

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

March 6, 2014
10:06 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
J. MARK McWATTERS, Member
LESLIE BINGHAM ESCAREÑO, Member
ROBERT D. THOMAS, Member
TOM GANN, Member

TIMOTHY K. IRVINE, Executive Director

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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 March 6 Board meeting of the Texas
4 Department of Housing and Community Affairs.

5 We will begin, as we always do, with roll call.
6 Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. OXER: Mr. Gann?

9 MR. GANN: Here.

10 MR. OXER: Mr. McWatters is not here; Dr. Muñoz
11 will be here. I'm here.

12 Mr. Thomas?

13 MR. THOMAS: Here.

14 MR. OXER: Okay, we have four here and we
15 expect Dr. Muñoz, so we have a quorum, we can safely
16 proceed.

17 Tim, will you lead us in the pledge.

18 (Whereupon, the Pledge of Allegiance and the
19 Texas Allegiance were recited.)

20 MR. OXER: Do we have a Fair Housing resolution
21 to start with?

22 MR. IRVINE: We do.

23 MR. OXER: Bobby Wilkinson, is he here? There
24 he is in the back, our new commander from the Governor's
25 Office. Welcome aboard. We appreciate you coming here

1 last time and we'll make it as much of an adventure for
2 you as it is for us.

3 Tim, let's have this resolution on Fair
4 Housing.

5 MR. IRVINE: Thank you very much, Mr. Chairman.

6 "Whereas, April 2014 is Fair Housing Month and
7 marks the 46th anniversary of the passage of the federal
8 Fair Housing Act, signed by U.S. President Lyndon Baines
9 Johnson on April 12, 1968; and

10 "Whereas, the Fair Housing Act provides that no
11 person shall be subjected to discrimination because of
12 race, color, national origin, religion, sex, disability or
13 familial status in the sale, rental, financing or
14 advertising of housing and charges the Secretary of the
15 U.S. Department of Housing and Urban Development with
16 administering HUD programs in a manner that meets the
17 requirements of the law and affirmatively furthers the
18 objectives of Fair Housing Act; and

19 "Whereas, the Texas Department of Housing and
20 Community Affairs administers housing programs to promote
21 the development and supply of safe, decent, affordable
22 housing for qualifying Texans; and

23 "Whereas, it is the policy of the Texas
24 Department of Housing and Community Affairs to support
25 equal housing opportunity in the administration of all of

1 its programs and services, including encouraging equitable
2 lending practices for its homebuyer programs and Fair
3 Housing rules and guidelines for its multifamily
4 developments; and

5 "Whereas, the Texas Department of Housing and
6 Community Affairs, through its program implementation
7 workshops, provides Fair Housing training designed to
8 continually educate architects, building managers,
9 consultants, contractors, developers, engineers, lenders,
10 real estate professionals, and other partners about the
11 importance of their commitment and adherence to the
12 requirements of the Fair Housing Act; and

13 "Whereas, the Texas Department of Housing and
14 Community Affairs encourages, especially at the local
15 level, the development of educational programs to provide
16 Fair Housing information in communities throughout the
17 state; and

18 "Whereas, the Texas Department of Housing and
19 Community Affairs and the State of Texas support equal
20 housing opportunity in accordance with the Fair Housing
21 Act not only during Fair Housing Month in April but
22 throughout the entire year; now, therefore, be it

23 "Resolved, that in the pursuit of the goal and
24 responsibility of providing equal housing opportunities
25 for all, the Governing Board of the Texas Department of

1 Housing and Community Affairs does hereby celebrate April
2 2014 as Fair Housing Month in Texas and encourages all
3 Texas individuals and organizations, public and private,
4 to join and work together in this observance for free and
5 equal housing treatment and opportunity for all."

6 And we recommend that the Board adopt this
7 resolution to memorialize our commitment to Fair Housing
8 and this celebration of Fair Housing Month which is upon
9 us.

10 MR. OXER: Okay. I'll entertain a motion to
11 resolve.

12 MS. BINGHAM ESCAREÑO: Move to so resolve.

13 MR. OXER: Okay.

14 MR. GANN: Second.

15 MR. OXER: Motion by Ms. Bingham, second by Mr.
16 Gann to adopt Resolution 14-017. Is there any public
17 discussion? There is none. All in favor?

18 (A chorus of ayes.)

19 MR. OXER: Opposed?

20 (No response.)

21 MR. OXER: There are none.

22 This just codifies or at least memorializes the
23 effort that we all put into this because everybody in this
24 room makes a substantial effort towards making sure that
25 Fair Housing is available to everybody in our community

1 and our state.

2 MR. IRVINE: If I might make a Fair Housing
3 comment at this moment?

4 MR. OXER: Sure. I think that's a good time to
5 do it.

6 MR. IRVINE: I would like for you all to know
7 that Cameron Dorsey, in an expanding role as deputy
8 executive director, is now overseeing not only multifamily
9 programs but our Fair Housing team, a hardworking group
10 that he will put together to heighten and improve our
11 focus of resources on Fair Housing and to assure that we
12 move forward, not only in accordance with the letter but
13 with the spirit of the Fair Housing Act. And in that
14 regard, since Cameron will be taking on these new
15 responsibilities, Jean Latsha has undertaken to become the
16 director of multifamily housing programs. So two pretty
17 significant changes.

18 MR. OXER: Congratulations to you both. We
19 appreciate you taking the new assignment, both of you. So
20 thanks to both of you.

21 (Applause.)

22 MR. THOMAS: Mr. Chairman.

23 MR. OXER: Yes, sir, Mr. Thomas.

24 MR. THOMAS: I'm just wondering is there any
25 limit to how far we spread Cameron. I think we're

1 eventually going to have him running the entire state.

2 MR. OXER: I was going to suggest him as a
3 replacement for my position, actually.

4 (General laughter.)

5 MR. OXER: In keeping with our staff
6 considerations here, as most of you probably know, today
7 is one of those days that we celebrate each year, and it's
8 not just because it's the date for the fall of the Alamo,
9 which was bad enough in itself, but today we mark the
10 passing of another year, another notch carved into the
11 bedpost for one of our staffers. So Miss Patricia, would
12 you please come forward?

13 Now, as most of you know, Patricia is quite an
14 athlete and we're always proud of her. And did you get
15 the ten miles in this morning yet? Congrats on that.
16 You're way ahead of my knees, trust me. We have a card
17 here signed by everybody and a gift on behalf of all of
18 us, some CVS muscle rub for all those aches and pains that
19 you have. So come right up here.

20 (General talking and laughter; pause for
21 photos; applause.)

22 MR. IRVINE: Mr. Chairman, if you're
23 memorializing important events such as that, I do want to
24 note that Tom Gann is coming up on a fifth anniversary of
25 serving on this Board.

1 (Applause.)

2 MR. OXER: I think I'm actually coming up on my
3 fifteenth -- no, it's only been three. Right?

4 All right. Now we move to the consent agenda.

5 Is there any point that we have on the consent agenda
6 that any member would like to pull?

7 (No response.)

8 MR. OXER: I'll entertain a motion to consider.

9 MR. THOMAS: So moved.

10 MR. OXER: Motion by Mr. Thomas to approve the
11 consent agenda.

12 MS. BINGHAM ESCAREÑO: Second.

13 MR. OXER: Second by Ms. Bingham. No public
14 comment. All in favor?

15 (A chorus of ayes.)

16 MR. OXER: Opposed?

17 (No response.)

18 MR. OXER: There are none. Thanks, folks.

19 Okay. The report item -- did somebody leave
20 something off this agenda? It's pretty short today.

21 MR. IRVINE: It's short, sir.

22 MR. OXER: Just checking.

23 Okay. Action items. Tim, I think you're up.

24 MR. NELSON: Good morning, Mr. Chairman and
25 members of the Board. My name is Tim Nelson and I'm

1 director of Bond Finance.

2 The item that we have before you today is a
3 report on the status of the Department's Series 2004B
4 swap, but I thought before getting into that, since I
5 think we've not had a lot of discussion in the past about
6 our swaps, that I might spend a little bit of time with
7 the Board giving you some historical perspective, and
8 while it's certainly not our intent to turn you into
9 options traders, I do think in your fiduciary duty and
10 what you're doing on the Board, it's probably helpful to
11 at least have a working understanding of what we're
12 talking about when we talk about these.

13 If you take a look at what the Department has
14 done in the single family area -- I won't be talking about
15 what we've done with the multifamily -- we've done
16 variable rate debt, totaling about \$380 million, original
17 amount. Currently we have about \$237 million of that
18 still outstanding. Those were in seven separate
19 transactions. We have five swaps that we've undertaken
20 that were for an original balance of about \$367 million
21 and the current balance on those, after having taken the
22 action outlined in the report for this item, we now have a
23 balance of about \$217 million of those outstanding as of
24 March 1. The first swap that we entered into was in April
25 of '04, about ten years ago; the last swap that we entered

1 into was June of 2007.

