, I will certainly take  
25 the brunt of ire for not honoring my commitments, but what

1 I want the Board and the development community to  
2 understand is that the investment community as a whole  
3 took a step back when they started hearing 15 percent  
4 corporate tax rates, because all of our models assume a 35  
5 percent corporate tax rate. And then they started to hear  
6 maybe depreciation would be accelerated.

7 And so what we have right now is wild  
8 speculation. You are absolutely right, this is a case-by-  
9 case basis. There's wild speculation in the market as to  
10 what the long term corporate tax rate might be, and  
11 there's long term speculation about depreciation. I mean,  
12 some of us in the room remember the 1986 tax reforms and  
13 what a sweeping change they had to real estate, real  
14 estate investments, depreciation. That's the same sort of  
15 speculation we have now. And so I just wanted to be here  
16 to reiterate and to thank you for acknowledging that there  
17 is a disruption in the market.

18 And let me just finish the trifecta. So we had  
19 interest rates, we have had an adjustment in the tax  
20 credit market that will be long term, somewhere around a  
21 20 percent correction in terms of where pricing is. And  
22 until we have a Tax Code, we're going to have a lot of  
23 uncertainty as to which investors are in the market, what  
24 kind of pricing we can assume going forward.

25 And then the third thing is the speculation of



1 a large infrastructure bill, combined with finally  
2 stabilizing oil prices. So we're starting to see  
3 construction pricing that has inched up year over year, 15  
4 to 20 percent in costs over the last three to four years,  
5 continue to increase. We saw some of those oil and  
6 delivery premiums because of oil prices reduced in the  
7 last year, now we're seeing those premiums again as oil  
8 prices start to tick up, and as steel and iron and timber  
9 and all the petroleum based products.

10 So you really have a development community -- I  
11 mean, we can shake our fingers at the development  
12 community and say shame on you, you should have known  
13 this. I didn't know this. I have a 25-year career based  
14 on affordable housing. You could have knocked me over  
15 with a feather two weeks ago when the industry started to  
16 collapse overnight in terms of our investor base. So I  
17 don't think that shame on you is the right approach. I  
18 think the right approach is what the Department is doing,  
19 is to look a sources to gap the deals that are going to be  
20 walked, because there are deals that will close, they were  
21 in a fund, they had a committed investor, that investor  
22 has already put their money into the fund.

23 But there are deals, many of them in the 2016  
24 round, that do not currently have an equity investor, but  
25 that developer spent \$500,000 on plans and specs, he was a

1 month or two months from closing. We should not turn the  
2 baby out with the bath water. We need to make sure we  
3 save the 2016 deals. We need to work collectively  
4 together to find the new normal in our market and make  
5 sure that Brent and Tom have the information that they  
6 need to underwrite the deals going forward at a fair and  
7 equitable level, but understanding there will be a new  
8 normal in the interim and in the long term when we have a  
9 new Tax Code.

10 So I know I went over this morning but I feel  
11 very passionate as a long term advocate for affordable  
12 housing. And I also don't think we should lose any  
13 affordable developers, this business is tough enough. We  
14 shouldn't leave them hanging on the vine because of an  
15 unintended consequence of our change in government.

16 So thank you for your time this morning and  
17 happy to answer questions. But on behalf of TAAHP and on  
18 behalf of my organization, R4, thank you.

19 MR. OXER: Thank you, Nicole.

20 Any questions from the Board?

21 (No response.).

22 MR. OXER: Thanks.

23 I suppose that there would be a long list of  
24 folks who could potentially be knocked over by a feather  
25 as of the morning of November 9. There were a few

1 surprises that happened that morning. So dealing with  
2 that unpredictability is one of those things. The  
3 unpredictability, of course, is that the market just gags  
4 on, so we'll figure it out, we'll work it out.

5 Good morning.

6 MR. KIERCE: Good morning. My name is Dan  
7 Kierce. I'm with RBC Capital Markets. Like Nicole, I'm  
8 wearing two hats today. I represent one of the largest  
9 syndicators in the country and one of the largest  
10 syndicators in Texas. In addition, I'm a TAAHP board  
11 member, so part of what we wanted to do today was just  
12 kind of get information to you in terms of what's  
13 happening in the market. Fortunately, Tim has already  
14 kind of outlined a few things that are happening and  
15 things that they're thinking about in terms of trying to  
16 help these deals.

17 But we really have two problems. So the long  
18 term problem is tax reform is coming. I think we have  
19 good representation through our affordable housing  
20 coalition, through our members of Congress, the folks in  
21 the Senate, they know who we are, so if they do change the  
22 tax rates, whatever they drop them to, I think we'll get  
23 that fix to our program to keep it viable so that we still  
24 have the same amount of proceeds coming through. Whether  
25 they shorten the tax credit period or accelerate

1 depreciation, something to kind of keep those yields where  
2 we need them to be for the deals to pencil out. So long  
3 term I think we're going to be okay, we just don't know  
4 how long that's going to take.

5 But short term what's happening is all the 2016  
6 deals are getting kind of caught in that web. And so,  
7 Tim, to your point, there are some deals that are getting  
8 done but it's really kind of falling into a couple of  
9 different buckets. There are those deals that were very  
10 close to closing and what we've seen most investors do is  
11 they've come in and said, Hey, we've got to redo  
12 everything, we've got to look at a 20 percent tax rate or  
13 25 percent -- most are gravitating toward the 20 now. But  
14 if they had a couple of deals that were closing within a  
15 couple of weeks, they said, We're going to let that one  
16 go, we'll still close it; but everything else going  
17 forward, we're going to look at this 20 percent rate

18 And what we've found is when you drop from that  
19 35 percent tax rate, for every percent you drop, it's  
20 pretty much a penny, so dropping from a 35 percent tax  
21 bracket down to 20, you're really talking about a 15  
22 percent pricing movement. And so as Nicole highlighted,  
23 adding in the cost increases that we've seen that come  
24 year over year and the interest rate spike, it's harder to  
25 absorb that hit of 15 cents. And also, too, as we've seen

1 over the years with the QAP, most of these deals are going  
2 into nicer neighborhoods and better school systems which  
3 comes with a higher cost, the land is more expensive, the  
4 quality of build that's required by the towns is more  
5 expensive, so we've seen that spike in costs and it just  
6 never seems to go down.

7           So in the short term what you're going to see  
8 is, I think, immediately there will be some deals that  
9 still close, but the vast majority of the investors that  
10 are in the market have decided to sit out of the market  
11 until such time as they can figure it out. Most of these  
12 folks are sitting on billions of dollars worth of tax  
13 credits which overnight might become worth a lot less, and  
14 that raises some concerns. So they've got to figure out  
15 what they're doing first and then on a go-forward basis as  
16 they're looking at new deals, they're doing it very  
17 cautiously.

18           So realistically, when I look at the investor  
19 environment that's out there, there's probably only 10 or  
20 20 percent of those investors that are actually looking at  
21 new deals currently, and when they do look at those new  
22 deals that pricing is significantly different. And again,  
23 there's really no way to gap that difference, and so  
24 that's why we're going to look to TDHCA and kind of work  
25 on a deal-by-deal basis and see what can be done to help

1 these deals, because at the end of the day we all want the  
2 same thing, we all want to get affordable housing on the  
3 ground in these communities, we want to help the  
4 developers get that done and bring the investors into the  
5 State of Texas and get this affordable housing on the  
6 ground.

7 MR. OXER: Thanks, Dan.

8 Any questions?

9 MR. KIERCE: Thank you.

10 MR. OXER: And let me make a quick note. Dan,  
11 did you sign in?

12 MS. SISAK: Dan did, Nicole didn't. I'll just  
13 sign her in.

14 Janine Sisak. I'm here today on behalf of  
15 TAAHP.

16 You know, I've met with Tim and the staff a  
17 couple of times over the past couple of months about a  
18 variety of things. It's all becoming a blur we've been  
19 talking so much.

20 MR. OXER: Turbulence does that to you.

21 MS. SISAK: I know, it does.

22 But DMA is in receipt of a 2016 award on a deal  
23 outside of Waco, it's not a CRA market. Right after  
24 Thanksgiving we were pretty much left at the altar by our  
25 investor on a deal that we are very, very pregnant on, so

1 it was kind of like being ditched at a shotgun wedding, as  
2 we were talking about last night.

3 MR. OXER: That's why there's the shotgun.

4 MS. SISAK: Right, exactly. So we have plans  
5 fully complete, we're in for permitting, we bought the  
6 land, we can meet carryover, and our investor didn't offer  
7 to replace the deal, it was a flat out walk. So of  
8 course, some of my investor friends called right after  
9 that. We were all kind of talking about the state of the  
10 market and 98 cents was being thrown about, and I said,  
11 Oh, I can do it at 98 cents. We went in at 98 cents at  
12 application, I pro formed very conservatively, so I was  
13 like I think I can get that done. A week after that  
14 people were talking about 90 cents and not so much  
15 anymore.

16 Plus, the fact, I probably could make it work  
17 with 90 cents and perhaps more HOME funds, but I was in a  
18 roomful of investors last night and no one was offering me  
19 90 cents. I mean, really, because this particular deal is  
20 not in a CRA market, I don't know if I could get 90 cents  
21 and I don't know if that offer would be firm for any  
22 significant amount of time. So you know, we can probably  
23 get the deal done.

24 But I want to talk just globally about some of  
25 the solutions that we've talked to Tim about and what some

1 of my concerns are. I mean, I do appreciate Tim's time  
2 and any sort of ideas that staff has and the Board has in  
3 terms of helping 2016 deals, but I just want to mention a  
4 couple of concerns that I've raised to Tim so none of this  
5 will be news to him.

6 But going to the material amendment concept, I  
7 think there's some merit there. It just kind of upsets me  
8 to think about reducing the size of these projects in  
9 order to get a better leverage on the credits. I mean, you  
10 know, you lose the economies of scale in construction,  
11 people that are waiting for this housing in some of these  
12 smaller communities lose the opportunity to live in  
13 affordable housing, operating expenses get more stretched  
14 because you're having to do the same for less rental  
15 income. So while it's something that I would consider for  
16 our deal, it just doesn't seem like in the best interests  
17 of the state, quite frankly.

18 You know, we've talked about this concept of  
19 bonus points in 2018. Again, on our deal we are lucky  
20 enough to have site control and we own the site now, but  
21 some people aren't in that position where they can buy the  
22 site without an investor on board, so I don't think that's  
23 an option for a lot of 2016 applicants.

24 The HOME loan, we talked about that, I'll  
25 testify more about that later. I have concerns about some



1 of the terms. I do think the NOFA that's out will help a  
2 couple of deals but I just don't think it's far reaching  
3 enough in terms of giving the agency flexibility on some  
4 of the terms to help some of the applicants that are in  
5 some of the smaller markets and really might not have a  
6 shot at closing. So we've talked about these things  
7 before, you know, the 3 percent interest rate, allowing  
8 for those funds to be soft.

9 And really my big thing about the HOME loan is  
10 that you have to reapply. I mean, I was kind of hoping  
11 that if you a HOME award from the 2016 round or TCAP, that  
12 you would get some sort of bump because we were just  
13 underwritten a couple of months ago. Now, I understand  
14 things have changed but the math is pretty easy on what's  
15 changed. So that's some of my concerns about that.

16 And I really would like to consider allocating  
17 leftover 2016 credits to 2016 applications that already  
18 have awards. I mean, I know it's not a lot --

19 MR. OXER: Not a lot, there's like six.

20 MS. SISAK: Yeah. I mean, really anything  
21 helps these deals, anything helps these deals. And I  
22 really just encourage you all to just consider as many  
23 tools in the toolkit and let's get there. I think there's  
24 some opportunity, I think there's more opportunity. We're  
25 just scratching the surface on what you can do to help.

1 And you know, we'll see what happens in the next month or  
2 two, we'll see. But I think force majeure is going to be  
3 a provision that will need to --

4 MR. OXER: It's a highly discussed concept,  
5 it's going to have its own set of problems, but it's still  
6 a tool in the toolbox.

7 MS. SISAK: Right. And I hope that the  
8 position isn't waiting for actual change of law because  
9 who knows how long that's going to take, and we just can't  
10 afford as a state to just sideline all these 2016 deals  
11 and wait and see.

12 So I thank you for your time.

13 MR. OXER: Any questions?

14 (No response.)

15 MR. OXER: Thanks, Janine.

16 Barry, you're up.

17 Dr. Muñoz, did you have a question?

18 DR. MUÑOZ: I might have a question for Tom or  
19 Brent. The point earlier made by Granger about sort of  
20 other projects that might be able to go without great  
21 assistance, are there many of those, are there a few of  
22 those? Is there just one?

23 MR. OXER: How deep is the standby list?

24 DR. MUÑOZ: That point of ready to go without  
25 any intervention.

1 MR. STEWART: Brent Stewart, Real Estate  
2 Analysis.

3 Most of those deals that are kind of parked out  
4 there are deals that we haven't done the math on to  
5 understand them at all, so we don't know that answer.

6 MR. OXER: You did the ones down through the  
7 ones that qualified.

8 MR. STEWART: Right, exactly.

9 MR. OXER: So if we were go to into an  
10 aggressive approach to this, you'd have to go back and do  
11 some aggressive REA to evaluate these deals.

12 MR. STEWART: That's right. We're working on a  
13 number of amendments right now where we're having  
14 conversations with the lender and the syndicator to  
15 understand what's happened specifically with those deals  
16 and we're getting a mixed reaction of what's happened.  
17 We're having some where they're still committed to the  
18 deal but they can't commit to a price. We have others  
19 that are holding their price and their commitment. And  
20 then we have the ones where when we ask the question, you  
21 know, they're not there at all, and in some cases haven't  
22 been there in a while, and so the applicants are  
23 struggling to get somebody else to step in.

24 DR. MUÑOZ: You know, I recall like in '08-ish,  
25 right, when people were talking about 70 cents, 75, 75.

1 Remember that? I mean, there was a real like panic. Is  
2 that where we're at right now? I mean, not that number  
3 but in terms of that sense of dread.

4 MR. STEWART: Yes.

5 DR. MUÑOZ: Really?

6 MR. STEWART: I think that uncertainty is out  
7 there. I think it's being driven by something different  
8 than it was in 2008.

9 MR. COCHRAN: Hold your crown there.

10 Tim.

11 MR. IRVINE: I have a couple of comments. One,  
12 I believe somebody mentioned the possibility of bonus  
13 points in the 2018 round for 2016 deals that returned, and  
14 conceptually that's an attractive concept, but obviously  
15 it's subject to the rulemaking process, public input, the  
16 Board's input, your decision, and ultimately the  
17 governor's decision. So I don't want anybody leaving here  
18 thinking there's a commitment to give bonus points in the  
19 2018 round because it's not there.

20 The issue of the wait list, the depth of the  
21 wait list is going to vary from subregion to subregion and  
22 under the different set-asides. Some are deeper than  
23 others. But it's also December 15 and we don't have a lot  
24 of time to sort this out and then it automatically goes  
25 into next year's round. So my thinking is that there's a

1 strong likelihood that these are deals that will  
2 ultimately get done in the next cycle.

3 MR. OXER: Anything else to add, guys?

4 (No response.)

5 MR. OXER: Barry.

6 MR. PALMER: Barry Palmer, Coats Rose.

7 So I have proposal that won't solve all the  
8 problems but that will solve some of them and won't cost  
9 you anything.

10 MR. OXER: Turn the clock off, we want to hear  
11 what he's going to say.

12 (General laughter.)

13 MR. PALMER: In a number of cases there are  
14 developers who could get their local housing authority or  
15 housing finance corporation to come into their deal and  
16 partner with them and bring an ad valorem tax exemption  
17 into the deal, and that would allow them to generate a  
18 million to two million of additional debt because of the  
19 reduction in expenses. So it wouldn't require any more  
20 credits or any soft money, just the Board or the staff to  
21 allow the developers, on a case-by-case basis, it would be  
22 subject to a previous participation review, but to allow  
23 the developer to bring in as a partner their local housing  
24 authority or housing finance corporation.

25 MR. OXER: Good idea. Any questions?

1 (No response.)

2 MR. OXER: Okay. Thanks.

3 Sarah.

4 MS. SARAH ANDERSON: Good morning. Sarah  
5 Anderson with the Texas Coalition of Affordable  
6 Developers.

7 We want to echo much of what we've heard today.  
8 Especially with TAAHP, we're in agreement with all of  
9 their comments. Tim has been very helpful in trying to  
10 work through some of these issues.

11 The two items that I'd like to address, one, I  
12 think I'd like to reiterate with Janine that I think it  
13 would be preferable to see amendments that came in that  
14 allowed a little bit more changes to your deal that didn't  
15 impact the number of units that we're providing, which  
16 would be maybe doing fewer buildings, things that can be  
17 value engineering to the deal and expediting that sort of  
18 thing so that we can lower our costs so that we can make  
19 the deal work. To me, that's much more preferable on  
20 every level than trying to cut the number of units.

21 And with all due respect to Granger, I've got  
22 deals above the line and below the line, and so I can  
23 answer and say that where you were on the list is not a  
24 function of what credit pricing you put in, that everybody  
25 came in with pretty much the same assumptions, maybe a

1 penny here or there, but I don't think looking down the  
2 list you're going to find deals that made significantly  
3 different assumptions in credit pricing. You're going to  
4 see the same thing below the line as you are above the  
5 line. And I can state that as a fact because I've got  
6 both and there's nothing that I've got below the line that  
7 has any different assumptions than those above.

8 MR. OXER: The depth of the waiting list has  
9 less to do with the pricing on the deal than it has to do  
10 with the competition in the zone.

11 MS. SARAH ANDERSON: It's all about scoring and  
12 that's it.

13 Thank you.

14 MR. OXER: Thanks. Any questions?

15 (No response.)

16 MR. OXER: Terri, you're up.

17 MS. TERRI ANDERSON: Good morning. Terri  
18 Anderson, Anderson Development and Construction.

19 Just a quick comment that came from someone  
20 watching from home, who wanted to follow up with Barry's  
21 comments that not all housing authorities actually receive  
22 a tax exemption. So to allow us to use every possible  
23 tool but understand that every particular transaction  
24 isn't going to be afforded the ability to receive a tax  
25 exemption. For example, DHA does not receive a tax

1 exemption on housing tax credit developments.

