

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

March 31, 2016
10:32 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	
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ASSET MANAGEMENT	
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852026 Transitional Housing for Victims of Domestic Violence Denton

BOND FINANCE

- e) Presentation, Discussion and Possible Action regarding publication of a Request for Proposal ("RFP") for a Master Servicer for the Texas First Time Homebuyer Program, the My First Texas Home Program, and other first-time homebuyer programs that may be implemented by the Department

MULTIFAMILY FINANCE

- f) Presentation, Discussion and Possible Action on Inducement Resolution No. 16-012 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority

16606 Emli at Liberty Crossing Wilmer

COMMUNITY AFFAIRS

- g) Presentation, Discussion, and Possible Action Reallocating Recaptured Program Year ("PY") 2014 Emergency Solutions Grants Program Funding
- h) Presentation, Discussion, and Possible Action on the PY 2016 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards

RULES

- i) Presentation, Discussion, and Possible Actions on: first, an order adopting the amendments to 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.620§ (concerning Monitoring for Non-Profit Participation, HUB or CHDO Participation); second, an order adopting the repeal of §10.610 (concerning Tenant Selection Criteria); and, third, an order adopting new §10.610 (concerning Written Policies

and Procedures) and directing that these be published in the *Texas Register*

CONSENT AGENDA REPORT ITEMS

- ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
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 - c) Report on the closing of the Department's 2016 Series A Single Family Mortgage Revenue Bonds and 2016 Series B Single Family Mortgage Revenue Refunding Bonds
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OPEN SESSION 81

ADJOURN 137

P R O C E E D I N G S

1
2 MR. OXER: Good morning, everybody. I'd like to
3 welcome you to the March 31 Board meeting of the Texas
4 Department of Housing and Community Affairs Governing
5 Board.

6 We will begin with roll call, as we do. Ms.
7 Bingham is not with us today.

8 Mr. Chisum?

9 MR. CHISUM: Present.

10 MR. OXER: Mr. Gann?

11 MR. GANN: Present.

12 MR. OXER: Mr. Goodwin?

13 MR. GOODWIN: Present.

14 MR. OXER: Professor Dr. Muñoz?

15 DR. MUÑOZ: Hurrah.

16 MR. OXER: And I'm here, so that gives us five,
17 so we are in business; we've got a quorum.

18 Tim, lead us in the pledge to the flags.

19 (The Pledge of Allegiance and the Texas
20 Allegiance were recited.)

21 MR. OXER: Okay. Tim, I understand we have a
22 resolution.

23 MR. IRVINE: We do.

24 MR. OXER: Who will read that?

25 MR. IRVINE: Yes. Tomorrow is April which is,

1 of course, Fair Housing Month, as it is every year. I
2 like to think of it really as the first month of Fair
3 Housing Year. So we do have a resolution which we would
4 like for the Board to consider adopting, and Michael will
5 read it into the record.

6 MR. LYTTLE: "Whereas, April 2016 is Fair
7 Housing Month and marks the 48th anniversary of the
8 passage of the Federal Fair Housing Act (Title VIII of the
9 Civil Rights Act of 1968), signed by U.S. President Lyndon
10 Baines Johnson on April 11, 1968;

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

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

24 "Whereas, it is the policy of the Texas
25 Department of Housing and Community Affairs to promote

1 equal housing opportunity in the administration of all of
2 its programs and services, including encouraging equitable
3 lending practices for its homebuyer programs and ensuring
4 compliance with Fair Housing rules and guidelines for its
5 multifamily developments;

6 "Whereas, the Texas Department of Housing and
7 Community Affairs, through its programs, workshops,
8 training and materials seeks continually to educate
9 property managers, consultants, program administrators,
10 architects, contractors, developers, engineers, lenders,
11 real estate professionals, and others about the importance
12 of their commitment and adherence to the requirements of
13 the Fair Housing Act;

14 "Whereas, the Texas Department of Housing and
15 Community Affairs encourages the development of
16 educational fair housing programs in local communities
17 throughout the state and is seeking to build new
18 opportunities for fair housing education and training;

19 "Whereas, the Texas Department of Housing and
20 Community Affairs and the State of Texas support equal
21 housing opportunity and housing choice in accordance with
22 the Fair Housing Act not only during Fair Housing Month in
23 April but throughout the entire year.

24 "Now, therefore, it is hereby resolved that in
25 pursuit of the goal and responsibility of providing equal

1 housing opportunities for all, the Governing Board of the
2 Texas Department of Housing and Community Affairs does
3 hereby celebrate April 2016 as Fair Housing Month in Texas
4 and encourages all Texas individuals and organizations,
5 public and private, to join and work together in this
6 observance for free and equal housing treatment and
7 opportunity for all.

8 "Signed this thirty-first day of March, 2016."

9 MR. OXER: Okay. I think we have to have a
10 motion.

11 MR. GOODWIN: Mr. Chairman, I move that we
12 adopt the resolution.

13 MR. OXER: Okay. Motion by Mr. Goodwin to
14 adopt the resolution just read into the record by Michael.
15 Do I hear a second?

16 MR. CHISUM: Second.

17 MR. OXER: Second by Mr. Chisum. No public
18 comment. Those in favor?

19 (A chorus of ayes.)

20 MR. OXER: And opposed?

21 (No response.)

22 MR. OXER: There are, of course, none.

23 Thanks, Michael.

24 MR. LYTTLE: Yes, sir.

25 MR. IRVINE: Mr. Chairman, before we take up

1 the consent agenda, I believe Stephanie Naquin would like
2 to provide a clarification with regard to item 1(i), 1-
3 India.

4 MS. NAQUIN: Good morning.

5 MR. OXER: Hi, Stephanie.

6 MS. NAQUIN: Hi. My name is Stephanie Naquin,
7 director of Multifamily Compliance, and I would like to
8 make a correction to item 1(i) concerning the adoption of
9 Title 10, Chapter 10, Subchapter F, Rule 10.610 related to
10 written policies and procedures. Specifically, Section
11 (B) paragraph (2) subparagraph (b) should read: If an
12 owner adopts a minimum income standards for households
13 participating in a voucher program, it is limited to the
14 greater of a monthly income of 2.5 times the household's
15 share of total monthly rent or \$2,500 annually. The
16 change being "if an owner adopts a" is necessary to better
17 clarify that it's not a requirement to maintain a minimum
18 income standard but that if there is one, for households
19 that receive rental assistance that standard is limited.

20 We recommend approval with these changes.

21 MR. OXER: What's the difference between what
22 you read in and what was in the Board book?

23 MS. NAQUIN: Just the words "if an owner adopts
24 a" and so it provides some clarification that it's not a
25 requirement but if you have one, there's a limitation on

1 what you can set.

2 MR. OXER: So this is simply a clarification,
3 not a substantive change.

4 MS. NAQUIN: That's correct.

5 MR. OXER: All right. Thanks.

6 Okay. With respect to the consent agenda,
7 would any member of the Board wish to pull any item,
8 recognizing we have the option later to come back and
9 discuss those as we need.

10 (No response.)

11 MR. OXER: With respect to the consent agenda
12 and modifications of item 1(i), as presented, do we have a
13 motion to consider?

14 MR. GANN: I so move.

15 MR. OXER: Okay. Motion by Mr. Gann to approve
16 the consent agenda with the modifications to 1(i). Is
17 there a second?

18 MR. GOODWIN: Second.

19 MR. OXER: And there's a second by Mr. Goodwin.
20 No public comment. Those in favor?

21 (A chorus of ayes.)

22 MR. OXER: And opposed?

23 (No response.)

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

25 Okay. Because we have some key action items

1 that we would like to take and to assure that we have
2 sufficient time for, I'm going to exercise the chair's
3 prerogative and alter the order in which we take some of
4 these. We'll take the action items first and the report
5 items will come later once we complete the action agenda.

6 So that said, do we have any other modifications that you
7 recognize, Counsel or E-D?

8 MR. IRVINE: Only that I believe item 8(c) is
9 pulled.

10 MR. OXER: Okay. We'll deal with that when we
11 get there.

12 All right. With respect to item 3(a), Suzanne,
13 you're new and you're first in the box. Good job.
14 Welcome aboard.

15 MS. HEMPHILL: Thank you. Good morning,
16 Chairman Oxer, Board members. My name is Suzanne
17 Hemphill. I'm Fair Housing Project manager at TDHCA.

18 Included in the board report behind tab 3A is a
19 summary of the major fair housing related projects and
20 activities planned for the next six months. In addition,
21 there is a detailed annual fair housing report that
22 outlines action steps that the Department is currently
23 planning, implementing or that have already been
24 incorporated into the rules and processes of the programs
25 that the Department administers. This includes both HUD

1 and non-HUD funded activities.

2 Fair housing work touches nearly every division
3 at the Department. Today I want to share with you a few
4 recent examples of the type of work my team does.

5 The first example relates to the Section 8
6 program. Each year the Section 8 program has to establish
7 its payment standards for the areas within its
8 jurisdiction. You recently approved the 2016 payment
9 standards at the December Board meeting. The
10 establishment of the standard is important because it
11 essentially determines whether a household will be able to
12 find a unit that they can afford with a voucher. In areas
13 where market rents are high and there's high demand for
14 rental units, it can be challenging for a voucher holder
15 to find a unit. Increase fair market rents aid in areas
16 where voucher holders have had difficulty in finding
17 acceptable units or affording units in more desirable
18 areas. The higher FMRs provide additional choices and
19 opportunities to tenants in highly competitive rental
20 markets.

21 My area played a large part in this year on
22 what standards to recommend to you. We wanted to
23 determine whether fair market rents in Section 8 areas
24 were sufficiently allowing us to expand tenant housing
25 choice. So the fair housing data management and reporting

1 team analyzed small market area rents for counties and zip
2 codes and identified areas that we believe needed adjusted
3 standards.

4 Another example relates to the Emergency
5 Solutions Grant Program. It's a HUD funded program that
6 provides funding for homelessness prevention. The fair
7 housing team has worked closely this year with ESG staff
8 to really emphasize fair housing. We conducted a webinar
9 for ESG subrecipients on the intersection of fair housing
10 and how clients are able to access services. In ESG
11 language it's called coordinated access. The training
12 components included information on how to screen and
13 direct clients into different services and how to apply
14 screening criteria evenly across protected classes, as
15 well as on a way that subrecipients can make referrals to
16 eligible resources and promote choice.

17 ESG and fair housing staff also provided
18 additional guidance related to serving persons with
19 limited English proficiency that has HUD regulatory
20 provisions associated with it. TDHCA is now requiring a
21 language access plan for all ESG subrecipients starting
22 with fiscal year 2016 funding. Additionally, the ESG
23 contract now requires that subrecipients provide program
24 applications and forms and educational materials in
25 English and Spanish and other languages as appropriate for

1 the service area. Spanish is a mandatory language in the
2 language access plan. Further, the forms used by program
3 participants are now translated into Spanish and posted
4 online.

5 The last example I have to share with you
6 relates to the QAP scoring incentives and their alignment
7 with fair housing. Fair housing staff participates in
8 monthly Qualified Allocation Plan 2017 planning roundtable
9 discussions, and we conduct significant research on
10 potential scoring items. The research includes analyzing
11 the statewide impact of items and considering their
12 alignment with fair housing through mapping and analyzing
13 census data related to income and poverty levels and
14 researching and mapping changes in the Texas Education
15 Agency education standards and ratings.

16 Those are just a few examples of the fair
17 housing work we do every day. In addition, as you noted
18 with your resolution at the beginning of the meeting,
19 today's Board meeting kicked off April as Fair Housing
20 Month. As part of that celebration, TDHCA will be
21 conducted three fair housing webinars. Trainings will
22 provide an overview of fair housing in Texas, information
23 on reasonable accommodations, and best practices for
24 multifamily developments in tenant selection criteria and
25 wait list management. Details and registration

1 information are available by visiting the calendar on
2 TDHCA's website.

3 That concludes my fair housing report. Thank
4 you very much, and I would be happy to answer any
5 questions you may have.

6 MR. OXER: Good. Thanks. Questions from the
7 Board?

8 DR. MUÑOZ: Not so much a question as a
9 comment. I appreciate the work that you're doing. I was
10 looking through the calendar all the way back to 2013 and
11 you do quite a bit every month. And particularly, I
12 remember when I was on the housing authority in Lubbock,
13 we always had issues with the number of Section 8 vouchers
14 and they were always deficient, not enough for the demand,
15 and just to hear you explain about periodically trying to
16 look at markets and how many would be appropriate for the
17 demand. I know when I served in that capacity at a more
18 local level, it was a need for us to have some mechanism
19 to be able to bring to somebody's attention that a greater
20 number of vouchers were necessary to serve the underserved
21 in our small town.

22 It's quit voluminous and extensive, the work
23 that you do, and I'm sure every member of the Board
24 appreciates it.

25 MS. HEMPHILL: Thanks. And we certainly work

1 with staff across the programs in the agency, and that was
2 Andrea in Section 8, and it was great to be able to
3 increase those FMRs where appropriate.

4 MR. OXER: I gather that the timing of your
5 report is based on the fact that this is meeting immediate
6 antecedent to Fair Housing Month.

7 MS. HEMPHILL: We plan to do an annual large
8 report, so this year it made sense to do it in April.
9 We'll also bring back additional reports in the fall to
10 give you updates.

11 MR. OXER: Okay. And those reports are
12 essentially to give us milestones you're hitting?

13 MS. HEMPHILL: Sure, and to document the work
14 that we're doing. We have a substantial fair housing
15 database that we enter everything into. What you're
16 seeing are kind of the significant substantive actions
17 we've taken. There's also daily calls of fair housing
18 questions and coordination. This morning we talked with
19 the San Antonio Fair Housing Council. We're documenting
20 all of our work to share with the Board, and also if this
21 comes up with any questions and folks what to see what
22 we're working on because it's substantial and we want to
23 share that work.

24 MR. OXER: Good. Any other questions?

25 Mr. E-D.

1 MR. IRVINE: Just a comment as one of your many
2 teammates, we're so appreciative of your role. You know,
3 you have really just jumped in, you've learned a lot of
4 details about a whole lot of things, you've organized it,
5 you've documented it, and I especially love the simplicity
6 and clarity with which you can portray sophisticated
7 issues in your mapping. It's a real asset.

8 MS. HEMPHILL: Thanks. It's definitely a team
9 effort, so happy to have everybody at the agency working
10 on it.

11 MR. OXER: Well, as everybody here at the
12 agency and everybody in the audience here, we recognize
13 this is pretty simple to do, there's not really a whole
14 lot to it. Of course, that doesn't explain the cat fights
15 and the blood on the walls in a couple of rooms we've met
16 in, but we do really appreciate the contributions you
17 make.

18 (General laughter.)

19 DR. MUÑOZ: And you know, but good team leaders
20 always recognize team members.

21 MS. HEMPHILL: Absolutely. Thank you.

22 MR. OXER: Thank you, Suzanne.

23 Do we want to continue on the report side? I
24 made a mistake there when I got started on that. We've
25 got enough time? Okay.

1 Who's next? Get on the spot here.

2 (General talking and laughter.)

3 MR. OXER: Commence firing.

4 MR. SINNOTT: Good morning, Chairman Oxer,
5 members of the Board. My name is Andrew Sinnott,
6 Multifamily Loan Program administrator for Texas
7 Department of Housing and Community Affairs.

8 I'm here today to talk about the National
9 Housing Trust Fund. It's a new program that we're hoping
10 to have some roundtables on in the coming months. It's a
11 new source of funding for Texas and for all states as a
12 result of the Housing and Economic Recovery Act of 2008.
13 That act required that .042 percent of Fannie and Freddie
14 mortgage purchases be set aside for affordable housing.
15 National Housing Trust Fund represents a portion of that
16 set-aside. Contributions to the Housing Trust Fund were
17 suspended in subsequent years while Fannie and Freddie
18 recovered from the economic collapse, and just last year,
19 2015, was the first year when those contributions were
20 reinstated, so it's been a while that this program was
21 envisioned but now it's finally coming to fruition.

22 MR. OXER: You know, every vision without a
23 plan to execute is just a hallucination.

24 (General laughter.)

25 MR. SINNOTT: So while Fannie and Freddie Mac

1 are providing the funds, HUD is overseeing the
2 implementation of the program. HUD published the interim
3 rule a little over a year ago in anticipation of the funds
4 being released this year. The formula grant allocation
5 amounts are currently being finalized and it's anticipated
6 that HUD will publish those amounts next month and a grant
7 agreement will be executed with HUD sometime this summer.

8 Some key requirements of the program. It's
9 intended exclusively for 30 percent AMI households as
10 currently planned. At least 80 percent of the funding
11 must be used for rental housing. The Department envisions
12 using all of it, less the 10 percent admin for rental
13 housing, so no funds going towards homebuyer which is an
14 option but not one that we're really considering at this
15 time. It also requires a minimum 30-year affordability
16 period. So those are just the minimum requirements for
17 the program.

18 We're also anticipating at least \$3 million.
19 Like I said, we'll find out that final amount next month
20 but it should be at least \$3 million.

21 So as far as next steps, we hope to have some
22 roundtables next month in May with a draft of the National
23 Housing Trust Fund allocation plan submitted to the Board
24 in May at the May 26 Board meeting. And then the
25 allocation plan draft will be published for public comment

1 on Board approval in May. The final version of the
2 allocation plan hopefully will be submitted to the Board
3 for approval in July as a substantial amendment to our
4 one-year action plan soon after the Board approval.

5 The direct loan NOFA should include these funds
6 for 2017 or later this year, so the direct loan NOFA we
7 envision this coming year including HOME, TCAP repayment
8 funds, and then National Housing Trust Fund. National
9 Housing Trust Fund obviously has some different income
10 requirements, but beyond that kind of plays a lot like
11 HOME funds. And hopefully, publication of the direct loan
12 NOFA in December 2016.