2 Now, what is a swap? There are a lot of
3 different types of swaps out there so I want to make it
4 clear to the Board that the types of swaps that we've
5 entered into for the single family portfolio are what are
6 referred to as fixed payer swaps, so that's what we'll be
7 talking about. In that type of swap arrangement we
8 basically sell variable rate debt, like what I was just
9 talking about, and then because we are funding fixed rate
10 mortgages and because we do not want to get into a
11 situation like the S&Ls did in the eighties where we're
12 funding fixed rate assets with variable rate debt, we want
13 to synthetically fix that, and the way you do that in this
14 market is that we got to a third party who's in the
15 interest of doing this, typically a bank or an insurance
16 company, and we tell them I would like to make a fixed
17 payment to you and what I would like you to do is pay me a
18 variable payment that's tied to some kind of an index, and
19 our hope is that that variable payment will cover the cost
20 of the variable rate debt that we've issued so that we're
21 now what they call synthetically fixed.

22 We have a lot of what we call counterparties in
23 our transactions, we have trustees that we rely on to make
24 payments to bondholders, we have servicers that we rely on
25 to service our mortgage loans for us, we have lenders that

1 we rely on to originate the loans originally, sell them to
2 the master servicer. Whenever we get payments in, we
3 invest those payments with third parties. These are all
4 considered counterparties in our transactions, third
5 parties that we're dealing with to carry out our program.

6 When you do a swap you introduce three new
7 parties that you don't typically have in these
8 transactions. That would be a liquidity provider,
9 remarketing agent, and a swap counterparty. The liquidity
10 provider is somebody -- the variable rate debt that I was
11 talking about earlier is typically sold to mutual fund,
12 money market fund. These people are looking to have 100
13 percent liquidity, so if they have somebody that wants to
14 withdraw money out of that money market fund, they have to
15 be able to turn around and sell the asset that they have
16 backing that in order to fund that redemption.

17 If those parties then come to us, I don't have
18 in the bank right now \$237 million to fund, if \$237
19 million worth of variable rate debt was put to me, so what
20 we do is line up a third party that says: I will provide
21 you liquidity, so if that occurs, we will draw down on my
22 liquidity to fund that, you don't have to worry about
23 that.

24 Our liquidity, which is very important, is all
25 with the Comptroller. We are the only housing finance

1 agency in the county that has our liquidity provided by
2 our state treasurer, basically. Very valuable. It is
3 gilt-edged, nobody worries about whether or not the
4 Comptroller is not going to have \$237 million to fund our
5 puts. We've very lucky to have that and we're able to
6 achieve that at a very low cost to the Department.

7 Remarketing agent is if those bonds come in,
8 somebody has to turn around and sell them to another
9 investor, so that's typically a broker-dealer. We have a
10 number of remarketing agents that we deal with.

11 Swap counterparty is ultimately, again, this
12 party that I talked about that we go to and say: I want
13 to make a payment to you that we agree is going to be
14 fixed, you turn around and pay me this variable rate
15 stream. We have three counterparties that we deal with
16 currently in the swap counterparty area.

17 Like I said before, all of ours are fixed pay
18 swaps, we don't have any fixed variable, we don't have any
19 swaptions, we don't have any knockout swaps, we don't have
20 any of these other things that you might read about in the
21 newspaper. As much as you can say a swap is vanilla, our
22 swaps are pretty vanilla.

23 You will hear, as we talk about things in the
24 item that we have today, the action that was taken for
25 March 1 did involve a termination. Typically when you put

1 these swaps in place, you can have a number of termination
2 rights that are built into the. The first one you can
3 have is a mandatory or a scheduled termination. Similar
4 to a term bond, you have some kind of a sinking fund
5 schedule over time, so we go to the swap provider and say:
6 Okay, on these dates we know we're going to want to have
7 some kind of a minimum termination. That's mandatory,
8 it's built in, there isn't anything the swap provider has
9 to do, isn't anything we have to do, the contract is set
10 up with that just occurring on its own.

11 You can also have an optional par termination.

12 That's actually, again, what we exercised on March 1 for
13 the 2004B, so that is an option right that we have built
14 into the contract, allows us to reduce the notional
15 amount, does not cost us anything to exercise that par
16 termination right.

17 Third type of termination you could have is an
18 optional market termination. If for some reason either
19 the swap counterparty or the Department wants to reduce
20 the swap and there is no par termination right presently
21 in that arrangement, you can always terminate it, but at
22 market, and that's where they will take a look at whether
23 or not the swap has a positive market value to them or to
24 us, and either we're going to end up receiving money or
25 we're going to end up paying money if that occurs. All of

1 our swaps currently, because of what's happened with the
2 interest rate levels since those swaps were first put in
3 place, all have negative mark to markets. So that means
4 if there's a termination, we will be paying the
5 counterparty, the counterparty will not be paying us.

6 Swaps, very complicated, and as you're seeing
7 as we go through this. I want to assure the Board that
8 when it comes to staff, the people in the Bond Finance
9 Department, your executive team, people in financial
10 administration, our working group, our bond counsel,
11 disclosure counsel, underwriters counsel, our group of
12 underwriters that we're working with, and most
13 importantly, our swap and financial advisor, George K.
14 Baum -- who is with us today if any questions become more
15 complicated than what I can address, we'll have them step
16 in and pinch hit for me -- but you have an outstanding
17 team. I would say, certainly from a housing finance
18 agency perspective, I would stack our team up against
19 anyone in the country. We're monitoring this stuff every
20 day, every week, every month. So rest assured that while
21 these are complicated, you've got a skilled team in place
22 monitoring this.

23 Let's talk about why did we enter into swaps.
24 You might be asking yourselves: Gee, this sounds pretty
25 complicated, why did we do this? Well, swaps are

1 generally, and the way we use them -- and a lot of other
2 people do different things with them -- we use them as a
3 way to lower our borrowing costs, so back in '04 when we
4 entered into this first one, we had a choice: we could
5 sell a fixed rate bond or we could sell a variable rate
6 bond, swap it to fixed.

7 We made a determination at the time that if we
8 sold a fixed rate bond, the mortgage rate that that would
9 have achieved would have been higher than what we could
10 have sold out in the marketplace. So we had a choice, I
11 suppose, at that point of either not doing a transaction,
12 not fulfilling our obligation or duty to try to assist
13 people with single family housing, or to enter into this
14 type of transaction which, admittedly, a little bit more
15 involved, a little bit more complicated, a little bit more
16 risk involved, but does allow us to achieve our mission.

17 I think I've mentioned this to the Board
18 before, we do about a million dollars a day in commitments
19 under our program, have the entire time that I've been
20 here. It varies, some days we do 600-, some days we do a
21 million and a half, it averages out to a million dollars a
22 day. So during the course of this meeting, probably two
23 people in the State of Texas will be assisted in getting
24 into their first home. That's how valuable this program
25 is out there.

1 How are the swaps performed? You might ask
2 yourself, again: This seems pretty complicated, wonder
3 how these things are done. You really have to look at it
4 in terms of how they've actually performed have been as
5 expected, frankly, better than as expected. What we have
6 seen in the swap market -- I'm going to talk about this a
7 little bit -- is that they've certainly faced challenges.

8 In the '07-08-09 period when we were going through all
9 the financial crisis, we had a lot of upheaval in the
10 marketplace. We ended up having to transfer. That's
11 really when the Comptroller got involved with our
12 liquidity; our original liquidity was with Depfa and Dexia
13 which were two large French banks, very active in this
14 arena, highly rated at the time, worked with a lot of not
15 only other housing finance agencies but a number of other
16 people in the marketplace.

17 Those guys were downgraded, all of a sudden we
18 started running into difficulty in getting our bonds
19 remarketed and people were not comfortable holding them.
20 So we either had to find another party like Depfa or
21 Dexia, what we ended up doing was going to the Comptroller
22 because that was the way of us getting the safest
23 liquidity, and frankly, the cheapest, most cost-effective
24 for us liquidity.

25 In the course of all that, the cost of

1 liquidity skyrocketed. In fact, the Treasury stepped in
2 at the end of '09 and offered the marketplace we will
3 step, and they funded hundreds of millions of dollars of
4 liquidity for all of these various issuers who had the
5 Depfas and Dexias of the world but did not have a
6 comptroller that was willing to step in and assist them.

7 The cost of that liquidity, to give you a
8 comparison, started off at 50 basis points, second year
9 increased to 100, third year and thereafter it was 150
10 basis points. The cost of our liquidity with the
11 Comptroller -- which again I would say is better than any
12 in the country -- 12 basis points. That gives you an
13 example of what the differential to us out in the
14 marketplace.

15 Similarly, we had to transfer, we were having a
16 lot of issues with bond insurers. Again, back in the day,
17 bond insurance very popular. We've used it in a number of
18 occasions to both insure our bonds, and in this case we
19 also insured our swap payments. Bond insurers started
20 getting downgraded, so we had to come in and transfer our
21 bond insurance.

22 Increased rating agency requirements -- and
23 that's probably where you hear swaps and if they've been
24 having difficult or haven't been performing -- in
25 quotation marks -- has really to do more with this area.

1 Rating agencies came in and really started ratcheting up
2 their requirements, and the stress scenarios that they
3 asked us to perform, the assumptions that they told us to
4 use as far as underlying variable rates, cost of your
5 liquidity, cost of your remarketing over time, they wanted
6 all of those to be increased and they wanted to see that
7 your indenture could withstand all these various stresses.