2 MR. OXER: Don't forget to sign in.

3 MS. TERRI ANDERSON: Yes, sir.

4 MR. OXER: I think it's fair to say, just as a  
5 generic comment on this, that it's a state of significant  
6 transition, the whole market is in a turmoil at this point  
7 with respect to our participation and our sector of it. I  
8 don't think we're trying to find any mass application.  
9 It's obvious we're going to have to take this deal-by-deal  
10 and case-by-case to see what we can work out. As the  
11 markets would suggest to you, some are going to work and  
12 some aren't. So just prepared to recognize that while  
13 TDHCA and the staff are going to be working with you,  
14 you're going to have to work with the staff and be ready  
15 to do something to get to the middle ground there to make  
16 these work. We do have projects that are waiting on a  
17 wait list.

18 Janine, did you have anything else you wanted  
19 to say.

20 MS. SISAK: No, but I want to take my pen.

21 MR. OXER: Well, that's efficiency. I can see  
22 things are getting tight out there.

23 (General laughter.)

24 MR. OXER: With respect to the report, I guess  
25 we accept your report?



1           MR. IRVINE: Sure. I would just say that I  
2 would anticipate that the first few months of 2017 will be  
3 absolutely insane. The window will be starting to close  
4 for when these 2016 deals can commence construction, close  
5 and still meet placed in service, and their partners will  
6 be getting increasingly antsy as the clock ticks. So I  
7 would anticipate the first several months of 2017 we will  
8 be looking at a lot of different requests for amendments,  
9 inclusion of new partners to exercise the options Barry  
10 discussed, people looking to access different financing  
11 assistance, and so forth. And we're going to be doing  
12 that while we're administering the 2017 tax credit round  
13 and going through a legislative session, so it's going to  
14 be a crazy spring.

15           MR. OXER: What are you going to do in the  
16 afternoons, though?

17           MR. IRVINE: Going to the park with the dog.

18           MR. OXER: Okay. Well, with respect to that,  
19 is there anything else to add? I think we all recognize  
20 it's going to be a turbulent few months.

21           MR. IRVINE: I just want to actually make a  
22 shout-out, just a thank you to my teammates, to the  
23 internal teammates and the external teammates for  
24 everybody's willingness to just drop everything and come  
25 sit around the table and kick ideas around. That's how we

1 get stuff done.

2 MR. OXER: There's an emergency pending here,  
3 it's trouble, it's problematic, this is not business as  
4 usual. We've got to figure out how to do this, we've got  
5 to figure it out now because we've got a short clock  
6 running on getting all this worked out.

7 Michael, you have an item you want to bring up,  
8 3(b)?

9 MR. LYTTLE: Yes, sir. This is report item  
10 3(b) just on our agency's submission to the 85th  
11 Legislature on two reports that were mandated, one of them  
12 being Homelessness among Veterans in Texas, and the other  
13 was Youth Homelessness in Texas. Just a few comments.

14 Each of these reports were mandated last  
15 session as a result of legislation that was passed by  
16 State Senator Sylvia Garcia and former Representative  
17 Sylvester Turner, who is now the mayor of Houston. Each  
18 had a statutory deadline of December 1, which we submitted  
19 on time.

20 The thing, I guess, to point out is that really  
21 both of these studies couldn't have been done without the  
22 good help of the Texas Interagency Council for the  
23 Homeless, which is chaired by Mike Doyle. Mike and his  
24 council members were very actively engaged in the review  
25 and culmination of these reports and studies. So I just

1 want to offer a big thank you to Mike and to the TICH for  
2 the outstanding that they did.

3           The Homelessness among Veterans in Texas study  
4 was also coordinated -- I wanted to bring this up -- by  
5 our own Naomi Cantu, who is here today. Naomi, raise your  
6 hand. Naomi did a phenomenal job with this study. She  
7 worked long hours, a lot of weekends. In fact, if I'm not  
8 mistaken, she even convinced her husband to postpone their  
9 honeymoon so she could do work on this study, so that's  
10 dedication.

11           MR. OXER: That's a fact.

12           MR. LYTTLE: Yes. So she and the TICH  
13 coordinated work groups related to the study that involved  
14 a number of organizations to get input on homelessness  
15 issues regarding veterans. There were multiple public  
16 roundtables that were involved, and also, Naomi presented  
17 on this item to several conferences around the state to  
18 kind of gather input.

19           The study basically, I won't get into the  
20 details of it, but it did report that the good news is  
21 that there are several large cities in Texas that have  
22 significantly reduced veterans homelessness, Houston, San  
23 Antonio, and here in Austin. And while the study does  
24 document some good strategies that have been used to help  
25 alleviate the problem, there's clearly a lot of room to

1 go.

2           There were five recommendations in the study  
3 and generally they dealt with increasing partnerships with  
4 the rental markets, identifying veterans and sharing  
5 information, increasing coordination among the groups,  
6 increasing housing and service resources, improving access  
7 to employment resources, and also improving access to  
8 mental and physical health resources for veterans. So now  
9 we'll see how the 85th Legislature responds to the study  
10 and the further work that they'll mandate as a result of  
11 that.

12           The other study which was the Youth  
13 Homelessness in Texas report, you received several reports  
14 during the year on that. If you recall, we had a video  
15 earlier this year that I know resonated with a lot of us  
16 that saw it. And as with the Veterans Homelessness study,  
17 TDHCA could not have submitted the report without the  
18 great work and contributions from several external  
19 parties. The two that I'm thinking of are the Texas  
20 Network of Youth Services, TNOYS, led by Christine  
21 Gendron, and also the University of Houston Graduate  
22 College of Social Work -- Dr. Sarah Narendorf, I believe,  
23 was the head there. Both did great work.

24           And really it's a pioneering piece of work  
25 because to our knowledge it's the first study of its kind

1 in the State of Texas that was done about youth  
2 homelessness. So both organizations provided a lot of  
3 opportunity for the public to chime in and work with us on  
4 the study and to gather input, as well as the TICH was  
5 involved with that also.

6 And again, just from a staff perspective, there  
7 were two people at TDHCA that really invested a lot of  
8 time and energy to help get this thing across the finish  
9 line: Brenda Hall and Elizabeth Yevich, who is our  
10 director of the Housing Resource Center. Elizabeth is  
11 here today. So again, great work by the both of them.

12 There's a ton of good information in the  
13 report. One of the things, just very quickly, that blew  
14 me away, and I don't think a lot of people really  
15 understand the gravity of the situation, in the 2014-15  
16 school year it was reported in the study that there were  
17 more than 110,000 children in the State of Texas who are  
18 homeless. That's basically anybody ages three and up  
19 during the school year. The reasons why they were  
20 homeless varied, as well as the length of time that  
21 they've been homeless, but 110,000, and it's estimated  
22 that that number is probably a conservative figure as  
23 well.

24 Finally, just the reports. The recommendations  
25 from this report were improving data sources to help us

1 count homeless youth, providing a full continuum of  
2 housing related supports, increasing service delivery and  
3 supports to youth identified through schools, trying to  
4 prevent homelessness by addressing the needs of youth in  
5 foster care, and then removing barriers in terms of  
6 existing homelessness strategies.

7 So again, we've submitted both of those reports  
8 on time, we're waiting to see what the legislature decides  
9 to do now, and that kind of culminates my comments.

10 MR. OXER: Any thoughts from the Board?

11 DR. MUÑOZ: You know, Mike, it's timely that  
12 you should bring up in particular the case of veterans.  
13 Last night I had dinner with one of the Texas Workforce  
14 commissioners, Julian Alvarez, and one of the three areas  
15 that he's looking at, disabled veterans and recently  
16 adjudicated adults in Texas, and I was stunned by the  
17 number of veterans who he was aware are homeless, are  
18 under-employed, unemployed, that are still suffering  
19 debilitating psychological conditions, often, related to  
20 their service. It was a very large number, and so I mean,  
21 I'm glad that we're involved in some measure with  
22 understanding that population.

23 I know that a good friend of mine, Commissioner  
24 Raymond Paredes, a commissioner for higher education, who  
25 is also a Vietnam era Veteran who was there, is also

1 concerned. As one of the largest sort of veterans states,  
2 with one of the largest military presences in the country  
3 and large number of veterans, we've got to pay closer  
4 attention to the care of veterans, post-uniformed service,  
5 and how to get them trained, either traditional post-  
6 secondary education or trades, so that they're  
7 contributing as they did in uniformed service to the  
8 state.

9 I served and so I appreciate that we're  
10 involved. I'd like a copy of the report, the one that's  
11 specifically related to veterans, because I'd like to get  
12 that to the commissioner and then have him share that with  
13 the other two commissioners as part of their preparation  
14 for the legislative session.

15 MR. LYTTLE: Absolutely.

16 MR. OXER: Do you post this report, Michael,  
17 both reports, on our website?

18 MR. LYTTLE: Yes. I believe they're both on  
19 the website right now.

20 But I'll make sure, Dr. Muñoz, you get a copy.

21 MR. OXER: Without getting too deep in the  
22 weeds on this, I'm looking for an answer, does it suggest  
23 that the number of homeless veterans we have and number of  
24 homeless children, is it going up or down? Do we have a  
25 trend line in any direction, or is it suggesting going

1 down? Even though the population is increasing, the  
2 population may actually increase, but as a percentage of  
3 the population is it going down? Do we know, do we have a  
4 sense of that?

5 MR. LYTTLE: I would probably ask Naomi if she  
6 could step up for a minute and speak to that. She's our  
7 subject matter expert on this.

8 MR. OXER: Cool.

9 MS. CANTU: Good morning. My name is Naomi  
10 Cantu with the Texas Department of Housing and Community  
11 Affairs. I'm the coordinator for Homelessness Programs  
12 and Policy.

13 For veterans, the good news is that the trend  
14 line has been going down since 2010. We have seen a 66  
15 percent decrease in veteran homelessness for the point in  
16 time count. For the youth homelessness, it depends on  
17 which measurement we're counting, I'd have to look at that  
18 more closely in the study. I do know that for the  
19 schools, they're counted a bit differently.

20 DR. MUÑOZ: Mr. Chair, maybe we could ask Naomi  
21 to come back at a future meeting and just give us a  
22 synopsis, give us an executive summary of both reports so  
23 that we can understand it for ourselves a little bit, but  
24 also further appreciate the work that you've done. It's a  
25 very important subject for both populations. Those young



1 people are eventually going to become older people, and we  
2 obviously want them to have the stability of a home, the  
3 academic achievement that comes from the stability of a  
4 home, the employability, the social benefit, so I see it  
5 all related. And so maybe you'll consider an invitation  
6 to come back and give us a little bit more detail.

7 MR. OXER: We would welcome that. Thanks,  
8 Naomi.

9 Any more questions or comments on that one?

10 (No response.)

11 MR. OXER: Let's go to item 4. Monica. You've  
12 been busy.

13 MS. GALUSKI: Good morning. Monica Galuski,  
14 director of Bond Finance.

15 This is the presentation, discussion and  
16 possible action on Resolution 17-011, approving an  
17 increase in authorization for the Taxable Mortgage  
18 Purchase program, authorizing the execution of documents  
19 and instruments relating to the foregoing, and containing  
20 other provisions relating to the subject.

21 The Department's Taxable Mortgage Purchase  
22 program, which we call TMP-79, was implemented in October  
23 of 2012 with a maximum dollar amount of loans that could  
24 be purchased under the program of \$600 million. That  
25 amount was increased to a billion dollars in December of

1 2014. The program is currently nearing the billion dollar  
2 maximum with approximately \$900 million in purchased loans  
3 and over 300 million loans in process. Now that the  
4 program has been up and running for over four years, and  
5 given our current and projected loan volume, we're  
6 recommending an annual maximum of a billion dollars for  
7 the TMP-79 program.

8 MR. OXER: So what you're saying is we're going  
9 from getting out of that category of being a sleepy little  
10 backwater agency to being a serious economic contributor  
11 to the state.

12 MS. GALUSKI: I think that's a fair statement.

13 And because this item and the next are both, at  
14 least in part, related to the increased loan volume we've  
15 seen, I thought I'd give you just a little bit of  
16 perspective o that. It's a little embarrassing to be back  
17 in front of you so quickly after we implemented the  
18 changes requesting additional changes --

19 MR. OXER: Hey, that just means things went  
20 well.

21 MS. GALUSKI: -- but again, it's also very  
22 exciting to be standing in front of you doing that.

23 On October 1, that was the release date for our  
24 restructured program and that was when we put Idaho HFA in  
25 as our new master servicer, we were able to lower our

1 mortgage rate due to several changes including the bank  
2 loan we took through Woodforest for down payment  
3 assistance. So when we put the structure together, we  
4 expected and factored in increased origination. We  
5 thought the program would be well received; I assumed a 50  
6 percent increase in loan volume. I was way, way off.

7           So just from a perspective standpoint, fiscal  
8 year '14 was the highest year in terms of the dollar  
9 amount of loans that the Department pooled under the  
10 program. We pooled \$236 million that year. Based on our  
11 current volume, we expect to pool somewhere between \$650  
12 million and \$800 million in the next twelve months, maybe  
13 more -- I'm not going to say the "B" word out loud -- but  
14 we're on a very strong, fast trajectory. The response has  
15 been overwhelmingly positive. So while it's a good  
16 problem to have, there are some adjustments that have to  
17 be made along the way, such as escrow amounts, program  
18 limits and other changes.

19           So in addition to increasing the dollar amount  
20 of loans that can be purchased under TMP-79, we're also  
21 requesting approval to, if necessary, use available funds  
22 to purchase up to \$7 million of TMP-79 mortgage loans with  
23 Department funds with available funds under our indentures  
24 that could be released to pledge as additional collateral  
25 to our Federal Home Loan Bank line.

1 Under the current structure, we purchase the  
2 mortgage loans using advances under the Federal Home Loan  
3 Bank line, but we're finding -- you'll see in the next  
4 item -- we're bumping up against escrow amount limits, et  
5 cetera, and one option is to increase escrow funds. We  
6 have to do that in \$5 million chunks, number one; number  
7 two, you have to tie that up for a minimum of twelve  
8 months. So if we're looking at addressing just a spike in  
9 origination or something that's unanticipated, it might be  
10 more efficient for us to go ahead, we fund some of the  
11 loans, post them as collateral, and then as they move  
12 through the process, we bring the money back in.

13 So that's authority we're requesting just to  
14 keep the program continually functioning without any  
15 interruptions and at the most efficient level.

16 MR. OXER: So you're essentially asking for  
17 authorization and authority to implement those responses  
18 to the market that you see faster than we could respond to  
19 as a board that meets only once a month.

20 MS. GALUSKI: Absolutely. We may not always  
21 have time.

22 MR. OXER: I get it.

23 MS. GALUSKI: So I'm available for questions.

24 MR. OXER: We're doing all right so far, so  
25 we're inclined to see this.

1 MS. GALUSKI: But the staff does recommend  
2 approval of Resolution 17-011, and any questions, I'll be  
3 happy to answer.

4 MR. OXER: So you're showing this as it's not a  
5 spike, this is a long term trend.

6 MS. GALUSKI: This appears to be a trend.

7 MR. OXER: This is a big deal.

8 MS. GALUSKI: This is a big deal.

9 MR. OXER: This could be a ten-figure deal  
10 eventually.

11 MS. GALUSKI: This is a big deal.

12 MR. OXER: That other word starts with a B too.  
13 Right? B in big and B in what's that other word, Tim?  
14 That's all right. Don't say it.

15 (General laughter.)

16 MS. BINGHAM ESCAREÑO: I'll move to resolve.

17 MR. OXER: Motion by Ms. Bingham to approve  
18 staff recommendation to resolve on item 4(a).

19 MR. GANN: I want to second that one.

20 MR. OXER: And a second by Mr. Gann. No  
21 request for comment.

22 Motion by Ms. Bingham, second by Mr. Gann to  
23 approve staff recommendation resolving 17-011. Those in  
24 favor?

25 (A chorus of ayes.)

1 MR. OXER: And opposed?

2 (No response.)

3 MR. OXER: There are none. It's unanimous.

4 4(b).

5 MS. GALUSKI: Still Monica Galuski.

6 Presentation, discussion and possible action on  
7 Resolution 17-012, approving increases in the maximum  
8 amount of outstanding advances under the advances and  
9 security agreement with Federal Home Loan Bank of Dallas  
10 and maximum amount and deposit in the escrow to secure  
11 such advances, authorizing the execution of documents and  
12 instruments relating thereto, making certain findings and  
13 determinations in connection therewith, and containing  
14 other provisions relating to the subject.

15 Again, this is very similar to the prior item.

16 In this one the advance agreement we have with Federal  
17 Home Loan Bank currently has a maximum and we set it up  
18 with a maximum of \$75 million of dollars in the advance  
19 line at any one point in time. Given where we're at with  
20 our origination and the way the pooling process works, et  
21 cetera, the \$75 million is not enough.

22 MR. OXER: We're easing the constrictions on  
23 the process to open it up and give you some more latitude  
24 to implement.

25 MS. GALUSKI: Right. Because we only pool MBSs

1 once a month and so we're capping out. So we'd like to  
2 move the advance line to a maximum of \$125 million. At  
3 the same time we post an escrow and so concurrent with the  
4 increase in the advance line, we would request an increase  
5 in the amount that we can take that escrow fund up to.  
6 It's currently at \$5 million, we're requesting the ability  
7 to increase it to \$15 million, but we're looking at an  
8 immediate need and an immediate response of another \$5  
9 million. We wouldn't add any additional until we see that  
10 we really need to.

11 MR. OXER: Okay. So you're going to run the  
12 escrow up from \$5 million to \$10 million, with the  
13 prospect of taking it up to \$15- later? So why would we  
14 not give you that now with the idea that you would inform  
15 us when you use it?

16 MS. GALUSKI: Because, again, I just don't know  
17 timing-wise if we're going to --

18 MR. OXER: Actually, I suspect we'll probably  
19 give you the add up to \$10 million and I hope we see you  
20 next month.