13 So if the Board has any comments beyond this
14 kind of foundational knowledge for what you guys hope to
15 have in these roundtables, or any questions.

16 MR. OXER: Any questions of the Board?

17 (No response.)

18 MR. OXER: So the .042 percent of Fannie and
19 Freddie, let's see, what would it be, from their
20 appropriations?

21 MR. SINNOTT: I think it's new mortgages.

22 MR. OXER: New mortgages. Okay. And then
23 we'll wind up \$3 million, more or less. It sounds like
24 it's a moderate complex system but we have the capacity to
25 manage these complex systems.

1 MR. SINNOTT: With our experience with HOME
2 funds and these being very similar to the HOME funds, save
3 the income targeting requirements, we think they can line
4 up pretty easily with our other loan programs.

5 MR. OXER: So it gives us another resource to
6 be able to allocate it to the people that need it here in
7 the state.

8 MR. SINNOTT: Exactly, and deeper affordability
9 as well.

10 MR. OXER: And it's principally for up to 30
11 percent AMI.

12 MR. SINNOTT: Exactly.

13 MR. OXER: So it's targeted at the most needy.

14 MR. SINNOTT: Exactly. In years when the
15 amount of funds provided for National Housing Trust Fund
16 exceed \$1 billion, we have the ability to target up to 50
17 percent AMI, but we're not anticipating that to happen
18 this year or any time in the near future.

19 MR. OXER: Good. All right. Thank you.

20 MR. SINNOTT: Thank you.

21 MR. OXER: Is this one yours, Marni?

22 MS. HOLLOWAY: Yes.

23 MR. OXER: We had so much fun yesterday, I just
24 couldn't wait for you to get here.

25 MS. HOLLOWAY: That actually was a good

1 meeting, I thought.

2 MR. OXER: It was.

3 MS. HOLLOWAY: Good morning, Chairman Oxer,
4 members of the Board. My name is Marni Holloway. I am
5 the director of the Multifamily Finance Division.

6 Item 3(c) is a report on the 2017 Qualified
7 Allocation Plan project. You'll recall this is the series
8 of meetings that we're having with stakeholders to discuss
9 the 2017 QAP, get an early start on it, and have an
10 opportunity for some more informal input than what we can
11 do with the public comment period.

12 So the second meeting was last month, February
13 24, so they're always the day before the Board meeting.
14 The topic for that one was aging in place and elderly
15 development.

16 MR. OXER: Sometimes I feel like that's what
17 we're doing. You know that, don't you?

18 MS. HOLLOWAY: Aging in place?

19 MR. OXER: Right.

20 MS. HOLLOWAY: I'm going to leave that one
21 alone.

22 DR. MUÑOZ: Good one, Marni.

23 (General laughter.)

24 MS. HOLLOWAY: So we discussed elderly
25 limitation and elderly preference requirements. You'll

1 remember we had that definition change that's been of
2 concern and quite a topic of conversation. We discussed
3 the limitations on elderly development in statute which
4 were new for this year, and then also the scoring
5 structure for elderly developments.

6 Additionally, we discussed aging in place which
7 was removed at the last minute from the 2016 QAP due to a
8 conflict with statutory requirements. The group suggested
9 combining aging in place measures with other measures,
10 such as educational excellence, so that elderly and
11 general developments are able to score balancing points.

12 We also discussed the difficulty of finding
13 sites that will score well on educational excellence, and
14 there was a request from the group that educational
15 excellence not apply to elderly development, and that's
16 something we are continuing to discuss with the community.

17 Another potential approach that we discussed
18 was a menu option that would allow points for multiple
19 facets of a site in order to reach opportunity index
20 scores, so sort of a tweak of the opportunity index that
21 we're using now, and this was something that we discussed
22 quite a bit more at the meeting yesterday which was about
23 opportunity index.

24 So the meeting yesterday, I came away with
25 pages and pages of notes and lots and lots of input from

1 the development community on different approaches and
2 looking at some other states and what they're doing.
3 We're going to compile all of that information and I will
4 bring back a much more detailed report next month. We are
5 also planning to put up a form on our website so that
6 there's opportunity for further input and discussion
7 outside of our monthly meetings.

8 Any questions?

9 MR. OXER: Any questions of the Board? And I
10 participated yesterday just to listen, frankly, to listen
11 to the options and get a sense of what the diversity is on
12 those, so it was informative to me.

13 I have a question in terms of what we're doing
14 compared to what other PHAs are doing across the country
15 now. There are some developers that were there that work
16 in other states, and I'm just curious if we see anything
17 that they're doing, or if we're, as is typically the case,
18 an axe and a compass and cutting our way through this to
19 begin with and everybody else gets on the road that we
20 build.

21 MS. HOLLOWAY: Well, so one of the suggestions
22 that was made yesterday was that the State of Georgia uses
23 a clustering approach rather than census tract measures,
24 so that's something that's a little different from what
25 we're doing.

1 What I learned at the NCSHA conference in
2 January was that states all over the country are
3 struggling with opportunity areas and how to meet our fair
4 housing requirements and our fair housing obligations, and
5 put those developments in those higher opportunity areas
6 so there's broader choice for tenants, how to do that
7 effectively with limited funds, how to deal with the
8 NIMBYism that the developers are encountering out there.

9 MR. OXER: Without creating more.

10 MS. HOLLOWAY: Yes. So I don't know that we're
11 out there with an axe.

12 MR. OXER: Do any of the other states engage
13 their development community in a process like this?

14 MS. HOLLOWAY: I heard from -- there was one
15 state and it was a much smaller one.

16 MR. OXER: Well, that would be most of them,
17 frankly.

18 (General laughter.)

19 MS. HOLLOWAY: I mean, much, much, much
20 smaller. That actually had gone out and met with all of
21 their developers individually. We don't have the manpower
22 to do that, and I, frankly, very much prefer the public
23 forum process that we've been going through. Another had
24 been doing what they called listening sessions which I
25 think is very similar to the process that we're going

1 through right now with this monthly input. So I think
2 that the governments are recognizing that input from the
3 developers is going to be vital in getting to a really
4 effective qualified allocation plan.

5 MR. OXER: Okay. Any questions? Mr. E-D.

6 MR. IRVINE: A couple of comments. We did hear
7 pretty loud and clear a sentiment that consistency in the
8 rules is a desirable thing because it gives developers a
9 longer opportunity to engage communities, to build
10 relationships, to help them understand what's going on,
11 and I'm really hoping that by putting in this extensive
12 front-end work in the 2017 QAP that we can be developing
13 something that can survive more or less intact and so
14 forth for a longer period of time. I would love to get to
15 the realization of the two-year QAP.

16 There was also a lot of discussion about what
17 really constitutes opportunity, and I think my take is
18 that it goes way beyond the mere demographics of a census
19 tract, it gets into what's going on there: is it growing,
20 is it bringing in job opportunities, is it providing good
21 schools, is it providing access to rapid transit, all of
22 those different kinds of things. And you know, I think
23 we're developing a better understanding of what
24 constitutes opportunity, and hopefully we'll be taking
25 this a really useful and valuable direction to make

1 Texas --

2 MR. OXER: Keep Texas out front.

3 MR. IRVINE: Keep Texas out front. Yes.

4 MR. OXER: And we should be working on creating
5 a definition of what constitutes opportunity, but the
6 concept of opportunity is being imposed on us and so it's
7 important to understand what that legal construct is about
8 what opportunity represents also. Because our
9 interpretation and certain legal constraints is probably
10 not the same as some others, as we've found in the last
11 couple of years.

12 MR. IRVINE: Well, and I would really
13 anticipate over the course, especially of April and May
14 there will be a lot of Board engagement on some of the
15 substantive policy issues that are going to undergird the
16 ultimate proposal of a 2017 QAP.

17 MR. OXER: Counsel, do you have a question or a
18 comment?

19

20 MR. ECCLES: The only comment that I was going
21 to make is that as we talk about the various definitions
22 and components of what is opportunity, there are some
23 necessary constraints of the metrics and data that can be
24 harvested statewide in a state as vast as Texas that would
25 go into that. So for all of those who have complained

1 about the limitations of, for instance, Neighborhood
2 Scout, I know that there are states that, for instance, go
3 into what are areas that are considered walkable. Unless
4 we have the data that can reliably and uniformly
5 substantiate one of these components of a definition of
6 opportunity, that could be problematic.

7 So I would just say that as we're all
8 attempting, TDHCA and the public and developers, as to
9 what constitutes opportunity, let's be mindful of what we
10 would feed into this definition and make sure that it is
11 both reliable and consistent rather than just a general
12 idea of what we might personally consider to present
13 opportunity.

14 MR. OXER: Definable and defensible.

15 MS. HOLLOWAY: The sort of quantifiable measure
16 that we can apply all over the state. Absolutely.

17 MR. OXER: Right. Because I suspect there are
18 places out there, you know, Houston would be walkable if
19 you had all day to get across it.

20 (General laughter.)

21 MR. OXER: Anything else, Counsel?

22 DR. MUÑOZ: Just a comment. You know, Marni,
23 just to pivot on, I think, what you've heard, I just think
24 it's important -- and I don't want this to sound like a
25 criticism, but when we say things, and I'm prepared to say

1 this too, other states are kind of grappling with this, so
2 be it. Right? But we shouldn't be a state that's
3 grappling with it. If we want to move to this two-year
4 sort of defensible, good input in, sort of position QAP, I
5 think often we avert our eyes to things that some other
6 states, even smaller states, are piloting, experimenting
7 with, looking at Definitions, operational definitions of
8 opportunity that we could potentially modify, that we
9 could cull, that we could adapt or something.

10 I just think that, you know, whether it's
11 cluster or census tract or something else, I mean, looking
12 seriously to see what other people are doing, and if
13 nobody else is doing anything more sophisticated or
14 representative or fair than we are, then that only
15 strengthens the ability to say that this plan should be
16 permissible over multiple years because we've canvassed
17 what the country is doing and no one is doing anything
18 more appropriate, more legally defensible, more innovative
19 than we are, and so the 49 other might struggle.

20 Sometimes it's easy to sort of, well, this is
21 kind of how we've done it, and I know that we're taking
22 input from our people in our state and I think that should
23 always sort of drive it, but we should always keep an eye
24 out to see what others are doing, even the small Vermonts
25 that might be useful and appropriate here as we try to get

1 something in place for developers and communities to look
2 at over more than just one year.

3 MS. HOLLOWAY: I agree entirely. And actually,
4 over the last couple of years, as all of the states are
5 starting to add these opportunity measures to their
6 QAPs -- and I have one right here -- there are reports
7 coming out about the effects of these changes on QAPs
8 across the country and those are a really good way to spot
9 those innovative ideas.

10 DR. MUÑOZ: Yes, that's right. That's exactly
11 what I'm saying. So you're already thinking about it.

12 MR. OXER: He's corroborating your position and
13 complimenting you on the direction you're headed.

14 MS. HOLLOWAY: Thank you very much.

15 DR. MUÑOZ: I appreciate the interpretation.
16 What he said.

17 (General laughter.)

18 MR. OXER: And the idea when we originally some
19 time ago started thinking of a two-year QAP, part of that
20 was with the intent to make it easier for developers to
21 have the time to develop the relationships, give them the
22 opportunity to explain to those communities that see this
23 as something they don't necessarily want, and explain to
24 them that this is an entirely different concept that they
25 probably haven't really truly understood yet, and that

1 gives them more time to explain that. Anything that does
2 that makes this program work better which makes Texas look
3 better, which is all I was looking for.

4 So the idea of having a two-year QAP would be
5 to stabilize that period to give more time, so if we can
6 get a QAP that's structured and then in the second year
7 everybody generally knows there's going to be some mod but
8 not a rewrite, then that gives people a couple of years or
9 at least some months longer than, what was it, six or
10 eight, ten weeks to nail down a site which everybody up
11 here recognizes that that's problematic. Okay? Not a
12 question. What we're trying to do is figure out a way
13 that the program works better, a stronger QAP that
14 accommodates this program and strengthens it. Because I'm
15 confident that this program is not going to get any
16 smaller the longer it goes. Okay? There's just too much
17 demand for the housing out there.

18 MS. HOLLOWAY: That does not appear to be the
19 trend.

20 MR. OXER: Right. So my point is to say yes,
21 what he said, I'd like to compliment you, that we're
22 headed all in the right direction, and I think I can speak
23 generically for the Board that we appreciate the direction
24 that the staff is going with respect to the QAP.

25 MS. HOLLOWAY: Thank you.

1 MR. OXER: Is there anything else you'd like to
2 say? J.B., anything? Tolbert?

3 MR. GOODWIN: Compliments.

4 MR. CHISUM: Compliments.

5 MR. OXER: Okay. You got all thumbs on this
6 one.

7 MS. HOLLOWAY: Thank you.

8 MR. OXER: Thanks, Marni.

9 Okay. Cathy, hey.

10 MS. GUTIERREZ: It's been a while since you've
11 had to get up and pitch.

12 MS. GUTIERREZ: It's my very first time up here
13 so I'm excited to be here. Good morning.

14 MR. OXER: We're excited to have you.

15 MS. GUTIERREZ: Cathy Gutierrez, Texas
16 Homeownership Division director.

17 I am here today to introduce to you a new
18 report that we will be bringing to you quarterly. The
19 report which has three components covers a two-year period
20 on program activity in the Texas Homeownership Division.
21 In previous Board meetings items have been presented to
22 you by our Bond Finance director, Monica Galuski,
23 explaining some of the many complicated financing methods
24 used to structure our homeownership program, so I think
25 you are somewhat familiar with the creative work being

1 done on her side of the floor. Her and I work in tandem.

2 I always say she generates the funds and I kind of spend
3 the money, so you guys might be familiar with that maybe.

4 MR. OXER: Sounds like my house.

5 (General laughter.)

6 MS. GUTIERREZ: What I'd like to provide to you
7 today is information that will help give you a better
8 understanding of how these various funding sources are
9 used in the Texas Homeownership Division to provide
10 affordable homeownership opportunities to the consumers of
11 Texas.

12 As described in this Board writeup, the
13 responsibilities of the Texas Homeownership Division is to
14 create, oversee and administer the Department's non-
15 federal and non-GR homeownership programs. These programs
16 are designed to assist low to moderate income individuals
17 and families with an opportunity of achieving the dream of
18 homeownership. We currently offer three different
19 homeownership programs.

20 The consumer can choose a 30-year fixed rate
21 mortgage loan that includes down payment and closing cost
22 assistance through the My First Texas Home Program. This
23 option is attractive to potential homebuyers who may have
24 an income that will support a mortgage loan and are credit
25 worthy but do not have funds needed to meet the minimum

1 investment requirement of a traditional mortgage loan
2 product. With this option we have various levels of
3 assistance the borrower can consider to help with
4 affordability of the mortgage loan.

5 The second option is for borrowers who are not
6 in need of assistance with down payment but would like to
7 take advantage of benefits or incentives offered to first-
8 time homebuyers. The option to participate in the
9 Department's Texas Mortgage Credit Certificate program, or
10 MCC program is available. Through the MCC program
11 borrowers have access to an annual federal income tax
12 credit of up to \$2,000. The tax credit, also referred to
13 as a mortgage interest credit, is calculated at 40 percent
14 of the annual mortgage interest paid and can be applied
15 for the term of the mortgage loan as long as the property
16 remains the borrower's primary residence. The MCC is a
17 stand-alone product, it's simply used as a companion to a
18 conventional or government first mortgage.

19 To further expand the opportunity at affordable
20 homeownership, qualified borrowers can take advantage of
21 our third option which is our combo option. This option
22 provides both the 30-year fixed rate mortgage loan and
23 assistance available through My First Texas Home, and the
24 tax credit benefits available through the Texas MCC
25 program. It's our way of giving the borrower the option

1 to super size, so to speak, their savings by maximizing
2 their purchase benefits. And then I just want to add a
3 little to the combo option that in this particular case
4 there is a lot of savings but also have savings in
5 calories because we don't include fries or a drink in this
6 particular combo option. It's definitely something that
7 borrowers can really maximize their savings when they're
8 taking advantage of that particular option.

9 To qualify for these options the home buyer
10 must comply with traditional requirements associated with
11 tax-exempt bonds, such as the first-time homebuyer
12 requirement and income and purchase price limits.
13 Additionally, loans must meet credit and underwriting
14 guidelines, such as minimum credit score and maximum debt
15 to income ratios as required by certain government or
16 conventional loan products and U.S. Bank who currently
17 serves as the master servicer of the loan program. And in
18 the consent agenda you did approve the authority for us to
19 issue an RFP for the master servicer role, so that was
20 approved today.

21 Another critical component of home buying, and
22 also a requirement of program participation is completion
23 of a homebuyer education course. Just this month TDHCA
24 launched Texas Homebuyer U which provides free online
25 tools designed to give homebuyers a greater understanding

1 of what to expect when buying a home and prepare them for
2 the responsibilities that come with homeownership.

3 Consumers can access these programs through our
4 network of participating lenders. Currently there are
5 approximately 150 lending institutions with 400-plus
6 branch offices across the state participating in our
7 homeownership programs

8 We continue to work in expanding our efforts in
9 generating product awareness through partnerships with
10 state and local realtor and mortgage banker associations,
11 such as the Texas Association of Realtors and the Texas
12 Mortgage Bankers Association, and through participation in
13 trade show events and homebuyer fairs across the state.
14 Additionally, social media, website tools, and a variety
15 of outreach materials have been developed in both English
16 and in Spanish to educate the consumer and our industry
17 partners on the benefits of these programs.

18 The Board writeup provides to you in a table
19 format the various interest rates and down payment
20 assistance percentages associated with each of these
21 program options. Interest rates are set daily by our Bond
22 Finance Division.