8 Those have changed annually, I think, since
9 about the '07 time frame, probably going to change again
10 this year. We've seen the rate of change sort of decrease
11 but it has been continuing to change.

12 The other thing that we've seen is a lot of
13 changes in the regulatory environment. When we first put
14 these swaps into place, really didn't have much of that
15 that we had to deal with. In the I think it was the 2010-
16 2011 time frame, GASB 53 came into being. That meant that
17 not only bond finance but our financial administration
18 group and our auditors had to take a look at all of our
19 swaps and make a determination that they were effective
20 and what the accountants were really looking for is they
21 wanted to see whether or not you were putting swaps in
22 place for a speculative purpose or was it for a hedging
23 purpose, but there was a very complicated set of
24 calculations that had to be done in order to determine
25 whether or not you had done one or the other.

1 We're now doing that on an annual basis. All
2 of our swaps have been deemed effective. As I said, that
3 was the reason why we put them in in the first place.

4 You've probably heard Basel I, Basel II, Basel
5 III. All of these increased bank regulations that have
6 basically come out and said more capital has to be set
7 aside, we want these things to be safer, and the bottom
8 line of all that is it's raising the cost of people
9 providing liquidity, people providing swaps. And so
10 that's all been what we've sort of seen over the past ten
11 years.

12 So what's ahead? This is what we've seen in
13 the past; what do we see coming down the pike. I think
14 the Board -- this is why we wanted to start with this
15 presentation on a more general level -- you're going to
16 see a lot more activity in our swap area. The way these
17 swaps, most of them, were originally structured were part
18 of a larger deal. In front of the swaps we put all this
19 fixed rate date. Well, over the past seven to ten years,
20 all the payments that have been coming in have been
21 knocking out all of that fixed rate debt. That debt is
22 now all gone so everything that's left over are these
23 variable rate deals with the swaps.

24 So you're going to start seeing a lot more
25 activity in that area, so staff is going to be coming to

1 you, probably on a pretty consistent semiannual basis,
2 giving you an update on what type of activity we've seen
3 over the intervening six months and any action that we're
4 looking to take in conjunction with, say, that particular
5 interest payment date.

6 You're probably going to see a lot more
7 opportunities for us to exercise these optional par
8 rights -- like what I just talked about with this March 1
9 action that we took -- and so we'll be probably bringing
10 to the Board, we're thinking at the next Board meeting, a
11 restructuring opportunity for this 2004B swap, and I'm
12 thinking probably in May or June, potentially, we have a
13 2004D swap that we might potentially be able to
14 restructure. So you're going to start seeing a lot more
15 of that type of activity.

16 Wanted to reiterate or assure the Board that
17 our strategic goal -- unless we're given direction
18 otherwise by the Board -- with our swap management policy
19 will be to prudently reduce our reliance on liquidity.
20 There is no doubt that it's great that we've gotten this
21 liquidity from the Comptroller, and the Comptroller, over
22 the intervening time period, we spend a lot of time with
23 them. I think Mr. Thomas actually sat through briefly,
24 until I think he couldn't take it anymore, our most recent
25 presentation to Comptroller. So we spend a lot of time

1 with these guys, outlining for them what we're doing and
2 trying to make sure that they're comfortable with what
3 we've got. But there's no doubt that they would prefer,
4 over some time period, to not be in the liquidity
5 business, that's not what they're about.

6 But we want to do that prudently. As I said,
7 we're now upside down, if you will, or in a negative mark
8 to market on these swaps, so we could come in, cancel all
9 of them, and cut a \$30 million check to all of our
10 counterparties. Well, we don't believe that's prudent
11 management of our swaps and of these indentures. So we
12 want to go through and restructure them, do it in a
13 prudent manner so that hopefully it doesn't cost us
14 anything and hopefully we can do it and still continue to
15 make money for the indentures.

16 I think with that, that's sort of my general
17 overview on swaps. I'll just briefly say, again, that the
18 item that we have outlined in this report item, we had an
19 opportunity, as we will have coming up in these other
20 swaps, to cancel up to \$31.8 million of the 2004B swap on
21 March 1 at no cost. We analyzed all of the underlying
22 statistics on the deal, where interest rates were, what
23 kind of an advantage it would be for the Department to do
24 that, and we determined we couldn't cancel or it wouldn't
25 be prudent to cancel the entire amount of that swap, but

1 that we could come in and cancel \$13 million out of that
2 \$31.8 million, and that by doing so we could pick up a
3 \$400- to \$500,000 profit from doing that without having to
4 incur too much risk.

5 And again, that's all outlined in the writeup
6 that's attached here, and so that action was taken. And
7 again, going forward on both the 2004B and coming up on
8 the D, there will be further opportunities to do that. We
9 would expect in the future we'll be coming to the Board
10 with similar reports.

11 And so I guess with that, I'm more than happy
12 to stop talking and let you guys ask questions if you've
13 got any.

14 MR. OXER: Thanks, Tim.

15 Any questions from the Board?

16 MR. IRVINE: I have a comment.

17 MR. OXER: Go ahead. I have a couple of
18 questions.

19 MR. IRVINE: I think it's always important to
20 remember that there's a backdrop to all of this, and that
21 is that we are an economic development agency, and all of
22 this activity focused on the management of the indenture
23 and the swaps and so forth is really all about putting
24 Texans into homeownership, and the 2004 program put 2,000
25 Texas households into homeownership, and I think that the

1 success of this program is a reflection of the success of
2 the Texas economy.

3 MR. OXER: Okay. I have a couple of questions,
4 Tim. When you go through this on an annual review or when
5 they come up, first of all, on the 2004A that you just
6 reduced 13 out of the 30 -- was it B or A?

7 MR. NELSON: 2004B.

8 MR. OXER: 2004B. You took 13- off of the 38-
9 and change, so you've got 25- left on that. When does the
10 next opportunity come up?

11 MR. NELSON: We have a semiannual, it has to be
12 exercised on March 1 or September 1 on all of our swaps.
13 So our next opportunity to make an adjustment in that swap
14 would be on September 1, and so we would fully expect to
15 be analyzing that over the summer. Like I said, we are
16 looking to probably come to the Board at your next meeting
17 with a proposed restructure of that entire swap which may
18 affect what the schedule of par termination rights are in
19 that particular swap. But absent any restructuring, we
20 will have our next opportunity to do a cancellation on
21 September 1.

22 MR. OXER: So that comes up on every one of
23 these when they roll up, you analyze each one of them.

24 MR. NELSON: 2004D will have its first
25 opportunity on September 1. Our '05A and '07A are what we

1 refer to as match dam swaps. They have scheduled
2 mandatory reductions and we can do an optional
3 termination. They do not have any option par termination
4 rights on those, so unless we restructure those, we will
5 never be coming to the Board with a report that we have
6 exercised an optional par termination; those swaps don't
7 have those.

8 MR. OXER: They actually don't exist within the
9 contract.

10 MR. NELSON: The deal that we struck there was
11 any time a prepayment or a payment comes in, we will call
12 bonds, we can cancel the swap, we don't know if that's
13 100,000 or a million or 10 million. That entire deal
14 could pay off tomorrow and we could cancel all the swaps,
15 so it had a lot of optionality built into it from that
16 standpoint, but it did not have any par optional built
17 into it. So it was just a different type of swap. Those
18 two were actually a little bit more complicated than the
19 other three swaps that we've entered into.

20 MR. OXER: I sat in the meeting with Mike
21 Morrissey, talking about liquidity -- early last year, I
22 think it was -- and he came in and announced, he says:
23 All right, you can't have any more liquidity, there's not
24 anything, your answer is no, now what's your question? I
25 could see he would be pretty happy with the fact -- he and

1 the rest of the Comptroller's Office would probably be
2 pretty happy that we're continuing to whittle this down.
3 What does that do, effectively, to the rate that we're
4 able to provide for homeowners for debt?

5 You did this in the first place because fixed
6 rate debt was going to generate a mortgage rate higher
7 than it would be on variable rate debt, so with all those
8 other costs coming up and slithering around in the market,
9 what is this doing now to our effective mortgage rate?

10 MR. NELSON: Well, that program, as Tim said,
11 we went out and made loans to 2,000 Texas homeowners and
12 took all those loans and swapped them into MBSs, and that
13 deal is done. We've already set our rate, so all we are
14 doing now is managing our portfolio and our debt cost.
15 There isn't anything that we're doing here that's either
16 going to increase or decrease anyone's particular mortgage
17 rate.

18 MR. OXER: If we decrease our demand for
19 liquidity our se of the Comptroller's liquidity, even for
20 inexpensive points like that, do we wind up getting off of
21 the list or is that liquidity still available as we need
22 it, or do we know?

23 MR. NELSON: Any net additions to our
24 liquidity?

25 MR. OXER: Let's say you continue to be as

1 effective -- and by the way, congrats. I have complete
2 confidence in our financial team. That's one of the
3 things I found most rewarding and most impressive about
4 this agency when I first got here, we're basically a bank
5 and a lot of people that work at this bank that know what
6 banking is and how to play the game, so I was pretty happy
7 about that.