21 MS. GALUSKI: My projections show that it won't  
22 be that long before we need to take it to the \$15 million,  
23 we just don't want to do that today because that is  
24 locking it up. But if you would prefer that we come back  
25 for another \$5 million increase, whatever the Board

1 prefers, we will do.

2 MR. OXER: Any thoughts from the Board? I like  
3 the idea of hearing from you because I think we have the  
4 best bond shop in the state, in any agency in the state.

5 MS. GALUSKI: We will be happy to come back and  
6 request additional.

7 MR. OXER: Any thoughts? Let's do that.

8 Do we have to change this resolution, Tim?  
9 What we're saying is you've got it at \$5-, you want to  
10 take it to \$10-, you have the authority to take it to \$10-  
11 now but you have the authority to take it to \$15- later.

12 MS. BINGHAM ESCAREÑO: It looks like the  
13 resolution gives them to \$15-, so it moves the agreement  
14 from \$75 million to \$125-, and then increases maximum  
15 escrow deposit to \$15- from \$5-, so they could go to \$10-  
16 and then this would allow them to go to \$15-.

17 MR. OXER: Just gives you a little more  
18 breathing room to be able to loosen, they're still exactly  
19 the same constraints, they're just wider, so you've got  
20 more room to work within those constraints.

21 MS. GALUSKI: Right.

22 MR. GANN: We're really just saying if we stay  
23 with this resolution, she can still come back and tell us,  
24 hey, we're going up to the \$15-. That would be easier on  
25 them. So let's stick with the resolution. I'll make the



1 motion.

2 MR. OXER: I was going to say we're about to  
3 hear a motion from Mr. Gann.

4 MR. GANN: The resolution as written.

5 MS. BINGHAM ESCAREÑO: I'll second.

6 MR. OXER: Motion by Mr. Gann, second by Ms.  
7 Bingham to approve staff recommendation on item 4(b) for  
8 Resolution 17-012. No request for public comment.

9 Motion by Mr. Gann, second by Ms. Bingham, item  
10 4(b). Those in favor?

11 (A chorus of ayes.)

12 MR. OXER: And opposed?

13 (No response.)

14 MR. OXER: There are none. It is unanimous.  
15 And just for the record, Monica, good job.

16 MS. GALUSKI: Thank you.

17 MR. OXER: Okay. Jennifer.

18 MS. MOLINARI: Good morning. I'll be  
19 continuing on one of our themes for today's Board meeting.

20 Chairman Oxer, Board members, my name is  
21 Jennifer Molinari, and I'm the director of the HOME and  
22 Homeless Programs Division. And today I'm pleased to  
23 present my first Board action request as director of the  
24 HOME and Homeless Programs Division.

25 And I don't know if you're aware, but in

1 October of 2016 this year, the Emergency Solutions Grants  
2 Program, or ESG, and the Homeless Housing and Services  
3 Program, or HHSP, was combined with the Department's HOME  
4 Investment Partnerships Program into a newly formed HOME  
5 and Homeless Programs Division. HOME, ESG and HHSP  
6 support a continuum of services spanning homelessness to  
7 rental assistance to homeownership, and in addition, HOME  
8 and ESG share common federal oversight through the U.S.  
9 Department of Housing and Urban Development, or HUD.

10 So with that, item 5(a) is possible action on  
11 conditional Emergency Solutions Grant awards for continuum  
12 of care lead agencies to perform a local competition of  
13 ESG grant funds on behalf of the Department. The ESG  
14 program focuses on assisting people to regain stability  
15 quickly in permanent housing situations after experiencing  
16 a housing crisis or homelessness. By federal statute, ESG  
17 subrecipients are required to work closely with housing  
18 and service programs, including continuum of care  
19 agencies, known as CoCs. The CoC program is a HUD program  
20 designed to promote community-wide commitment to ending  
21 homelessness. There are eleven CoCs in Texas and ESG  
22 funding is allocated in each CoC region for competition.

23 So in October of 2016, we released a request  
24 for applications for CoC lead agencies to locally manage  
25 our 2017 and 2018 ESG program award process. The

1 Department is building on the success of a similar  
2 process that we used during 2016 ESG awards which allows  
3 for greater local decision-making of priority in the  
4 community's homeless programs. So the CoC lead agencies  
5 are selected to run local competitions, they will release  
6 locally tailored ESG applications, they will rank those  
7 applications and recommend awards to the Department.

8 Four CoC lead agencies applied to the  
9 Department, and if awarded today, will receive ESG  
10 administrative funds as indicated in your Board action  
11 request. And with that, staff recommends award for the  
12 following four agencies to run local competitions on  
13 behalf of the Department: the Metro Dallas Homeless  
14 Alliance, Tarrant County Homeless Coalition, El Paso  
15 Coalition for the Homeless, and Coalition for the Homeless  
16 of Houston and Harris, Fort Bend and Montgomery Counties.

17 And with that, I'll be happy to answer any  
18 questions that you might have.

19 MR. OXER: Any questions?

20 (No response.)

21 MR. OXER: We're essentially outsourcing the  
22 administrative operation of this program to those guys by  
23 giving them some money to handle their costs.

24 MS. MOLINARI: Yes. They'll be awarding out  
25 about \$3.5 million in ESG funds locally. We're

1 recommending awards for that amount.

2 MR. OXER: I like it. Hear a motion to  
3 consider.

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. OXER: Motion by Ms. Bingham to approve  
6 staff recommendation on item 5(a).

7 DR. MUÑOZ: Second.

8 MR. OXER: Second by Dr. Muñoz. There's no  
9 request for public comment.

10 Motion by Ms. Bingham, second by Dr. Muñoz to  
11 approve staff recommendation on item 5(a). Those in  
12 favor?

13 (A chorus of ayes.)

14 MR. OXER: Those opposed?

15 (No response.)

16 MR. OXER: There are none. It is unanimous.  
17 Somebody has got 5(b). Naomi, you're back.

18 MS. CANTU: Hello again. My name is Naomi  
19 Cantu, coordinator for Homelessness Programs and Policy.

20 Item 5(b) is authorization to release a notice  
21 of funding availability, or NOFA, for fiscal years 2017  
22 and 2018 of the Emergency Solutions Grants Program, also  
23 known as ESG. The Department receives ESG funding from  
24 the U.S. Department of Housing and Urban Development, or  
25 HUD, in the amount of approximately \$8.8 million per year,

1 depending on federal allocations.

2 As you heard in item 5(a), once the NOFA is  
3 released, continuum of care agencies in four regions will  
4 run a local competition on behalf of the Department for  
5 ESG funding. The Department will administer a competition  
6 for funding in the remaining seven continuum of care  
7 regions. HUD requires the Department to commit EGS  
8 funding within 60 days after receipt of an award letter,  
9 which typically comes in the summer of each year.

10 In order to commit the funding, staff is  
11 requesting authorization of the NOFA in front of you today  
12 which will open officially in early January. Applications  
13 will be due in late March. After time for scoring and any  
14 appeals, the awards and recommendations will be presented  
15 to the Board in the summer of 2017.

16 The ESG NOFA under consideration has several  
17 changes from last year's ESG NOFA as a result of a public  
18 input process from September to November of this year.  
19 The Department held two roundtables and an online forum on  
20 key issues for the application cycle. For example, the  
21 NOFA reflects a two-year award cycle which received broad  
22 support during the roundtables and the online forum. A  
23 two-year award allows for greater predictability for  
24 subrecipients and program participants, and reduces  
25 administrative costs for subrecipients and the Department.

1           In addition, three different allocation models  
2 were presented during the online forum. As a result of  
3 public input, a fourth model was also presented on the  
4 online forum which addressed several concerns of public  
5 input. The allocation formula in the NOFA includes two  
6 new factors and new rates.

7           Staff recommends that the NOFA in front of you  
8 today be approved for release, and allow for release in  
9 early January to prepare for the next program year.

10           With that, I'm available for any questions.

11           MR. OXER: Any questions from the Board?

12           (No response.)

13           MR. OXER: Then we'll have a motion to  
14 consider.

15           DR. MUÑOZ: So moved.

16           MR. OXER: Motion by Dr. Muñoz to approve staff  
17 recommendation on item 5(b).

18           MR. GANN: Second.

19           MR. OXER: And second by Mr. Gann. No request  
20 for public comment.

21           Motion by Dr. Muñoz, second by Mr. Gann to  
22 approve staff recommendation on item 5(b). Those in  
23 favor?

24           (A chorus of ayes.)

25           MR. OXER: And those opposed?

1 (No response.)

2 MR. OXER: There are none. It's unanimous.

3 All right. Here's what we're going to do.

4 We've got a couple of significant items coming up here.

5 It's quarter after 10:00, we've been in our seats here for

6 a while. We're going to take a 15-minute break. It's

7 10:12. Let's be back in our chairs at 10:30.

8 (Whereupon, at 10:12 a.m., a brief recess was  
9 taken.)

10 MR. OXER: All right. Let's get back to it,  
11 folks.

12 Okay. The action item 6 on the rules. Raquel.  
13 Good morning.

14 MS. MORALES: Raquel Morales, director of Asset  
15 Management.

16 Item 6 is presentation, discussion and possible  
17 action on an order adopting the repeal of 10 TAC Chapter  
18 10, Subchapter E, and an order adopting the new 10 TAC  
19 Chapter 10, Subchapter E concerning our post-award and  
20 asset management rules.

21 At the last meeting, the Board approved the  
22 draft 2017 asset management rules to be published in the  
23 *Texas Register* for public comment. Public comment started  
24 on October 28 and ended at 5:00 p.m. on November 28. The  
25 Department received comments from a total of six

1 individuals and/or organizations, and that comment is  
2 summarized for you in the Board action item that's in the  
3 Board book. I don't think there was anything really huge  
4 or mind blowing, so I'm not going to go into any detail,  
5 but if you guys have any questions, I'm happy to answer  
6 those.

7 MR. OXER: Just a little buffing and polishing  
8 on the thing?

9 MS. MORALES: Yes. Otherwise, I recommend  
10 approval of the asset management rules.

11 MR. OXER: Leslie, did you have a question, did  
12 I see that?

13 MS. BINGHAM ESCAREÑO: No.

14 MR. OXER: Any questions from the Board?

15 (No response.)

16 MR. OXER: Motion to consider on item 6(a).

17 MS. BINGHAM ESCAREÑO: So moved.

18 MR. OXER: Motion by Ms. Bingham to approve  
19 staff recommendation on item 6(a). Do I hear a second?

20 DR. MUÑOZ: Second.

21 MR. OXER: Okay. Second by Dr. Muñoz. There  
22 appears to be no request for public comment.

23 Motion by Ms. Bingham, second by Dr. Muñoz to  
24 approve staff recommendation on item 6(a). Those in  
25 favor?



1 (A chorus of ayes.)

2 MR. OXER: And opposed?

3 (No response.)

4 MR. OXER: There are none. It's unanimous.

5 MS. MORALES: Thank you.

6 MR. OXER: Marni. We knew we'd see you today,  
7 Marni.

8 MS. HOLLOWAY: I know. Just a few things  
9 today.

10 MR. OXER: You're pulling anchor on the whole  
11 thing today from here on out. Right?

12 MS. HOLLOWAY: Exactly. I'm just going to take  
13 this all home.

14 Item 6(b) is presentation, discussion and  
15 possible action on orders adopting 10 TAC Chapter 13,  
16 concerning the Multifamily Direct Loan rule and directing  
17 its publication in the *Texas Register*. This is the final  
18 rule that will provide a framework for our direct loan  
19 program in 2018 and the NOFA that relies on this rule is  
20 item 7(c) on today's agenda.

21 I need to shout out to Andrew, who has done a  
22 tremendous amount of work, and Megan, who has helped us  
23 quite a bit with making sure that this brand new rule  
24 meets all of our needs and requirements moving forward.

25 The Board approved the draft of the new Chapter

1 13 at the October 13 Board meeting, and it was published  
2 in the *Register* for comment. During the public comment  
3 period between October 28 and November 28, a public  
4 hearing was held here in Austin on November 10. The  
5 transcript from that meeting is included in your Board  
6 materials, as are the comments received from six  
7 organizations and individuals.

8           There are several changes to Chapter 13 to the  
9 final that we made in response to the comments we  
10 received. We changed the requirement for eligibility  
11 determinations for applications that have received awards  
12 or allocations from the Department in previous rounds so  
13 that their eligibility is determined with their award  
14 rather than having to request an earlier determination.  
15 We also changed the limitation on expenses incurred prior  
16 to the application to align with other fund sources.

17           It's important to note here that we can only  
18 use TCAP funds for projects that have already started.  
19 Limitations on HOME and National Housing Trust Funds make  
20 it almost impossible to use those sources if construction  
21 is already rolling. We also amended one of the  
22 tiebreakers so that an applicant is limited in how many 15  
23 percent units they can pledge. We removed the requirement  
24 that an applicant certify they can provide a letter of  
25 credit or guarantee. While the requirement in rule was

1 only for certification, we believe this item could use a  
2 little more development prior to implementation. We may  
3 bring it back next year.

4 Staff recommends approval of the final order  
5 adopting the proposed 10 TAC Chapter 13 concerning the  
6 Multifamily Direct Loan rule.

7 MR. OXER: Any questions?

8 MS. BINGHAM ESCAREÑO: Move to approve.

9 MR. GANN: I'll move to approve.

10 MS. BINGHAM ESCAREÑO: Second.

11 MR. OXER: Okay. Motion by Mr. Gann to approve  
12 staff recommendation on item 6(b), second by Ms. Bingham.

13 No request for public comment.

14 Motion by Mr. Gann, second by Ms. Bingham to  
15 approve staff recommendation on item 6(b). Those in  
16 favor?

17 (A chorus of ayes.)

18 MR. OXER: And those opposed?

19 (No response.)

20 MR. OXER: There are none.

21 Take it on home, number 7.

22 MS. HOLLOWAY: 7(a) is presentation, discussion  
23 and possible action on an appeal of the denial of  
24 carryover for housing tax credit application for Abbington  
25 Place. This is application number --

1 MS. SARAH ANDERSON: We were coming up to  
2 comment on the last item but the vote went so fast.

3 MR. OXER: Well, you know, we were talking  
4 about and she was up there.

5 MS. SARAH ANDERSON: The vote just went really  
6 fast.

7 MR. OXER: Well, all right. Everybody hold  
8 your ground. We'll take your comments.

9 MS. SARAH ANDERSON: Sarah Anderson.  
10 And we worked with the Department, we  
11 appreciate some of the changes made, but we still are  
12 concerned about some of the flexibility on these loans. A  
13 lot of the discussion that we've heard from the Department  
14 is that the Department is trying to operate more like a  
15 bank, and unfortunately, we don't feel like that that is  
16 necessarily the exact role of the Department. These funds  
17 are necessary to do what banks can't do. A bank can do  
18 market rate and to have your loan program mirror market  
19 rate lending practices is a little problematic.

20 The biggest item is the hard debt, the 3  
21 percent hard debt number is problematic and we were hoping  
22 that there would be some language that would allow for a  
23 little bit of flexibility, especially as the 2016 deals  
24 come in, some of those are going to need to maybe have  
25 zero percent interest rates.

1           So we've spoken with staff, they obviously  
2 don't agree with us, but I think that based on the  
3 discussion that we had earlier today in needing  
4 flexibility, we really feel like it would be nice to have  
5 some language in there that would allow staff to go  
6 outside of some of the hard rules that are in it right  
7 now. And specifically, I'm mostly concerned about the  
8 interest rate, and 3 percent is good if it's my only debt,  
9 but it doesn't help me if I've got a huge gap now because  
10 of credit pricing issues.

11           MR. OXER: All right. Terri.

12           MS. TERRI ANDERSON: Good morning. Terri  
13 Anderson, Anderson Development and Construction.

14           I would like to echo the majority of the  
15 information Sarah just provided to you all and then  
16 broaden more specifically the 20 percent equity component  
17 that has changed and to at least discuss the difference in  
18 the rule. And the rule that we had previously would  
19 require 10 percent equity on a multifamily only type loan,  
20 and the rules have now been modified to require 20 percent  
21 equity on any transaction that has multifamily loans as  
22 the only source of Department funds, but it doesn't  
23 consider if there are other sources outside of the  
24 Department. So the rule essentially is requiring 20  
25 percent equity, essentially hard equity, if a multifamily

1 direct loan is the only source of financing from the  
2 Department that goes into your sources.

3 And when Sarah was talking about the banking  
4 type criteria, when you're looking at 20 percent equity,  
5 any typical investor who's putting private equity in would  
6 expect market rate returns. And HOME money and TCAP  
7 money, for example, would be the actual vehicle through  
8 which any level of affordability or the sole level through  
9 which any affordability is being achieved or attained. So  
10 if you can receive an 80 percent loan from any bank, then  
11 there would be no creation of new affordable housing using  
12 this program if that is the sole opportunity to do so. So  
13 if you've got 20 percent equity coming in that's private  
14 and you can get an 80 percent bank loan, essentially, then  
15 those developments would no longer even seek a multifamily  
16 loan from the Department which would negate the  
17 affordability associated with it.

18 Thank you.

19 MR. OXER: Appreciate your comments.

20 Janine, did you want to say something on that  
21 item?

22 MS. SISAK: Yes, just very quickly.

23 MR. OXER: Okay.

24 MS. SISAK: Janine Sisak on behalf of TAAHP.

25 We also would like to see some flexibility in

1 the rule about the terms of the direct loan, either  
2 allowing for the funds to be soft or lowering the interest  
3 rate, and in the absence of getting in the rule, I really  
4 hope staff can make that recommendation to the Board for  
5 exception to those rules for 2016 deals and 2017 deals  
6 that have greater gap due to the uncertainty in the equity  
7 market.

8 And then I'll have further comments about the  
9 NOFA and some of the requirements there, but these are  
10 similar requirements what you've heard and what I  
11 mentioned earlier.

12 MR. OXER: Okay. Marni, quick question here.

13 MS. HOLLOWAY: Yes.

14 MR. OXER: Does the rule as it's being approved  
15 or would be approved under this motion -- or as it was  
16 just approved under this motion, we still have the  
17 flexibility to adopt waivers and such on that. Is that  
18 correct?