23 The reports behind the writeup reflect activity
24 over the prior two years for each of the three available
25 options just described. Monthly loan purchase trends,

1 average interest rates, average loan amount, demographic
2 and loan information are also included. As it relates to
3 volume, please note that a seasonal reduction in loan
4 origination typically occurs December through February,
5 and is reflected on a delayed basis to take into account
6 the time from loan origination to closing and purchasing
7 by our master servicer.

8 Our division, again, as I mentioned, works
9 closely with our Bond Finance team on structuring these
10 programs. Both divisions monitor activity daily to ensure
11 the products are affordable and attractive options to the
12 consumer and meet the economic feasibility of the
13 Department. Through these efforts the interest rates
14 associated with these options have consistently been the
15 lowest rates available in comparison to similar options.

16 For a sense of the volume we handle, My First
17 Texas Home Program averages \$3.5 million per week in
18 closed purchase loans, the Texas MCC program averages \$4.1
19 million in loan volume on issued MCCs, and the combo
20 option averages \$1.2 million per week in closed purchase
21 MCC volume.

22 We will be providing these reports to you on a
23 quarterly basis from now on, and if there's anything you
24 would like to see, please let me know. And with that in
25 mind, I will close, and I'm happy to answer any questions

1 you might have. That was long.

2 MR. OXER: Sounds like we've got it going on
3 down there in the Bond Finance Division.

4 MS. GUTIERREZ: We do. We have a great team on
5 the mezzanine. If you guys have ever had the opportunity
6 to come up there, our Bond Finance team and Homeownership
7 team work daily.

8 MR. OXER: Maybe I should go there and sit down
9 and listen and try to learn something and try to catch up
10 because I certainly can't keep up with them.

11 Tom, you have a comment?

12 MR. GANN: I'd just like to make a comment as a
13 realtor that we'd like to see this program double, if you
14 can pull that off. It is a fantastic program if you've
15 had any experience with it. First-time homebuyers are the
16 easiest ones to please and it's just a pleasant experience
17 for most all of them.

18 MS. GUTIERREZ: Thank you. I agree.

19 MR. OXER: Mr. Chisum.

20 MR. CHISUM: Yes. You mentioned there were 400
21 financial institutions?

22 MS. GUTIERREZ: Yes, sir.

23 MR. CHISUM: And how many of those are
24 domiciled in Texas versus I assume they come in from all
25 over the country.

1 MS. GUTIERREZ: We do. Now with the ability to
2 originate a loan online, we have lenders that are coming
3 from other -- their corporate offices are located in other
4 states, but most of them have a storefront.

5 MR. OXER: Like North Carolina and California.

6 MS. GUTIERREZ: Right. California, really.
7 We've had a lot of lenders participate from the California
8 area, but most of them have storefronts here, they may
9 have a retail office here. Any loan officer that
10 originates under the program, they have to be licensed to
11 originate here in the State of Texas.

12 MR. CHISUM: So the vetting, there's no vetting
13 done here, it's through the state? Are you doing vetting?

14 MS. GUTIERREZ: Well, all lenders do have to be
15 approved through our master servicer to deliver the loans
16 to the master servicer, but we do also have agreements in
17 place that the borrower does have to be purchasing a home
18 here in the State of Texas and lenders have to be licensed
19 to originate here, and through our agreements that's all
20 outlined.

21 MR. CHISUM: Okay. What happens when the
22 first-time buyer is unable, for whatever reason, to
23 continue to make their payments?

24 MS. GUTIERREZ: Our master servicer has a loss
25 mitigation area that handles all of that.

1 MR. CHISUM: Okay. Thank you.

2 MR. OXER: Is that good, Tolbert?

3 MR. CHISUM: Yes, sir.

4 MR. OXER: J.B., are you good on this?

5 MR. GOODWIN: Yes.

6 MR. OXER: Sounds like if anybody wants to come
7 over here and play, they've got to play by our rules on
8 our field.

9 MS. GUTIERREZ: Absolutely.

10 MR. OXER: Good. Thanks.

11 MS. GUTIERREZ: Thank you.

12 MR. IRVINE: A couple of comments.

13 MR. OXER: Mr. E-D.

14 MR. IRVINE: One, except for perhaps
15 Underwriting during tax credit season, this is the
16 division that's they're the latest working the hardest.
17 Whenever I go home through the mezzanine, she's always
18 there. Like a private mortgage broker, it's all about
19 working relationships which is, frankly, a very personal,
20 labor-intensive activity, and it's greatly appreciated.

21 I would also say, though, that unlike a typical
22 mortgage broker which is looking to optimize that balance
23 between how cheaply do I need to price it and still
24 maximize my return, we don't do it that way. We are
25 looking to optimize the benefit to the homeowner and

1 that's our focus.

2 MS. GUTIERREZ: Absolutely.

3 MR. OXER: Well, we're basically a bank without
4 deposits that's looking to optimize the benefit to the
5 state.

6 Thank you.

7 MS. GUTIERREZ: Thank you.

8 MR. CHISUM: Thank you, Cathy.

9 MR. OXER: Okay. I think that's the last of
10 our report, is it not?

11 Monica.

12 MS. GALUSKI: Good morning. I'm Monica
13 Galuski, the director of Bond Finance.

14 This item pertains to authorization for various
15 actions that are necessary to effect a substitution of
16 liquidity related to the Department's variable rate bonds.

17 Currently the Department has six series of variable rate
18 bonds. These are all within the single family indenture
19 and currently total \$141,560,000. Five of these series
20 are senior lien, that's 2004B and D, 2005A and C, and
21 2007A. The 2004 Series A are junior lien bonds.

22 The Texas Comptroller of Public Accounts, who
23 has provided the liquidity for our variable rate bonds
24 since 2009, has drafted amended and restated liquidity
25 agreements to replace the existing agreements. The new

1 liquidity agreements add clarity to the roles and
2 responsibilities of the Comptroller and the Department and
3 modernize and standardize the agreements. The business
4 terms of the existing agreements have not changed; our
5 fees and the structure of the terms with the Comptroller
6 have remained the same.

7 MR. OXER: Basically twelve points.

8 MS. GALUSKI: I'm sorry?

9 MR. OXER: There's basically twelve basis
10 points on it.

11 MS. GALUSKI: Yes. That has not changed.

12 The replacement of these existing agreements
13 with the new liquidity agreements constitutes what's
14 called a substitution of liquidity under the existing
15 transaction documents and it results in a mandatory tender
16 and immediate remarketing of the variable rate bonds. In
17 order to facilitate this remarketing, disclosure counsel
18 has drafted reoffering circulars that disclose the
19 relevant terms of the new liquidity agreements. So we're
20 currently remarketing weekly with existing remarketing
21 circulars out there. Disclosure counsel has drafted new
22 ones that disclose the new terms of this and has updated
23 the documents to the current state of the world for the
24 Department.

25 At this time we're also amending the

1 remarketing agreements for the variable rate bonds to
2 update and conform those to current regulatory
3 requirements and industry standards. One thing we're
4 getting in conjunction with this remarketing of the
5 variable rate bonds and the mandatory tender is we're
6 taking this opportunity to increase our bondholder consent
7 ratio related to the amendment of the Department's single
8 family indenture.

9 The Board approved in December an indenture
10 amendment to our 1980 indenture, and it has what are known
11 as springing covenants. They're amendments that can't be
12 effective until certain requirements are met. Under the
13 terms of the original 1980 indenture, the Department can't
14 amend without, among other things, written consent of at
15 least two-thirds of the senior lien bondholders. When we
16 closed out our 2016 Series A and B bond issue in February,
17 we were able to get bondholder consent for that amendment
18 already, so we have \$91,245,000 in par amount where we
19 have bondholder consent already.

20 MR. OXER: Which represents more than the
21 required percentage on the current variable rate?

22 MS. GALUSKI: No. We need two-thirds consent
23 of all the senior holders in the indenture.

24 MR. OXER: Oh, okay.

25 MS. GALUSKI: So with this remarketing we're

1 requesting bondholder consent from the variable rate
2 holders as well.

3 MR. OXER: I got it now. Okay.

4 MS. GALUSKI: If we get it, which we believe we
5 will, we'll be almost directly on top of the two-thirds.
6 We may be a little shy, in which case we'll go find a
7 bondholder from one of the other issues, but we're going
8 to be really close. So hopefully within the next few
9 months we'll be able to make that indenture amendment
10 effective, which that gives us a lot more flexibility to
11 structure things that investors today are looking for and
12 hopefully give us better execution going forward.

13 Staff recommends approval of Resolution 16-013
14 that you have in your package that outlines all of the
15 approvals, and I'd be happy to answer any questions at
16 this time.

17 MR. OXER: Questions from the Board?

18 (No response.)

19 MR. OXER: So we're essentially updating our
20 contract.

21 MS. GALUSKI: Yes, that's what we're doing.

22 MR. OXER: The basic numbers are the same. The
23 legal components of it are just representing what the
24 current state of affairs are in the mortgage industry
25 these days.

1 MS. GALUSKI: Correct.

2 MR. OXER: Juan, you have a question, I can
3 tell.

4 DR. MUÑOZ: It's not so much a question as an
5 admission of naiveté. Like when you said it puts us in a
6 better position to negotiate for what lenders what
7 today -- remember that statement a few seconds ago?

8 MS. GALUSKI: I think I said for bondholders,
9 investors.

10 DR. MUÑOZ: For bondholders. I'm sorry.

11 MS. GALUSKI: Yes.

12 DR. MUÑOZ: Like tell me how so like a four-
13 year-old -- wait -- so like a three-year-old can
14 understand.

15 (General laughter.)

16 MS. GALUSKI: Okay. On that point I was
17 talking about the indenture amendment that we're doing in
18 conjunction with this, and the existing indenture
19 basically says you can issue your bonds but they all have
20 to look like this, they all have to be semiannual pay, you
21 can't have two different interest rates for the same bond
22 maturity, they all have to have terms that were laid out
23 in that indenture.

24 In today's environment, especially in our area,
25 you have an awful lot of investors who are looking for

1 what's called a true pass-through structure. We did our
2 last couple of bond issues at what we call the TDHCA
3 modified pass-through structure.

4 DR. MUÑOZ: By the way, 'm positive I'm not the
5 only one that doesn't understand pass-through structure.
6 There's other people in the audience behind you so you're
7 not just helping me.

8 MR. OXER: That's why we've got her in what
9 she's doing. Okay?

10 MS. GALUSKI: But those investors are normally
11 your MBS investors and they're kind of coming in and
12 buying our bonds now or buying other agencies' bonds, and
13 what they're looking for is really something that looks
14 more like an MBS. They want it to come through, they want
15 it to be monthly pay, they want the principal reduction on
16 the mortgages that comes through the MBS to be passed
17 right through to them. And because of the way our
18 indenture is structured right now, we're prohibited from
19 doing that. So all we're saying is under the new
20 amendment every time we do a new issue the supplemental
21 indenture for that issue will state the specifics related
22 to those particular bonds. So we're not impacting
23 anything that's outstanding now, we're saying going
24 forward we want to be able to define the terms of each new
25 issue when we go to do it.

1 MR. OXER: But it could be different.

2 MS. GALUSKI: It could definitely be different.

3 MR. OXER: They could vary going forward.

4 MS. GALUSKI: Absolutely.

5 DR. MUÑOZ: Monica, I appreciate the clarion
6 clarity, and Gary, that's what I've been asking you to
7 explain to me forever. So thank you for the education.

8 (General laughter.)

9 MR. OXER: Anything else? Thanks, Monica.

10 MS. GALUSKI: You're welcome.

11 MR. OXER: Wait a minute. We have to vote on
12 this. Is that correct?

13 MR. CHISUM: We're going to vote but I've got a
14 question then. The \$91 million then you referenced is
15 what has been, in essence, approved by the bondholders.

16 MS. GALUSKI: Correct.

17 MR. CHISUM: The current bondholders.

18 MS. GALUSKI: Correct. So when we get these,
19 we add another \$141,560,000 and then we're almost there.

20 MR. CHISUM: Thank you.

21 MR. GANN: Mr. Chair, if we've finished
22 discussion, I would move the Resolution 16-013 for
23 approval.

24 MR. OXER: Okay. Motion by Mr. Gann to approve
25 Resolution 16-013 as recommended by staff. Do I hear a

1 second?

2 DR. MUÑOZ: Second.

3 MR. OXER: Second by Dr. Muñoz. There appears
4 to be no request for public comment. Motion by Mr. Gann,
5 second by Dr. Muñoz to approve staff recommendation with
6 respect to Resolution 16-013. Those in favor?

7 (A chorus of ayes.)

8 MR. OXER: And opposed?

9 (No response.)

10 MR. OXER: There are none.

11 Thanks, Monica. And by the way, thank you.
12 You have no idea how glad we are that you are there.

13 MS. GALUSKI: Thank you.

14 MR. OXER: Okay. Raquel.

15 MR. GOURIS: You get me today. Sorry.

16 Are we ready for the next item?

17 MR. OXER: We're ready.

18 MR. GOURIS: Tom Gouris, deputy executive
19 director.

20 I am here to present consideration material
21 for an application amendment for a 194-unit development
22 from this last year which was targeting seniors in
23 Midland, Texas. It's number 15234.

24 The original award was for \$786,147 per year in
25 tax credits and \$2 million in HOME CHDO funds repayable at

1 3 percent interest over 30 years. As outlined in the
2 Board writeup, significant changes to the application were
3 made and they include a reduction in the market or non-
4 restricted units from 97 to 43 and a commensurate
5 reduction in the total number of units to 140, a reduction
6 in the number of buildings from nine buildings to seven, a
7 shift in the unit mix to now include 13 new efficiency
8 units and reduce the number of one- and two-bedroom units
9 to make room for those efficiency units, a 35 percent
10 reduction in the square footage of the development, a 28
11 percent reduction in the density, the replacement of a
12 \$1.6 million local political subdivision third lien
13 financing with first lien conventional financing and/or
14 additional tax credit equity, and an overall reduction in
15 the conventional financing from \$16.4 million to \$10
16 million and an increase in the syndication proceeds
17 from --

18 DR. MUÑOZ: Tom, are we allowed to interrupt
19 you without unnerving you?

20 MR. GOURIS: Absolutely.

21 DR. MUÑOZ: I know you're not familiar with the
22 microphone protocol.

23 MR. GOURIS: Please.

24 DR. MUÑOZ: I don't remember something like
25 \$1.6- being withdrawn, \$1.6 million. That seems like a

1 large amount. I don't remember deals like this with these
2 kinds of dramatic changes.

3 MR. GOURIS: That is true. This is a very
4 significant number of changes.

5 DR. MUÑOZ: I mean, I didn't mean to interrupt.

6 MR. GOURIS: No, no. You're getting just that
7 second ahead of me in my speaking notes, but neither our
8 statute or our rules describe what level of significance
9 of modification is too much, it just has us looking at a
10 couple of items. And the items that we're supposed to
11 look at to bring back to you are does it affect the score,
12 does it affect the underwriting, are the changes
13 reasonably foreseeable, or were they reasonably
14 foreseeable by the applicant prior to their application,
15 so could they have figured these needed to have occurred
16 when they made the application. And so those are the
17 questions and those are the tough questions.

18 MR. OXER: The real question is: Is this a
19 tweak or is this a rewrite?

20 MR. GOURIS: Right.

21 MR. GOODWIN: What is staff's view of that
22 question?

23 MR. GOURIS: Staff has spent a lot of time
24 trying to come to terms with that, the magnitude of these
25 changes. I think we are today recommending the changes

1 because there isn't a specific limitation on the size and
2 magnitude of changes in the rule, and the
3 applicant/developer/sponsor offered a reason for why those
4 changes couldn't have been foreseeable, though there's a
5 question there. The reason he provided was that the oil
6 and gas market has fallen out and it had begun doing that
7 prior to the application but that the lag effect on the
8 Midland economy was not foreseeable is what his letter
9 said.

10 So we're providing that as information. We're
11 recommending the approval of them subject to a hopefully
12 robust discussion and policy direction from you, and if
13 there should be a limitation, if this is the kind of --
14 what sort of limitations there should be on the magnitude
15 of change, and/or is this a reasonable foreseeable event.

16 MR. GOODWIN: One more followup. Does this
17 impact the affordable portion of the project? There's the
18 affordable side.

19 MR. GOURIS: No. Well, not directly. For sure
20 the number of affordable units remains the same. He is
21 including some efficiency units in the unit mix so the
22 size of those units, there are going to be some smaller
23 units, but that could be looked at both ways as a positive
24 because there's more opportunity for a variety of options
25 for tenants, it could also be looked at as a negative

1 because the square footage will be reduced. So you can
2 look at it both ways.

3 DR. MUÑOZ: Tom, if they don't receive the 14
4 points, where do they fall?

5 MR. GOURIS: The 14 points?

6 DR. MUÑOZ: Yes, for the \$1.6 million.

7 MR. GOURIS: Well, they would have fallen
8 behind, they would not have received an award. But the
9 scoring, the way that we evaluate those scoring items is
10 if they had a firm commitment and they could have executed
11 on that commitment and it seems reasonable to us that they
12 could have as of carryover, then the score stays the same
13 because it's a very difficult thing, a lot of times things
14 change, and so they would not have -- at this time they
15 would not be dinged for that point loss, but had it
16 occurred a year ago, it would be a different story.

17 MR. CHISUM: Tom, the withdrawal of the City of
18 Midland of the \$1.6 million, what is the reason for that?

19 Is it the economy? Did they give us a reason?

20 MR. GOURIS: The letter is in your packet.

21 MR. CHISUM: Well, they withdrew it, and so
22 let's keep moving.

23 MR. GOURIS: Basically it says they believed it
24 was no longer necessary, and so therefore, they withdrew
25 it.

1 MR. OXER: They believed it was no longer
2 necessary. Can that be true?

3 MR. CHISUM: With that said, with my credit
4 experience and background, this deal is quite different
5 than what we approved.