8 So given the fact that we have this and you've
9 continued to make progress on this, we continue to reduce
10 the variable rate debt over time, that goes down, and our
11 liquidity expectations from the Comptroller eventually go
12 to zero because we've cleared all that debt, do we still
13 have access to that line of credit through the liquidity
14 for that, or does that cut off when we get it to zero?

15 MR. NELSON: As we reduce, it reduces, and at
16 least presently is not allowed to be increased. So we
17 would have to, if we decided to do a new bond issue today
18 and needed liquidity, we would have to go in to the
19 Comptroller, and my guess is that would be a very
20 difficult discussion, and so more likely we would have to
21 look to the marketplace. And as I said before, we're
22 paying 12 basis points, we can get market liquidity for
23 probably 50, 60, 70 basis points, so it's certainly much
24 more expensive.

25 The bigger issue for us -- and again, this is

1 starting to get into the weeds a little bit -- under the
2 rating stress scenarios -- and this was, again, post-swap
3 requirement -- they come in and say: Assume all of your
4 debt is put, and in your typical liquidity arrangement, if
5 there are bank bonds, if they have to buy these bonds
6 because they've been put, there's an arrangement in there
7 where they need to be termed out, they call it, over some
8 period of time, five years, ten years.

9 For a revenue issuer like ourselves, where
10 we're relying upon revenues that are coming in from a pool
11 of assets that have prepayment characteristics, that makes
12 it very difficult, to meet, frankly, any type of term-out
13 scenario. So for us to get non-Comptroller liquidity
14 would probably be impossible solely from that standpoint.

15 Forget about the costs, given how well we've managed the
16 indenture and how it's improved, frankly, we could
17 probably afford to pay 50-60 basis points. We can't
18 afford any kind of a turnout provision. Comptroller is
19 the only liquidity arrangement that I'm aware of that does
20 not have a term-out provision.

21 MR. OXER: And so since the rest of the debt is
22 fixed rate and we're backed up by the credit of the
23 state --

24 MR. IRVINE: We have the credit of the
25 indenture.

1 MR. OXER: -- the credit of the indenture.

2 MR. NELSON: Yes.

3 MR. OXER: I stand corrected. Based on that,
4 once we are through with this variable rate debt, we're
5 through with variable rate debt unless we want to jump
6 into that game.

7 MR. NELSON: Well, we're through with variable
8 rate debt that requires liquidity. Now, they do have a
9 bond structure out there that's referred to as an index
10 bond, so you would sell a 20- or 30-year bond that is tied
11 to an index, but the holder of that bond does not have the
12 right to put back to me. Their return is based on an
13 index but they're not allowed to put. Potentially we
14 could use that type of arrangement in the future, but
15 again, we wouldn't need liquidity for that.

16 MR. OXER: So it's essentially a product
17 evolution and then market to meet something that's not
18 going to be available.

19 MR. NELSON: Correct. Necessity is the mother
20 of invention. If you don't have liquidity or don't have
21 it at a good cost, somebody comes out with another
22 structure that meets that same need.

23 MR. OXER: Good. All right. Any other
24 questions? Mr. Thomas.

25 MR. THOMAS: That was a very interesting

1 meeting, and I sat through multiple interesting meetings
2 in preparation for it. But what is the time frame,
3 crystal-balling, Tim, to be able to reduce or pay off the
4 liquidity line through the Comptroller's Office, best case
5 scenario?

6 MR. NELSON: Well, this is going to give you a
7 little bit of a coming attraction poster for next month
8 and maybe June. Right now we have these contracts that
9 have par termination rights in them but there's a portion
10 of the contract that goes all the way out to like 2033, or
11 whatever, so absent doing anything with that, it will be
12 another 20 years. Our hope is if we can't come in and get
13 rid of this entirely, then what we want to do is take, as
14 they come up, each of these swap contracts.

15 And again, it's important for people to know
16 that these things are complicated, but one thing to
17 remember with these sort of termination rights is that
18 they are time-based or time-valued. So what I mean by
19 that is a \$20 million termination right today is more
20 valuable than one a year from now. So what we're looking
21 at doing in particular on these next two deals, as I
22 stated on this '04B, we have the right to terminate almost
23 \$32 million, we couldn't terminate any more than \$13-,
24 well, there's \$19 million worth of optionality sitting
25 there that's valuable but we can't do anything with it.

1 So what we're looking to do is reorder that
2 around, reduce the amount of optionality we have today,
3 increase the optionality that we have into the future --
4 which is cheaper -- and our goal is to, on this '04B deal,
5 take that 2033 date, move it up to 2023, let's say, so
6 that we are pushing everything forward. Assuming that
7 we're successful with that, it's my hope, or our strategic
8 goal, if you will, to try to align all of these so that
9 within ten years we can be completely out of them. Again,
10 presently our contracts don't allow us to do that; we're
11 hoping that we can achieve that through these
12 restructuring.

13 MR. THOMAS: Which is another reason why in
14 that meeting with the Comptroller they seemed particularly
15 pleased with both the management and the strategy
16 associated around that.

17 MR. NELSON: I believe they were.

18 MR. OXER: Not to mention the results. So
19 congrats on that.

20 MR. NELSON: Thank you.

21 MR. OXER: Thanks for representing us well.

22 Any other questions from the Board?

23 (No response.)

24 MR. OXER: Good. Is there anything we should
25 be doing -- not that I think this is a valid question

1 because I know what the answer is -- but is there anything
2 we could be doing that we're not already? Because I know
3 you're so meticulous in the way you approach this, you've
4 looked at every option we've got.

5 MR. NELSON: I've been working around the clock
6 on this since Halloween, so if there was anything else we
7 should be doing, I'm not sure if we've got the time to do
8 it.

9 (General laughter.)

10 MR. OXER: Well, managing our risk down is the
11 right way to go on this. So great. Thanks very much,
12 Tim.

13 MR. NELSON: Thank you.

14 MR. OXER: Okay. Item 3, Cameron, or Jean now.

15 MS. LATSHA: Good morning. Jean Latsha,
16 director of Multifamily Finance.

17 MR. OXER: And congratulations for that.
18 Sounds good on you.

19 MS. LATSHA: I believe the first item, 3(a) is
20 the exemptions. If we had some public comment on one of
21 them, I thought it might be appropriate to take these
22 slightly out of order.

23 MR. OXER: Just tell us the order you want to
24 go in.

25 MS. LATSHA: Sure. I think it might be most

1 appropriate to leave Louis Manor for the last, so we can
2 talk about Moss Rose Apartments for a moment. So these
3 three items are all the same request, it's for an
4 exemption that is allowed under Section 10.101(a)(3) of
5 the Uniform Multifamily Rules.

6 Normally this rule calls for staff to deem a
7 site ineligible if a site is located within 300 feet of a
8 number of different undesirable site features, one of
9 which is a railway. However, the rule does specifically
10 call out the ability for the Board to grant an exemption
11 if the development has existing and ongoing federal
12 assistance. In all three of these cases the subjective
13 element does have that existing and ongoing federal
14 assistance, although in different formats, and is within
15 300 feet of a railway.

16 So staff's recommendation for Moss Rose
17 Apartments is to grant the exemption. As part of that
18 granting of the exemption and part of staff's
19 recommendation, I do want to point out that staff did
20 confirm with the applicant that they felt that there were
21 no undesirable area features relevant to the site that
22 could also deem the site ineligible. Now, if staff, once
23 we begin to review this application fully, finds that
24 there are undesirable area features, we would reserve the
25 right to find the site ineligible, even with the exemption

1 granted today.

2 MR. OXER: I have a question. So what we're
3 saying is essentially we won't use this to knock them out
4 of the list if there's a federal support for it, but if
5 you find something else, that would knock them out.

6 MS. LATSHA: Yes, sir.

7 MR. IRVINE: And in looking at area features,
8 we would be unconstrained in taking into account the
9 presence of the railroad.

10 MS. LATSHA: That's correct as well.

11 MR. IRVINE: So staff does recommend to grant
12 the exemption for Moss Rose Apartments.

13 MR. OXER: So we're going to take these one at
14 a time?

15 MS. LATSHA: I think that's most appropriate,
16 yes.

17 MS. DEANE: Mr. Chair, just to be clear, the
18 101(a)(3) exemption which is for site features only,
19 that's the one that we're talking about here that provides
20 an exemption for a railway within 300 feet, there is no
21 such exemption for area features. And so what staff is
22 saying is if they later come into possession of
23 information or realize that there might be area features
24 that could be a problem, that because the (a)(4), which is
25 area features as opposed to site features, allows them to

1 consider the confluence -- in other words, holistically
2 take a look at it -- that they could still look at the
3 presences of the railway as it relates to the other
4 features that they find in that area, and they're not
5 precluded, just because they granted this 101(a)(3)
6 exemption as it relates because of the federal exemption.

7 MR. OXER: So what we're saying is it can't be
8 considered unilaterally but it could be considered
9 concurrently with other components.