19 MS. HOLLOWAY: Yes. And actually, the loan  
20 terms section was modified just a little bit to clarify.  
21 The NOFA and the application are going to be at 3 percent  
22 because we have to start somewhere. There's language here  
23 that says: The Department may recommend an alternative  
24 that makes the development feasible under all applicable  
25 sections of 10 TAC 10.300 which would be our underwriting

1 rules, and 13.8(c) which would be our rules. The interest  
2 rate amortization period and term for the loan will be  
3 fixed by the Board at award.

4 MR. OXER: Okay. All right. Based on that,  
5 Mr. Gann or Ms. Bingham, do you care to modify your motion  
6 or to move to reconsider?

7 MR. GANN: No. I think it works.

8 MR. OXER: Ms. Bingham? We have to have that  
9 on the record, Leslie.

10 MS. BINGHAM ESCAREÑO: My second stands.

11 MR. OXER: It stands, but does any Board member  
12 have a motion to reconsider the motion that we just  
13 completed? The answer is no.

14 All right. The rule is there. Apparently the  
15 flexibility exists that they appear to be looking for.

16 MS. HOLLOWAY: We made sure to include that  
17 flexibility because we've run into some issues in the  
18 past.

19 MR. OXER: Okay. Next one.

20 MS. HOLLOWAY: Next one. 7(a) is presentation,  
21 discussion and possible action on appeal of the denial of  
22 carryover for housing tax credit application for Abbington  
23 Place. This is application 16018.

24 Abbington Place received an award of 9 percent  
25 tax credits in 2016 for the construction of 60 units in



1 four two-story garden style buildings for which a zoning  
2 change was pending. The applicable rule at application is  
3 10 TAC 10.204(11)(c) which requires that applicants  
4 provide evidence that they are in the process of seeking a  
5 zoning and states: Documentation of final approval of  
6 appropriate zoning must be submitted to the Department  
7 with the commitment or determination notice.

8 Further in the process, 10 TAC 402(d) which  
9 relates to requirements at commitment, includes at number  
10 four the requirement that applicants provide evidence of  
11 final zoning to construct the development as proposed and  
12 awarded no later than the expiration date of the  
13 commitment.

14 The applicant returned the commitment package  
15 on the due date, and rather than providing evidence of  
16 zoning for the development, as proposed at application,  
17 they included a material amendment request to change the  
18 development plans. The new plan meets the existing zoning  
19 of the site because the applicant's request for zoning  
20 that was necessary to construct what they originally  
21 proposed had been denied by the city.

22 The development plan presented in the  
23 application and approved by the Board at the July 28  
24 meeting again indicated this was going to be a garden  
25 style development which included ground floor units. The

1 new plan with ground floor retail space and parking  
2 underneath the buildings meets the local requirements for  
3 commercial zoning but is markedly different than the plan  
4 presented at application. So they took their buildings  
5 and lifted them up, put parking and retail underneath.

6 It should be noted that while the site is  
7 currently zoned for a commercial use, the fields and  
8 generally rural character of the surrounding area does not  
9 align with the character of neighborhoods we generally see  
10 proposing this type of mixed use development.

11 Staff issued a deficiency requesting that the  
12 applicant show us how they met the requirement in the  
13 rule. Their response acknowledges that they did not get  
14 the zoning change they needed for their original  
15 development and again requested the material amendment.  
16 Such an amendment would not have been allowed prior to  
17 award, though it is clear that the applicants anticipated  
18 the amendment prior to receiving the credits or prior to  
19 the July 28 meeting. The allocation of credits was based  
20 on part on the applicant representation regarding the  
21 zoning change that would allow the development to move  
22 forward as presented.

23 Staff recommends denial of the appeal of the  
24 termination notice because the applicant failed to meet  
25 the requirement at 10 TAC 402(d)(4) to provide evidence of

1 zoning necessary to construct the development as proposed.

2 MR. OXER: Any questions from the Board?

3 (No response.)

4 MR. OXER: No questions from the Board. Do I  
5 have a motion to consider?

6 DR. MUÑOZ: So moved.

7 MR. OXER: Motion by Dr. Muñoz to approve staff  
8 recommendation on item 7(a). Is there a second?

9 MR. GANN: Second.

10 MR. OXER: Second by Mr. Gann.

11 Okay. It looks like several people want to  
12 talk, so have a seat, Marni.

13 Don't forget to sign in and tell us who you are  
14 when you step up to the mic.

15 MR. REA: Good morning. My name is Bill Rea.  
16 I'm with Rea Venture. I'm the developer of Abbington  
17 Place.

18 We've been in the affordable housing  
19 development business for 30 years and have done over 100  
20 affordable housing developments and every one has some  
21 small or material change. In this case, the change that  
22 we're making is actually less than a number of the  
23 properties that were on the consent agenda today. We had  
24 garden apartments, and all we've done, we've got the same  
25 number of apartments, exactly what we put in our

1 application, although we have put some of our community  
2 spaces and some parking on the ground floor level and  
3 we've simply raised the number of units up to the second,  
4 third and fourth levels. So everything we put in our  
5 application, we're still delivering exactly the same  
6 thing, we've just changed the design.

7 And again, the change that we've made is less  
8 than what we've seen in other approved material changes.  
9 So we're not out of line in what our request is. We're  
10 not asking for any more resources, we're providing exactly  
11 what we proposed to provide, and we're ready to proceed.  
12 We've got equity providers, we're in a CRA area, and we  
13 are prepared to deliver exactly what we proposed in our  
14 application.

15 Thank you.

16 MR. OXER: Hold on. Juan.

17 DR. MUÑOZ: Well, I understand what you're  
18 saying but there's something that doesn't seem to comport  
19 with my understanding. I heard Marni say that this  
20 request would not have been approved prior to award. Is  
21 that right, Marni? So if we had known about it earlier,  
22 it wouldn't have been approved. We find out about it  
23 after the fact. I'm no familiar with what cases you're  
24 indicating in the consent agenda were materially less  
25 significant than what you're proposing, but I can't help

1 but hear the staff say we wouldn't have approved this  
2 before.

3 MR. REA: And I think I'm going to have to let  
4 some of the other people speak to that, but there is a  
5 reason that should allow us to do what we're asking for.

6 Thank you.

7 MR. OXER: Marni, just a question on that  
8 before we have the next one come up.

9 Thank you, Mr. Rea.

10 MR. REA: Thank you.

11 MS. HOLLOWAY: yes, sir.

12 MR. OXER: It would not have been approved  
13 before for what reason?

14 MS. HOLLOWAY: Prior to award it would have  
15 been -- so when an application is submitted to us, that is  
16 the development that they are proposing to create, that's  
17 what we're evaluating, that's what we're underwriting.  
18 They can't change it in the middle of that process. I  
19 mean, imagine what would happen to our competition if  
20 everybody was changing stuff in the middle of it.

21 MR. OXER: So underwriting, Brent and his crew  
22 take a look at what's there as is what's there.

23 MS. HOLLOWAY: Yes.

24 MR. OXER: Would this have changed -- we'll get  
25 to you in a second, Brent. Keep going. I want to hear

1 the rest of your comment.

2 MS. HOLLOWAY: So just to remind everyone, item  
3 7(a) is about the termination of that commitment notice  
4 because they did not meet the zoning requirement. The  
5 next item is about the material amendment, and yes, this  
6 is an amendment that further down the road probably we  
7 could work out having that amendment move forward, but the  
8 concern here for staff is that that requirement in several  
9 places in our rule was not met at commitment.

10 MR. OXER: Okay. Brent, I have a question on  
11 this, and then we'll get to the next one. I have a  
12 question for underwriting.

13 MR. STEWART: Brent Stewart, Real Estate  
14 Analysis.

15 MR. OXER: Would the underwriting evaluation of  
16 this in its original expectation, original design, be  
17 different from its current design or the one that's  
18 proposed, including the proposed change?

19 MR. STEWART: Right. We have underwritten the  
20 proposed change and we have not published that report but  
21 we've underwritten it. Costs certainly went up but the  
22 transaction as a whole still fits within the feasibility  
23 rules of the REA -- still is feasible within the REA  
24 rules. So the only issue that we have, not an issue, but  
25 like I said earlier, we talked with the equity and lenders

1 on these transactions and the equity is still committed to  
2 the deal, although they would not confirm a price. We did  
3 some sensitivity on it and it looks to be that there's a  
4 fairly wide gap between where they were and what they  
5 need, depending on what the final interest rate is on the  
6 debt. So it's within the realm of what we would be okay  
7 with recommending from a feasibility standpoint.

8 MR. OXER: Okay. They could essentially get by  
9 your shop with what they have now?

10 MR. STEWART: That's right. Costs went up  
11 because of the tuck-unders and because of elevators and  
12 things like that, but it still fits within the rules.

13 MR. OXER: Okay. Thanks, Brent.

14 Any other questions?

15 (No response.)

16 MR. OXER: Let's hear the next one because  
17 there are going to be a couple more questions. You'll get  
18 there, Cynthia, don't worry. Miss a chance to hear from  
19 you? We don't hear from you that often; of course, we're  
20 going to listen to you.

21 MR. BRADY: I wanted to make sure I signed in  
22 first so I don't forget.

23 My name is Sean Brady. I'm the vice president  
24 of development at Rea Ventures. I've been involved in  
25 this development since the beginning really, for the past

1 three years that we've been working on this.

2 A couple of points I want to just correct, and  
3 then I'd like to kind of go briefly through the timeline  
4 because it is very relevant as to how we ended up where  
5 we're at.

6 First off, we did not propose a two-story  
7 development at application. We proposed three-story  
8 garden style walk-up apartments. We're not proposing any  
9 commercial space down there. What we're really proposing  
10 are garages and office space. We have about 1,400 square  
11 feet -- I'm sorry -- garages and common areas. We have  
12 about 1,400 square feet of what we're considering flex  
13 space that may be for a third party office tenant, it may  
14 not, but that's it. And so just to kind of underscore and  
15 just to take a second to look at the different designs.

16 This was in our amendment. I know there was a  
17 ton of information that we submitted, but in Appendix C,  
18 this is the original design, the site plan for building 60  
19 units, same unit mix, same amenities. Our proposed  
20 amendment is in Appendix D, I mean, it's basically the  
21 same thing: it is four buildings, 60 units, same unit mix.

22 MR. OXER: Same square footage per unit?

23 MR. BRADY: Actually, that's a good point. The  
24 square footage is actually increased slightly. The square  
25 footage of the common space increased, we've added



1 amenities that we didn't have before. And so I mean, I  
2 guess we're having trouble seeing -- I mean, this is a  
3 positive effect to the development, we're meeting all of  
4 our commitments to the Department.

5 And really, this was our last choice, not our  
6 first choice. We worked extremely hard with the city,  
7 which I'll touch on in a minute, and they helped us  
8 develop this. And they do, by the way, think that this is  
9 a better fit. I understand the rule, the character of the  
10 area, and we talked ad nauseam with the planning board  
11 about this, but they have targeted this area for higher  
12 density development, and contrary to the council, that's  
13 what they have in mind.

14 I do also want to mention, just to mirror a  
15 comment that Granger had made, and this had a lot of  
16 discussion earlier, not all developments that have  
17 received allocations will be able to close. One of the  
18 big things that's going to be a distinguishing factor this  
19 year is if you're in a CRA area, and we are, and I can say  
20 that not all the other folks on the waiting list are in  
21 that same favorable situation.

22 We have gone back to debt and equity. I think  
23 we have five different investors at this point that are  
24 interested in this deal, assuming that we have our credits  
25 reinstated. Three of those are CRA investors. And what

1 we've been told is that prices have definitely dipped  
2 right now, and a lot of that is due to uncertainty. In  
3 the next three or four months it's expected to come back  
4 up, certainly not to the dollar five, dollar ten range  
5 that it was before, but it's coming back up and the  
6 numbers still work.

7 MR. OXER: We got spoiled.

8 MR. BRADY: We sure did. But just keep that in  
9 mind that we are meeting all of our commitments, we're  
10 able to move forward with no additional resource request,  
11 which other people were proposing, from the Department. I  
12 mean, we're the guarantors, Bill is the primary guarantor.  
13 We're confident I this. We've reviewed the costs, the  
14 numbers, it works. Underwriting has confirmed that. And  
15 so just keep all of that in mind.

16 The other thing I want to just mention, because  
17 we had challenged an application years ago based on this  
18 same reason of zoning and we were told correctly by the  
19 staff that that is not a factor of consideration prior to  
20 award, and so our challenge was dismissed. That is not a  
21 consideration of award. We're allowed to submit an  
22 amendment any time after the Board votes to award credits,  
23 and because of the timing where we had thought we were  
24 going to get a decision in August from the planning board,  
25 they chose not to take any action for some reason, and so

1 we were put on the September agenda, which literally the  
2 council voted on their final decision. And we thought  
3 right up to the last minute that we had a very good chance  
4 of getting our zoning approved. I mean, we literally had  
5 the decision the night before the commitment was due, and  
6 so we had no other choice. So we submitted our amendment  
7 which we were allowed to do at that time as well.

8 I realize that it's an unusual situation, but  
9 please keep in mind it's also an unusual situation to have  
10 that ability. Usually when your zoning is denied, that's  
11 because you can't build multifamily there. Well, we  
12 could, and the city helped us develop this to kind of  
13 figure out a way to solve their political issues, which  
14 frankly, were caused by one guy that was our neighbor in  
15 his mid eighties that suddenly became an expert in the QAP  
16 and which projects are going to be funded. I mean, it was  
17 amazing, and he had a long list, I don't know where he  
18 came up with all of this. And we had met with the guy.

19 MR. OXER: We run into that a lot, by the way.

20 MR. BRADY: Our realtor had met with the same  
21 guy and they were friends from high school, and he had  
22 said, I have no problem, just build me a privacy fence.  
23 And then he shows up to the planning board meeting with, I  
24 think, six to eight of his neighbors and they're all  
25 reading off the same sheet. But yeah, I mean, I don't

1 know where he got all of his knowledge all of a sudden.

2 But the planning board really fed off of that  
3 and council kicked us back to planning board because they  
4 had a whole laundry list of questions which we spent  
5 months researching about property value impacts, crime,  
6 impact to schools, and we quantified all of that, that  
7 we're a net positive, economic impact, like somehow we're  
8 not going to be an economic benefit to the community. And  
9 they ultimately, at their September board meeting -- I'm  
10 sorry -- their August board meeting which is what really  
11 gave me hope, they acknowledged after receiving our  
12 response that we had satisfactorily addressed all of their  
13 comments.

14 And they went around and polled everybody in  
15 the room and they indicated that they were leaning a lot  
16 more positively in our direction but they were still kind  
17 of weighted towards their Vision 2020 plan, which when I  
18 first talked to the original city manager there three  
19 years ago, he said, It's great, this is what we've been  
20 trying to attract, this is what our Vision 2020 plan calls  
21 for.

22 But for whatever reason, we believed during the  
23 research and discussions with people that it ultimately  
24 had to do with the school superintendent thinking that all  
25 seven deals that because of the rules this year were all

1 clustered in the same -- we were all within like a half a  
2 mile of each other -- in the same census tract. He had  
3 made a comment at a school board meeting that there were  
4 going to be seven deals funded in Whitehouse and we can't  
5 handle that. And so that's, I think, what happened behind  
6 the scenes. It became some kind of political.

7           So I'm sorry, I realize I've beeped out of time  
8 and I planned to go through a little bit more detail, so  
9 I'm just kind of trying to hit the high points. But this  
10 was our last choice and we're very, very sorry that it is  
11 here kind of at the eleventh hour. But the deal works. I  
12 mean, if you look at it, it's the same basic deal,  
13 development design. If you look at the architecture, you  
14 know, we were in the fortunate position that we could  
15 reconfigure to still meet and exceed our commitments to  
16 the Department. We're fortunate we have enough investors  
17 interested because of our CRA location. The deal still  
18 works, even now.

19           And you know, frankly, I guess I don't  
20 understand why the amendment wasn't considered, which is  
21 what I thought the process was supposed to be, before  
22 having our credits rescinded. So I just feel like if we  
23 could have had an opportunity to discuss the request on  
24 the merit of the amendment that we could have avoided a  
25 lot of this. I mean, I guess we just really don't see how

1 this is -- I mean, I know it qualifies as a material  
2 change under significant architectural and site plan, but  
3 when you look at what is actually happening here, putting  
4 our common areas under our residential units and basically  
5 working with the city to figure out a way to still make  
6 this happen, I just don't see how that's a problem.

7 DR. MUÑOZ: Are you saying you're not clear  
8 what constitutes, according to staff definition,  
9 significant modification of the plan?

10 MR. BRADY: No, sir.

11 DR. MUÑOZ: And significant modification,  
12 that's not modest. That's significant. So it's not clear  
13 in your mind how they define that?

14 MR. BRADY: Well, I guess what's not clear to  
15 me is that that to me is the definition of what a material  
16 amendment request is, not necessarily grounds for a  
17 denial. The grounds for the denial, as I understand it,  
18 would be if it's a negative effect.

19 DR. MUÑOZ: Let me interrupt you. Respond to  
20 my question and then we're going to ask you to bring to a  
21 close your comments.

22 MR. BRADY: Yes, sir. I understand.

23 So yes, I do understand that those are  
24 significant and I believe that was part of the staff's  
25 basis. And I will also admit I am not an expert on the

1 rules, but I had just understood that that was the  
2 definition of what staff couldn't administratively  
3 approve. I had understood that the criteria were: is it  
4 still financially feasible, is it a negative effect, would  
5 it have affected the scoring outcome.

6 MR. OXER: Let me tell you how this fits.  
7 Okay? I'm going to cut to the chase for you to make sure  
8 that you get a good clear image on this. We've got a set  
9 of rules on this, everybody gets to play by the rules,  
10 they get to tell you what the rules are. If you fall on  
11 one side of them or the other, they don't get to change  
12 the rules, only we do. Okay?

13 MR. BRADY: Yes, sir.

14 MR. OXER: So that's why it comes to us because  
15 you don't understand the discussion with them, you  
16 argument was not with them, they're applying the rules  
17 that we gave them to guide you on how this development  
18 works. The question that I have on this is why is it that  
19 the neighbors in there, in working with the planning and  
20 zoning, did they suddenly go away when you made these  
21 changes?