6 MR. GOURIS: That's our impression.

7 MR. CHISUM: It has been altered substantially,
8 and so candidly, I'm uncomfortable with all of the moving
9 parts, and so I'm reluctant to go forward under the way I
10 understand this development has been altered and changed.

11 MR. OXER: What sort of precedent does this set
12 if this goes or doesn't go? If it does go, we stick to
13 our rule; if it does go, what sort of precedent does that
14 open up for people to say, well, I didn't like the way
15 this worked put and the city had to take their money back
16 and we couldn't tell that the city was going to do that.

17 MR. GOURIS: It's hard to tell what kind of
18 precedent. Certainly even this conversation, I think,
19 provides some insight to the development community to try
20 to make sure that what they present to us is what they're
21 really going to get accomplished. I think that's the
22 intent that all developers have. We're struggling with it
23 and we're struggling at this level probably helps the
24 community reinforce that position that they understand.

25 But some might say that an approval would make

1 it easier to adjust a transaction in the future. Others
2 would say that we are just dealing with allowing the
3 nature economies of things to move forward and since it
4 doesn't impact our units that we should be willing to move
5 forward with it. So I think there's more than one way to
6 look at it.

7 DR. MUÑOZ: Here's my hesitation, Tom, as I
8 read it. When you look at this letter from Midland, okay,
9 it says: In '14 and '15 DDC Merritt applied for funding
10 through TDHCA to construct affordable housing in Midland.

11 As part of that application, the city committed to a loan
12 of \$1.6 million to assist in qualifying. DDC Merritt has
13 since qualified for the program and no longer needs the
14 loan that was established. The resolution will eliminate
15 the commitment.

16 Here' how I read that: We said we're going to
17 give you this money for you to qualify; now that you've
18 qualified, we never had the intent to really give you the
19 money and we're going to rescind it. In which case, in my
20 mind there was never a firm commitment from the city which
21 would not have qualified them for the 14 points which
22 would not have rendered them competitive.

23 MR. GOURIS: I can see that way of looking at
24 it. I don't know if that was their intent.

25 DR. MUÑOZ: Yes, I don't know either, but this

1 is what I'm looking at from their letterhead.

2 MR. CHISUM: That's what it seems like.

3 MR. ECCLES: Let me interject with just the
4 rule that is in play here which would be 10 TAC
5 10.405(a)(4): Amendment requests will be denied if the
6 Department finds that the request would have changed the
7 scoring of an application in the competitive process such
8 that the application would not have received a funding
9 award, or if the need for the proposed modification was
10 reasonably foreseeable or preventable by the applicant at
11 the time the application was submitted, unless good cause
12 is found for the approval of the amendment.

13 DR. MUÑOZ: I don't think the second part
14 applies but the first part seems to apply. I don't know
15 that they could have anticipated this, but it would have
16 absolutely affected their scoring eligibility.

17 MR. OXER: Mr. Chisum.

18 MR. CHISUM: Mr. Chairman, I make a motion.

19 MR. OXER: I know you're going, but is there
20 anything else?

21 MR. GOURIS: I was going to actually read the
22 rule.

23 MR. OXER: Staff recommendation is?

24 MR. GOURIS: It is to approve the amendment
25 sort of subject to you being comfortable with the

1 magnitude.

2 MR. OXER: Where we're going with this is in
3 the event that we do not move with staff recommendation,
4 we have to defend why and put on the record why. Okay?
5 We've got an eloquent description of that.

6 DR. MUÑOZ: I mean, Beau, you heard what I just
7 said. I'm just basing it on sort of this right here.

8 MR. ECCLES: Well, it's only to say that your
9 perception is that the City of Midland may not have
10 intended to actually give them the money. That's talking
11 about intent and foreseeability as opposed to whether this
12 request for amendment would have changed the scoring of an
13 application in the competitive process such that it would
14 not have received the funding.

15 DR. MUÑOZ: And I guess let me just qualify
16 again. I can't speak to -- clairvoyance isn't a skill I
17 possess, I can't speak to the intent. Just as I read this
18 I'm at a loss to understand, based on these two very short
19 paragraphs, why the commitment was clearly made but it
20 provides no explanation, to my understanding, as to why
21 the commitment was then eliminated after qualification.
22 And from our point of view, we made the judgment for
23 awarding this predicated on the availability of these
24 funds in order to make this project viable. If those
25 weren't there, if those aren't there, that's sort of just

1 a further explanation of at least my understanding right
2 now.

3 MR. ECCLES: Sure. And let me ask this just
4 towards the second in the condition on the rule, the
5 decline in oil prices, how was that -- what trending
6 analysis do we have about the time of the application, the
7 months leading up to the application, what is the evidence
8 regarding foreseeability or preventability that's been
9 presented by the applicant?

10 MR. GOURIS: So the applicant provided, and
11 it's in your Board books, a small chart of oil prices and
12 it reflects that clearly by January of the year they made
13 the application that the greatest reduction in oil prices
14 had occurred. I think their contention is -- and I'm not
15 trying to put words in their mouth -- I think the
16 understanding is the impact of that on the Midland economy
17 was not clear and the lag effect of that is still
18 something that they're seeing, in fact, expect to continue
19 to see even through this summer.

20 DR. MUÑOZ: Well, Tom, again, that has to be, I
21 think, part of our calculus. I mean, it's not just
22 anticipated, it is categorically and unequivocally
23 impacting that city and that region. I mean, businesses
24 are closing. And so does that impact the viability of the
25 project? Because from what I understand, based on people

1 that I know living just an hour and a half from this
2 general are, there are still adjustments taking place.

3 MR. GOURIS: We have re-underwritten the
4 transaction as it is and have come to a conclusion that it
5 still has the viability that one would need to pass that
6 test for us. We've checked with other properties in the
7 area, senior properties in the area, and they're still
8 doing well, they're not seeing a runoff, but again, the
9 concern might be that that hasn't fully affected -- you
10 know, as businesses close, then people move, and then as
11 people move, families move, there this lag thing, and so
12 maybe we haven't seen all of it yet but from what we can
13 tell right now, we're not. And we believe that also maybe
14 the oil prices will rebound. Midland is a vibrant place
15 and it's going to continue to be a vibrant place, and
16 there's an expectation of that. So I don't think we're as
17 concerned about that feasibility, though it is a concern.

18 I'd also note Cynthia just let me know that we
19 had expected Colby to be here. She mentioned that he is
20 ill today so he's not able to be here to respond or to
21 provide any input at this point, but I'm sure he would
22 appreciate the ability for us to -- for him to have that
23 ability to respond, and it may be appropriate to look at
24 tabling this item until next time.

25 MR. OXER: If we table this item until the next

1 meeting, what's the net impact on the project?

2 MR. GOURIS: Well, it delays his closing and
3 his moving forward with the project which will delay the
4 start of the project which will ultimately delay the
5 finish of the project. He's got until the end of next
6 year to complete the transaction for tax credit purposes,
7 but it has a more acute impact on our HOME funding because
8 we are every year having to meet a certain level of
9 commitment, and while we have awarded the funds to this
10 project, they haven't been committed formally and won't be
11 until we get fairly close to closing. We would like to
12 see that happen in early summer to meet our commitment
13 issues.

14 MR. OXER: To my way of thinking on this -- and
15 I invite comments from other members of the Board -- to my
16 way of thinking, even if he comes next month and stands up
17 and makes an argument doesn't change the first part of the
18 rule that Beau read to us.

19 MR. GOURIS: That would be your prerogative and
20 direction.

21 MR. CHISUM: Mr. Chairman, my concern continues
22 to be that the project has been significantly altered from
23 what we approved. And the City of Midland, like my fellow
24 trustee, I can't interpret what their purpose was to make
25 a commitment and then to withdraw it. In deference to the

1 staff, I think coming here next month we're going to
2 rehash exactly what we've gone through.

3 MR. OXER: And not get any farther than we are
4 right now.

5 MR. CHISUM: And we also, I'm afraid, would be
6 setting a precedent that a deal is not a deal. And so
7 with that, I make a motion that we deny the amendment, and
8 that's my motion.

9 MR. OXER: Okay. There's a motion by Mr.
10 Chisum to deny staff recommendation on this item. And to
11 be clear, denying that would take this project basically
12 out. Is that correct, Tom?

13 MR. GOURIS: That's correct.

14 MR. OXER: Okay. Motion by Mr. Chisum to deny
15 staff recommendation on item 5. Do I hear a second?

16 MR. GANN: Second.

17 MR. OXER: Second by Mr. Gann.

18 MR. GOURIS: And I apologize. As part of my
19 notes I would have said and meant to say that the city's
20 withdrawal of the funds doesn't mean that they don't
21 support the transaction and aren't going to be
22 participating in assisting the transaction. There is a
23 road that they are going to be participating in funding
24 along the one side of the project, and they have and the
25 state rep have expressed continued support for the project

1 as adjusted. I should have said that in my speaking
2 notes, and I apologize that I didn't get that out.

3 MR. CHISUM: And I understand that, and a road
4 is a road but the road is not our project, the road is not
5 the project.

6 MR. OXER: And to be fair to Tom's comment,
7 that's a contribution in kind for the development of the
8 project -- not that that changes the way I look at it.
9 But that said, apart from the fact that they made a
10 contribution, made a commitment to the loan and then
11 rescinded that loan, what is their contribution apart from
12 modifying, I gather, an entrance?

13 MR. GOURIS: They're actually building a new
14 road that is going to split this property with a property
15 next to it and provide connection between two cross
16 streets. It's fairly significant and they have agreed to
17 participate in the funding of that road. And it's
18 necessary to help this property out and the property next
19 door which is also the subject of another tax credit
20 application.

21 MR. OXER: Okay.

22 MR. GOODWIN: Can I ask a question of counsel?

23 MR. OXER: Yes, sir.

24 MR. GOODWIN: Does Merritt have the opportunity
25 to appeal this under our rules, or if we vote on this

1 motion is this final?

2 MR. ECCLES: This is it under our rules.

3 MR. GOODWIN: When I read this comment in here
4 it says: DDC Merritt has since qualified for the loan and
5 no longer needs the loan that was established, it doesn't
6 say we've chosen to withdraw the loan because they
7 qualified. I'm curious if there's anybody from Merritt or
8 if they told staff did they go to the City of Midland and
9 say we don't need the \$1.6 million anymore to make this
10 economically feasible?

11 MR. GOURIS: I have no knowledge of that one
12 way or the other.

13 MR. OXER: Hold on a second, Tom. Just to
14 recap where we are so far with respect to item 5, we have
15 motion by Mr. Chisum, second by Mr. Gann, to deny staff
16 recommendation to approve this modification. The vote has
17 not yet been taken. We'll receive public comment.

18 Hi, Cynthia.

19 MS. BAST: Hi. Cynthia Bast from Locke Lord.

20 We do represent the applicant in this matter,
21 and I have to admit that I've been feeling a little
22 helpless here because honestly I have not been involved in
23 all of the extensive conversations between the developer
24 and the City of Midland and the developer and TDHCA. So I
25 don't have all of the details which is why I was in the

1 back of the room texting my client and found out that he
2 was sick, which is why we ask for the delay.

3 My understanding is that in part, as Tom
4 mentioned, as they're moving forward with the tax credit
5 commitment and with planning for that with the city that
6 this road became a need, and in accordance with the rules,
7 a city can commit in-kind or a loan, and over the years
8 we've always been able to, as long as there's a
9 commitment, change out one for the other, whether it be
10 economic development funds for some other pot of money or
11 development of a particular offsite in exchange for money.
12 We've been able to do that in the development community.

13 And so my understanding is that the need for
14 this road came up and as the numbers were adjusting that
15 made the most economic sense for this transaction and
16 that's why that was proposed.

17 DR. MUÑOZ: Cynthia, are you suggesting that
18 the city eliminated its commitment because it was going to
19 build a road in lieu of the loan? Now, you've already
20 stated that you've not been involved in these discussions,
21 so I want you to be very purposeful about your answer to
22 the question. Are you suggesting that the city interprets
23 the road as equivalent to the loan in terms of their
24 support?

25 MS. BAST: I do not know that. I cannot say

1 that for sure.

2 DR. MUÑOZ: That's what it sounds like you're
3 implying.

4 MS. BAST: I do not know the value of the road
5 versus the value of the loan. I am just saying that I do
6 not think that the developer went to the city and
7 specifically asked them to pull the loan, so that's what
8 I'm saying.

9 I would also like to clarify the record here.
10 I heard something from you, Mr. Oxer, that if we vote on
11 this today then this is done. I want to be clear that --

12 MR. OXER: That was from these guys over here,
13 for the record.

14 MS. BAST: Well, it was before that. This is
15 an amendment request, and so if you deny an amendment
16 request, this is not a revocation of tax credits, this is
17 not a revocation of the deal. The applicant is completely
18 capable of going forward with that deal, could even submit
19 a different amendment for your consideration, but I want
20 to make very clear that this is not a revocation of
21 credits but rather a denial of the amendment.

22 MR. OXER: Denial of the amendment. Okay.
23 That's an important distinction in terms of our process.

24 MS. BAST: Yes, I think it is, and I wanted to
25 be clear on that and I appreciate the opportunity to

1 clarify that.

2 And Dr. Muñoz, I'm sorry that I can't give you
3 all the rest of the details because I have not been
4 involved in those conversations.

5 DR. MUÑOZ: And I know, just given how
6 professional and precise you are, I know you would like
7 to.

8 MS. BAST: I would.

9 DR. MUÑOZ: The road might be \$3.8 million in
10 which case the \$1.6- seems comparatively less. I don't
11 know.

12 MS. BAST: Which is why I was asking for a
13 delay because Mr. Denison is not here and I don't have
14 those details and I knew that there were these pieces to
15 the question.

16 MR. GOODWIN: The letter from the City of
17 Midland says the road cost \$271,020. That's a pretty
18 specific price. It doesn't say whether that's half the
19 cost of the road.

20 MR. CHISUM: It just says that the road cost.

21 MR. GOODWIN: It's really worded pretty poorly,
22 frankly. In addition, the developer has agreed to pay for
23 their half of street improvements required. And then it
24 says those costs are estimated at \$271,020.

25 MR. OXER: You're going to be at a disadvantage

1 here, Cynthia, but stay right there for a second.

2 Tom.

3 DR. MUÑOZ: But Cynthia, I appreciate the
4 clarification about the amendment.

5 MR. OXER: If we deny this amendment, the deal
6 continues.

7 MR. GOURIS: Potentially, as it was originally.

8 MR. OXER: Right. Because of the compounding
9 and complex nature of these deals, it sometimes uses parts
10 that it's not just the Tax Credit Program that it affects.

11 MR. GOURIS: Right.

12 MR. OXER: So if we go down this route to deny
13 the amendment, Mr. Merritt still has the option to come
14 back -- or Mr. Colby still has the option to come back and
15 modify this in some other fashion.

16 MR. GOURIS: That's correct.

17 MR. OXER: This is not like a knockout round on
18 the appeals and the challenges where if you get taken out,
19 you're taken out until next year. So this one, the deal
20 still works so he has the option to come back and
21 reconsider this and perhaps be here.

22 The other thing too -- and while you're
23 probably representing him, Cynthia, but he's not here and
24 we recognize that these sorts of things happen, but for an
25 amendment, an item before the Board that has such impact

1 to him and to his deal and to his business and constitutes
2 such a radical change from the original deal, as Mr.
3 Chisum pointed out, that's going to invite attention from
4 our adherence to our rule, even if he wasn't going to be
5 here, I would have had somebody else up to speed so
6 Cynthia could make sure she could present his case.
7 That's a passing comment that's not aimed at you, or at
8 you, Cynthia, but for anybody else here, being sick when
9 it's your turn, you know, the dog can't eat your homework.
10 Okay?

11 So that said, is there any other comments? Do
12 you have anything else to say, Tom?

13 MR. GOURIS: Two brief comments.

14 MR. OXER: You may want to defend yourself
15 after he gets finished, Cynthia.

16 MR. GOURIS: I would imagine, based on the
17 conversations we've had with him, that he would suggest --
18 because it's been impressed upon me -- that this deal is
19 not likely to move forward without this amendment. But
20 from our perspective, that would be his decision and his
21 choice and he could come up with another amendment. But I
22 wanted to share that it has been our impression that this
23 was necessary in order for it to move forward; otherwise,
24 we wouldn't have brought it up as an amendment, we would
25 have negotiated that.

1 MR. OXER: So in your perspective, it's
2 necessary for the deal to move forward, if he doesn't get
3 this amendment or something like it.

4 MR. GOURIS: Yes.

5 MR. OXER: I know it would be pure speculation
6 at this point, but would any amendment seemingly need to
7 be as significant and as much of a rewrite as this is?
8 It's one thing to take a deal and everybody knows you've
9 got to adjust the margins. This is something, as Mr.
10 Chisum points out, this is different entirely.

11 MR. GOURIS: And again, I don't want to speak
12 on his behalf other than what I can convey that I thought
13 I heard him say and that was that our part of the
14 transaction stayed the same, it was his risk that he was
15 concerned about. The market units were more than what he
16 now felt comfortable with and that that shouldn't affect
17 our decision because it's not the units that we're going
18 to be restricting.

19 MR. OXER: But we're not financing units, we're
20 financing a deal that has those units in it.

21 MR. GOURIS: Yes, that's true.

22 The other issue that I was going to bring up
23 was that I chatted with our underwriter and he had
24 confirmed the \$225- was what the city's contribution was
25 to the road, about half of the contribution to the road,

1 and that that was contemplated in the initial application,
2 though I'm not sure if it was perfectly clear how much the
3 city was going to contribute or if that was finalized at
4 that point, but that the road had always been part of the
5 transaction.