10 MS. LATSHA: I think that's kind of an accurate
11 assumption. The undesirable area features item addresses
12 area features that are within 1,000 feet of the site, so
13 obviously there's some overlap here. The undesirable site
14 features addresses features that are only within 300 feet
15 of the site, and if a development site is within 300 feet
16 of these features, it's an automatic ineligibility.
17 Whereas, under the undesirable area features rule, you
18 might be within 1,000 feet of one or even two of these
19 features and still we could find you site eligible. Does
20 that make sense?

21 So what we're saying here is that we could find
22 the site eligible with respect to undesirable site
23 features because this applicant does meet the requirements
24 of the exemption because it's a federally subsidized
25 development, however, we could again look at the site more

1 holistically and look at all of the features that are
2 within 1,000 feet and still take into account that
3 railway.

4 MR. OXER: So explain the current federal
5 support on a tax credit deal.

6 MS. LATSHA: Well, these are all a little bit
7 different. Moss Rose Apartments happens to be a public
8 housing development in Killeen.

9 MR. OXER: So it preexists.

10 MS. LATSHA: Preexisting and ongoing as well.

11 MR. OXER: So the point is they're using the
12 credits for reconstruction?

13 MS. LATSHA: Correct, or rehabilitation.

14 MR. OXER: Any questions from the Board? A
15 motion to consider? Mr. Thomas.

16 MR. THOMAS: I'm looking at the background,
17 including the Coats Rose letter and seeing who wrote the
18 Coats Rose letter -- I'm sure it's clear -- but this
19 (a) (4)/(a) (3) distinction, it doesn't seem to be clear in
20 the resolution. Is it clear for the applicant that we
21 reserve that? There's no question so we're not going to
22 hear somebody down the road say that we granted an
23 exemption under (a) (3) and that should have been
24 universal?

25 MS. LATSHA: Yes, sir. I have correspondence

1 with the applicant, written correspondence with the
2 applicant, and then if you'll read the writeup as well, I
3 included in the writeup that staff does reserve that right
4 to find the site ineligible.

5 MR. OXER: We want to make sure that's
6 memorialized in our transcript as well.

7 MS. LATSHA: Yes, sir.

8 MS. DEANE: And also, if I could suggest, you
9 could also make the motion clear that it's without
10 prejudice to consideration of this issue under (a)(4).

11 MR. OXER: A brief time out here. I'd like the
12 record to reflect that Dr. Muñoz has joined us, so that
13 gives us five of our six. So with that, we'll continue.

14 Mr. Thomas, any other questions?

15 MR. THOMAS: No. Thank you.

16 MR. OXER: Motion to consider?

17 MR. THOMAS: We're working on it, Leslie and I
18 are working on it right now.

19 MR. OXER: Okay. Write it up, Leslie.

20 MS. BINGHAM ESCAREÑO: Mr. Chair, I'll move to
21 so resolve as staff has recommended, with the addition of
22 another term in the resolution to say without prejudice to
23 consideration under 10.101(a)(4).

24 MR. OXER: Motion by Ms. Bingham. Do I hear a
25 second?

1 MR. THOMAS: Second.

2 MR. OXER: Second by Mr. Thomas.

3 Robbye, do you have anything to say? You're
4 sitting in the say-something seats so that's why we ask.

5 MS. MEYER: (Speaking from audience.) I'm only
6 here for the next one if you need me.

7 MR. OXER: Okay. Just checking.

8 There being no public comment, all in favor?

9 (A chorus of ayes.)

10 MR. OXER: Opposed?

11 (No response.)

12 MR. OXER: There are none. Good.

13 MS. LATSHA: All right. The next to take would
14 be Pecan Tree Square Apartments. This is a similar
15 situation: this site is located within 300 feet of a
16 railway and is asking for a similar exemption. This
17 particular property is allowed the exemption because it is
18 funded with USDA funds that will be ongoing as well.

19 This is a slightly different type of site.
20 Staff, on a preliminary review, does not expect to find
21 any undesirable features or any other undesirable site
22 features. This is a high opportunity site that is in the
23 second quartile of the median household income for the
24 area, and only has a 6.6 poverty rate. The area median
25 income in this census tract is actually above \$60,000.

1 We did confirm with the applicant, as well,
2 that there were no undesirable area features, and like I
3 said, staff doesn't really expect to find any upon further
4 review. So we recommend granting the exemption.

5 MR. OXER: Any questions of the Board?

6 MR. THOMAS: There's no need for the (a)(4)
7 distinction here?

8 MS. LATSHA: It could be added, but I don't
9 know that it would be as relevant to this particular site.

10 MR. OXER: Is there your classic engineering
11 perpendicular measurement to the railroad to get the
12 distance or is it from the nearest corner?

13 MS. LATSHA: It's the classic linear. I
14 believe this one is adjacent to the site or about 80 feet
15 from.

16 MR. OXER: The closest point of the site and
17 the closest point of the railroad track.

18 MS. LATSHA: That's right.

19 MR. OXER: Any questions? Motion to consider?

20 MR. THOMAS: So moved.

21 MR. GANN: Second.

22 MR. OXER: Motion by Mr. Thomas, second by Mr.
23 Gann to accept staff recommendation.

24 Robbye, do you have something you wanted to
25 say?

1 MS. MEYER: (Speaking from audience.) I'm good
2 with that.

3 MR. OXER: Good. All right. Motion by Mr.
4 Thomas, second by Mr. Gann to approve staff
5 recommendation. All in favor?

6 (A chorus of ayes.)

7 MR. OXER: Opposed?

8 (No response.)

9 MR. OXER: There are none.

10 MS. LATSHA: Third on the list, I guess first
11 on the agenda, though, was Louis Manor. This is another
12 similarly situated property that is requesting an
13 exemption under the same rule, undesirable site features.

14 MR. OXER: We're big on railroads this year.

15 MS. LATSHA: Yes. This is 40 feet from an
16 active railway and has ongoing existing federal
17 assistance, it has a HAP contract so from HUD.

18 The difference with this site is that it is a
19 pretty high poverty low income site. On a very
20 preliminary review of the site, staff did voice some
21 concerns about some other potentially undesirable area
22 features and contacted the applicant. We requested some
23 information with respect to blight or crime or any other
24 undesirable area features that the applicant wished to
25 disclose.

1 In the meantime, we had also received some
2 comment that voiced objection to the site, and this
3 morning I did receive some information from the applicant
4 with respect to crime and blight, but it was minutes
5 before the Board meeting and I honestly have not had a
6 chance to review it.

7 Again, our recommendation was to grant the
8 exemption, of course, with the similar caveat that we
9 could later find the site ineligible with respect to
10 undesirable area features. Because we have had quite a
11 bit of information coming in with respect to this site,
12 the Board could consider to possibly table this particular
13 decision and give staff some time to review the
14 information related to the site with respect to
15 undesirable area features, or if the exemption is granted,
16 I would suggest adding the language to the language as was
17 added to the Moss Rose Apartments and allow staff to
18 further examine the undesirable area features of the site.

19 MR. OXER: Okay. But you retain that capacity
20 to consider the other undesirable area features,
21 regardless of what we say, we're just making sure that
22 everybody here and out there knows it.

23 MS. LATSHA: Yes, sir.

24 MR. OXER: All right. The 40 feet, what was
25 the distance on the other two?

1 MS. LATSHA: I think it was similar, 80 feet
2 and one was adjacent.

3 MR. OXER: All right. So in order to remain
4 consistent with our deliberation on this, even though
5 there's been more information coming in, you still can
6 consider that if you get the appeal, but considering that
7 information you still have the option later on. But to be
8 consistent, it appears that we would be well guided to
9 grant the appeal -- I'm sorry -- the exemption.

10 MS. LATSHA: That's certainly at the Board's
11 discretion. But I think it's been made very clear to the
12 applicant, and now to everyone else interested in the
13 development, that we can certainly reserve the right to
14 find the site ineligible.

15 DR. MUÑOZ: But in the other two cases, sort of
16 all the documentation was finalized; in this one you claim
17 that information is still arriving. Would there be any
18 sort of adverse consequence to the applicant were it to be
19 tabled until all information was in hand?

20 MS. LATSHA: I think the only adverse
21 consequence to the applicant is just that there's still a
22 little bit of uncertainty, but in my estimation, the
23 uncertainty is there regardless because the uncertainty
24 with the eligibility of this site really lies with respect
25 to undesirable area conditions.

1 MR. OXER: And so even with this exemption, the
2 uncertainty remains until you consider the area
3 characteristics.

4 MS. LATSHA: Yes.

5 MR. OXER: Okay. I think we should be
6 consistent and consistently hold out the capacity to
7 consider those issues concurrently.

8 MS. LATSHA: And with respect to your other
9 question, it is true that this is different that we have a
10 lot more information that we feel we need to review in
11 general.

12 MR. OXER: You still need to take a look at it.
13 That being the case, may I request, Ms.
14 Bingham, that you prepare the motion simply because it's
15 consistent with the first one?