22 MR. BRADY: No. I mean, they came to every  
23 meeting. The planning board was a lot happier, honestly,  
24 with the changes. It was the mayor and the city manager  
25 who kind of helped us develop and think through that, and

1 basically the planning board felt that our alternative  
2 design was more in keeping with the Vision 2020 plan, but  
3 they felt that stand-alone apartments in that location  
4 were not. They basically said that we addressed all of  
5 their concerns, but that they still felt that stand-alone  
6 apartments in that location -- they basically didn't want  
7 to change their future land use plan, they had a policy in  
8 place for that.

9 MR. OXER: That's the right answer. So you  
10 basically accommodate their request to be able to get your  
11 zoning. Our staff says you can't get this unless your  
12 zoning has to be there. There's certain things that have  
13 to happen, there's a schedule on this. And it could go up  
14 to December 30 too, but if we do that, there's a whole lot  
15 of work that everybody has to do, so there's a reason we  
16 got all these milestones and these gates to get everybody  
17 through.

18 MR. BRADY: Yes, sir.

19 MR. OXER: The good news for you is that Brent  
20 still says the deal will work, and you say you have a  
21 commitment for the financing and for the syndication on  
22 the credits.

23 MR. BRADY: We're confident the deal will still  
24 work.

25 MR. OXER: That's apparently better than a few



1 others that are in the room.

2 MR. BRADY: Yes, sir. We are fortunate in that  
3 regard.

4 MR. OXER: All right. Okay.

5 Any other questions?

6 MS. BINGHAM ESCAREÑO: I have a couple of  
7 questions.

8 MR. OXER: Ms. Bingham

9 MS. BINGHAM ESCAREÑO: I think for Marni.

10 MR. BRADY: Do you want me to have a seat?

11 MR. OXER: Good plan.

12 MS. BINGHAM ESCAREÑO: Thank you.

13 MR. BRADY: Sorry for going on.

14 MS. BINGHAM ESCAREÑO: So the development was  
15 characterized as originally a two-story.

16 MS. HOLLOWAY: Two- or three-story typical  
17 garden style apartments.

18 MS. BINGHAM ESCAREÑO: I don't want to nitpick,  
19 but in our Board book and in your report it went from  
20 being a two-story and that the part of the significant  
21 material change -- which I don't even know if this is  
22 appropriate questioning because I thought we were talking  
23 about the zoning and that there's another agenda item, but  
24 just since this came up as part of her report, I just want  
25 to ask. Because, I mean, clearly the renderings look like

1 it went from a three-story to a four-story or three and  
2 four stories, but you know, it was characterized in the  
3 report as garden style, two stories, and then that it was  
4 materially changed to three and four stories and mixed  
5 use, and I don't see mixed use. I don't see mixed use in  
6 the renderings, the second set of renderings, I don't see  
7 anything.

8 I get it. What I was picturing in my head was  
9 we went from a kind of suburban rural area, typical  
10 apartment kind of setup to something that sounded more  
11 appropriate for a large metropolitan area, and ooh, that's  
12 materially different, we're out. And I don't see that.

13 MR. IRVINE: I believe that the space on the  
14 ground floor that Mr. Rea alluded to that says it's kind  
15 of indeterminate as to exactly how it will be used, it may  
16 be that somehow or another that complies with the zoning  
17 definitions for mixed use, although it is not contemplated  
18 that it would actually be active commercial in nature.

19 MS. BINGHAM ESCAREÑO: Okay. Gotcha.

20 MR. OXER: So they've got mixed use meaning  
21 more than one resident would be able to use that in mixed  
22 use.

23 MS. BINGHAM ESCAREÑO: That's how they got  
24 there with the city.

25 MS. HOLLOWAY: Or it would be office space for

1 a business of some sort.

2 MR. OXER: Right. Something going on.

3 MS. HOLLOWAY: The mixed use would be the  
4 commercial use on the ground floor and the residential use  
5 above.

6 MS. BINGHAM ESCAREÑO: Okay. Gotcha.

7 DR. MUÑOZ: Yes, but I thought that they said  
8 that they would be used like common use area, not  
9 necessarily commercial.

10 MS. HOLLOWAY: Their common areas are now on  
11 this first floor, and they have parking underneath the  
12 buildings, they've raised the buildings.

13 DR. MUÑOZ: I guess I understand common area  
14 like people in the structure could commonly use the area,  
15 not somebody could appropriate it for purposes of a  
16 proprietary business.

17 MS. HOLLOWAY: As I understand it, this plan  
18 that was presented to us includes both.

19 DR. MUÑOZ: Oh.

20 MS. HOLLOWAY: Is that not correct?

21 MR. OXER: Sean. Don't talk there, get up to  
22 the mic, please. We have a transcript.

23 MR. BRADY: Yes, sir. I'm sorry.

24 It's basically our clubhouse is what's on -- we  
25 have clubhouse space and garages. Let's see, it's made up

1 of the leasing office --

2 DR. MUÑOZ: Hey, Sean, let me interrupt you.  
3 You're saying it's clubhouse space.

4 MR. BRADY: Yes, sir.

5 DR. MUÑOZ: And they're saying it's clubhouse  
6 space but it could serve as office.

7 MR. BRADY: Yes and no.

8 MR. OXER: That's not a good answer.

9 MR. BRADY: Well, it's the correct answer.  
10 There are four buildings, just like we had originally.  
11 Two of those buildings, the ground floor is nothing but  
12 garages for the exclusive use of the residents. So then  
13 we have two other buildings, the ones on Highway 110.  
14 There's a big one and a small one. The big one is our  
15 clubhouse. In there it has a fitness center, a leasing  
16 space, we've added a media center, a computer center,  
17 basically all the amenities that we had in the  
18 application -- we added the media center. And that's just  
19 for the residents so that's our clubhouse.

20 And so then in the small building we have 1,400  
21 square feet -- I'm sorry -- the back half of that small  
22 building is garage space. The front half of that small  
23 building has 1,400 feet of flex space that could be office  
24 for a third party but also could become additional amenity  
25 space if no one leases.

1 MR. OXER: So it could actually become like a  
2 local office for the county constable.

3 MR. BRADY: It could. But it just depends. We  
4 do not have any tenants lined up for that space.

5 MR. OXER: So how is the structure? And I  
6 don't mean the deal structure but how is the physical  
7 structure in terms of the number of floors, the location  
8 and that plans and all that different from when you  
9 applied for it to start with and what you're suggesting  
10 now?

11 MR. BRADY: One story. Basically, the zoning  
12 ordinance that we fit within only says no residential  
13 units on the ground floor, second floor or higher, that's  
14 it. So we have a wide variety of what we can do on the  
15 ground floor, and this is where we worked with the city  
16 staff and the mayor to kind of figure this out is that it  
17 could be all garages but then obviously we need our  
18 community space. So we basically stuck our clubhouse  
19 underneath there and added garages to fill up all the  
20 other space that we needed on the other buildings, and  
21 they said sounds good.

22 MR. OXER: So where was the parking and the  
23 clubhouse before?

24 MR. BRADY: The parking before was all surface  
25 parking, we didn't have any garages, so that's new, we've

1 added that. The clubhouse was a stand-alone building  
2 before and now it's not. That's about it. I mean, it's  
3 four buildings.

4 MR. OXER: So that's a cost reduction you can  
5 take off which is part of the reason the deal works for  
6 Brent.

7 MR. BRADY: Yes. And we were able to save a  
8 good bit of money there by doing that. We're building the  
9 same number of structures on the property, but we were  
10 able to work out through the city because their zoning  
11 ordinance was broad enough for our category that we were  
12 already in that we basically built the same development  
13 but just put it up a floor. We did have to add elevators  
14 but they're still walk-up garden style apartments but  
15 we've had to add -- for accessibility reasons, we've had  
16 to add elevators.

17 MR. OXER: Okay. So Marni. Thanks, Sean.

18 MR. BRADY: Thank you.

19 MR. OXER: So were there points awarded for  
20 this for this for accessibility based on living space?

21 MS. HOLLOWAY: Accessibility is not necessarily  
22 a point item, it's a threshold item.

23 MR. OXER: But I gather the elevators that  
24 they've arranged to put in satisfy the accessibility  
25 threshold.

1 MS. HOLLOWAY: I believe so.

2 The change to the plan could have impacted  
3 scoring in that the cost per square foot went up, but  
4 because it's now considered a four-story building, right,  
5 it's now considered high cost so they didn't lose those  
6 points for their costs going up because it's now a four-  
7 story structure.

8 DR. MUÑOZ: Hey Marni, you say that it may have  
9 affected their scoring but is there anything that jumps  
10 out to you sort of kind of immediately and definitively  
11 about the changed plan that absolutely would have  
12 negatively affected the scoring?

13 MS. HOLLOWAY: As I understand it, if this plan  
14 had been presented at the application, so if they had  
15 presented the plan that matched the 2020 land use plan for  
16 the city, if that's what they had sent us at application,  
17 it would have just gone right on through and we wouldn't  
18 be standing here today. The plan that was submitted to us  
19 required a change in zoning and they told us at  
20 application that they were applying for that zoning  
21 change, they did not get that zoning change. This item  
22 7(a) is about that zoning change and that was the basis  
23 for our termination.

24 MR. OXER: So let's speculate here for a  
25 second. Let's assume this goes -- that we accommodate

1 their interest in the zoning change. So if they had  
2 proposed what they have now, it would have slipped right  
3 on -- not slipped -- it would have gone through, we  
4 expect.

5 MS. HOLLOWAY: We expect, yes.

6 MR. OXER: Brent would have been happy, you  
7 would have been happy.

8 MS. HOLLOWAY: We expect it would have fit  
9 within the box. Yes.

10 MR. IRVINE: It would have complied with the  
11 rules and would have scored the same.

12 MR. OXER: Okay. So based on the fact that  
13 there's a local consideration for zoning, and they get  
14 caught up in timing, scheduling, angry neighbors that  
15 don't understand tax credits -- because I've got to tell  
16 you, I've heard the crime, I've heard the traffic, I've  
17 heard the crowding. One of the things, just as a  
18 collateral comment heard, in the six years I've been here,  
19 going on the six years I've been here, I've heard that  
20 from every opponent for a tax credit deal, and every one  
21 of them say that but I've never heard the numbers that  
22 support that. So after 30 years, since we've been doing  
23 the Tax Credit Program since '86, somebody ought to be  
24 able to generate the numbers to show that's true or not.

25 So just for the record, I'm tossing this out



1 here for the next developers and the opponents, the next  
2 time you come up and want to oppose one of these deals for  
3 traffic, crime, overloading the schools and that sort of  
4 thing, bring numbers or be prepared to just sit down and  
5 be quiet.

6 MS. HOLLOWAY: So regarding the zoning issue,  
7 we had at least one other application that I can think of  
8 that comes to mind immediately that did not get a zoning  
9 change and they withdrew because they were not fortunate  
10 enough to have this site that they could change their plan  
11 to fit. So the basis for the termination was the  
12 requirement that the zoning at commitment fit the  
13 development that was proposed.

14 DR. MUÑOZ: But they've modified it and the  
15 zoning is no longer --

16 MS. HOLLOWAY: So as Chairman Oxer mentioned,  
17 all we can do is apply the rule so the rule says if you  
18 don't have the zoning at commitment for the development  
19 you originally proposed, that's a termination. So that's  
20 the item that we're discussing.

21 MR. OXER: Beau.

22 MR. ECCLES: And let me just ask you a few  
23 questions that may contextualize this within the rule.  
24 What you were just citing to is 10 TAC 10.402(d).

25 MS. HOLLOWAY: That's for the commitment. Yes.

1 MR. ECCLES: Right. Which also says that  
2 failure to provide these documents, which includes at  
3 (d)(4), evidence of final zoning that was proposed or  
4 needed to be changed pursuant to the development plan.  
5 And that's the development plan in the application. So  
6 failure to provide those documents may cause the  
7 commitment or determination notice to be rescinded. So  
8 when your staff got essentially an amendment, that  
9 amendment is not what matches (d)(4), it's not evidence of  
10 the final zoning that was proposed.

11 MS. HOLLOWAY: Correct.

12 MR. ECCLES: You have this unique situation  
13 where you have instead of Mohammed going to the mountain,  
14 you have the mountain coming to Mohammed, you have the  
15 plan that's changing to meet the zoning that already  
16 existed. So then the next question goes over to the  
17 amendment rule, and I think we're all agreed this is a  
18 material amendment, we're at 10 TAC 10.405(a) which says  
19 that, first of all, they couldn't make a material  
20 amendment during the application period. Correct?

21 MS. HOLLOWAY: Correct.

22 MR. ECCLES: It's only after an award is made  
23 that they could make a material amendment. But 10.405(a)  
24 says: regardless of the development stage, the Board  
25 shall reevaluate a development that undergoes a material

1 change. That's not you, it's not staff, it's the Board  
2 reevaluating the material change with the underwriting  
3 being considered, and then they need to demonstrate that  
4 the material change fits within 10.405. Correct?

5 MS. HOLLOWAY: Correct.

6 MR. ECCLES: So that's why we have these two  
7 agenda items that are back to back. You have what staff  
8 did which was apply the rule, documents come in that  
9 didn't match the rule, so they exercised their option to  
10 say we can't go forward on a commitment. They have  
11 submitted, I believe it was in September, their amendment  
12 request.

13 MS. HOLLOWAY: September 28. Yes.

14 MR. ECCLES: Right after they first got notice  
15 that this wasn't going to work within the zoning that they  
16 expected, they submitted their amendment. This is now  
17 before the Board in the second agenda item whether the  
18 Board would accept that amendment which then makes it  
19 their development plan as would have been reflected in  
20 their application, but that's getting kind of temporally  
21 behind what staff had.

22 Is that a fair summation of the rules and how  
23 all of this works together with the two agenda items?

24 MS. HOLLOWAY: Yes, it is.

25 MR. OXER: So essentially, unless we give them

1 a waiver on the zoning timing, they don't get to play in  
2 the material amendments game.

3 MS. HOLLOWAY: Correct.

4 MR. OXER: But given the fact that they managed  
5 to change this, put those amenities in the right place,  
6 got this in this other space which was considered  
7 commercial, potential mixed use optional space, I can see  
8 how that would be something to be considered. But as long  
9 as the deal works, and apparently from the earlier  
10 discussion about the equity collapse here recently, Mr.  
11 Rea, I'll assume -- you give me a thumbs up on this --  
12 you've got a commitment that this is going to work. And  
13 that's 60 more units that we can get in.

14 So the question to my understanding, and from  
15 what I'm hearing from you, Beau, is we give them a waiver  
16 on this, on just the sequencing and the timing on this --

17 MS. HOLLOWAY: If the Board wishes to grant  
18 their appeal.

19 MR. OXER: If we grant the appeal.

20 DR. MUÑOZ: Let me help out here. So I mean,  
21 look, this discussion is very helpful because to me the  
22 commercial mixed use sort of inflection and then when you  
23 understand that it's 1,400 square feet of one building  
24 that may or may not actually translate into this kind of  
25 third party use, you make these changes, it still pencils

1 the cost, you get these 60 units where the originally  
2 determined the units would be built. I mean, sometimes it  
3 helps to listen to additional detail to clarify in your  
4 mind.

5 So Mr. Chair, I'd like to withdraw my motion to  
6 approve staff recommendation.

7 MR. OXER: Mr. Gann?

8 MR. GANN: I'll withdraw my second.

9 DR. MUÑOZ: And I'll make a motion to grant the  
10 waiver --

11 MS. HOLLOWAY: Grant the appeal.

12 MR. OXER: Grant the appeal.

13 DR. MUÑOZ: -- grant the appeal regarding the  
14 zoning in 7(a).

15 MS. BINGHAM ESCAREÑO: I'll second.

16 MR. OXER: Okay. Motion by Dr. Muñoz, second  
17 by Ms. Bingham to oppose staff recommendation and to grant  
18 the appeal.

19 MS. HOLLOWAY: To grant the appeal.

20 MR. OXER: In item 7(a). Any other questions?

21 (No response.)

22 MR. OXER: Now, Cynthia, I'm going to ask  
23 you -- this is going, I think, the way you want it to --  
24 have you got anything to say? Do you want to say  
25 anything, or do you want to just say thank you and wait

1 till the next item, or what?

2 MS. BAST: I will be brief. Cynthia Bast,  
3 Locke Lord, representing the applicant here.

4 There are just a couple of things that I would  
5 like to put in the record. First of all, thank you, Mr.  
6 Eccles for your explanation. You basically did exactly  
7 what I was going to do, is to dig into the rules and the  
8 law here --

9 MR. OXER: I love how great minds follow those  
10 parallel paths.

11 MS. BAST: -- to explain how this all works  
12 together. With having two agenda items, it seems like a  
13 procedural quagmire but it's really not, in that we have  
14 an amendment and we have rules and law about amendments  
15 that are mandatory, that say if an amendment is submitted  
16 after the application has been awarded credits, that it  
17 shall be considered.

18 At the same time, with regard to the commitment  
19 notice and providing the evidence of zoning, we have a  
20 rule that is permissive, that says failure to provide  
21 these documents may -- may cause the commitment to be  
22 rescinded. And so I would actually have argued that the  
23 amendment should have been taken first as item 7(a) and  
24 the commitment condition should have been taken as item  
25 7(b) because if you had looked at the amendment as item

1 7(a) and approved the amendment, then you would have, I  
2 think, had a better path to item 7(b).

3 MR. OXER: Certainly clearer.

4 MS. BAST: I think so. And on 7(a) -- excuse  
5 me -- on the amendment it needs to be considered on its  
6 merits and I think Dr. Muñoz, Mr. Oxer, you have expressed  
7 what you understand on that amendment now and I think you  
8 understand that, again, according to our rules, it is a  
9 material amendment but our rules say the material  
10 amendments will be denied when they would have affected  
11 scoring, when they were foreseeable, when they were  
12 preventable and things like that, and we don't have those  
13 grounds. So we have merits to approve this amendment.