6 MR. OXER: So the road was always part of the
7 deal, it's not a replacement, this is just they're taking
8 the \$1.6 million out.

9 MR. GOURIS: That's what I understand.

10 MR. OXER: Brent, yes or no, up or down?
11 That's all right, you can just thumb it yes or no. Is
12 that right? If you're going to talk, you've got to come
13 up. I just asked for yes or no.

14 (General talking and laughter.)

15 MR. STEWART: Brent Stewart, director of Real
16 Estate Analysis.

17 There was indication up front early in the deal
18 that the city was very much behind this deal and they were
19 going to support it with the million six and they were
20 going to support it with some other infrastructure types
21 of improvements that were referenced in the initial -- I'm
22 not sure if it was an official city resolution but some
23 documentation. What's happened since is the million six
24 is no longer there, there is a new resolution that
25 formally commits to this amount of money for the road and

1 also indicates that they still support the project. That
2 resolution is very clear on that part.

3 MR. OXER: So would they have received the 14
4 points under the current?

5 MR. STEWART: With just the road? I don't know
6 the answer to that.

7 MR. OXER: Okay.

8 MR. GOURIS: I believe it would have been a
9 lesser amount because of the size of the contribution.

10 MR. OXER: And significant because those
11 typically go from 14 to seven to nothing. Right? Because
12 it's not graduated.

13 MR. GOURIS: Right.

14 MR. OXER: Okay. Any other questions? Is that
15 clear to all the Board?

16 Thanks, Cynthia. Thank you, Tom.

17 With respect to item 5, there's been a motion
18 by Mr. Chisum, second by Mr. Gann, to deny staff
19 recommendation to approve this amendment which essentially
20 takes the deal back to its original condition. Is that
21 clear to everyone? Okay. Those in favor?

22 (A chorus of ayes.)

23 MR. OXER: And opposed?

24 (No response.)

25 MR. OXER: There are none. It is unanimous.

1 Okay, Jennifer. Wipe the blood off up there.

2 MS. MOLINARI: I was about to say, Jennifer
3 Molinari, HOME Program director, here to present our next
4 sticky item for the day.

5 Item 6 is an update on staff's development and
6 implementation of an action plan to ultimately result in
7 the completion of a home that's currently under
8 construction in Texas City, as well as to give the status
9 of three other houses that were also assisted under an
10 agreement with Ebenezer Anene of EBENZ.

11 A little background. You may recall that Mr.
12 Anene of EBENZ made public comment at the last two Board
13 meetings. He was requesting the Board consider extending
14 his contracts with us to allow for completion of a home in
15 Texas City that was stalled in November of 2015, however,
16 to date he has still not resolved the outstanding findings
17 and no extensions have been provided to him. He was
18 working on a total of four homes under his RSP agreement
19 with the Department.

20 This situation prompted staff to develop an
21 action plan to ensure the completion of the home in Texas
22 City currently under construction so that the household
23 would no longer be displaced. And since the last Board
24 meeting we've also inspected the other three homes to
25 ensure there were no other deficiencies in those as well,

1 but unfortunately each home does have items that need to
2 be corrected, ranging from minor to severe.

3 Because of the length of time that has passed
4 since Ebenezer initially worked on all four of these
5 houses, three of them can be fixed with additional HOME
6 funding, one of them was completed more than a year ago
7 and cannot use HOME funds on that house. We are still
8 working on a solution for that house but we will come up
9 with a plan to get the deficiencies on that house
10 corrected as well.

11 I'm pleased to say that since the last Board
12 meeting we've executed an RSP agreement with IBTS --
13 please don't ask me what that acronym stands for -- that
14 will be used to complete construction of the house under
15 construction. We're also in discussions with IBTS to fix
16 the other three houses which would be done with a
17 combination of HOME funds and other sources available to
18 us. At this time we do not have an estimate on the amount
19 of funds or time that we will need to correct the
20 deficiencies on all four houses, but that will become
21 clear in the next few weeks.

22 Today we are requesting Board authorization to
23 proceed with our action plan, which includes working with
24 IBTS to complete construction of the home in Texas City,
25 as well as to fix deficiencies on the other three houses,

1 two of which may be fixed using HOME funds and the third
2 another funding source. At this point, our greatest
3 interest is to make sure that the homes assisted under
4 EBENZ's RSP agreements are up to par, particularly for the
5 displaced household, and we will continue to report to the
6 Board on the resolution of this matter.

7 And with that, I will take any questions that
8 you might have.

9 MR. CHISUM: Mr. Chairman.

10 MR. OXER: Mr. Chisum.

11 MR. CHISUM: Are any of these issues related to
12 environmental issues like the flooding? What's the
13 problem?

14 MR. OXER: What's the delay?

15 MS. MOLINARI: They're not related to any
16 environmental issues. There's a lot of kind of issues
17 that are surrounding what's been going on under our
18 agreement that we had with Mr. Anene of EBENZ, Inc. He
19 had finished up on three houses and his fourth house was
20 under construction when we began to identify some really
21 serious monitoring issues, and they began to be reported
22 to you as far back as November, and at that point we were
23 not able to kind of proceed with that contractual
24 relationship.

25 And because of some of these issues, we also

1 wanted to make sure that the other three homes that were
2 done were done right, so to speak, which is when we have
3 had our inspectors go out there again and kind of look at
4 them with a fine tooth comb, if you will, and identify
5 that each of the four houses, one that's not complete, the
6 other three that were, all have outstanding items that
7 need to be fixed in order to meet program requirements as
8 well as our own standards and expectations.

9 MR. CHISUM: Had we had prior experience with
10 him?

11 MS. MOLINARI: We had experience with Mr. Anene
12 in 2008, I believe. He had done a couple of homes at that
13 time. He did have one issue, I believe, which was related
14 to procurement. And we have not worked with him, though,
15 since that time so that would have been about five to six
16 years before he had come back to us.

17 MR. CHISUM: Is there a procedure in place
18 where we can replace him?

19 MS. MOLINARI: Yes, sir. That's the action
20 plan that we've kind of laid out for you here for the
21 particular homes under construction. We did move forward
22 with notifying the public that we were looking for a
23 partner to help us with this. We have an organization,
24 IBTS, that has a relationship with us in another program
25 that we fund, that stepped up and said that they would be

1 willing to take this on. They did apply to us, they did
2 go through our normal procedures. Nothing about this
3 agreement will allow them to waive any of our requirements
4 or any of our rules, provisions or anything like that.
5 This is just them simply stepping up and saying, you know,
6 we have the ability and the capacity to take this on. And
7 staff has looked at them and has found that they do, in
8 fact, have the ability to do this for us.

9 MR. CHISUM: Is that what the staff is
10 recommending?

11 MS. MOLINARI: We are.

12 MR. CHISUM: I didn't get that.

13 MR. OXER: Let's be clear about it. The staff
14 is recommending that they move forward with this action
15 plan.

16 MS. MOLINARI: And the action plan would
17 include a new RSP agreement with IBTS, Institute for
18 Building and Technology Solutions, that would allow them
19 to go into these four houses, do a work writeup for the
20 work that needs to be done, and then come up with a bid
21 package and put that out for bid to get the deficiencies
22 corrected.

23 MR. OXER: You can handle it.

24 MS. MOLINARI: Yes.

25 MR. OXER: Good.

1 MR. ECCLES: If I could just add one
2 clarification. You had mentioned that Mr. Anene had come
3 in at the prior two Board meetings asking for extensions
4 on his contract. In fact, his contract had expired.

5 MS. MOLINARI: That is correct. His contract
6 with us expired at the end of October of 2015, and just to
7 refresh your memory a little bit, he had received all the
8 extensions that were authorized to provide him. When he
9 came up to the October 2015 deadline, we notified him of
10 his right to appeal to you to get his contracts extended.

11 He did not request an appeal timely that would have
12 allowed us to present that to you because also during that
13 time we were starting to identify the other issues with
14 the contract.

15 MR. OXER: Okay. Any questions from the Board?

16 MR. IRVINE: And I don't know if this has
17 already been covered, but the compliance monitoring folks
18 did identify some disallowed costs there and he's
19 continuing to work through, in accordance with our rules,
20 his rights to appeal, first to the Compliance staff and to
21 the Compliance Committee, so that's in process.

22 MR. OXER: But he's got a few things he's got
23 to work through in terms of getting paid back, but
24 essentially, what we're doing is replacing him to get this
25 finished.

1 MS. MOLINARI: Yes. We're doing kind of a dual
2 track, we're working with him on that side. From my part
3 of it, our concern is making sure that the houses that he
4 did work on under the HOME Program can meet --

5 MR. OXER: Were complete and satisfactory.

6 MS. MOLINARI: Yes.

7 MR. OXER: Okay. Any questions?

8 (No response.)

9 MR. OXER: And so the staff recommendation is?

10 MS. MOLINARI: Staff recommendation is your
11 authorization to allow us to proceed with the action plan
12 we have developed which is to work with IBTS on all four
13 houses, if possible, using HOME funds and a combination of
14 other funding sources to make sure that the houses meet
15 our expectations and HOME Program requirements.

16 MR. OXER: So with respect to item 6, staff
17 recommendation on item 6, do I hear a motion to consider?

18 DR. MUÑOZ: So moved.

19 MR. OXER: Motion by Dr. Muñoz to approve staff
20 recommendation on item 6.

21 MR. GOODWIN: Second by Mr. Goodwin.

22 There appears to be no request for comment, so
23 with respect to item 6, motion by Dr. Muñoz, second by Mr.
24 Goodwin, to approve staff recommendation. Those in favor?

25 (A chorus of ayes.)

1 MR. OXER: And opposed?

2 (No response.)

3 MR. OXER: There are none.

4 Okay. We're going to take a time out here for
5 an executive session. Everybody sit still and listen to
6 this, it won't take but a second.

7 The Governing Board of the Texas Department of
8 Housing and Community Affairs will go into closed or
9 executive session at this time. The Board may go into
10 executive session pursuant to Texas Government Code
11 551.074 for the purposes of discussing personnel matters,
12 pursuant to Texas Government Code 551.071 to seek and
13 receive the legal advice of its attorney, pursuant to
14 Texas Government Code 551.072 to deliberate the possible
15 purchase, sale, exchange or lease of real estate, and/or
16 pursuant to Texas Government Code 2306.039(c) to discuss
17 issues related to fraud, waste or abuse with the
18 Department's internal auditor, fraud prevention
19 coordinator or ethics advisor.

20 The closed session will be held in the anteroom
21 of this room, JHR 140. The date is March 31, 2016, and
22 the official time is 12:10. I anticipate that the
23 discussion on some of the legal issues may take a while,
24 so let's plan to be back in our seats here at 1:30.

25 (Whereupon, at 12:10 p.m., the meeting was

1 recessed, to reconvene this same day, Thursday, March 31,
2 2016, at 1:30 p.m.)

3 MR. OXER: All right. Let's get back at it
4 here. The Board is now reconvened in open session at
5 1:31. During the executive session the Board did not
6 adopt any policy, position, resolution, rule, regulation,
7 or take any formal action or vote on any item.

8 We're back on to our action agenda with item
9 number 7. Michael, you look really different today.

10 MS. BOSTON: He was sorry he couldn't be here
11 today.

12 I'm one of our deputy executive directors,
13 Brooke Boston.

14 In this item, item 7, we're requesting that you
15 ratify awards of 2016 Community Services Block Grant
16 funds -- we call it CSBG -- for two CSBG eligible
17 entities: Cameron and Willacy Counties Community
18 Projects, Inc., which we call CWCCP, and Urban Community
19 Center of North Texas, which we call the UCC.

20 In July of 2015 you guys of the Board had
21 approved the awards for the 2016 CSBG funds to the
22 existing network of eligible entities. At that time there
23 were eight entities that we were noting to you that were
24 not being considered for an award yet or we had awarded
25 with conditions, and over time six of those eight had

1 their issues resolved in one way or another, however, two
2 of those, CWCCP and UCC, still had issues or concerns, and
3 staff had been continuing to work with both of those
4 subrecipients.

5 Earlier this month, representatives from the
6 U.S. Department of Health and Human Services came to
7 perform monitoring visits, and during that visit they also
8 took time to talk with several of us at the agency about
9 Cameron and Willacy and UCC. Based on their guidance,
10 staff has proceeded to execute contracts with those two
11 CSBG eligible entities and we are now requesting Board
12 ratification of those awards.

13 So the award amounts are noted in your Board
14 materials, and staff recommends the ratification.

15 MR. GOODWIN: So moved.

16 MR. OXER: I guess there are no further
17 questions. Motion by Mr. Goodwin to approve staff
18 recommendation on item 7 to award the CSBG fund
19 contracting to the two entities described. Do I hear a
20 second?

21 DR. MUÑOZ: Second.

22 MR. OXER: And second by Dr. Muñoz. There's no
23 request for public comment. Those in favor?

24 (A chorus of ayes.)

25 MR. OXER: And opposed?

1 (No response.)

2 MR. OXER: There are none. I'll have the
3 record note that Mr. Chisum had to leave to make a flight.
4 With his absence we still maintain a quorum.

5 Okay. Here's Marni.

6 MS. HOLLOWAY: Here I am.

7 MR. OXER: Number 8.

8 MS. HOLLOWAY: Number 8(a) is a report and
9 possible action regarding the eligibility of state
10 representative letters for application number 16319,
11 Residence at Coulter.

12 The letter from the state representative for
13 the district in which the Residence at Coulter is located,
14 in staff's estimation, merits scoring as a positive letter
15 despite concerns raised due to the submission of multiple
16 letters by the representative.

17 On January 25, 2016, Representative John
18 Smithee submitted the letter attached to this item in your
19 Board book a Exhibit A. There are multiple exhibits. The
20 letter did not reference any pre-application specifically,
21 and so staff considered it a general comment. The QAP
22 requirement for representatives' letters says in part
23 that: This documentation will be accepted with the
24 application or through delivery to the Department from the
25 applicant or the state representative and must be

1 submitted no later than the final input from elected
2 official's delivery date, as identified in Section 11.2 of
3 this chapter. Once a letter is submitted to the
4 Department, it may not be changed or withdrawn.

5 The elected official's delivery date in this
6 instance was March 1; that was the application delivery
7 date.

8 On February 15 of 2016, the representative
9 provided the letter attached in your Board book as Exhibit
10 B which was based on his interpretation of Texas
11 Government Code 2306.6710(J) which directs the Department
12 to evaluate the level of community support for the
13 application, evaluate it on the basis of a written
14 statement from the state representative who represents the
15 district containing the proposed development site. So
16 that's the language in statute.

17 Upon being made aware of the specific
18 requirements of the Department's rule, Representative
19 Smithee prepared a third letter which conforms to the
20 rules requirements. On March 1, 2016, which was within
21 the time frame for timely submission of the letter, the
22 email attached in your Board book as Exhibit D was
23 provided to the Department. The attachment to that email
24 was the same letter as Exhibit B which was the February 15
25 letter.

1 The representative's office quickly identified
2 that this transmission had been made in error, and on
3 March 3 of 2016, the email attached as Exhibit E was
4 provided. Attached to that email was the letter that is
5 now Exhibit F which clearly states the representative's
6 intent that his letter is a letter of support and not to
7 be taken as neutral.

8 It is staff's assessment that the last letter
9 was not intended to be a change to or withdrawal of the
10 earlier letters, it was intended to clarify the
11 representative's support of the application. It appears
12 that re-sending the earlier letter on March 1 was an error
13 which the office promptly identified and corrected by
14 sending the final letter on March 3 of 2016, which is
15 within the administrative deficiency timelines.

16 Staff believes that the core issue before the
17 Board is whether a state representative should be afforded
18 an opportunity to clarify a letter of support by the
19 deadline when the letter is believed by the representative
20 to follow the statute but does not adhere to the technical
21 requirements of the Department's rule. If the answer by
22 this Board is that a state representative should be
23 allowed to clarify such a letter of support by the
24 deadline, then the next issue is whether the
25 representative's clerical error of attaching the previous

1 letter at the deadline should be permitted to be
2 corrected, and whether the letter dated March 1, 2016
3 should be substituted for the letter submitted on February
4 15, 2016.

5 MR. IRVINE: Might I add a comment?

6 MR. OXER: Sure.

7 MR. IRVINE: Under Texas Government Code
8 Section 2306.6710(f) goes on to provide guidance with
9 regard to the way that you evaluate these statements under
10 (J) -- and it's small (f) as relating back to (b)(1)(J) --
11 and it says specifically: Positive points for positive
12 written statements, zero points for neutral statements
13 received. And so the real question to me is does the
14 original letter constitute a positive written statement
15 after you consider the totality of the situation.

16 MR. OXER: Dr. Muñoz.

17 DR. MUÑOZ: I have a question for the executive
18 director and Beau. So when you read the letters dated in
19 February, particularly the letter on the 15th, just above
20 the final development Valencia: My office has neither the
21 resources, this letter should not be taken as an opinion
22 as to either matter, provide this statement of the level
23 of community support as reflected in the following
24 information, et cetera. Okay, so that's how it ends. But
25 when you go to the March 1 letter, which to me falls into

1 the category of neutral. Under the final development
2 Valencia in the new letter submitted, I believe, if I'm
3 understanding correctly: This letter is intended to
4 express clear and unequivocal community support for these
5 projects. Which to me seems like a much more sort of
6 definitively other than neutral letter. Is that then the
7 same letter?

8 MR. IRVINE: That's the real crux of it is that
9 is a clarification permitted or is it a change.

10 MR. OXER: Any comments from the Board?

11 DR. MUÑOZ: Well, I'll say this, it's certainly
12 a change in the language. I don't know how that could be
13 disputed.