16 MS. BINGHAM ESCAREÑO: You'll entertain the
17 motion now?

18 MR. OXER: You can essentially read the same
19 thing.

20 MS. BINGHAM ESCAREÑO: Mr. Chair, I'll move to
21 so resolve as staff recommended, with a resolution term
22 that it be done without prejudice to consider of under
23 101.01(a)(4). Is that the correct one?

24 MS. DEANE: It's 10.101(a)(4).

25 MS. BINGHAM ESCAREÑO: I apologize. I'll

1 correct myself. 10.101(a)(4).

2 MR. OXER: Motion by Ms. Bingham to approve
3 staff recommendation to grant the exemption as amended.

4 MR. GANN: I'll second.

5 MR. OXER: Second by Mr. Gann. Any other
6 comments?

7 (No response.)

8 MR. OXER: All in favor?

9 MS. DEANE: Is there any public comment on this
10 one?

11 MR. OXER: I just asked for it and nobody was
12 up there and nobody said they wanted to speak. They're
13 going to learn to sit in these chairs in the front if they
14 want to talk.

15 MS. DEANE: Well, I wanted to mention that we
16 got a handout this morning, that's why I thought there
17 might be someone here related to this handout. It was
18 provided with regard to the new public comment rule. It
19 was brought in and given to staff this morning. I'm going
20 to assume there are copies out front for everybody. And
21 so because this has been turned in at the meeting, then it
22 becomes within the discretion of the chair to allow it,
23 subject to any objections by other Board members, to allow
24 it into the record. But I will say they did follow the
25 new rule.

1 MR. OXER: Okay. That being the case, guidance
2 from counsel suggests we can consider this. Does any
3 Board member have an exception or an objection to
4 considering the material?

5 (No response.)

6 MR. OXER: Okay. Chair accepts.

7 You have a comment?

8 MS. SLOAN: Yes. Good morning. I'm Maddie
9 Sloan, with Texas Appleseed. I apologize, I forgot about
10 the new sitting down front procedure.

11 The letter is from Appleseed and Texas Low
12 Income Housing Information Service. We object to granting
13 an exemption for the undesirable site features. There are
14 two public housing developments about 600 yards away from
15 Louis Manor that the state and the public housing
16 authority are using CDBG Disaster Recovery funds to
17 relocate. In part, because of a 2011 letter from the
18 Environmental Protection Agency urging that that happened
19 because, to quote from the letter: "The residents of
20 Carver Terrace face greater chronic risk from air
21 pollution, e.g., releases due to process malfunction or
22 insufficient equipment shutdowns, as well as a higher risk
23 of emergency events, such as a chemical or oil spills.
24 Significantly, during hurricanes, these risks become
25 amplified and more probable."

1 And I think in the case of something like a
2 chemical or oil spill, if there were a train derailment,
3 40 feet is -- I mean, 300 feet is probably not enough, but
4 I think there are significantly greater risks from
5 something like that happening for Louis Manor.
6 Particularly since the train tracks we're talking about go
7 from the petrochemical refinery to the port, I don't know
8 exactly what those trains carry but I am guessing it is
9 related to petrochemicals.

10 MR. OXER: Probably not chocolate syrup, you
11 can bet on that.

12 MS. SLOAN: Yes, yes.

13 And just a little bit on the broader site and
14 area concerns, which I know the staff is working on, this
15 development is on the west side of Port Arthur which is a
16 pretty stunning example of environmental racism. This is
17 the segregated African-American neighborhood. It is now
18 surrounded by four sides with heavy industrial uses,
19 including the largest refinery in North America. In 2012,
20 two of the refineries on the West Side released a combined
21 1.4 million pounds of toxic chemicals into the air.

22 This is also a high poverty census tract. It
23 contains the highest concentration of the poverty in the
24 city, it's 55 percent. It is also extremely racially
25 segregated; according to the ACS data it's 99.3 percent

1 Black, .07 percent Hispanic and 0 percent White, non-
2 Hispanic. We pulled some crime data from a service called
3 Neighborhood Scout which collects I believe it's the FBI
4 crime data. A resident of this census tract is subject to
5 a risk of violent crime 203 percent higher than the City
6 of Port Arthur as a whole.

7 We are very concerned that these affordable
8 units and the subsidies attached to them be preserved. As
9 you know, we're advocates for affordable housing, but we
10 are also advocates for ensuring that low income families
11 with the worst case housing needs are able to live in high
12 opportunity areas. The investment of ongoing government
13 assistance in this kind of development really acts to
14 perpetuate and reinforce the kind of segregation, and
15 generations of African-American families have been
16 subjected to these environmental risks.

17 So we would ask you, actually, not only to
18 reject this exemption but to think about how we can work
19 with HUD and the developer to find a way to move that
20 development and those subsidies and those families out of
21 the West Side.

22 MR. OXER: Okay. Are there any questions from
23 the Board?

24 (No response.)

25 MR. OXER: Your point is well stated and well

1 taken. The evidence seems appropriate. Staff has only
2 received that this morning, we've only received it this
3 morning. In an effort to be consistent, we're balancing
4 some things here, as is the case with the two others in
5 this, they get an appeal because of the specific
6 exemption -- they get an exemption -- I'm sorry, I'm
7 sorry. The cattle prod reaches all the way over.

8 MS. DEANE: They just are granted an exemption.

9 MR. OXER: They get granted an exemption -- I
10 stand corrected. The exemption would exist for this
11 particular site based on that one rule but not to the
12 exclusion of the application of the other rules. Not that
13 we doubt the veracity of the information that you
14 provided, but it also gives staff more opportunity to
15 evaluate that because there are several more steps that
16 this has to go through. What I'm trying to do is to make
17 sure that we're consistent in the application of the
18 rules, and recognize that you've made a strong point,
19 we're looking at the specific exemption based on the
20 railroad.

21 MS. SLOAN: And we have every confidence staff
22 will look at those undesirable area features and the
23 opportunity levels and all of that stuff.

24 MR. OXER: Okay.

25 MR. IRVINE: But as counsel has pointed out to

1 me, the granting of the site feature exemption is a
2 discretionary matter. The staff recommendation, as
3 formulated based on the limited information we had was to
4 grant it, but to reserve the right to weigh in on the area
5 conditions. But now we do have additional information,
6 including this letter and Ms. Sloan's testimony, but I
7 guess I don't mean to put you on the spot, Jean, but is
8 that still staff's recommendation?

9 MS. LATSHA: Well, admittedly, this
10 recommendation was written before all of this information
11 came to our attention. It's hard to say that that writeup
12 would look exactly the same had this information been in
13 hand when it was originally written.

14 MR. OXER: The heat goes up about 300 degrees,
15 by the way, it gets warmer the longer you sit on it.

16 MS. LATSHA: On its face, this development site
17 does qualify for the exemption. You know, I do think that
18 there might be bigger issues here. I think, too, as I was
19 sitting and listening to the comment, perhaps with respect
20 to this site, if there is a motion to grant the exemption
21 that it should be even more specific to just the railway.

22 It's possible that there are undesirable features even
23 within 300 feet of this site and not just 1,000.

24 This is a difficult case because we do have
25 information that we have not been able to review yet. And

1 I have a feeling that information will even prompt staff
2 to request additional information and that this review
3 could take some time. I don't know if that helped at all.

4 MR. OXER: So back to Tim's question, are you
5 up or down on this now?

6 MR. IRVINE: If I might speak for staff, I
7 think that we would really appreciate it if this were
8 tabled so that we could bring back a comprehensive
9 recommendation.

10 MR. OXER: I think that's a delightful idea; I
11 was trying to get her to suggest that.

12 (General talking and laughter.)

13 MR. GANN: Would you like a motion to table?

14 MR. OXER: We have a motion.

15 MS. DEANE: Is there any additional comment?

16 MR. THOMAS: I have a question. Is the
17 applicant here?

18 MR. BAUGH: I'm a representative of the
19 applicant.

20 MR. THOMAS: Do you have anything to say, sir?

21 MR. BAUGH: I'd like to just briefly address
22 the issue.

23 MR. THOMAS: I'm sorry. I'm not the chair; I'd
24 like to hear from the applicant but I'll defer to our
25 chair.

1 MR. OXER: Excuse me. You'll have to identify
2 yourself.

3 MR. BAUGH: I'm sorry. My name is Kenneth
4 Baugh and I'm counsel for the applicant.

5 This letter was just brought to our attention
6 this morning. The only thing that I can say is that there
7 are extensive EPA reports regarding the west end of Port
8 Arthur and the fact that the environment and all the water
9 has any adverse effects on the human beings in the area.
10 The latest study was in 2012. Everything is monitored on
11 a daily basis, all of this in terms of the air quality and
12 in terms of the water, surface water, as well, and that's
13 on the website, the EPA website daily, the report is
14 extensive.

15 The things that they raised here are not
16 really -- none of this stuff has happened that we're aware
17 of. There's no reason to really believe that these things
18 will happen in view of the history of the area.
19 Admittedly, there are a lot of refineries in the area, but
20 because there area, that's why there's extensive
21 monitoring going on in the area relative to our site, as
22 well as the west end of Port Arthur. And if there was a
23 real problem, I suspect that they'd move everybody out of
24 the west end of Port Arthur.