14 And with that taken under consideration, then  
15 we get to the issue of the condition on the commitment  
16 notice. And first of all, I don't think a waiver is  
17 necessary, I don't think you're waiving anything because  
18 your rule is permissive. It says that if a document is  
19 not provided, then the commitment notice may be rescinded.

20 And to me, then this becomes a timing issue. If you boil  
21 it down and you say if this development owner had  
22 sufficient zoning at the time of commitment notice to  
23 build a multifamily complex that's consistent with what  
24 was in the application but we're just basically moving  
25 some residential units up a floor, then should that

1 commitment notice be rescinded in that permissive  
2 environment? And I would argue that the answer is no.

3 And further, that the only reason we're sort of  
4 tripped up here is because of the timing. Had the zoning  
5 issue occurred earlier and an amendment been able to be  
6 submitted earlier, we wouldn't have had a problem. Had we  
7 met the commitment notice but then something else come up  
8 that we had to change our site plan somehow with an  
9 amendment later, again, it wouldn't have been a problem.  
10 The only thing that created a problem was the timing here.  
11 Mr. Eccles indicated the temporal adjustment of the fact  
12 that this literally happened in a 24-hour time span. At  
13 any other point in this entire development process, this  
14 amendment would be acceptable in accordance with your  
15 rules. And so I don't think that we can allow that kind  
16 of timing issue to trip up a development that is otherwise  
17 ready to go.

18 And I do appreciate you giving me time. Thank  
19 you.

20 MR. OXER: Sure. Any questions for Cynthia?

21 DR. MUÑOZ: Cynthia, I appreciate the  
22 clarification. I hope I remember in the future, you know,  
23 sometimes how this gets interpreted by you and your  
24 colleagues in terms of permissibility, you know, I hope I  
25 can remind you and others in the future when this gets



1 brought up in a way that is not quite as amenable to your  
2 position about how you might have the permission to go  
3 this way but you certainly have the permission to go this  
4 other way. Because that's what happens is we're going to  
5 be reminded, just like we were earlier. There are earlier  
6 cases where you exercised some discretion and we're not  
7 quite in violation as much as those, and we're going to be  
8 reminded of, well, there was this policy and rules are  
9 rules and yet you took this. And usually the people at  
10 the microphone making that argument have letterheads  
11 similar to yours.

12 (General laughter.)

13 MR. ECCLES: And if I could also just tag onto  
14 that. Rules are almost always a simple matter of timing,  
15 and what staff was looking at was the moment in time when  
16 the commitment notice was coming due and what they had to  
17 look at did not satisfy their rule as it existed at that  
18 time. So I think that they were not at all in the wrong  
19 for making the call that they did.

20 MR. OXER: Go ahead, Beau. I'm sorry.

21 MR. ECCLES: It is merely that we are in this  
22 somewhat bizarre circumstance where usually when we're  
23 looking at you didn't get the zoning that you needed to  
24 make this development, it's usually it was zoned  
25 commercial and not residential and there's no way to do

1 this flex that we're looking at here. But the submission  
2 of the amendment and all of the expectations and the  
3 minute adjustment in the grand scheme of things, it's  
4 still a material amendment but the ability to go from just  
5 essentially build it up one floor and then it's within the  
6 zoning and it's also within the material amendment rule  
7 and the window of the material amendment rule, as well as  
8 the requirement that the Board shall consider it, is this  
9 interesting confluence of events there it's the Board's  
10 purview, in a mandatory sense, to consider that amendment  
11 but it already was staff's purview to consider that the  
12 commitment was not satisfied.

13 So I think we have opposite conclusions but  
14 both were correct.

15 MR. OXER: You'll get a shot at it here, Toni.  
16 Hang on a second.

17 And kudos and compliments to staff because your  
18 job is to apply the rules. It's our job to call when we  
19 can say out of bounds or make excretions, and that's why  
20 even for something that ultimately becomes more clear, I  
21 want to make sure we've got a record built that there's a  
22 clarity on some of these things, that we're not doing this  
23 quickly, suddenly, or with any sort of lack of  
24 consideration or discussion.

25 TJ, your turn.

1 MS. JACKSON: Good afternoon -- or it's still  
2 morning.

3 MR. OXER: Still morning.

4 MS. JACKSON: Good morning. My name is Toni  
5 Jackson and I am here to support staff recommendation and  
6 to oppose the current motion that is on the floor.

7 MR. OXER: See, you're one of those that he  
8 just said was going to be showing up here.

9 DR. MUÑOZ: I didn't know it would be this  
10 soon.

11 MR. OXER: But I'm willing to bet you don't  
12 have the same letterhead as she does.

13 (General laughter.)

14 MS. JACKSON: Different letterhead.

15 So I respect all of the comments that I've  
16 heard and particularly as it relates to what has been  
17 indicated in terms of the timing. However, I am here to  
18 speak to the fact that, as you have already pointed out  
19 and as staff has simply moving forward, with the fact that  
20 there are rules, be they permissive or otherwise.

21 But I also want to point out something that was  
22 stated by the applicant themselves, and that is the fact  
23 that they have been pursuing this for the last three  
24 years, and so I do not agree that this is a simple matter  
25 of late timing because they knew over the last couple of

1 years that there was a zoning issue, and so for it to come  
2 up at this late time, is a concern for us.

3 I represent the applicant that follows and the  
4 thing that is very significant here -- because I know that  
5 this is sometimes a concern in your mind -- is that if you  
6 take these credits away or this award is not given, then  
7 the city goes without an award. In this particular case,  
8 the next applicant in line is in the same city.

9 MR. OXER: Didn't they say there were seven  
10 applicants in that same zip code or same census tract?

11 MS. JACKSON: That is correct. And so the city  
12 of Whitehouse would not be losing credits.

13 MR. OXER: What have they got over there that  
14 was attractive to so many? We need to buy some real  
15 estate over there.

16 MS. JACKSON: Real estate is good.

17 But Haven has 72 units proposed. Like has been  
18 the question of the day, it has the ability to close,  
19 we're ready to go, if we were given our commitment notice  
20 today, we are ready to meet all of the requirements of  
21 that commitment notice.

22 But again, we are talking about the rules here  
23 and the fact that when they got the commitment notice,  
24 they did not meet the requirements of that commitment  
25 notice. Again, granted, they did, as they have indicated,

1 say that they submitted their amendment the very next day  
2 after they received the information that they did not get  
3 the zoning approval. However, one of the things that  
4 developers do when they put a contract on land, they do  
5 their due diligence, they do their inspections, and they  
6 knew that they did not have the zoning for what they were  
7 proposing it the application that they put forward.

8 But we don't control, obviously, when we get to  
9 a planning committee, however, they indicated themselves  
10 to you that they've been working on this for the last  
11 three years. So for them to not have gotten zoning by the  
12 time of that commitment notice is a concern because they  
13 had that opportunity to do so and to follow the rules. And  
14 we have a concern and we look to you, again, for  
15 consistency and to have those rules applied consistently.

16 And in this case, we feel that is a concern and they had  
17 plenty of time to have done this before now.

18 MR. OXER: Thanks.

19 Any questions?

20 MR. ECCLES: Just as a point of clarification,  
21 the vote that's been moved on and has been seconded now is  
22 dealing with 7(a) which is addressing the appeal from the  
23 rescission of the commitment. What you're talking about  
24 is foresee ability which would actually be in 7(b) which  
25 would be the amendment.

1 MS. JACKSON: Well, Beau, I beg to differ, and  
2 my comments had to change up a bit because I feel that you  
3 have argued the position from the podium, which concerns  
4 me, but more importantly, all of you have spoken to both  
5 (a) and (b), so my comments have been convoluted because  
6 I'm speaking to (a) and (b) as you have all done from the  
7 podium.

8 MR. ECCLES: And that's actually what I'm  
9 trying to make sure happens is that your position  
10 regarding --

11 MS. JACKSON: My position is clear that we ask  
12 for you to stay with staff's recommendation and oppose --  
13 to terminate this commitment.

14 MR. OXER: To deny their appeal.

15 MS. JACKSON: To deny their appeal.

16 MR. OXER: Thank you.

17 MS. JACKSON: Is that clear?

18 MR. OXER: Seems pretty clear.

19 MS. JACKSON: Thank you.

20 MR. OXER: Sean, one quick question. You've  
21 been working on this for three years, you got there, why  
22 did you not propose the current circumstance or current  
23 design in the original application?

24 MR. BRADY: That's a great question. Because  
25 I've had a different site every year. In fact, I started

1 off on the site that the other applicant in line is on,  
2 that was my first site the first year. The second site I  
3 went for a site that was on the north side of town. This  
4 is my first year --

5 MR. OXER: So you've been working in Whitehouse  
6 for three years, not on this site for three years.

7 MR. BRADY: I've been working in Whitehouse  
8 with the community, and they've supported this every year,  
9 for three years, but every year they've supported a  
10 different site. I didn't know about all of these problems.

11 And furthermore, on the foresee ability, I  
12 didn't get a chance to talk about the steps we took ahead  
13 of time. We met with staff, the zoning, Nathan Higgins  
14 and the city manager, and they indicated they'd be  
15 supportive of our location for re-zoning. This was back  
16 in October-November Unfortunately, the city manager got  
17 fired afterwards that had said that -- another whole  
18 story. But his one comment was you need to go talk to  
19 your neighbor to the north because he's kind of loud and  
20 opinionated. Which we did, which is what I did get into  
21 my comments that he's the mid eighties guy who told us  
22 that we're fine, just build us a fence.

23 And so we also, two weeks before we turned in  
24 our application -- we typically bring our whole design  
25 team out, engineer, everybody, to meet with the city and

1 make sure all of our costs and utility locations are  
2 figured out -- we asked the new city manager at the time,  
3 hey, we're coming up, we're about to submit this  
4 application, are you aware of any problems. What we were  
5 told was: No, we've heard nothing about you, no concerns  
6 from planning, no concerns from anybody in the community,  
7 however, I have heard concerns about some of your  
8 competitors. He didn't say who. And he said, They might  
9 have some trouble, but I haven't heard anything from you.

10 And in fact, the city manager called me after  
11 the planning board voted and wanted to know what bar I had  
12 stopped in because he was shocked with all of that and  
13 kind of figured I was too. I was pretty floored. We were  
14 all trying to figure out what just happened.

15 I mean, it's not like we didn't do our due  
16 diligence and it's not like we've been on the same site  
17 for three years, every site is different, and every  
18 indication we had from the city was that they were going  
19 to be in support of this, until they weren't.

20 MR. OXER: Okay. Thank you.

21 MR. BRADY: Which occurred two weeks after we  
22 submitted our application.

23 MR. OXER: Okay. We have one more comment on  
24 7(a)?

25 MR. APPLEQUIST: Chairman, members of the



1 Board, thank you very much. My name is Chris Applequist.

2 I'm with Miller Valentine, and we are supporting the  
3 denial of the appeal.

4 As was mentioned, we are the next one up in  
5 line and we've also worked in Whitehouse for three years.

6 It hasn't been on a different site every year. Think in  
7 their presentation, they said initially it was three years  
8 on the same development and that's not true. For the past  
9 two years we have had the same site that we've been  
10 working on, it's zoned correctly, it's zoned for  
11 multifamily, we've had support all three years, and we  
12 know what it's like to submit and not get awarded.

13 We think this is very simple. We think they  
14 didn't meet the rules of the commitment, it's laid out  
15 very clear. We've seen a lot of people get killed over  
16 the years here just because maybe a check box wasn't  
17 marked or you miss a date. I mean, that's a deadline,  
18 your deal is dead at that point. We all know that.

19 Zoning, that's another risk. That's a risk we  
20 wouldn't take. We've been there for three years; we would  
21 not have contracted that site. It adds more risk.

22 And really, this year was pretty interesting  
23 because we were at a disadvantage by starting early. I  
24 mean, for two years we had the same site. Whitehouse  
25 Church of Christ had that site, they enjoyed working with

1 us, they trust us, we've been working on it, everyone knew  
2 where we were. Everyone scored the exact same so it went  
3 to a tiebreaker. The tiebreaker is farthest from another  
4 deal. So because we started early, we were working on a  
5 site that had support, had zoning, was ready to go, people  
6 could easily just go down the street and they would win,  
7 and that's exactly what happened here. They just went  
8 down the street and applied for zoning.

9           Because I don't know how they're going to make  
10 their numbers work. Honestly, we just spent an hour  
11 talking about the equity markets. I don't know how you  
12 make it work. Your costs go up and your sources go down.  
13 I don't know how you make that work. We would not do it,  
14 we would not do that deal. But essentially, they just  
15 went down the street and got the award.

16           And we're ready to go, we have equity lined up,  
17 we have an in-house civil engineer, we know the site  
18 inside and out, and we think it makes a lot of sense for  
19 our deal to be awarded. Again, the city supported it two  
20 years in a row. I know they got a ton of opposition. I  
21 think 34 people came out. I mean, it just doesn't make a  
22 whole lot of sense. All of a sudden they're looking at a  
23 mixed use development that you would see in Austin,  
24 downtown Austin, and it's going in a field in rural East  
25 Texas, and people are upset and they're going to drive by

1 it and say that's a strange use of resources. Why are we  
2 putting money into this? Why are we building a five-  
3 story, four-story mixed use development on a farm in far  
4 East Texas where they just went as far from the city  
5 center as possible, farther from the amenities than us,  
6 farther from the schools?

7 We're actually building more units, we're  
8 building 72 units, and we're ready to go. We've got our  
9 equity lined up. We do this in 14 states, we're the  
10 largest affordable developers in the United States, and  
11 we've been trying to get this done for three years.

12 Thank you very much.

13 MR. OXER: Good timing.

14 Any other questions?

15 MR. GANN: Where are we on this?

16 MR. OXER: All right. The current  
17 circumstances, here we are: there's been a motion by Dr.  
18 Muñoz and a second by Ms. Bingham to disapprove staff  
19 recommendation, which is to grant the appeal. Staff  
20 recommendation is to deny the appeal, the motion would be  
21 to grant the appeal.

22 Ms. Bingham, Dr. Muñoz, do you have any other  
23 thoughts?

24 (No response.)

25 MR. OXER: Marni.

1 MS. HOLLOWAY: I have nothing further regarding  
2 that particular item.

3 MR. OXER: Okay. And this was for item 7(a)  
4 which is for granting the appeal on the determination with  
5 respect to the zoning. Is that correct?

6 MS. HOLLOWAY: Yes.

7 MR. OXER: This is only the zoning.

8 MS. HOLLOWAY: Yes. This is only the zoning  
9 that's addressed in item 7(a).

10 MR. OXER: So it's the timing issue of this  
11 that's one of those little quirks that invariably we seem  
12 to have one that runs into this every year.

13 MR. GANN: Mr. Chairman.

14 MR. OXER: Yes, sir.

15 MR. GANN: Are we still in discussion?

16 MR. OXER: We are.

17 MR. GANN: I just listened real close to that  
18 last gentleman and what he was saying as far as  
19 Whitehouse, Texas and what building looks good in  
20 Whitehouse, Texas. But that's not what we're here for,  
21 we're here for a voting on this particular issue, but I  
22 think we have to underwrite that, just like we have to  
23 underwrite everything else.

24 I think I heard Brent say that you used --  
25 because it goes to two-story, three-story, four-story,

1       whichever one it was, you get a different comparison in  
2       cost. Is that correct? And if it is correct, is that  
3       what qualified it?

4               MR. OXER: Brent Stewart, Real Estate Analysis.

5               MR. STEWART: Yes, sir. Brent Stewart, Real  
6       Estate Analysis.

7               So the original construction was all three-  
8       story garden style buildings. The amended structure is  
9       they took the three stories and they stuck tuck-under  
10      garages underneath it and they reconfigured some of the  
11      commercial space.

12              MR. OXER: Commercial space or mixed use?  
13      Commercial means something, in my estimation it means  
14      something.

15              MR. IRVINE: Non-residential space.

16              MR. STEWART: Non-residential space.

17              MR. OXER: Okay.

18              MR. STEWART: So the costs went up because of  
19      that, and it went up over the \$70 per square foot scoring  
20      item, but because it then became a high cost development  
21      under the rules, they're allowed to go to \$75 for those  
22      points, so they stayed under the \$75 and then made those  
23      points.

24              One thing to watch out for is that the non-  
25      residential space cannot be used for anything residential

1 purposes or that cost per foot number then busts over the  
2 \$75 per foot because it is then included in the number  
3 that's calculated. So they would not be allowed to use  
4 that space for tenant purposes, it would have to be office  
5 or retail or what-have-you. So taking all that into  
6 account, we underwrote it.

7 The reason financially that this deal, again,  
8 under the rule works, is because the 2016 rents went up  
9 which allowed them to support more debt to then cover some  
10 more of that gap that would get created if the syndication  
11 price went down.

12 MR. GANN: But if all the same rules we use for  
13 it under the first presentation, it would not have  
14 qualified. Is that correct?

15 MR. STEWART: The 2015 rents would not have.

16 MR. GANN: But I mean I'm talking about because  
17 it went from a three-story to a four-story. You used a  
18 different group of numbers, did you not, \$75 instead of  
19 \$70?

20 MR. STEWART: That's right.

21 MR. GANN: And it would not have qualified at  
22 that point. Is that correct?

23 MR. STEWART: The costs would have been above  
24 \$70 so it would not have achieved those points.

25 MR. GANN: I think that that zoning ticker in

1 there has several other different elements to it, and it  
2 keeps you from making mistakes. And I think that this has  
3 a functionally obsolescent mistake. That building looks  
4 good in Galveston but it doesn't look good in Whitehouse,  
5 Texas. And we're underwriting something that costs more  
6 than a regular unit would cost over there, and I don't  
7 think that's really what we want to do. I think the  
8 reason for it is the zoning change because they had to add  
9 more cost because they were in a commercial zoning area.

10 MR. ECCLES: Well, if I could just ask a  
11 question, because we've gotten -- before the discussion  
12 led to the conclusion that had the proposed amended design  
13 than the development plan in the original application, I  
14 heard before that it would have scored the same as it  
15 would have.

16 DR. MUÑOZ: That's what I asked, Beau, that's  
17 the question I asked, and I'm hearing a different answer  
18 to that.