14 MR. ECCLES: Just to clarify the point, in our
15 rules regarding community support from state
16 representative, it mentions that once a letter is
17 submitted to the Department, it may not be changed or
18 withdrawn. So the question for the Board then becomes is
19 the movement from the February 15 letter to the March 1
20 dated letter a change.

21 MR. OXER: It certainly appears to be a change
22 from neutral to assuming positive, and even then they got
23 it 15 days late -- or 15 days behind it before they
24 corrected that part.

25 DR. MUÑOZ: You know, again, in that second

1 paragraph it -- this is the language, Beau: This letter
2 should not be taken as an opinion as to either matter. We
3 don't have the resources or the capacity to evaluate this.
4 I mean, my interpretation is that that offers sort of a
5 justification of neutrality. And in the March letter that
6 seems to have been altered. Clear and unequivocal to me
7 is implying something different than this letter in
8 February. And so if the letter then that we received is
9 changed and late --

10 MR. OXER: Any questions?

11 DR. MUÑOZ: No, no. I'm going to leave it out
12 there for the dramatic pause.

13 (General laughter.)

14 MR. OXER: Any other questions for Marni on
15 this item?

16 MS. HOLLOWAY: I believe we have some folks
17 here to speak.

18 MR. OXER: They'll get to as soon as we make
19 the motion.

20 DR. MUÑOZ: Hey, Marni. So the one letter was
21 dated -- I've got to go back and forth -- so I'm looking
22 at the first letter.

23 MS. HOLLOWAY: The very first one dated January
24 25?

25 MR. OXER: February 15.

1 MS. HOLLOWAY: The February 15. Okay.

2 DR. MUÑOZ: While I'm not qualified to judge
3 the most qualified applicants and have very little
4 background. I'm kind of basing my interpretation on that.

5 Clearly the representative is indicating there's we, but
6 I don't know firsthand as to the viability or quality of
7 these developments. And then I read in the next letter
8 that he's been made aware of these developments, we don't
9 have the resources to evaluate them, they seem honest, but
10 we can't conduct any kind of investigation, and so it
11 should not be taken as an opinion of dissent or
12 affirmation, but these conversations were held on these
13 dates.

14 And then the last one: This letter is intended
15 to express clear and unequivocal support for these
16 projects and should not be taken as neutral. It's no
17 longer neutral; the first two are sort of neutral.

18 MS. HOLLOWAY: Well, so that was the question.

19 We weren't clear, frankly, with the February 15 letter
20 what the intent there was. Representative Smithee chose
21 to compose his letter based on the statute, so we were
22 having difficulty fitting it into the rule either way.
23 The later letter we think clarified his position, and that
24 was the consensus of where we wound up after numerous
25 conversations regarding these letters.

1 MR. OXER: The application of the concept of
2 administrative deficiency, that administrative
3 deficiency -- and I'll invite your comments, Counselor and
4 Mr. E-D -- that invites rectifying administrative
5 deficiencies by the applicant. If there had been no
6 letter and it was simply missing, you could say that that
7 letter got in perhaps as something they left out. But
8 having had the letter put into it, does changing that
9 letter constitute an administrative deficiency?

10 MS. HOLLOWAY: So we actually did not issue an
11 administrative deficiency on this item for this
12 application.

13 MR. OXER: I think I recall that you said that
14 should changing the letter simply represent an
15 administrative deficiency or simply having attached the
16 wrong letter on the email be an administrative deficiency.

17 MS. HOLLOWAY: When the original Board item was
18 composed, I believe that the intent was to illustrate that
19 getting this final letter on March 3 was well within what
20 would have been an administrative deficiency deadline had
21 we issued one. So we did not issue a deficiency, and
22 actually, it was Representative Smithee's office that
23 identified that they had intended to send this letter and
24 not resend the previous letter.

25 MR. OXER: Okay.

1 DR. MUÑOZ: The previous letter dated the 15th?

2 MS. HOLLOWAY: Yes. So there's a copy of the
3 email on March 1 from Andrea Stingley that says: Hello.
4 Attached is a letter from Representative Smithee. This is
5 Exhibit C email had the Exhibit B letter, the February 15
6 letter attached to it. And then on Thursday, March 3,
7 there's another email that you have a copy of that says:
8 Michael, I sent this letter to the agency but realized
9 that I may have emailed you the previous letter via email.

10 Here is the letter from March 1 that I referenced the
11 other day.

12 So that's how we were made aware that the
13 February 15 letter was not the letter that was not
14 intended, the March 1 letter was.

15 MR. OXER: Staff recommendation on this item
16 is?

17 MS. HOLLOWAY: This is actually a report and
18 possible action. We have issued a scoring log that
19 provides eight points for this letter. If the Board
20 chooses to take action that would remove those points,
21 then we would issue a scoring notice to the applicant so
22 that they would have an opportunity to work through that
23 process for an appeal.

24 MR. OXER: And that's on the eight points in
25 the event of a neutral letter.

1 MS. HOLLOWAY: So it would be zero points for a
2 neutral letter, eight points for a positive letter.

3 MR. OXER: So you've already issued the points.

4 MS. HOLLOWAY: The log has been published that
5 shows these points. Yes.

6 MR. OXER: So who made the request to change
7 this if they already got the points?

8 MS. HOLLOWAY: This was staff working through
9 this issue with these letters and a sense that this is
10 something that we needed to at least tell you all about as
11 an issue that was coming up for us.

12 MR. OXER: Tim.

13 MR. IRVINE: I would say that staff obviously,
14 when a representative speaks to us in writing and takes a
15 specific position, we are appropriately deferential, and
16 when Chairman Smithee provided his initial letter, we
17 believed on its face that it was problematic and would be
18 treated as a neutral letter. We received followup
19 communication from the office indicating that it had been
20 their intent, based on their reading of the statutory
21 requirement, to be providing a letter that would be scored
22 positively, and there were obviously logistical issues,
23 such that we did not finally have in our possession until
24 after the deadline anything from the office clearly
25 indicating a letter of unambiguous support.

1 I think that there's certainly a timing issue,
2 but then there's also, frankly, the issue does staff have
3 the latitude to allow for a clarification, and if so, is
4 it consistent with the rule.

5 MR. ECCLES: And one more thing just talking
6 about Marni's shop, I don't believe that there's a process
7 for issuing an administrative deficiency to a state
8 representative.

9 MS. HOLLOWAY: No. It would go to the
10 applicant, of course.

11 MR. ECCLES: Of course not.

12 MR. OXER: Well, since they're never wrong, why
13 would you have to issue one?

14 (General laughter.)

15 MR. ECCLES: No comment.

16 However, in your shop is a letter dated March 1
17 from a state representative, so it would make sense that
18 from that the log would reflect whatever the on the ground
19 judgment was.

20 MS. HOLLOWAY: The initial judgment. Yes.

21 MR. ECCLES: That's it.

22 MR. OXER: Okay.

23 DR. MUÑOZ: And staff's recommendation one more
24 time.

25 MS. HOLLOWAY: This is a report and possible

1 action. Staff's recommendation is that you accept the
2 report. You have the option, because it's titled report
3 and possible action, to take this as an action item and
4 take the action that you feel is appropriate.

5 MR. OXER: When was the scoring log posted?

6 MS. HOLLOWAY: The last one went up on the
7 16th.

8 MR. OXER: A couple of weeks ago.

9 MS. HOLLOWAY: Yes.

10 MR. OXER: Had any blowback?

11 MS. HOLLOWAY: I'm sorry?

12 MR. OXER: Had any blowback, not from the
13 proponents but I'm talking about everybody else.

14 MR. IRVINE: It obviously impacts other
15 applicants.

16 MS. HOLLOWAY: Yes. This item would impact
17 probably more than just this application because the
18 question of whether we can accept a clarification. And I
19 don't know for sure but it could potentially impact other
20 applications. We would have to get further through the
21 process to determine that.

22 DR. MUÑOZ: As I read it, the representative is
23 endorsing several.

24 MS. HOLLOWAY: Yes, three of them.

25 DR. MUÑOZ: Right. So not necessarily one, but

1 the need.

2 MR. OXER: So this could come up on those other
3 two also.

4 MS. HOLLOWAY: We did not have full
5 applications from the other two.

6 MR. OXER: Okay. Hold on. Just as a
7 tangential comment regarding the QAP deliberations that we
8 were involved in yesterday, there seems to be some
9 question about what constitutes an endorsement or approval
10 or support letter. May I request, as a simple humble
11 member of this Board, that we put some direct language and
12 say in this letter this is the language that's got to be
13 in your letter, and absent this language, skip it, we're
14 not accepting it.

15 MS. HOLLOWAY: We certainly could look at that,
16 and I believe there are probably some other people in the
17 room who could speak to that more than I can. I believe
18 that at one point there was a requirement for that kind of
19 specific language in rule, I believe. Or was it in the
20 template?

21 MR. OXER: Are we asking too much, Beau?

22 MR. ECCLES: Well, the rule does contain an
23 example of wording that would garner a neutral, and that
24 is specifically saying either that you don't endorse the
25 specific development but you say I'm in favor of fair

1 housing. But I believe the example in the rule is the
2 local support the development and I support the locals.
3 The sort of transitive support via somebody else's support
4 indicates that the rule is looking for the state
5 representative's support as if it were a vote. It is the
6 representative's endorsement of this development.

7 DR. MUÑOZ: Okay, Beau, let me ask a question.

8 However, in this letter that's not what I believe is
9 being sort of stated. The letter essentially claim that
10 our office -- the representative's office is aware of
11 several expressions of local support, either through city
12 council action, an article in the Globe supporting these,
13 statements by the City of Amarillo leadership.

14 MR. OXER: We don't need an inventory of
15 everybody else's support, we need the representative's
16 support.

17 DR. MUÑOZ: So I mean, I don't see that. What
18 I see the representative saying is there seems to be --
19 there is by these sort of actions support for these,
20 plural, projects and I know of no dissent or I know of no
21 opposition.

22 MR. ECCLES: Well, which letter are we talking
23 about?

24 MR. OXER: That's the February 15 letter.

25 MS. HOLLOWAY: The March 1 letter lists the

1 community support citations.

2 DR. MUÑOZ: Right.

3 MR. ECCLES: The question then becomes the
4 statute says that it's going to be judged on the basis of
5 community support for the application evaluated on the
6 basis of a written statement from the state representative
7 who represents the district and that positive points will
8 be given for positive written statements, negative points
9 for negative written statements, and zero points for
10 neutral statements received.

11 Now, certainly the legislature has also given
12 this Board the authority to write rules to enact this
13 legislation and to make it programmatically sound.

14 DR. MUÑOZ: Well, it certainly appears that the
15 letter is a letter that is not neutral from the state rep
16 affirming community enthusiasm for these projects.

17 MR. OXER: But is it confirming his enthusiasm
18 for them?

19 DR. MUÑOZ: Well, does it require his
20 affirmative statement?

21 MR. OXER: They already got the points for the
22 community supporting the project. For them to get the
23 points for the representative supporting the project, he
24 has to say he supports it. Is that correct?

25 MS. HOLLOWAY: That is, in fact, what the rule

1 says.

2 MR. IRVINE: Staff added the language in the
3 rule to make it a personal statement from the
4 representative so that it would effectuate the legislative
5 intent that the two scoring items be, in fact, two
6 separate scoring items. And I think what this all comes
7 down to is that if you want staff to apply a hard edge use
8 of its rule-based language, the letter initially submitted
9 is a neutral letter. If you want staff to be deferential
10 to a representative in fleshing out after the fact what
11 was stated to be their intent, then you take a different
12 course.

13 MR. OXER: Well, we need a motion to consider,
14 and since it's in a report item, to say that you're
15 dealing with it, one of the options that we have is just
16 keep dealing with it.

17 MS. HOLLOWAY: That is one of the options. As
18 I said, the item is titled as a report and possible
19 action. That is so you may just accept the report and
20 we'll move on down the road, and I would imagine that
21 there would be an administrative deficiency, third party
22 deficiency on this application on this item. If you
23 choose to not accept the report and direct staff not to
24 score this letter this way, then we'll go back to the
25 office and issue a scoring notice to the applicant and

1 likely go through that appeals process.

2 MR. OXER: What we're trying to do is get the
3 message -- it's not going to be like it's going to
4 sound -- what we're trying to do is get the message to
5 state representatives that if these projects are there,
6 then we want an unequivocal support by them personally,
7 not to suggest that there's an inventory of everybody else
8 in five counties that support it. Do they or don't they.

9 Now, I can see in the attachment to emails,
10 everybody has done that, I understand that. Last time we
11 did that, we knocked out a project and they didn't get to
12 play. We've had a lot of people that were deficiency in
13 their support or deficiency in their submittals that
14 didn't have the right one and they got left out of the
15 game. Okay?

16 You've already done this, there's been scoring
17 done on it. I'm not necessarily excited about the
18 prospect or the way this worked out, but it has worked out
19 at this point. How do we get the message to you folks on
20 that front row there that if you do this again we're going
21 to chop one of your legs off?

22 MR. ECCLES: Figuratively speaking, of course.

23 MR. OXER: It's like we told the last one, just
24 wipe the blood up when you get over there.

25 DR. MUÑOZ: Run through those two options

1 again. If one of us makes a motion to accept the report
2 and no action, then staff would do what?

3 MS. HOLLOWAY: Then staff will do nothing. We
4 will move forward as we have started, considering this as
5 a support letter. Part of what's available to other
6 applicants through the QAP is this third party
7 administrative deficiency process, so if another applicant
8 has an action they would like to bring, has something that
9 they want to point out to us, they can do that that way.
10 If you do take action and direct us to not consider
11 this --

12 DR. MUÑOZ: If someone makes the motion to
13 deny, to not accept the report?

14 MR. OXER: There's two pieces. One is
15 acceptance of the report, and then we can act also, I
16 understand.

17 MR. IRVINE: I don't think you need to accept
18 or reject the report, I think you simply need to decide if
19 you want to take action to resolve this matter
20 definitively right now, you have the posted legal
21 opportunity. If you want to say we determined as a Board
22 that we want this to be scoring outcome, then you can
23 articulate it and we will implement it. There are
24 administrative processes to protect all the parties'
25 rights going forward if that's what you do. If you don't

1 take such action, I don't want to sugarcoat it, I think
2 it's inevitable that this conflict will come back to this
3 Board. So it's a matter of do you have enough information
4 to say where you fall on it.

5 MR. GANN: And I had a question just for
6 clarification for myself. The last letter which kind of
7 said the correct information came in on the 3rd, did it
8 not?

9 MS. HOLLOWAY: It did.

10 MR. GANN: Which is two days after the
11 deadline.

12 MS. HOLLOWAY: That is correct. That letter
13 was attached to the email that's in your Board book that
14 came from the staff person in Representative Smithee's
15 office saying I made a mistake, I sent you the wrong
16 letter.

17 MR. GANN: It was a mistake but it all happened
18 after.

19 MS. HOLLOWAY: Yes.

20 MR. OXER: And we have historically made some
21 considerable deference or been considerably deferential to
22 the representatives for a lot of reasons, because we
23 appreciate the work that they're doing for our state also.

24 I would, frankly -- I want to close the door. I
25 recognize that there have been mistakes that were made,

1 that you guys missed it the first time through, it's been
2 brought to your attention and we're looking at it. Can we
3 get something in the record so this doesn't happen again?

4 Just to let you know, folks, you've gone
5 through and you've tripped all those triggers now and
6 everything is lit up and waiting for you on the next one.

7 SPEAKER FROM AUDIENCE: We're in opposition to
8 it.

9 MR. OXER: I understand that. There's going to
10 be a few here that are going to be in opposition and few
11 here that want to make it work.

12 MS. HOLLOWAY: That's exactly the case.

13 MR. OXER: Okay. So we actually have the
14 option to accept the report and do nothing else. Is that
15 correct, Counselor?

16 MR. ECCLES: It is. You'll see it again
17 through one party.

18 MR. OXER: There will at least be a challenge.
19 I expect so, Mr. Flores, you'll be challenging this in
20 one way or another.

21 MR. ECCLES: Either way the Board goes on this,
22 there's going to be a challenge and you'll see it again.

23 MR. IRVINE: If I could say on behalf of staff
24 I would prefer clarity sooner rather than later.

25 MR. OXER: Okay.

1 MR. GOODWIN: And you've currently scored it as
2 zero. Right?

3 MS. HOLLOWAY: We've currently scored it as
4 eight. We've scored this as a support letter. The log as
5 it sits right now has language on it that says this hasn't
6 been verified because we're still so early in the process.

7 But that said, if the decision is not to accept this as a
8 support letter, then we will issue a scoring notice to the
9 applicant and go through that process.

10 MR. GOODWIN: So you've scored it as eight even
11 though the letter missed the deadline.

12 MS. HOLLOWAY: Yes.

13 MR. GOODWIN: Do we do that?

14 MR. IRVINE: This is the first time we've ever
15 done it, and we did it based on, first of all, deference
16 to the position that the second letter was a
17 clarification, and using the nunc pro tunc provision that
18 the erroneous sending of the February 15 letter on March 1
19 was ministerially correctable.

20 MR. OXER: But the ministerial correctability
21 of that letter does not change the fact that once the
22 February 15 was issued, it essentially represented a
23 neutral letter at that time. So the question is under
24 statute and rule, do we have the option to allow that
25 change which the rule says we do not. Is that correct?

1 MR. IRVINE: Correct.

2 MR. OXER: All right. Let's have it, one of
3 you.

4 MS. HOLLOWAY: No pressure.

5 MR. GOODWIN: I'm opposed to giving it the
6 eight points but I don't know how to structure it.

7 MR. IRVINE: I think you just moved.

8 MR. OXER: The structure would be --

9 MR. GOODWIN: We'll obviously be revisiting
10 this.

11 MR. OXER: We're going to visit it now or
12 later.

13 MR. GANN: Our deal is which side do we want t
14 be on, the right side, what our rules say, or do we want
15 to go through some different questions. So I think we
16 just need to make a decision now.