25 We're aware that there's potential to be some

1 problems but that's why the monitoring is taking place,
2 and I think the arguments that are being made here are not
3 really well founded. And we don't mind the scrutiny and
4 we don't mind providing additional information, but I
5 would hope that based on the exemption request that we've
6 made, which really was a noise issue, that we would be
7 granted that, subject to us providing additional
8 information on the other issues that have just been raised
9 here today that we haven't had an opportunity to respond
10 to.

11 MR. OXER: Thank you, Mr. Baugh.

12 Specific to the point I was bringing up,
13 specific to this item, we're looking at unilaterally the
14 exemption essentially on the proximity to the railroad,
15 which to be consistent with our prior considerations, it
16 would suggest that we would provide that exemption, with
17 the idea that more information to back up Madison's
18 information, Mr. Baugh's defense of it would be available
19 in the next stage on the application.

20 MS. LATSHA: That's right. And as helpful as
21 this discussion is going to be in our review of
22 undesirable area features, staff is not prepared to
23 respond to either of these folks today because we just
24 simply haven't had a chance to review the documentation.
25 And I do want to be clear that this is about a very, very

1 specific provision in the rule, this is exemption and it
2 is about the railway and that is all.

3 We can certainly look at the exemption as part
4 of a holistic approach to this site when we look at
5 undesirable area features, or you could take it up
6 separately today. Tabling is certainly appropriate, and I
7 think at the same time, granting the exemption and taking
8 a look at the undesirable area features will not affect
9 staff's review of the undesirable area features and our
10 ability to find this site eligible or ineligible.

11 MR. OXER: All right. Granting the exemption
12 now does not prevent the continued scrutiny, it will be
13 consistent with our prior evaluation. We have a motion by
14 Ms. Bingham, second by Mr. Gann to that effect. Is there
15 any other public comment? Madison, you've had enough?
16 Okay. All in favor?

17 (A chorus of ayes.)

18 MR. OXER: Opposed?

19 (No response.)

20 MR. OXER: There are none. Both of you get
21 back next month.

22 MS. LATSHA: The next two are a bit easier.

23 MR. THOMAS: Actually, Mr. Chair, I'd like to
24 go on the record as opposed to that motion. I was still
25 deliberating it when you were moving it through.

1 MR. OXER: Okay. Let the record reflect that
2 the vote on the prior motion was four to one, with Mr.
3 Thomas opposing.

4 MS. LATSHA: Next on the agenda is Hunter
5 Plaza. This is a 4 percent bond transaction that actually
6 was granted a determination notice back in December.
7 Basically, the short story is that the applicant, when
8 returning that determination notice to the Department,
9 missed some conditions that were due with that
10 determination notice that were included in the
11 underwriting report. The applicant has since satisfied
12 those conditions, and so staff is simply recommending a
13 reinstatement of that same determination notice.

14 MR. OXER: Any questions from the Board? So
15 they basically repaired their delay.

16 MS. LATSHA: Correct.

17 MR. THOMAS: And this doesn't impact any other
18 applicant?

19 MS. LATSHA: Not at all.

20 MR. OXER: Does it set a precedent we need to
21 worry about?

22 MS. LATSHA: I would say, if anything, it might
23 be beneficial to future applicants who might not be
24 reading their underwriting reports, and so maybe they
25 will.

1 MR. OXER: We don't do those for our health.

2 That said, we'll have a push to consider.

3 DR. MUÑOZ: A motion to reinstate?

4 MS. LATSHA: Yes, sir.

5 DR. MUÑOZ: Motion to reinstate.

6 MS. BINGHAM ESCAREÑO: Second.

7 MR. OXER: Motion by Dr. Muñoz to reinstate the
8 application, second by Ms. Bingham. Is there any public
9 comment?

10 (No response.)

11 MR. OXER: There is none. All in favor?

12 (A chorus of ayes.)

13 MR. OXER: Opposed?

14 (No response.)

15 MR. OXER: There are none. You're right, it
16 was easier.

17 MS. LATSHA: Next on the agenda is Emma Finke
18 Villas. This is an approval of a HOME award of \$1
19 million. Emma Finke Villas was a 2013 9 percent tax
20 credit application.

21 Traditionally, conventionally applicants who
22 want to combine Housing Tax Credits with Department-
23 administered HOME funds apply for those funds at the same
24 time. What happened here was this applicant was awarded
25 tax credits and then some of the financing terms changed

1 which created a gap in financing for them. They were able
2 to apply under the 2013 NOFA for HOME funds to fill that
3 gap, and so staff is simply recommending that HOME award
4 which is basically on top of the 2013 Housing Tax Credit
5 award that the Board has already granted.

6 MR. OXER: So basically the item is to
7 restructure the financing on it. Is that correct?

8 MS. LATSHA: It's additional gap financing. A
9 gap was created when their interest rate on their USDA
10 loan went up about 100 basis points.

11 MR. OXER: Would they have known about that or
12 anticipated?

13 MS. LATSHA: No.

14 MR. OXER: Is there any way they should have
15 been able to anticipate that?

16 MS. LATSHA: I wouldn't think so, no.

17 MR. OXER: Any questions of the Board?

18 (No response.)

19 MR. OXER: Motion to consider then.

20 MR. THOMAS: So move to approve the staff
21 recommendation.

22 MR. OXER: Motion by Mr. Thomas to approve
23 staff recommendation.

24 DR. MUÑOZ: Second.

25 MR. OXER: Second by Dr. Muñoz. Is there any

1 public comment? Madison, just for the record, you're
2 sitting there.

3 MS. SLOAN: I forgot to sign in. I'm messing
4 up the procedure.

5 MR. OXER: Just making sure. I was the one who
6 was complaining.

7 MR. THOMAS: I was the one complaining that
8 people weren't talking, they weren't getting the front
9 seat.

10 (General laughter.)

11 MR. OXER: Item 3(c), motion by Mr. Thomas,
12 second by Dr. Muñoz. No public comment request. All in
13 favor?

14 (A chorus of ayes.)

15 MR. OXER: Opposed?

16 (No response.)

17 MR. OXER: There are none.

18 Item number 4.

19 MS. LATSHA: All right. Item number 4 is an
20 appeal of a termination of a HOME application that was
21 received also under the 2013 NOFA. This is for Majors
22 Place Apartments.

23 What happened here was this application was
24 submitted without a site and feasibility study which is
25 required under Section 10.205 of the Uniform Multifamily

1 Rules. The rules specifically call for staff to terminate
2 any applications that do not include any of the required
3 third party reports. The applicant has argued in their
4 appeal that this should be considered an administrative
5 deficiency.

6 I just want to explain really quickly why this
7 is not considered an administrative deficiency. When I
8 think if someone were to look at the entire application
9 and the items that were missing, might realize that staff
10 has allowed for similar types of corrections under
11 different circumstances for other applicants, but it is
12 because this particular omission was an omission of a
13 third party report and the rule does very specifically
14 call for termination of applications when those third
15 party reports are missing. This particular report calls
16 for a site plan, a survey, an executive summary from an
17 engineer related to basic due diligence of the applicant.

18 The applicant has also argued that that due
19 diligence in fact was done, and that a large part of the
20 evidence of that due diligence could be found in other
21 parts of the application. Again, the reason for the
22 termination and the reason that this is not considered an
23 administrative deficiency is because it is technically a
24 third party report and the rules simply call for that.

25 The applicant has also asked that if the Board

1 cannot find that this should be able to be corrected
2 administratively, they are requesting a waiver of the rule
3 in general. Now, the staff has also not recommended
4 granting the waiver and that is basically because should
5 the HOME funds not be granted to this applicant, they'll
6 not be lost to the state, they'll simply get rolled into
7 the 2014 NOFA. That being said, this is not like a
8 competitive Housing Tax Credit application, there's not an
9 applicant behind this applicant that would be harmed,
10 necessarily, should this award go forward.

11 But again, based on the plain language of the
12 rule, staff is recommending denial of the appeal of the
13 termination, and then simply based on the fact that the
14 funds would not be lost to the State, should they not be
15 awarded to this applicant, also denial of the waiver.

16 I'm sure that there is some comment here,
17 unless you have any questions for me first.

18 MR. OXER: Okay. Questions from the Board?

19 DR. MUÑOZ: I've got a few questions.

20 MR. OXER: Dr. Muñoz.

21 DR. MUÑOZ: You say that the third party sort
22 of report wasn't maybe attached in some sort of
23 discernible way, but are the elements -- is the
24 information that would have been contained in that report
25 elsewhere in the application?

1 MS. LATSHA: Part of it, yes. What was
2 essentially missing were some elements of the site plan.
3 Very specifically, it called for water and wastewater tie-
4 ins and detention ponds and things like that, and then
5 also the executive summary from the engineer.

6 DR. MUÑOZ: And the information related to the
7 wastewater and what-have-you, as well as what might have
8 been contained in an executive summary, which generally my
9 understanding of that kind of sort of synopsis is just
10 sort of redundant: The following contains et cetera,
11 you'll find et cetera. So I mean, I don't know that it
12 adds information, the executive summary. I'm just trying
13 to get at whether sort of what your contending should have
14 been added is absent from the balance of the application,
15 because when I hear you say that sort of similar
16 exceptions have been allowed in the past, that gives me
17 some pause.

