TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

March 6, 2014
10:06 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

a) Presentation, Discussion, and Possible Action to delegate to the Chair authority to perform the performance evaluation of the Executive Director

ASSET MANAGEMENT

b) Presentation, Discussion, and Possible Action on approval of Housing Tax Credit Amendments

13242 Saige Meadows Tyler

REPORT ITEMS

The Board accepts the following reports:

1. Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers

2. Status Report on the HOME Program Contracts and Reservation System Participants

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Report on status of the Department's Series 2004B Swap held under the SF Bond Trust Indenture

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Port Arthur  

14176 Moss Rose Apartments  
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14277 Pecan Tree Square Apartments  
Grandview  

b) Presentation, Discussion, and Possible Action regarding Reinstatement of a Determination Notice for Housing Tax Credits with another Issuer

13419 Hunter Plaza  
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c) Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2013-1 HOME Multifamily Development Program Notice of Funding Availability

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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS.  

EXECUTIVE SESSION (None required)  

ADJOURN
MR. OXER: Good morning, everyone. I'd like to welcome you to the March 6 Board meeting of the Texas Department of Housing and Community Affairs.

We will begin, as we always do, with roll call.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

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

Mr. Thomas?

MR. THOMAS: Here.

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

Tim, will you lead us in the pledge.

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

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

MR. IRVINE: We do.

MR. OXER: Bobby Wilkinson, is he here? There he is in the back, our new commander from the Governor's Office. Welcome aboard. We appreciate you coming here.
last time and we'll make it as much of an adventure for
you as it is for us.

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

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

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

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

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

"Whereas, it is the policy of the Texas
Department of Housing and Community Affairs to support
equal housing opportunity in the administration of all of
its programs and services, including encouraging equitable lending practices for its homebuyer programs and Fair Housing rules and guidelines for its multifamily developments; and

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

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

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

"Resolved, that in the pursuit of the goal and responsibility of providing equal housing opportunities for all, the Governing Board of the Texas Department of [..]"
Housing and Community Affairs does hereby celebrate April 2014 as Fair Housing Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance for free and equal housing treatment and opportunity for all."

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

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

MS. BINGHAM ESCAREÑO: Move to so resolve.

MR. OXER: Okay.

MR. GANN: Second.

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

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

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and our state.

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

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

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

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

(Applause.)

MR. THOMAS: Mr. Chairman.

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

MR. THOMAS: I'm just wondering is there any limit to how far we spread Cameron. I think we're
eventually going to have him running the entire state.

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

(General laughter.)

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

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

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

MR. IRVINE: Mr. Chairman, if you're memorializing important events such as that, I do want to note that Tom Gann is coming up on a fifth anniversary of serving on this Board.
MR. OXER: I think I'm actually coming up on my fifteenth -- no, it's only been three. Right?

All right. Now we move to the consent agenda. Is there any point that we have on the consent agenda that any member would like to pull?

(No response.)

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

MR. THOMAS: So moved.

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

MS. BINGHAM ESCAREÑO: Second.

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

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

MR. IRVINE: It's short, sir.

MR. OXER: Just checking.

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

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

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

If you take a look at what the Department has done in the single family area -- I won't be talking about what we've done with the multifamily -- we've done variable rate debt, totaling about $380 million, original amount. Currently we have about $237 million of that still outstanding. Those were in seven separate transactions. We have five swaps that we've undertaken that were for an original balance of about $367 million and the current balance on those, after having taken the action outlined in the report for this item, we now have a balance of about $217 million of those outstanding as of March 1. The first swap that we entered into was in April of '04, about ten years ago; the last swap that we entered
Now, what is a swap? There are a lot of different types of swaps out there so I want to make it clear to the Board that the types of swaps that we've entered into for the single family portfolio are what are referred to as fixed payer swaps, so that's what we'll be talking about. In that type of swap arrangement we basically sell variable rate debt, like what I was just talking about, and then because we are funding fixed rate mortgages and because we do not want to get into a situation like the S&Ls did in the eighties where we're funding fixed rate assets with variable rate debt, we want to synthetically fix that, and the way you do that in this market is that we got to a third party who's in the interest of doing this, typically a bank or an insurance company, and we tell them I would like to make a fixed payment to you and what I would like you to do is pay me a variable payment that's tied to some kind of an index, and our hope is that that variable payment will cover the cost of the variable rate debt that we've issued so that we're now what they call synthetically fixed.

We have a lot of what we call counterparties in our transactions, we have trustees that we rely on to make payments to bondholders, we have servicers that we rely on to service our mortgage loans for us, we have lenders that
we rely on to originate the loans originally, sell them to
the master servicer. Whenever we get payments in, we
invest those payments with third parties. These are all
considered counterparties in our transactions, third
parties that we're dealing with to carry out our program.

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

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

Our liquidity, which is very important, is all
with the Comptroller. We are the only housing finance
agency in the county that has our liquidity provided by our state treasurer, basically. Very valuable. It is gilt-edged, nobody worries about whether or not the Comptroller is not going to have $237 million to fund our puts. We've very lucky to have that and we're able to achieve that at a very low cost to the Department.

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

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

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

You will hear, as we talk about things in the item that we have today, the action that was taken for March 1 did involve a termination. Typically when you put
these swaps in place, you can have a number of termination rights that are built into the. The first one you can have is a mandatory or a scheduled termination. Similar to a term bond, you have some kind of a sinking fund schedule over time, so we go to the swap provider and say: Okay, on these dates we know we're going to want to have some kind of a minimum termination. That's mandatory, it's built in, there isn't anything the swap provider has to do, isn't anything we have to do, the contract is set up with that just occurring on its own.