17 MR. OXER: I think we need to make the decision
18 now.

19 Structuring it, the motion would be to direct
20 staff to reduce the points by eight and not accept the
21 letter because the one that was submitted, even with its
22 ministerial replacement, represented a material change in
23 the letter that was received on February 15. Is that
24 motionable, actionable?

25 MR. GOODWIN: That was exactly what I intended

1 to say.

2 (General laughter.)

3 MR. GANN: And I will second that.

4 MR. ECCLES: Just as a clarification, the
5 motion is that the February 15 letter sent on February 15
6 is the letter of the representative and should be scored
7 accordingly.

8 MR. GOODWIN: As neutral.

9 MR. ECCLES: As neutral.

10 MR. OXER: I rarely make the motion here since
11 I'm driving the bus.

12 MR. GOODWIN: I'll make that the motion.

13 MR. OXER: Okay. As described?

14 MR. GOODWIN: I accept that.

15 MR. GANN: My second was that also.

16 MR. OXER: Okay. Motion by Mr. Goodwin, and a
17 second by Mr. Gann, to direct staff to reduce the points
18 by eight and not accept the letter as amended but to
19 recognize the letter of February 15 as the representative
20 letter for this applicant.

21 Is that sufficiently stated, Beau?

22 MR. ECCLES: Yes.

23 MR. OXER: Okay. I gather we have public
24 comment. That's clear on the record what we're doing?

25 MS. ANDERSON: Yes, it is.

1 Thank you. My name is Sarah Anderson and I'm
2 not here necessarily to represent the developer but I did
3 want to ask legal counsel about a general point of order
4 about some of this process real quick.

5 In the general processes we go through, there's
6 a very specific appeals process that we're supposed to
7 follow, and the appeals process is Section 10.902 appeals
8 process Part B, and I just want to ask counsel because I
9 think it's going to determine how we're going to continue
10 from here. Specifically, Part B says an applicant or a
11 development owner may not appeal a decision regarding an
12 application filed by or an issue related to another
13 applicant or other development owner.

14 And the reason I'm bringing this up is that
15 because we all do have a process we're supposed to follow,
16 while I don't want to prevent other people from speaking
17 at some point, I'm not sure that because this is a
18 determination that the Department is making that being
19 able to speak on the item and impacting your decision
20 seems outside of the appeal allowable process. So I just
21 wanted to ask that question.

22 MR. ECCLES: Who are representing?

23 MS. ANDERSON: I'm representing the developer,
24 the person who received the five letters we've been
25 talking about.

1 MR. ECCLES: The developer of the Residence at
2 Coulter.

3 MS. ANDERSON: Correct. And so this is a
4 process, this is a determination the staff is making on
5 our application, and at this point it is not appealable
6 until the determination is made. It's only appealable
7 through a challenge or this new appeal process which they
8 have to file, at which point they would then come forward
9 and be able to speak on this item as you're determining.
10 So I'm trying to figure out right now is --

11 MR. OXER: What you're asking is is the appeal
12 legitimate at this point.

13 MS. ANDERSON: Yes. I mean, should the people
14 who are coming to speak against this item be able to speak
15 and impact your decision on this particular item at this
16 point. I know they should be able to be heard, but I'm
17 not sure whether or not it's open for them to be appealing
18 staff's decision yet.

19 MR. OXER: So it actually wouldn't be an appeal
20 because there's no developer out there that's going to
21 appeal being given eight points.

22 MS. ANDERSON: Well, or appeal the
23 determination on another application. In other words, I
24 can't come up to you and appeal what staff has done on
25 somebody else's application. I have to go through an

1 appeal process that goes through staff and then ends up on
2 your agenda.

3 MR. OXER: The first time that you get anybody
4 gets to make a commentary on another application is during
5 the challenge process after the appeals.

6 MS. ANDERSON: Correct. As opposed to right
7 now you're just trying to determine an issue on my
8 application that should not be impacted by a challenger at
9 this point.

10 MR. ECCLES: The rule doesn't really speak to
11 impact, this is just a public comment.

12 MS. ANDERSON: That's why I'm trying to figure
13 out the point of order. I mean, it specifically says they
14 cannot appeal, and that is, in essence, what they would do
15 if they got to get up and speak before you have voted.

16 MR. ECCLES: Well, the only point that I would
17 disagree on is you appeal an order. The order hasn't been
18 made yet. There's been a motion and now it's public
19 comment.

20 MS. ANDERSON: Correct.

21 MR. ECCLES: And then you get to appeal if it
22 goes the way of the motion.

23 MS. ANDERSON: I have an administrative issue
24 that is still going through the process which does not
25 allow for somebody else to step in and muddy the waters

1 yet. That's at least what the rule implies.

2 MR. ECCLES: I appreciate what you're saying.
3 I don't believe that the rules preclude having public
4 comment at this point.

5 MS. ANDERSON: Okay.

6 MR. IRVINE: I believe the intent of the rule
7 was that they may not initiate it and use it as an
8 opportunity to challenge something, but I think that the
9 statute is clear that the public has a right to comment on
10 Board actions.

11 MR. ECCLES: For instance, if they were to
12 proffer evidence and new documents and charts and whatnot,
13 I think that has more the hallmarks of an appeal, but just
14 coming forward and on those matters that are already in
15 the Board book and offering their thoughts. Just like
16 anyone in the audience could say, you know what, I think
17 that they're right or I think that you're wrong, I think I
18 would be hard pressed to say that they would be precluded
19 from making such statements.

20 MS. ANDERSON: Okay. Just wanted to ask the
21 question. Never hurts to ask.

22 So the developer will actually be speaking on
23 this. I will say that it's messy and it's messy because
24 we have a state rep who is an attorney, who read the
25 statute, who is angry at having to opine to begin with.

1 This is a city that has not had a letter written or even
2 the city support for five to ten years. There were issues
3 with a developer there. Anybody who has a longstanding
4 history might know that the City of Amarillo has not
5 supported affordable housing for a very long time.

6 So what we have is a state rep who feels like
7 his letter on the 15th -- and I will say that from my
8 conversations with him, he feels that the letter on the
9 15th was a letter of support. He's an attorney, he says
10 he read statute, and if asked, that was a support letter,
11 which I believe is the crux of the issue because if his
12 viewpoint when he turns it in is unequivocally he believes
13 it was support, staff is reading it as neutral, I say tie
14 goes to the rep.

15 MR. OXER: If the rep sends a letter that's on
16 his letterhead that's got his signature on it and has a
17 big plus sign in it and sends that in, that's
18 differentiated from putting in one that has a big minus
19 sign on it and sending that in. Do those constitute
20 unequivocal support?

21 MS. ANDERSON: It's a good question, and it
22 just might happen one day.

23 MR. OXER: And I understand that. But at this
24 point it's not a matter of what he thinks, it has to be a
25 matter of that we think because we're the ones scoring it.

1 MR. ECCLES: And more to the point, it's what
2 the letter says. I appreciate and I have no doubt of the
3 veracity of your statements, but you can hardly expect the
4 Board to take your expressions of conversations with the
5 representative to trump what they have to do under the
6 statute, and that is statements here in the letter as
7 positive.

8 MS. ANDERSON: Correct.

9 MR. OXER: Sarah, this is not new in terms of
10 what we've been looking for. How many years have we been
11 talking about this?

12 MS. ANDERSON: I spent so many hours talking to
13 the state rep who kept pointing out that he fulfilled the
14 language of the statute.

15 MR. OXER: In his estimation.

16 MS. ANDERSON: In his estimation. And I guess
17 the only thing I could say is that when it was submitted
18 and staff had a question and it was clarified to me that
19 it was addressed to that point. Other than him getting up
20 and saying, you know, when I say there's these people's
21 support and it's an obvious support letter -- I don't know
22 other than him getting up and saying what his intent was
23 that all of us can conjecture what was on the paper.

24 MR. OXER: Well, I can tell what it would it
25 be. Not only the intent, write it in the letter

1 MS. ANDERSON: Right. And we asked him to
2 clarify because you cannot rewrite a letter, and his mind,
3 what he told us was it was a support letter. And I
4 believe he spoke with staff and called and said it was a
5 support letter and couldn't understand why nobody would
6 understand why it wasn't a support letter.

7 MR. OXER: Well, you can understand why there
8 are people in that first row over there.

9 MS. ANDERSON: Well, sure, absolutely.

10 MR. OXER: Well, can you understand why we
11 think the way we do?

12 MS. ANDERSON: I can, and I know we're going to
13 be right back before you and hopefully we'll have him with
14 us next time to clarify what he believed was obvious. So
15 thank you.

16 MR. OXER: And even it was, I mean, he's
17 changed the letter going forward, the rewrite on it. You
18 can't say that there was no difference between those two
19 letters, between the February 15 and the March 1 letter.

20 MS. ANDERSON: Right. There was addition of
21 something and clarification.

22 MR. OXER: Help us out, Meagan. She's running,
23 someone stop her.

24 MS. ANDERSON: I want to run away too.

25 MR. OXER: Who left that chain off of that

1 chair.

2 (General laughter.)

3 MS. ANDERSON: So I'm sure we'll be back in
4 front of you again, whichever way this goes.

5 MR. OXER: Okay.

6 DR. MUÑOZ: I have a question of staff. Did
7 anybody speak to the representative themselves?

8 MR. OXER: Marni, get up and talk to us,
9 please.

10 MS. HOLLOWAY: I did not speak with the
11 representative or any of his staff. I believe Michael
12 spoke with at least Andrea on the representative's staff.

13 DR. MUÑOZ: Okay. Here's my question. Sarah
14 just said the state rep spoke with staff. I'm pretty sure
15 if we look at the record, that's what it will say. So I'm
16 asking you: Did anybody speak with the representative?

17 MR. LYTTLE: Yes, I spoke with the
18 representative.

19 DR. MUÑOZ: And is that what he said?

20 MR. LYTTLE: The representative felt like his
21 initial letter was a letter of support as much as he could
22 write one per the statute.

23 MR. OXER: As much as he could?

24 MR. LYTTLE: He felt like he went by --

25 MR. OXER: He couldn't come out and say I

1 support the project, rather than saying I see no option to
2 oppose it?

3 MR. LYTTLE: He felt like he was doing that as
4 result of what statute said.

5 MR. OXER: Next. Three minutes.

6 MR. STELL: Mr. Chairman, members of the Board.
7 My name is Paul Stell. Good afternoon. I'm with Stellar
8 Development Company. Our headquarters is in Lubbock,
9 Texas. We've been in the tax credit business since 2006,
10 and my partner, Madhouse Development, and I have a
11 competing application in this region.

12 Although I respect and appreciate what staff
13 does and the opinions that have been set forth today
14 already, I respectfully disagree with them and agree with
15 the proposal that's been put forth. What staff has
16 proposed, I believe violates the rules the agency has
17 consistently upheld and enforced over the years. As Mr.
18 Irvine said, this is the first time they've ever done
19 this, and there's a reason for that.

20 Specifically, I have two concerns. The final
21 letter, as it was submitted, was submitted late, and
22 deadlines in the rules have always been considered
23 sacrosanct, they've always been inviolable. And there
24 have been numerous occasions when developers turned
25 something in late, sometimes even of no fault of their

1 own, that might have been days, it might have been hours
2 or even minutes, and their applications were denied. This
3 was late.

4 Secondly, the final letter is a change from the
5 previous letter. As Dr. Muñoz quoted, and I quote from
6 his letter, he says, "My office has neither the resources
7 nor ability to assess the applicants or to determine to
8 what extent they are reputable or honest, neither are we
9 in a position to evaluate the individual projects.

10 Therefore, my office has conducted no investigation into
11 any of the applicants or their projects, and this letter
12 should not be taken as an opinion as to either matter.:

13 The final letter, of course, takes that out.

14 And as a matter of analogy, if the Board asked
15 me today my position on a matter and I told you I had no
16 opinion about the matter, but then returned tomorrow and
17 told you I'm in favor of it or against it, you would
18 immediately recognized that I had changed my position from
19 that of having had no opinion or having been in a position
20 of neutrality to that of being either for or against it.

21 The rule has very specific language prohibiting
22 changes in it, and so much so that it even gives an
23 admonition to the developer that he is not to turn in a
24 letter in early for that every reason, you cannot change
25 it. And so the burden is not on the state rep to get it

1 right, the burden is upon the developer to make sure it is
2 right. Whether it's coming from a state rep, a city
3 council, a market analysis firm, whatever we turn in, we
4 have to ensure that it is turned in in the form that you
5 need. The language in the rule has very sharp edges and
6 it is not ambiguous or confusing in any manner.

7 And so I believe the letter violates the rules
8 twice: it was late, first, and secondly, it was changed.

9 And so I encourage you to stand by and continue to uphold
10 the rules as you've proposed and as the motion that sits
11 on the floor as it speaks.

12 MR. OXER: Great. Thanks, Paul.

13 MR. STELL: Thank you. If you have any
14 questions, I'm happy to answer them.

15 MR. OXER: I think we've got it taken care of.
16 Cynthia. Three minutes, Cynthia.

17 MS. BAST: Good afternoon. Cynthia Bast from
18 Locke Lord. To be clear, we're representing the applicant
19 for the Villas in Region 1 Urban, and that is with Mr.
20 Flores and Mr. Stell.

21 Our client presented this question to me and
22 when I looked at the materials, I honestly felt fairly
23 certain that I knew what the staff would recommend, and to
24 be honest, I was surprised when the staff assessment came
25 out in the Board book because I did think that the

1 position of accepting that March letter and declaring it
2 support was not consistent with the rules that you've
3 exactly been talking about, the fact that deadlines must
4 be met, the fact that the plain language of the rules must
5 control, and so I appreciate and do support the motion
6 that is on the floor.

7 When this came up I got a little bit of PTSD
8 because it harkened me back to 2011 -- and I know some of
9 you were there -- when we had a very contentious issue on
10 a state senator letter. Back then many of the rules were
11 the same and some of the language was identical, but one
12 of the differences was that there was an April 1 deadline
13 for submitting a support or objection letter and then a
14 June 1 deadline by which they could withdraw it.

15 And in this particular circumstance the support
16 letter was received by the deadline, the withdrawal letter
17 was received before the deadline, and then the senator
18 said, Oops, I didn't mean it, I want to withdraw my
19 withdrawal so that we can go back to support. He even
20 came and personally appeared before this Board and
21 expressed his regret and asked you all to please take his
22 support for that application. And the Board said, No.
23 They said, We have a rule that says that a withdrawal
24 letter once submitted cannot be changed, and we must
25 follow our rule. Over deference to the senator and the

1 applicant's appeal, my client's appeal was denied at that
2 point.

3 I've heard a little bit about the
4 representative's concern about the statute versus the
5 rule, and that he followed the statute, that the rules
6 seem to be asking for something more, and to the point
7 where maybe the rule exceeds your rulemaking authority,
8 and I heartily disagree with that. We have a 2004
9 attorney general opinion that looked at our rules very
10 closely, and in particular this rule, 6710, and it said,
11 In deciding whether an administrative agency has exceeded
12 its rulemaking powers, the determinative factor is whether
13 the rule's provisions are in harmony with the general
14 objections in the statute. And that's exactly what you
15 gentlemen have been talking about.

16 And in fact, I think that staff very eloquently
17 harmonized the rule and the statute in a response to the
18 representative's office by email on February 23 -- which
19 we discovered in an open records request, it is not part
20 of your Board book -- where they basically said, The
21 statute calls for positive points for positive support,
22 negative points for negative. We have to read that in
23 conjunction with we have two categories, local support and
24 representative support, and therefore, the representative
25 saying the local support cannot be enough, you can't

1 harmonize the rule and the statute that way.

2 So I think that your motion here is exactly
3 right on, and I appreciate you taking the time on this
4 important matter because these letters are hard and we
5 recognize that these developers work hard with these state
6 representatives and we appreciate that you uphold the
7 process.

8 MR. OXER: They're hard and we want them to be
9 unambiguous.

10 MS. BAST: That's exactly right.

11 MR. OXER: Mr. Flores, you're about to get what
12 you want, I gather. You'll get three minutes, but I'll
13 tell you we're about to lose a quorum here unless you get
14 in a hurry.

15 MR. FLORES: I'm going to try to take less than
16 a minute. First of all, let me thank you for your
17 thoughtful consideration of this matter. You know,
18 there's a reason for the rules and I appreciate the
19 Board's reliance on the strict interpretation of these
20 rules.

21 You know, one of the comments you made, Mr.
22 Chairman, was about trying to have this very carefully
23 worded so that we, as developers, have clear direction on
24 what the state rep. This is not the state rep's problem.

25 The state rep is our responsibility, not this Board. The

1 letter that was wrong was the developer's mistake, not the
2 state rep's mistake. In the QAP it reads: To qualify
3 under this paragraph for the four points letters must be
4 on the state representative's letterhead, be signed by the
5 state representative, identify the specific development,
6 and clearly state support for or opposition to a specific
7 development. That's pretty clear. Anyone can read that,
8 the developer should have read that, they should have
9 known what they needed from that state rep. Again, this
10 is not the state rep's problem, this is the developer's
11 problem.

12 Thank you again for your thoughtful
13 consideration of this issue.

14 MR. OXER: Thanks for your comments, Mr.
15 Flores.

16 MR. ECCLES: I'll just make a comment. To the
17 extent that you're saying it's the developer's problem, I
18 don't it to look like it's necessarily the developer's
19 fault that it came out this way. State representatives
20 have their own thought process and what they want to do
21 and what they want to write, and that's not subject to the
22 direct control of anybody.

23 MR. FLORES: Point well taken.

24 MR. OXER: And we obviously wholeheartedly with
25 what Beau has offered up on that, and we know you can't

1 control any of those, but in the end, any administrative
2 deficiency is with the developer and the applicant, now
3 with the legislator.