18 MS. LATSHA: And what I mean is that staff has
19 used, on average, I would say, over a dozen administrative
20 deficiencies per application that we receive. There's
21 quite frequently similar types of information that is
22 missing, whether it's just a form that was filled out
23 incorrectly or some backup documentation with respect to
24 site control or something like that. So yes, the type of
25 information that you're talking about, sometimes those

1 executive summaries are redundant, sometimes they provide
2 some information if you've got some particularly strange
3 circumstances surrounding a site. But those
4 administrative deficiencies that we allow to be corrected
5 are found under a different section of the rule that
6 allows for those types of clarifications.

7 Like I said, the reason for the termination
8 really was because this particular omission was found
9 under the third party report section which clearly
10 requires staff to terminate the application.

11 MR. OXER: Any other questions from the Board?

12 I have a couple. While the executive summary could add
13 some dimension to this, the executive summary is simply
14 the applicant's assessment, rather than a third party
15 technical provider, to provide that information which is
16 the key component of the application.

17 MS. LATSHA: Actually, for this particular
18 third party report, it's a third party report because we
19 do require that summary to come from a third party
20 engineer.

21 MR. OXER: So it has to be an engineering
22 assessment of these particular components to go into the
23 application?

24 MS. LATSHA: Yes.

25 MR. OXER: Okay. I'd also point out that there

1 were things that we've done before that we don't do again
2 that we don't do anymore. So are there any similar
3 waivers or administrative deficiencies that you've
4 repaired or allowed to be repaired by the applicant in
5 this round?

6 MS. LATSHA: Well, in 2013, no. So we did have
7 another example of a third party report that was missing
8 from an application and that application was simply
9 terminated. I don't think that termination even made it
10 to the Board because the applicant realized that the rule
11 simply called for that. So I think the precedent is that
12 when a third party report is missing, the termination has
13 been upheld.

14 MR. OXER: And third question is if we were to
15 grant the appeal, what benefit to the state accrues by
16 opposing staff, Counsel?

17 MS. DEANE: Well, I think as Jean stated,
18 because the money can continue to be used, I don't know
19 that there's any particular benefit to be gained by
20 granting it. I'm not aware of any benefit that accrues to
21 the state to grant the exemption. Is that what you're
22 asking?

23 MR. OXER: Yes, because that's one of our
24 policy requirements.

25 MS. DEANE: That would probably be a question

1 for staff.

2 MR. IRVINE: Well, it's actually a question I
3 think the applicant could certainly speak to.

4 MS. LATSHA: That's right; that's where I was
5 going.

6 MR. OXER: Trust me, we'll get to him.

7 DR. MUÑOZ: Hey, Jean, can I ask a followup?

8 MR. OXER: Dr. Muñoz, do you have a question?

9 DR. MUÑOZ: Make that point again to me about
10 this falls under a rule for which you would not be
11 permitted, that those other exemptions fell under a rule
12 that permitted you sort for the administrative -- the
13 latitude to exercise an administrative sort of waiver
14 exemption, but that this would not.

15 MS. LATSHA: That's correct.

16 DR. MUÑOZ: Well, maybe that's correct, but I'm
17 not exactly sure what I just said.

18 MS. LATSHA: So under Section 10.204 there's a
19 host of items listed that are required for an application
20 to be eligible for funding, such as site control, evidence
21 of some zoning.

22 DR. MUÑOZ: If there's something deficient
23 there, you could ask.

24 MS. LATSHA: We simply ask for the information.
25 Right.

1 DR. MUÑOZ: But the third party falls under
2 what rule?

3 MS. LATSHA: 10.205, and there is a specific
4 sentence in the first paragraph of 10.205 that calls for
5 staff to terminate applications if a third party report is
6 not present.

7 MR. OXER: Counsel, could you cite that for us,
8 10.205, differentiate those two?

9 MS. DEANE: I had a question for Jean. Are you
10 talking about under 10.205 there is a section about
11 termination of applications if the reports are not
12 received by the deadline in their entirety? That's for
13 competitive HTC applications. Are you referring to
14 another section?

15 MS. LATSHA: No. That was what I was referring
16 to was competitive HTC, and it does refer to competitive
17 HTC applications.

18 MS. DEANE: Not HOME.

19 MR. OXER: So this is a HOME application.

20 MS. LATSHA: Yes.

21 MR. OXER: Go ahead, Dr. Muñoz.

22 DR. MUÑOZ: So then could we consider it under
23 that other rule that permits you the sort of latitude to
24 look at this as an administrative deficiency?

25 MS. LATSHA: I think you could.

1 DR. MUÑOZ: So I mean, would you be willing to?

2 MS. LATSHA: I think I would be willing to.

3 DR. MUÑOZ: So could we make a motion to return
4 it back to staff for additional consideration?

5 MR. IRVINE: Sure.

6 DR. MUÑOZ: So moved.

7 MR. THOMAS: Second.

8 MR. OXER: Okay. Motion by Dr. Muñoz to return
9 to staff for further consideration under 10.205(5), second
10 by Mr. Thomas.

11 Mr. Conine, would you like to say anything, or
12 do you want to sit this one out?

13 MR. CONINE: (Speaking from audience.) I'm
14 here for questions.

15 MR. OXER: Okay. I think you can have a little
16 conference with the guys in the anteroom here once we get
17 finished. You've got some more breathing room on this
18 one, it looks like.

19 Any other questions? Motion by Dr. Muñoz,
20 second by Mr. Thomas to deny --

21 DR. MUÑOZ: No.

22 MR. OXER: Say it again.

23 DR. MUÑOZ: To refer back to staff for further
24 consideration.

25 MR. OXER: Return it to staff for further

1 consideration. Does that oppose the staff recommendation?

2 MR. THOMAS: No. We just don't take it up.

3 MR. OXER: Okay. So we're basically tabling
4 this.

5 MS. LATSHA: I suppose so. And I would guess
6 that --

7 MR. OXER: Hold on a second. We've got to go
8 up or down on this. We're either tabling this or we're
9 voting on the staff recommendation.

10 MS. LATSHA: The only clarification I would ask
11 for with such a motion would be that if staff takes
12 another look at the application -- which we haven't
13 reviewed in full -- that we basically could rescind our
14 own termination.

15 MS. DEANE: In other words, if you were to look
16 at it and find that it qualified for administrative
17 deficiency, it may not come back to the Board, and so
18 would that be all right with the Board.

19 DR. MUÑOZ: Yes.

20 MR. THOMAS: So we wouldn't table, we're
21 referring it back for their consideration.

22 MR. OXER: Okay. So what we're voting on is
23 we're ignoring your recommendation -- this is a process --
24 we're looking at this, we're going to ignore your
25 recommendation, create our own resolution and tell you to

1 go back and look at this again.

2 MS. LATSHA: Yes, sir.

3 MR. OXER: With the idea that you could get
4 some more information.

5 Would you like to state that, Dr. Muñoz?

6 DR. MUÑOZ: My motion is to return to the staff
7 for further consideration and to either resolve it within
8 their statutory discretion, or if they feel necessary,
9 return to the Board for additional consideration.

10 MR. OXER: And essentially disregard the
11 existing staff recommendation.

12 DR. MUÑOZ: Essentially disregard current staff
13 recommendation.

14 MR. OXER: And there was a second by Mr.
15 Thomas, who understands that to be the same.

16 MR. THOMAS: Yes.

17 MR. OXER: Okay. Now do you want to say
18 something, Ken, or just sit tight?

19 MR. CONINE: (Speaking from audience.) No,
20 sir. Thank you.

21 MR. OXER: Trying to watch out for us, the
22 whole process.

23 All right. All in favor?

24 (A chorus of ayes.)

25 MR. OXER: And opposed?

1 (No response.)

2 MR. OXER: There are none.

3 That completes the formal agenda. We are at
4 the point at this point, being eleven o'clock, we're not
5 going to break for lunch, nor do we have an executive
6 session required today, so we have opportunity for those
7 who wish to make comment on items other than which there
8 were posted agenda items. Does anybody care to add
9 anything for our future agenda?

10 (No response.)

11 MR. OXER: In that case, is there any staff
12 consideration, any comments from staff, including general
13 counsel, public affairs and the executive director?

14 (No response.)

15 MR. OXER: Any comments from any of the other
16 Board members? Any contribution to make for the benefit
17 of Texas?

18 (No response.)

19 MR. OXER: All right. I get the last word.
20 It's a good job we do here, folks, and it's an important
21 process to keep in place. So with that, I'll entertain a
22 motion to adjourn.

23 MS. BINGHAM ESCAREÑO: So moved.

24 MR. THOMAS: Second.

25 MR. OXER: Motion by Ms. Bingham, second by Mr.

1 Thomas to adjourn. All in favor?

2 (A chorus of ayes.)

3 MR. OXER: Opposed?

4 (No response.)

5 MR. OXER: There are none. See you in April,
6 everybody.

7 (Whereupon, at 11:01 a.m., the meeting was
8 concluded.)