19 MR. ECCLES: This sounds different now. So if  
20 that could be clarified.

21 MR. STEWART: They would have submitted  
22 originally at the \$75 level, not the \$70 level, so that  
23 would have gotten them the same points. That's why it's  
24 equal.

25 MR. GANN: But it's not the original plan.

1 MR. ECCLES: Yes, but when you amend the plan,  
2 that's what you're judging it against, would they have  
3 lost points under that rule.

4 MR. GANN: But I'm just saying that's part of  
5 the complex situation here, in my opinion. The costs have  
6 gone up and the functionality of the building has actually  
7 gone down. Crime starts underneath there where there's  
8 parking lots underneath buildings -- it's probably better  
9 because it's actually a parking garage, but it's just  
10 problematic as far as the structure goes. That's not part  
11 of the zone change, but I think the zone changes protects  
12 you from some of that in this case. There was no zone  
13 change.

14 MS. HOLLOWAY: There was no zoning change. The  
15 plan as presented in the amendment meets the zoning  
16 requirements for the site which this is a letter from the  
17 City of Whitehouse. It says: It is currently zoned C-H  
18 which is retail/office high intensity. This zoning allows  
19 for the construction of multifamily apartments on the  
20 second floor or higher. So that's the zoning that's  
21 currently on this piece of property, that's been on this  
22 piece of property. What they had sought really was a down  
23 zoning to a less intense use.

24 MR. OXER: They had sought a down zoning to  
25 change but if they had stayed with the original zoning



1 which would have accommodated the current design, it would  
2 have gone right through at the zoning office and with the  
3 application. Is that right?

4 MS. HOLLOWAY: So far as I can tell at this  
5 point, yes, without having all of the schedules and  
6 everything in front of me.

7 MR. OXER: Everybody is telling us what they  
8 believe to be true.

9 MS. HOLLOWAY: And I'm sure that the applicant  
10 had a reason for not proposing this plan.

11 MR. OXER: I'm not because we just asked and  
12 didn't get a good answer.

13 MS. HOLLOWAY: At application, this was what it  
14 was zoned for.

15 MR. OXER: TJ.

16 MS. JACKSON: Toni Jackson.

17 I'd like to also point out, as the applicant  
18 has stated and Brent has confirmed, that costs will go up  
19 because they are now changing the site plan as it is, and  
20 there are other things. And Dr. Muñoz asked specifically  
21 what glaringly would change or impact the application, and  
22 leveraging would change if the costs have gone up. And so  
23 that would be something that would not be meeting the  
24 qualifications of the application at this point.

25 MR. OXER: Come on up, Cynthia. One more shot.

1 Make it short.

2 MS. BAST: Cynthia Bast.

3 I was just going to throw out a suggestion  
4 since it seems that this is hard. Does it make any sense  
5 to table this one and go to 7(b) first and look at the  
6 amendment and then come back to 7(a)? Just throw it out.

7 MR. OXER: Any interest in doing that by  
8 anybody?

9 MR. GANN: Not right now.

10 MR. OXER: Tim, did you have something?

11 MR. IRVINE: No. I think procedurally we've put  
12 it together correctly. The applicant applied to do a very  
13 specific transaction which required a zoning change. As a  
14 result of that, we issued a commitment notice that said,  
15 Hey, you've got to prove up your necessary zoning at  
16 commitment. They were unable to do that. As a result of  
17 that, it is our assessment that you didn't meet the  
18 requirements of commitment. And I think you have to  
19 dispose of that issue before you decide if you're going to  
20 take up the other matters.

21 MR. OXER: There is currently a motion by Dr.  
22 Muñoz and second by Ms. Bingham to oppose staff  
23 recommendation. Staff recommendation is to deny the  
24 appeal, the motion would be the equivalent of granting the  
25 appeal.

1 All right. As described, motion by Dr. Muñoz,  
2 second by Ms. Bingham to oppose staff recommendation on  
3 item 7(a) on this agenda. Those in favor?

4 (Ayes: Dr. Muñoz and Ms. Bingham.)

5 MR. OXER: Okay. That is Dr. Muñoz and Ms.  
6 Bingham.

7 Those opposed?

8 (Nays: Mr. Gann and Mr. Oxe.)

9 MR. OXER: That's Mr. Gann and myself. So  
10 we'll reconsider. Anybody else have anything else they  
11 want to say?

12 MS. Meyer: I didn't want to speak but I guess  
13 I'll have to.

14 I'm going to go back and go back to Cynthia.  
15 The rules state that you have after initial award that if  
16 an amendment is submitted that it must be considered by  
17 the Board. We were denied that right. We put that  
18 amendment in and you haven't considered that amendment.  
19 Now we've got an agenda item on the agenda that you  
20 haven't considered our amendment yet, but yet you're  
21 denying our commitment and you're terminating our  
22 application, in essence. So I really think that it makes  
23 better sense to hear the amendment and allow that process  
24 to be heard and allow that amendment to have  
25 consideration.

1           Because we did follow the rules, it states  
2 that. It wasn't foreseeable for us to do that. We have  
3 worked with Whitehouse for three years, we've been there.

4           We had no reason to believe that anything was going to go  
5 wrong when we submitted that application. We ran into a  
6 hiccup. We just so happened we lucked out that we were in  
7 a zoning area that would allow to do what we've put in as  
8 an amendment. You don't normally have that ability when  
9 there's a zoning change if you're in a commercial zone and  
10 you've got to change because they don't allow residential.

11           We just happen to be in an area that did that. That  
12 wasn't what we anticipated doing; we never even considered  
13 that.

14           MR. OXER: I have a question. So the actual  
15 zoning change is not actually a zoning change on the  
16 development, it's a zoning change in our application.

17           MS. MEYER: It's a zoning change in the site.

18           MR. OXER: They were looking, basically, to  
19 down rate the zoning from commercial to residential, if I  
20 gather that right.

21           MS. MEYER: Correct.

22           MR. OXER: They said, No, you can't do that,  
23 we're putting it back up as long as you have this mixed  
24 use. Is the zoning now the same as it was before, or was  
25 there actually a zoning change?

1 MS. MEYER: No. It is exactly what it was.  
2 We're not changing anything.

3 MR. OXER: So everything is what it was with  
4 respect to the zoning, so there's actually been no zoning  
5 change in Whitehouse.

6 MS. MEYER: Correct.

7 MR. OXER: So the zoning change that we're  
8 talking about is changing the description of the zoning on  
9 the application that we took on the project.

10 MS. MEYER: Well, it would be amending our  
11 application to not have to change the zoning. It's  
12 amending our application saying here's a new development  
13 that fits in with the existing zoning that's there that  
14 meets the 2020 plan with the City of Whitehouse that was  
15 already there, and they didn't want to change their plan.

16 There was a statement made a little while ago  
17 that sounds like our development is out in the middle of  
18 nowhere. It's not. There's residential development  
19 around us. We're cater-corner across from the elementary  
20 school. We're not out in the middle of nowhere, we're in  
21 rural Texas. I mean, yeah, we're a little further away  
22 from amenities because we're right down the street from  
23 the other applicant. We're not that far from the other  
24 amenities, and we're closer to the elementary school than  
25 they are. We're surrounded by residential development,

1 we're not out in the middle of nowhere.

2 MR. OXER: Okay. Comments received.

3 MS. MEYER: Thank you.

4 MR. OXER: Thanks.

5 Since we voted on that motion and had that,  
6 we'll have to have a reconsideration on the motion on  
7 7(a). Is that correct with your interpretation,  
8 Counselor?

9 MR. ECCLES: Or move to 7(b).

10 MR. OXER: Or move to 7(b) since 7(a) is not  
11 resolved yet. We're going to table 7(a) at the chairman's  
12 discretion, we'll have comments on 7(b), take a look at  
13 that, make sure that works, assuming that it does, and  
14 then we'll come back to 7(a).

15 MS. JACKSON: So hold my comments, because they  
16 were still staying on the zoning issue.

17 MR. OXER: Yes, keep your comments and we'll  
18 get back to you.

19 Marni.

20 MS. HOLLOWAY: Item 7(b) is presentation,  
21 discussion and possible action regarding a material  
22 amendment to the housing tax credit application for  
23 Abbington Place. This is application number 16018.

24 As the Board is well aware, this material  
25 amendment was submitted with the commitment notice on

1 September 28. At the time that we had to post the  
2 amendment under the statutory requirements, the day prior  
3 to 15 days prior to the Board meeting, underwriting was  
4 not complete and for that reason and because of the  
5 commitment notice issue, staff is recommending denial of  
6 the material amendment request in this Board item.

7 MR. OXER: At the risk of throwing gasoline on  
8 the fire, I'll ask if anybody has any comments. Mr. Gann,  
9 do you have anything? You were requesting some  
10 information with respect to the nature of the site and its  
11 context.

12 MR. GANN: No. My position on that was that if  
13 it didn't qualify underneath the written set of rules, you  
14 know, you can't change it in midstream it doesn't seem  
15 like. So that where I was on that particular question.  
16 And the complete looks of the thing changed from  
17 residential to commercial.

18 MR. OXER: But did it change to commercial?

19 MR. GANN: No. It was commercial to start with  
20 so they had to change their look to commercial which means  
21 you've got a high rise there next to that 80-year-old man,  
22 for instance.

23 MR. OXER: Next to an elementary school.

24 So staff recommendation is to deny the appeal  
25 for the material change.

1 MS. HOLLOWAY: To deny the request for a  
2 material amendment. Yes.

3 MR. OXER: Or the material amendment. Okay.  
4 Have to have a motion to consider.

5 MR. GANN: I move we deny the request.

6 MR. OXER: Okay. Motion by Mr. Gann to approve  
7 staff recommendation on item 7(b) which is to deny the  
8 request for material amendment. I hear no second. Do I  
9 hear an alternative motion? It's deafeningly quiet in  
10 here. Yeah, this is a hard one. Don't anyone take it for  
11 granted that this is easy. We have spent a lot of time,  
12 and I'll tell the applicant, Mr. Rea, you guys have been  
13 working out there for three years. This is one of those  
14 things, we've denied people's applications for being 15  
15 minutes late. Not checking the box on something is going  
16 to get your application shot quickly.

17 MR. GANN: Let me ask a question. They have  
18 the financing and we're just a few months away. Why  
19 couldn't they recycle through next year? I mean, it's  
20 possible. Right?

21 MR. OXER: They've been working out there for  
22 three years.

23 MR. GANN: I mean, I think they've got local  
24 financing too, which I don't know that. Is that what you  
25 said, investors? Well, it's not going to be due to some



1 other things

2 MR. OXER: Robbye.

3 MS. MEYER: Robbye Meyer, Arx Advantage.

4 The new QAP, the competitive nature, if the  
5 other awards are there, then we won't have an under-served  
6 area, and so therefore, the competitive nature of  
7 Whitehouse is no longer there.

8 MR. OXER: It changes it. Because there's  
9 nothing there which is why it attracted all of that  
10 attention.

11 MS. MEYER: Right. So we would lose points.

12 MR. OXER: The target has got a lot of red dots  
13 on it.

14 MR. GANN: I was just hoping for some relief  
15 there.

16 MR. OXER: This would be way too easy if it was  
17 that easy to get out.

18 MS. BINGHAM ESCAREÑO: I'll second Mr. Gann's  
19 motion.

20 MR. OXER: Okay. So Mr. Gann, would you care  
21 to restate your motion, please?

22 MR. GANN: I move we approve staff  
23 recommendation.

24 MR. OXER: Item 7(b) is motion by Mr. Gann,  
25 second by Ms. Bingham to approve staff recommendation on

1 item 7(b) which is to deny the appeal for material  
2 amendment.

3 MS. HOLLOWAY: Deny the request for a material  
4 amendment.

5 MR. OXER: Deny the request.

6 MR. ECCLES: If I could ask the question. Has  
7 this amendment be reevaluated by the Department? You said  
8 that underwriting was not complete.

9 MS. HOLLOWAY: Was not complete.

10 MR. ECCLES: By the time of posting.

11 MS. HOLLOWAY: At the time of posting. That  
12 was part of our reason for the denial. The other part was  
13 the commitment issue. You've heard Brent discuss the  
14 feasibility of the development with the material  
15 amendment.

16 MR. ECCLES: And Underwriting's evaluation was  
17 that it was feasible.

18 MS. HOLLOWAY: Yes, it was.

19 MR. OXER: But only at this elevated level of  
20 \$75 a square foot as opposed to the \$70?

21 MS. HOLLOWAY: Yes. Well, the other important  
22 piece, and we received an email from staff back at the  
23 office -- thank you -- that if the office spaces that are  
24 designated as office spaces right now are used for tenant  
25 activities, the cost would be included in the total

1 building cost and would exceed the \$75 per square foot  
2 scoring threshold, so they would lose a point.

3 MR. ECCLES: We've also heard from the  
4 applicant that they have no prospective tenants lined up.

5 But now that Underwriting's evaluation is complete, just  
6 on the issue of the material amendment in 7(b), does that  
7 change staff's recommendation?

8 MS. HOLLOWAY: No, it does not.

9 MR. OXER: What you got crossed up with a  
10 schedule that we have to complete to be able to exercise  
11 this program, issue these tax credits and there are  
12 certain gates you have to go through, and the schedule,  
13 deadlines and that sort of thing are not casual, of  
14 course, knowing that we have lots of competition, lots of  
15 people want these. You know, we've run into the case  
16 before where I have to say that TDHCA doesn't work  
17 according to somebody's local city schedule, we have to  
18 work on our schedule, and if you want that schedule, that  
19 means somebody has got to have their zoning board meeting  
20 ahead of when we need our deadline. Is that clear?

21 MR. GANN: Can I move the question?

22 MR. OXER: I was going to ask is there any more  
23 comment to be made. Cynthia.

24 MS. BAST: Cynthia Bast of Locke Lord.

25 As I mentioned in my prior comments, I feel

1 like this amendment needs to be reviewed on its merits and  
2 I don't think that I have ever seen a staff recommendation  
3 against an amendment based on the fact that underwriting  
4 wasn't complete. That's not the merits of the amendment,  
5 that's not the substance of the amendment.

6           The Government Code says that the Board may  
7 reject an amendment -- permissive language, Dr. Muñoz --  
8 if the Board determines that the modification proposed in  
9 the amendment would materially alter the development in a  
10 negative manner or would have adversely affected the  
11 selection of the application in the application round.  
12 Your rules say: Amendment requests will be denied if the  
13 Department finds that the request would have changed the  
14 scoring of an application in the competitive process such  
15 that the applicant would have not received the award, or  
16 if the need for the proposed modification was reasonably  
17 foreseeable and preventable.

18           You've received testimony on all of that, and  
19 having worked on a number of material amendments over the  
20 years, and even, as was mentioned, looking at some that  
21 are on your agenda today for significant changes, for  
22 changing unit types, for changing numbers of buildings,  
23 for changing a lot of things, I believe firmly that if you  
24 look at the merits of this amendment standing on its own,  
25 that this is an amendment that would otherwise be approved

1 in accordance with the law and the rules.

2 Thank you.

3 MS. JACKSON: Toni Jackson, Jones Walker.

4 I agree in most circumstances you would look at  
5 the merits of the amendment on its own, however, I think  
6 in this case you have to look at the whole picture here,  
7 and you do have an amendment that is being requested  
8 simply because the criteria of the original application  
9 could not be met.

10 I think it was actually pointed out that  
11 they're not asking for a zoning change now. This is an  
12 amendment based on the way the property was already zoned.  
13 However, we do have to also take into account the  
14 applicant had the chance to submit an application in the  
15 first place as the zoning was already in place and chose  
16 not to, and there was a reason that they chose not to,  
17 that they wanted to build something different and now  
18 they're changing it. And so I think that has to be taking  
19 into consideration because they submitted an application  
20 that they did not have zoning for, that zoning was not  
21 approved by the city, there was opposition, significant  
22 opposition, obviously, that caused the city to not approve  
23 the change in the zoning.

24 And therefore, we respectfully ask that you  
25 consider the fact that the rules are here for a reason, we

1 look for consistency in those rules. The applicant  
2 himself even stood before you said, Well, I'm that good  
3 with the rules. But this is a rule focused program, it's  
4 a competitive program, and each of us in this audience  
5 have to follow those rules that you have put into place.  
6 And we ask that you remain consistent with the program and  
7 follow those rules and deny the request.

8 MR. OXER: Thanks, Toni.

9 Any other questions from the Board? Any other  
10 public comment? Sean. Sixty seconds so make it quick.

11 MR. BRADY: Yes, sir.

12 I just wanted to clarify that our revised  
13 design is what the planning board wanted. I certainly  
14 understand your belief about what fits in Whitehouse, but  
15 the planning board wanted this revised design. That was  
16 part of the reason that they denied our request is they  
17 didn't want simple garden style, they wanted more of  
18 gateway feature on the southern side. That's why we're  
19 zoned what we are. Their application is very close to  
20 ours too; we're all basically clumped up right next to  
21 each other because of the distance tiebreaker rule. So  
22 this is what the city wanted, this is what the planning  
23 board wanted

24 So we've met the rules for the scoring and all  
25 of that, as I understand it, and that's part of what led

1 to all of this is the city does want this design, which  
2 we've done as minimal changes as we possibly could from  
3 the application.

4 MR. ECCLES: Let me ask this question very  
5 quickly. If this is what the city wanted, why didn't they  
6 tell you that a year ago at application?

7 MR. BRADY: That is a great question.

8 MR. ECCLES: Or did they tell you that a year  
9 ago at application?

10 MR. BRADY: Well, honestly, there's been three  
11 different city managers there since we have been there,  
12 really all in the past year, and we've gotten different  
13 direction from those different city managers. The initial  
14 city manager, who I first talked to three years ago, was  
15 more inclined just for the apartments. Then there was an  
16 interim city manager which is who we had talked to before  
17 the zoning hearing, and then they now have a full-time  
18 city manager there, and they were kind of more inclined  
19 towards the mixed use concept.

20 There was also a lot more discussion from the  
21 planning board about the importance of their Vision 2020  
22 plan which we had received a different interpretation from  
23 the original city manager, that they were more simple  
24 apartments focused. And the new city manager, they were  
25 more inclined towards kind of a mixed use concept on that

1 southern side. Honestly, that was a lot of it is  
2 different directions from different individuals we were  
3 working with in the city, and we've been trying to be  
4 responsive to all of that.