4 MR. FLORES: And that was more my point. Thank
5 you, sir.

6 MR. OXER: All right.

7 Hi. Welcome aboard.

8 MS. WATSON: Hi. Audrey Watson with Overland
9 Property Group.

10 I would like to make a few points here, but
11 before I do that, I was hoping that you could read the
12 Texas Code 2306.6710(b)(1)(J). I'm sorry. Do you happen
13 to have that? I believe you read it earlier. Do you
14 happen to have that one more time?

15 MR. ECCLES: (b)(1)(J) reads: The level of
16 community support for the application, evaluated on the
17 basis of a written statement from the state representative
18 who represents the district containing the proposed
19 development site.

20 MS. WATSON: So the issue was Representative
21 Smithee believed that his February 15 letter was a letter
22 of support because it did satisfy that requirement. So I
23 believe he intended to have the February 15 support is a
24 letter of support. He had never -- there was some
25 discussion of a 2011 letter where the rep changed and

1 flip-flopped. There is no issue of the representative
2 flip-flopping, it's an issue of how his support was
3 communicated and his interpretation of statute and him
4 feeling that he met the statute.

5 And again going back to the letter on the 15th
6 was his intent for the letter of support. He never
7 changed on that. It was staff that requested
8 clarification from him. Had he felt it was a neutral
9 letter, he would have not followed up with clarification.
10 He did not change his position, he was just, at the
11 advice of staff, clarifying his initial letter.

12 MR. OXER: And to be clear, Audrey, your point
13 is to oppose the motion that we have on the floor at this
14 point and continue to have them enjoy the eight points for
15 the letter.

16 MS. WATSON: Yes, sir.

17 MR. OXER: Okay. Any questions?

18 (No response.)

19 MR. OXER: Okay. Thank you.

20 Sarah, you've got one minute.

21 MS. ANDERSON: One more point. Sarah Anderson,
22 S. Anderson Consulting, with the developer.

23 The discussion came out about whether or not
24 clarification is allowed for the state rep letters. I
25 will point out that every single other player in the tax

1 credit process is allowed clarification. The local
2 neighborhood organizations, when they submit documentation
3 on their support or opposition, are allowed to go through
4 deficiency and clarification process. The applicant is
5 allowed to go through a deficiency and clarification
6 process. If I receive a letter from the city that is in
7 my application that may be a little weird, I'm allowed a
8 clarification process with the city. I don't see why the
9 state rep should not be allowed to clarify.

10 DR. MUÑOZ: But Sarah, first of all, it's not
11 necessarily that staff said that there's a deficiency in
12 your neutral letter, and why would staff think, hey, can
13 you clarify your neutral position as stated?

14 MS. ANDERSON: I would only say --

15 DR. MUÑOZ: I know after the fact. I heard
16 what Michael said.

17 MS. ANDERSON: So technically, if we were to
18 follow that down the road, if staff scored this as a zero,
19 it would be an administrative deficiency that says we're
20 unsure of what this letter should be and we want
21 clarification, at which point we could have gotten back to
22 the state rep. Which I would say that should be the
23 process that should be followed at this point is that if
24 you've got the rep saying he believes it said one thing
25 and you guys aren't quite sure, then we should be able to,

1 through the deficiency process, get that clarification,
2 only talking about the letter on February 15.

3 Thank you.

4 MR. OXER: Thanks.

5 Audrey, one more point, or do you want to sign
6 in?

7 MS. WATSON: I'm signing in.

8 MR. OXER: Okay. We'll let you go on with that
9 while we're working.

10 Any questions from the Board?

11 (No response.)

12 MR. OXER: All right. There's a motion by Mr.
13 Goodwin, second by Mr. Gann, to deny -- come on up, Marni,
14 and help us get this straight -- to score the letter as
15 neutral and rescind the eight points for a positive letter
16 and accept only the February 15 letter.

17 MS. HOLLOWAY: Understood.

18 MR. OXER: That's clear what we did? Does
19 everybody agree that's what we did?

20 MR. GOODWIN: Yes.

21 MR. OXER: That being the case, those in favor?

22 (A chorus of ayes.)

23 MR. OXER: And opposed?

24 (No response.)

25 MR. OXER: There are none.

1 I suspect we're going to see some more activity
2 on this one way or the other, and so if nothing else, we
3 made clear what our intentions are and we'll deal with the
4 aftermath which I'm sure we'll have to deal with.

5 All right. What else you got?

6 MS. HOLLOWAY: Item 8(b) is presentation,
7 discussion and possible action regarding the financing
8 structure of a multifamily direct loan award.

9 The application for Westridge Villa was
10 originally submitted in the 2015 competitive tax credit
11 cycle. The application was subsequently changed and
12 resubmitted as a HOME CHDO application under the 2051
13 multifamily direct loan NOFA. HUD has very specific
14 requirements for CHDOs community housing development
15 organizations, and the definition of CHDO at 24 CFR 92.2
16 is the basis for this Board action request.

17 So HUD's definition, their regulatory
18 definition says: A community housing development
19 organization means a private nonprofit organization that
20 is organized under state or local laws, has no part of its
21 net earnings inuring to the benefit of any member,
22 founder, contributor or individual, and three, is neither
23 controlled by nor under the direction of individuals or
24 entities seeking to derive profit or gain from the
25 organization. So that's HUD's definition of a CHDO, in

1 part.

2 The Center for Housing Resources was actually
3 the applicant on the CHDO application and they were
4 determined to be an eligible CHDO and staff believes that
5 that organization continues to meet those CHDO
6 requirements. At the time of the application, the
7 ownership developer structure for the project was not
8 examined in light of the CHDO designation. The Center for
9 Housing Resources was awarded \$4 million of CHDO funds and
10 a \$50,000 CHDO operating grant for the development of
11 Westridge Villa.

12 More recently, as we were preparing to close
13 the CHDO loan, changes to the financing structure and
14 costs from the original application necessitated re-review
15 by our Real Estate Analysis Division. This review caused
16 us to retrace our steps regarding approval of the
17 ownership structure as there was a concern that Terri
18 Anderson is both the developer in the application and a
19 board member for the CHDO.

20 Staff has discussed this concern both with the
21 applicant and with applicant's counsel and with our
22 contact at HUD and has received a good deal of information
23 from the applicant seeking to mitigate these concerns.
24 For instance, Terri has recused herself from votes by the
25 nonprofit on these issues, and we have those records. We

1 have discussed multiple options for resolution of our
2 concerns regarding control. Staff has taken steps to
3 assure that this unique circumstance will not happen again
4 through changes to our review process, so if someone comes
5 in with a CHDO app again, we're going to look at that CHDO
6 within the larger construct of everyone who is coming into
7 the deal.

8 The staff recommendation for the current action
9 is to move forward with closing the CHDO loan only if the
10 applicant is able to produce documentation from HUD that
11 the current structure, with Terri as the developer and as
12 a board member of Center for Housing Resources, meets
13 HUD's CHDO requirements, so something from HUD CPD says
14 it's okay. This is the only circumstance under which the
15 applicant would receive the \$50,000 CHDO operating grant
16 that's shown in the underwriting report.

17 If the applicant is not able to produce
18 documentation from HUD, staff is recommending that the
19 award be moved from the CHDO set-aside in the direct loan
20 NOFA to the general set-aside. This change is possible
21 because funds were previously shifted from general to CHDO
22 as a result of applications received. The general set-
23 aside in the 2015 direct loan NOFA had a cap of \$3 million
24 for new construction, so the full \$4 million award would
25 not be available under that set-aside.

1 The Real Estate Analysis review indicates that
2 the project is feasible with a \$3 million HOME loan which
3 would cause an increase in the level of deferred developer
4 fee in order to make that deal work. The applicant has
5 objected to a reduction of the loan amount, stating that
6 the underwriting for their FHA loan has been completed
7 with TDHCA funds at \$4 million, and the delay created by
8 re-underwriting the FHA loan would cause them to lose
9 their purchase contract for the land.

10 Due to this circumstance, staff is recommending
11 that the additional million dollars be treated as a
12 workout so that TCAP funds previously set aside for this
13 purpose can be used and keep them at that \$4 million
14 level.

15 I'd be happy to answer any questions.

16 MR. OXER: We're proceeding with a workout to
17 keep us from getting so entangled we can't work it out
18 later.

19 MS. HOLLOWAY: Basically.

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

21 MR. GOODWIN: So moved.

22 MR. OXER: Motion by Mr. Goodwin to approve
23 staff recommendation with respect to item 8(b). Do I hear
24 a second?

25 DR. MUÑOZ: Second.

1 MR. OXER: Second by Dr. Muñoz.

2 It looks like we're going to have some fun and
3 games here at the podium, so Claire, you're first.

4 MS. PALMER: I am Claire Palmer, and I actually
5 represent the CHDO in this transaction. And I am, in the
6 interest of time and getting a positive motion, going to
7 not talk.

8 MR. OXER: Will somebody find a calendar and
9 put a star by that?

10 MR. GOODWIN: That would be advisable for
11 everybody else that's in favor.

12 MR. LYTTLE: Chairman, may I tweet that?

13 MR. OXER: Please do.

14 (General laughter.)

15 MR. OXER: Terri, you've got a vested interest
16 in this, and I understand it's going to be worked out,
17 it's going to be something we're not going to make another
18 mistake. You sure you want to say anything?

19 MS. ANDERSON: Yes, sir.

20 MR. OXER: Okay. Make it quick, please.

21 MS. ANDERSON: Terri Anderson, Anderson
22 Development and Construction. Thank you all very much.

23 MR. OXER: Good job. T.J., come on. All
24 right. Now, see that's the way we like the responses.
25 Anybody else on 8(b)?

1 (No response.)

2 MR. OXER: We have a motion by Mr. Goodwin,
3 second by Dr. Muñoz, to approve staff recommendation on
4 8(b). Those in favor?

5 (A chorus of ayes.)

6 MR. OXER: Those opposed?

7 (No response.)

8 MR. OXER: There are none.

9 MS. HOLLOWAY: Chairman Oxer, the applicant on
10 16401 and 16402 which is item 8(c), it's the same
11 applicant, has requested that this item be postponed to
12 next month. We will be bringing it back to you at that
13 time.

14 MR. OXER: Okay. Good enough.

15 In the interest of time, I will note that we're
16 at the point -- okay, number 9. Stephanie.

17 MS. NAQUIN: Good afternoon. Stephanie Naquin,
18 director of Multifamily Compliance.

19 Item 9 is a presentation, discussion and
20 possible action on rulemaking related to utility
21 allowances for the Department's multifamily rental
22 programs.

23 At the Board meeting of December 17, 2015, the
24 Board approved rulemaking regarding utility allowances. At
25 that time staff was proposing changes to align our rule

1 with HUD's requirements regarding the HOME Program. The
2 public comment period for that action was January 1, 2016
3 to February 1, 2016. Staff gave a presentation about the
4 rule and fielded questions from the Board at the meeting
5 of January 28, 2016. Staff also held an additional
6 roundtable to discuss the rule at the request of
7 commenters.

8 We were all ready to propose adoption of the
9 rule with some small tweaks based on comment when the
10 Treasury Department released a new regulation for the Tax
11 Credit Program that requires us to make additional
12 changes. So today we're requesting that you approve
13 withdrawal of the proposed action from December, propose
14 repeal of the current utility allowance rule in the Texas
15 Administrative Code, and a proposal of a new rule which we
16 would propose for adoption, plus some other changes needed
17 due to the Treasury regulation.

18 The new Treasury regulation clearly prohibits
19 the use of the public housing authority utility allowance
20 schedule for areas where there is no applicable housing
21 authority. Our current rule allows owners to request the
22 use of a PHA method in this circumstance if it can be
23 justified, but with this new regulation we must curtail
24 that flexibility. In addition, the regulation made
25 changes to the energy consumption model which has been a

1 particularly challenging method to implement. We're
2 incorporating those changes into Section C, paragraph (3),
3 subparagraph (d) and we are hopeful that these changes
4 provide an opportunity to overcome those challenges.

5 The new regulation also supports some of the
6 changes the staff was proposing in December related to tax
7 credit properties layered with HOME funds. The prior
8 regulations defined a HUD-regulated building as a building
9 where the rent and utility allowances were reviewed by HUD
10 on an annual basis. Now a HUD-regulated building is
11 defined as a building in which the rents and utility
12 allowances are regulated by HUD. This new definition
13 supports our understanding that the housing tax credit
14 building layered with HOME must use the utility allowance
15 prescribed by the HOME Program.

16 So to sum it up, we're asking you to withdraw
17 the rulemaking proposed in December, propose repeal of the
18 current rule in the Administrative Code, and propose a new
19 utility allowance rule with a new public comment period
20 which will be from April 15 to May 16. The rule we are
21 suggesting to take out for comment includes the changes
22 proposed in December to align our rule with HUD's
23 expectations for the HOME Program and incorporated changes
24 we needed to make because of the new Treasury regulation.

25 I'd be happy to answer any questions, talk

1 about the different methodologies, circumstances under
2 which they're appropriate -- that may be more information
3 than what you're looking for. But it looks like we have
4 some public comment, and before that, can I answer any
5 questions?

6 MR. OXER: Any questions of Stephanie?

7 (No response.)

8 MR. OXER: Okay. We have to have an action on
9 this?

10 MR. IRVINE: Motion to approve.

11 MR. OXER: Motion to approve staff
12 recommendation.

13 MR. GANN: I so move.

14 MR. GOODWIN: Second.

15 MR. OXER: Motion by Mr. Gann to approve staff
16 recommendation, second by Mr. Chisum -- I'm sorry -- Mr.
17 Goodwin. We have comment. Quick.

18 MR. ALLGEIER: I feel like I'm a relief pitcher
19 going in in the 9th inning and I'm down eight to nothing.

20 MR. OXER: With a 100 mile an hour fast ball.

21 MR. ALLGEIER: I'm Dan Allgeier and I'm
22 representing TAAHP today. I'm on the compliance
23 committee.

24 There was language in the draft that said that
25 this could be all changed if HUD came out with new

1 regulations. We think that's going to change this, put
2 the language back in the draft, and then we'll make
3 comments during the comment period.

4 That's all. Thank you.

5 MR. OXER: Okay. Thanks, Dan.

6 Let's see, motion by Mr. Gann, second by Mr.
7 Goodwin -- which is the reverse of the last motion -- to
8 approve staff recommendation on item 8(c). Any other
9 comments? Those in favor?

10 (A chorus of ayes.)

11 MR. OXER: And opposed?

12 (No response.)

13 MR. OXER: There are none.

14 All right. We're going to do a little
15 administrative juxtaposition here. I'm going to accept a
16 motion to adjourn.

17 MR. GOODWIN: So moved.

18 MR. GANN: Second.

19 MR. OXER: Motion by Mr. Goodwin to adjourn,
20 second by Mr. Gann. Those in favor?

21 (A chorus of ayes.)

22 MR. OXER: And Mr. Goodwin is in the process,
23 and we did that so we could preserve our quorum under the
24 full administrative rule.

25 (Whereupon, at 2:41 p.m., the meeting was

1 adjourned.)

2 MR. OXER: Everybody else sit still. I'm going
3 to convene a chairman's workshop to receive public
4 information for the next agenda for the next meeting.
5 Those who wish to speak, stand up and do so. Anybody in
6 the audience care to make a point? We were at the point
7 at the meeting where we make available time for public
8 comment on matters other than items for which there were
9 posted agenda items, and this is for the purpose of
10 building the agenda for the next and future Board
11 meetings.

12 We've got a taker.

13 MR. ALCOTT: I'm Tim Alcott with the San
14 Antonio Housing Authority, you may know as the Wheatley
15 Development.

16 MR. OXER: We've seen that one before, haven't
17 we?

18 MR. ALCOTT: You certainly have.

19 So at the last Board meeting, as we were here,
20 there was a discussion about Senator Ruth Jones McClendon
21 and that she had resigned her seat, and J.B. Goodwin was
22 here earlier and I said I would come back next month and
23 tell you what we did with this unusual situation whereby
24 there was no state rep and how do I go about getting a
25 letter of support.

1 MR. OXER: A letter of support being one of
2 those casual things we don't spend much time on.

3 MR. ALCOTT: Exactly. Maybe I shouldn't talk
4 about it today.

5 (General laughter.)

6 MR. OXER: Don't want to pick the scab off of
7 this, it's starting to heal up.

8 MR. ALCOTT: Exactly. But real quickly, we did
9 have a letter of support and then she resigned. And so
10 what we did, we requested through a letter to Tim Irvine
11 that we either accept the previous letter of support, so
12 that way we could get the eight points, or there's an
13 election set by the governor on May 20, that we could get
14 it at that point in time, within a month of that.

15 Or if it doesn't happen for some reason on May
16 20 -- because I remember Attorney Beau Eccles saying
17 something that it could actually be extended -- that we at
18 least have 30 days whenever we finally get somebody
19 appointed.

20 And so we asked for three different things in
21 our letter, and this is not an action item but I just
22 wanted to report out what we were doing.

23 MR. OXER: Appreciate your time. Any comments?
24 You understand we can't respond to it but we appreciate
25 the information.

1 Is there anybody else? Is there any staff that
2 wish to make a comment? Anybody from the Board here or at
3 the dais?

4 (No response.)

5 MR. OXER: All right. Chairman, I get to make
6 the lost comment. It's a good thing that we do up here,
7 it's a lot of work, I know it is, but we appreciate that
8 everybody is here and the detail that you put into this.

9 There being no formal Board meeting, I'll
10 simply say we stand adjourned.

11 (Whereupon, at 2:44 p.m., the meeting was
12 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: March 31, 2016

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 138, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Housing and Community Affairs.
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16
17 04/06/2016
(Transcriber) (Date)

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19 On the Record Reporting
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23