

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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- o) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report and directing their publication for public comment in the *Texas Register*
- 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*
- r) Presentation, Discussion, and Possible Actions on: first, an order adopting amendments to 10 TAC Chapter 1 Administration, Subchapter B, §1.201 (concerning Purpose), §1.202 (concerning Definitions), §1.203 (concerning General Certifications and Effect of Non Compliance), §1.204 (concerning Reasonable Accommodations), §1.205 (concerning Compliance with the Fair Housing Act), and §1.206 (concerning Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1978); and, second, an order adopting the repeal of §1.208 (concerning Public and Common Use Areas in Multifamily Developments) and §1.211 (concerning Additions of Units to Existing Multifamily Housing Developments), and directing that these be published 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.)

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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)

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