5 We got that revised direction after the  
6 planning board hearing which happened two weeks after we  
7 turned in our application, and so honestly, they were  
8 dealing with a political situation, I believe, that they  
9 didn't expect, and so that's part of kind of what I  
10 believe we got all wrapped up in there, and I think they  
11 were kind of trying to move with the response. I mean, we  
12 had been in the paper and nobody had ever showed up  
13 before, and so I guess they changed their tune because of  
14 the politics of the situation. That happens a lot.

15 MR. OXER: Yes. Okay. Thanks for your  
16 comments.

17 Chris.

18 MR. APPLEQUIST: Thank you, Chairman Oxer.  
19 I'll make it very quick.

20 MR. OXER: Sixty seconds, please.

21 MR. APPLEQUIST: Absolutely.

22 You know, really when we look at it, we feel  
23 like we really followed the rules to a T, and that seems  
24 to be what the Department has been asking for a number of  
25 years, more due diligence, engineering reports,



1 feasibility reports, really understanding your site and  
2 having something ready to go. We did that, we met all the  
3 deadlines, we checked all the boxes. Had we been awarded,  
4 we'd already be closed. I mean, we're ready to go, we  
5 don't need zoning.

6           They're commercial retail zoning, and I wish we  
7 had an aerial to show what we're talking about because the  
8 reality is if you look at the site and you look at the  
9 area, it is rural East Texas. I mean, you buy land out  
10 there a lot of times by the acre, you don't buy it by the  
11 foot. It's a rural site, and I should have brought a  
12 large blowup to show that to you guys, I think.

13           I've had the privilege of working with Ms. Bast  
14 a number of years. She's very, very good at what she  
15 does, she's very good at what she does. I think if she  
16 weren't here, this would have gone a lot faster. I think  
17 it's pretty straightforward. I think we met the rules, I  
18 think they missed their deadlines, I don't think they  
19 followed the rules.

20           I think staff is absolutely correct, and I  
21 thank you for your time, and with a favorable vote, we're  
22 ready to go today. Thank you.

23           MR. OXER: Thanks.

24           Marni, you indicated there as a point  
25 differential?

1 MS. HOLLOWAY: If the designated office spaces,  
2 the flex space that doesn't have a tenant, if that is used  
3 for tenant purposes, then the cost for that space would be  
4 included in total building costs which at that point would  
5 exceed the \$75 per square foot threshold to get twelve  
6 points on this item and they would get eleven points.  
7 That's a future use but something that is important to  
8 consider.

9 MR. OXER: Okay. Any other questions?

10 (No response.)

11 MR. OXER: All right. With respect to item  
12 7(b) on the agenda, there's been a motion by Mr. Gann,  
13 second by Ms. Bingham -- if I recall back that long ago --  
14 to approve staff recommendation which is to deny the  
15 request for material amendment.

16 Is that correct, Marni?

17 MS. HOLLOWAY: Yes.

18 MR. OXER: Okay. There's been public comment  
19 motion by Mr. Gann, second by Ms. Bingham. Those in  
20 favor?

21 (A chorus of ayes.)

22 MR. OXER: And those opposed?

23 (No response.)

24 MR. OXER: Motion passes four-zero. It's  
25 unanimous. The request is denied.

1           Given that the request is denied, item 7(a)  
2 becomes immaterial, if I recall. Is that correct?

3           MS. HOLLOWAY: I believe there's still an  
4 appeal that's been filed.

5           MR. OXER: It's still an open agenda item but  
6 it also becomes less material. We'll take up item 7(a)  
7 again. I'll hear a motion to consider for item 7(a) which  
8 is staff recommendation to deny the appeal.

9           MR. GANN: I move staff's recommendation.

10          MR. OXER: Motion by Mr. Gann.

11          MS. BINGHAM ESCAREÑO: Second.

12          MR. OXER: Second by Ms. Bingham to approve  
13 staff recommendation on the appeal which is to deny the  
14 carryover. Is that correct?

15                 Getting signals from the dugout?

16          MS. HOLLOWAY: That's all right.

17          MR. OXER: Just checking. I just want to make  
18 sure Tom is not telling tractor jokes.

19                 (General laughter.)

20          MR. OXER: We've already considered comment on  
21 item 7(a). There's been a motion by Mr. Gann, second by  
22 Ms. Bingham to approve staff recommendation to deny the  
23 appeal. Those in favor?

24                 (A chorus of ayes.)

25          MR. OXER: And opposed?

1 (No response.)

2 MR. OXER: There are none. It's unanimous.

3 We'll move to item 7(c).

4 MS. HOLLOWAY: Item 7(c) is presentation,  
5 discussion and possible action regarding approval for  
6 publication in the *Texas Register* of the 2017-1  
7 Multifamily Direct Loan notice of funding availability.  
8 This ties directly back to the final rule that we took up  
9 just a little bit ago.

10 This year we have in total for this NOFA  
11 \$32,549,905. We are splitting these funds up into set-  
12 asides, of course. For CHDOs we have \$4,723,589; for our  
13 supportive housing/soft repayment set-aside, so this is  
14 our old deferred forgivable, we have \$4 million this year,  
15 so we actually have more than we had last year as a result  
16 of interest payments received; the balance of \$23,826,316  
17 is going into the general set-aside. We have increased  
18 maximum requests just a bit this year. For CHDO the  
19 maximum request is \$3 million; for supportive housing/soft  
20 repayment that maximum is \$800,000; new construction under  
21 the general is \$3 million, and rehabilitation is \$2  
22 million.

23 We will open for applications on January 9, and  
24 the funds will be regionally divided until February 9.  
25 I'd like to point out that we are doing a separate RAF for

1 the soft repayment funds so that hopefully that will sort  
2 of mitigate some of the issues that we had out of the last  
3 year's round. We will close for applications on August  
4 31.

5 I need to point out that National Housing Trust  
6 Fund is not included in this NOFA. We have submitted our  
7 response to their disapproval of our original plan to HUD  
8 and we have not received that back yet. Once we have that  
9 resolved, then we will bring forth an amendment to put  
10 those trust fund dollars into this NOFA.

11 Staff recommends approval of the 2017-1  
12 Multifamily Direct Loan Program NOFA.

13 MR. OXER: Thank you. Any questions from the  
14 Board?

15 MS. BINGHAM ESCAREÑO: I move staff's  
16 recommendation.

17 DR. MUÑOZ: Second.

18 MR. OXER: Motion by Ms. Bingham, second by Dr.  
19 Muñoz to approve staff recommendation on item 7(c).

20 Have you got something you want to say, Janine?

21 MS. SISAK: Janine Sisak. I'm here today on  
22 behalf of TAAHP, just really quickly.

23 MR. OXER: Keep your pen in your pocket.

24 MS. SISAK: I didn't even bring it up, I lost  
25 it somewhere in the back of the room during that long

1 appeal.

2 (General laughter.)

3 MS. SISAK: So I really appreciate staff's  
4 ability to put this on the Board meeting in short order  
5 after having discussions with staff about the uncertainty  
6 in the equity crisis only recently, really in the last  
7 three weeks, so we really appreciate that. And we  
8 wouldn't as -- TAAHP wouldn't ask for a postponement of  
9 this NOFA at the time.

10 But in looking at it -- I know that the NOFA  
11 will help some people and I think that's great. I think  
12 there's an ability for these direct HOME and TCAP funds to  
13 help a greater number of people, as we discussed, in terms  
14 of soft loans or lowering interest rates. But I'm mostly  
15 concerned about the process. I mean, when I read the  
16 NOFA -- and I haven't quite thought it through with regard  
17 to our particular situation -- it sounds like the request  
18 is for a full application to be resubmitted and that would  
19 require all 2016 deals to meet threshold requirements  
20 under the 2017 rules, so I foresee some problems in that  
21 respect.

22 I also see -- and I might not be right about  
23 some of this stuff and I need to sit down with staff and  
24 make sure I understand how it's going to work -- if we're  
25 looking at a RAF, so for our situation in Region 8,

1 there's some language in the NOFA that says if you have  
2 previously received funds that you can only get TCAP funds  
3 on a 2016 deal, so in our case I think it's maxed at, I  
4 don't know, \$180,000 or something like that. Which is  
5 helpful, as I said, every little bit counts, but if I need  
6 to do a whole new application and meet a whole new set of  
7 rules and the rules will require us to submit an  
8 application that's feasible at 3 percent with hard  
9 repayments, I don't know how we would ever effectively get  
10 to a lower interest rate or a soft repayment if we need to  
11 go in with a feasible development.

12           Again, I need to think it through but I'm very  
13 concerned about this concept of 2016 deals having to  
14 reapply. So those are my comments. And again, I might be  
15 wrong and would like to talk with staff about it, and  
16 again, we certainly don't want to hold up passing this  
17 NOFA because there are some people that -- I think the  
18 people that can kind of get their deal done with one big  
19 HOME loan, I think that that is an option for them and I  
20 would not want to take that option away from those few  
21 deals that can really benefit. And so in that respect,  
22 for them to do an application when they're getting a \$3  
23 million HOME loan, that makes sense, but too get like an  
24 extra \$150,000 with hard repayments at 3 percent, I don't  
25 know that that helps in a way.

1                   So those are my comments. Again, I might not  
2 be thinking it through properly, so I'll talk to staff  
3 about it.

4                   MR. OXER: So your position is that you support  
5 staff recommendation to issue the NOFA, you compliment  
6 them on bringing it to fruition quickly, and so you're  
7 putting this in the record to be considered, but I assume  
8 that when you call the staff, they talk to you.

9                   MS. SISAK: I would love to have the Board  
10 correct this aspect of reapplying on the fly today, but if  
11 not, if you feel like you can't do that, then I would like  
12 staff to consider issuing another NOFA soon after this one  
13 to make the program work better for the large number of  
14 2016 deals that I think will be troubled.

15                  MR. OXER: Well, I will offer up that making  
16 any sort of sudden movements on the fly is what has  
17 historically gotten us in trouble, so we are inclined not  
18 to do that. Not to mention, I'm getting signals in from  
19 every attorney that's ever talked to us that that's not  
20 the right way to do this, and it hasn't been issued on the  
21 agenda to be considered. But that said, we have the  
22 option to issue others later on.

23                  MS. SISAK: Right. And if staff would like to  
24 respond, maybe I'm misunderstanding how this is going to  
25 work.



1 MR. OXER: With respect to that, what I'm going  
2 to offer up is that Marni is going to be amenable to a  
3 phone call and you and she can chat about it. Is that  
4 good, Marni?

5 MS. HOLLOWAY: Yes.

6 MR. OXER: Okay. With respect to item 7(c),  
7 anything else you want to add, Marni?

8 MS. HOLLOWAY: No.

9 MR. OXER: Good.

10 MS. HOLLOWAY: I'm all done for now.

11 MR. OXER: Brought it home, anchor lady on this  
12 one.

13 Item 7(c), there's been a motion by Ms.  
14 Bingham, second by Dr. Muñoz to approve staff  
15 recommendation on the NOFA. Those in favor?

16 (A chorus of ayes.)

17 MR. OXER: And opposed?

18 (No response.)

19 MR. OXER: There are none.

20 That takes us to the end of the formal agenda.

21 Mr. Duncan, I think you'd like to make a  
22 comment on one of the items we took up first thing this  
23 morning on the consent agenda.

24 MR. DUNCAN: I'm starting to lose my voice now  
25 that I need to talk.

1 MR. OXER: The first thing you need to start  
2 off with is to formally tell us who you are.

3 MR. DUNCAN: Charlie Duncan, Texas Low Income  
4 Housing Information Service. Thanks for giving me the  
5 last minute opportunity here to comment on application  
6 16442 for the Independence Heights project.

7 As the Board is aware, the U.S. Department of  
8 Housing and Urban Development, HUD, is currently  
9 conducting an investigation into the City of Houston for  
10 possible Title 6 and Fair Housing Act violations related  
11 to the siting of public and affordable housing in the  
12 city, and whether said policies and practices discriminate  
13 on the basis of race, color, national origin, and/or other  
14 protected class status.

15 Despite the ongoing investigation, the City of  
16 Houston has continued to make housing siting decisions  
17 that continue the practice of locating affordable housing  
18 exclusively in these areas. This includes the resolution  
19 of no objection for this application at Independence  
20 Heights, as well as for the Point at Crestmont which was  
21 also placed on today's consent agenda. And there's some  
22 pending issues with that one related to the removal of  
23 blight in the area. In contrast, the city refused to  
24 bring a similar resolution to the city council for a vote  
25 when the development at issue was located in a low poverty

1 area with high quality schools that would have promoted  
2 integration.

3 We'd like to emphasize that the fair housing  
4 issue we see is not the Independence Heights application  
5 in and of itself but the city's failure to balance this  
6 investment and those like it with integrated developments  
7 in low poverty areas. Whether or not the Independence  
8 Heights site taken in isolation meets federal civil rights  
9 and housing standards is at this point irrelevant. Two  
10 and a half years ago HUD explicitly warned the city that  
11 development in Independence Heights must be accompanied by  
12 a plan to deconcentrate poverty and put develop of housing  
13 in high opportunity areas that are not impacted.

14 The City of Houston has blocked the housing  
15 authority's attempts to develop in low poverty, high  
16 opportunity areas while advancing developments that  
17 perpetuate segregation and further concentrate poverty in  
18 citing this civil rights investigation.

19 Over the past several years TDHCA has  
20 demonstrated an ongoing commitment to fair housing and  
21 ensuring that it promotes equal access to opportunity for  
22 all Texans. We urge the Board to not move this  
23 application forward until it has been balanced with an  
24 affordable housing development in a high opportunity area.

25 Thank you.

1 MR. OXER: Thanks, Charlie. Appreciate your  
2 comments.

3 MR. DUNCAN: Are there any questions?

4 MR. OXER: Any questions for Mr. Duncan?

5 Donna, did you have anything you wanted to say  
6 on this, or are you just moving up front? Do you have a  
7 comment?

8 MS. RICKENBACKER: Public comment, not on this  
9 item.

10 MR. DUNCAN: It's too bad that it was moved to  
11 the consent agenda. We passed along a letter to Mr.  
12 Eccles last week and he informed there's no rule that  
13 staff could act on to do anything about this, and we'd  
14 like to have seen staff exercise its discretion in at  
15 least delaying this vote until the HUD investigation  
16 resolved and not enable the City of Houston to potentially  
17 commit a violation. I thank you for your time.

18 MR. OXER: And you know, we are cautious not to  
19 get in refereeing any local cat fights.

20 Do you have a comment to make there, Counselor?

21 MR. ECCLES: And I appreciate your comments,  
22 and I'll note that the materials that you forwarded were  
23 placed in the Board book and they are under agenda item  
24 1(1) under this application 16442. But I agree with  
25 myself and my previous statement that I know of no either

1 statutory or rule-based mechanism to indefinitely delay an  
2 otherwise facially sufficient application that this  
3 development has made. Staff treated this application like  
4 every other application and it did not hit the triggers  
5 that exist in our rule and in statute.

6 MR. DUNCAN: I understand that, and that's why  
7 I wanted to bring this to the Board, who has discretion,  
8 and this is, I think, a unique circumstance that certainly  
9 doesn't apply to a lot of 4 percent or other tax credit  
10 applications. That's all I can do is bring that to your  
11 attention and hope that you act. And thanks for the  
12 opportunity to speak.

13 MR. OXER: I suspect there are some folks, like  
14 Lance Gilliam, who would like to have another outcome on  
15 that deal anyway.

16 MR. DUNCAN: Definitely.

17 MR. ECCLES: And certainly the Board is within  
18 its discretion to reconsider this matter that they've  
19 already voted on through the consent agenda that was on  
20 item 1(1).

21 MR. OXER: With that I mind, does any member of  
22 the Board wish to reconsider that item on the consent  
23 agenda, under advice of counsel?

24 (No response.)

25 MR. OXER: Okay. Thanks for your comments.

1 MR. DUNCAN: Thank you.

2 MR. OXER: Does that complete the final agenda?

3 Now we're at the completion of the agenda, so we are at  
4 the point in the agenda where we accept public comment for  
5 items to be used to build up the agenda for coming  
6 meetings.

7 Donna.

8 MS. RICKENBACKER: Well, this isn't for  
9 purposes of adding anything to the agenda. My public  
10 comment -- Donna Rickenbacker, by the way -- is to  
11 recognize and congratulate Dr. Muñoz for accepting a  
12 position with the University of Houston Downtown.

13 MR. OXER: Indeed.

14 (Applause.)

15 MS. RICKENBACKER: So very much congratulations  
16 to you. I obviously live in Houston and I've been  
17 watching Dr. Couture since Welcome Wilson and others  
18 brought here to the City of Houston and watched her turn  
19 around that school into now a tier one program, and now  
20 the third largest city in the nation, and our only public  
21 tier one program in Houston, and to add you to it is kudos  
22 to her. And congratulations to you and welcome to  
23 Houston.

24 MR. OXER: Looking forward to it.

25 Okay. Is there any other comments from the

1 audience? Anybody on staff?

2 (No response.)

3 MR. OXER: I'd like to say happy holidays and  
4 Merry Christmas to everybody.

5 Any member on the dais like to say anything,  
6 any Board member?

7 (No response.)

8 MR. OXER: Okay. As chairman I get the last  
9 word. So Merry Christmas, be careful, Happy New Year,  
10 careful with your celebrations. What we do here is an  
11 important thing that we do and it's a good thing that we  
12 do, and we need you all back.

13 So with that, I'll consider a motion to  
14 adjourn.

15 MS. BINGHAM ESCAREÑO: So moved.

16 MR. OXER: Motion by Ms. Bingham to adjourn.

17 MR. GANN: Second.

18 MR. OXER: And I hear a second by Mr. Gann.

19 Those in favor?

20 (A chorus of ayes.)

21 MR. OXER: See you in a month.

22 (Whereupon, at 12:30 p.m., the meeting was  
23 adjourned.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: December 15, 2016

I do hereby certify that the foregoing pages, numbers 1 through 152, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 12/17/2016  
(Date)

On the Record Reporting  
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