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

Third type of termination you could have is an optional market termination. If for some reason either the swap counterparty or the Department wants to reduce the swap and there is no par termination right presently in that arrangement, you can always terminate it, but at market, and that's where they will take a look at whether or not the swap has a positive market value to them or to us, and either we're going to end up receiving money or we're going to end up paying money if that occurs. All of
our swaps currently, because of what's happened with the interest rate levels since those swaps were first put in place, all have negative mark to markets. So that means if there's a termination, we will be paying the counterparty, the counterparty will not be paying us.

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

Let's talk about why did we enter into swaps. You might be asking yourselves: Gee, this sounds pretty complicated, why did we do this? Well, swaps are
generally, and the way we use them -- and a lot of other people do different things with them -- we use them as a way to lower our borrowing costs, so back in '04 when we entered into this first one, we had a choice: we could sell a fixed rate bond or we could sell a variable rate bond, swap it to fixed.

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

I think I've mentioned this to the Board before, we do about a million dollars a day in commitments under our program, have the entire time that I've been here. It varies, some days we do 600-, some days we do a million and a half, it averages out to a million dollars a day. So during the course of this meeting, probably two people in the State of Texas will be assisted in getting into their first home. That's how valuable this program is out there.
How are the swaps performed? You might ask yourself, again: This seems pretty complicated, wonder how these things are done. You really have to look at it in terms of how they've actually performed have been as expected, frankly, better than as expected. What we have seen in the swap market -- I'm going to talk about this a little bit -- is that they've certainly faced challenges.

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

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

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

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

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

Increased rating agency requirements -- and that's probably where you hear swaps and if they've been having difficult or haven't been performing -- in quotation marks -- has really to do more with this area.
Rating agencies came in and really started ratcheting up their requirements, and the stress scenarios that they asked us to perform, the assumptions that they told us to use as far as underlying variable rates, cost of your liquidity, cost of your remarketing over time, they wanted all of those to be increased and they wanted to see that your indenture could withstand all these various stresses.

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

The other thing that we've seen is a lot of changes in the regulatory environment. When we first put these swaps into place, really didn't have much of that that we had to deal with. In the I think it was the 2010-2011 time frame, GASB 53 came into being. That meant that not only bond finance but our financial administration group and our auditors had to take a look at all of our swaps and make a determination that they were effective and what the accountants were really looking for is they wanted to see whether or not you were putting swaps in place for a speculative purpose or was it for a hedging purpose, but there was a very complicated set of calculations that had to be done in order to determine whether or not you had done one or the other.
We're now doing that on an annual basis. All of our swaps have been deemed effective. As I said, that was the reason why we put them in in the first place.

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

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

So you're going to start seeing a lot more activity in that area, so staff is going to be coming to
you, probably on a pretty consistent semiannual basis,
giving you an update on what type of activity we've seen
over the intervening six months and any action that we're
looking to take in conjunction with, say, that particular
interest payment date.

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

Wanted to reiterate or assure the Board that
our strategic goal -- unless we're given direction
otherwise by the Board -- with our swap management policy
will be to prudently reduce our reliance on liquidity.
There is no doubt that it's great that we've gotten this
liquidity from the Comptroller, and the Comptroller, over
the intervening time period, we spend a lot of time with
them. I think Mr. Thomas actually sat through briefly,
until I think he couldn't take it anymore, our most recent
presentation to Comptroller. So we spend a lot of time
with these guys, outlining for them what we're doing and trying to make sure that they're comfortable with what we've got. But there's no doubt that they would prefer, over some time period, to not be in the liquidity business, that's not what they're about.

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

I think with that, that's sort of my general overview on swaps. I'll just briefly say, again, that the item that we have outlined in this report item, we had an opportunity, as we will have coming up in these other swaps, to cancel up to $31.8 million of the 2004B swap on March 1 at no cost. We analyzed all of the underlying statistics on the deal, where interest rates were, what kind of an advantage it would be for the Department to do that, and we determined we couldn't cancel or it wouldn't be prudent to cancel the entire amount of that swap, but
that we could come in and cancel $13 million out of that $31.8 million, and that by doing so we could pick up a $400- to $500,000 profit from doing that without having to incur too much risk.

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

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

MR. OXER: Thanks, Tim.

Any questions from the Board?

MR. IRVINE: I have a comment.

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

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

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

MR. NELSON: 2004B.

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

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

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

MR. NELSON: 2004D will have its first
opportunity on September 1. Our '05A and '07A are what we
refer to as match dam swaps. They have scheduled mandatory reductions and we can do an optional termination. They do not have any option par termination rights on those, so unless we restructure those, we will never be coming to the Board with a report that we have exercised an optional par termination; those swaps don't have those.

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

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

MR. OXER: I sat in the meeting with Mike Morrissey, talking about liquidity -- early last year, I think it was -- and he came in and announced, he says: All right, you can't have any more liquidity, there's not anything, your answer is no, now what's your question? I could see he would be pretty happy with the fact -- he and
the rest of the Comptroller's Office would probably be pretty happy that we're continuing to whittle this down. What does that do, effectively, to the rate that we're able to provide for homeowners for debt?

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

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

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

MR. NELSON: Any net additions to our liquidity?

MR. OXER: Let's say you continue to be as
effective -- and by the way, congrats. I have complete confidence in our financial team. That's one of the things I found most rewarding and most impressive about this agency when I first got here, we're basically a bank and a lot of people that work at this bank that know what banking is and how to play the game, so I was pretty happy about that.

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

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

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

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

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

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

MR. IRVINE: We have the credit of the indenture.
MR. OXER: -- the credit of the indenture.

MR. NELSON: Yes.

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

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

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

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

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

MR. THOMAS: That was a very interesting
meeting, and I sat through multiple interesting meetings in preparation for it. But what is the time frame, crystal-ball ing, Tim, to be able to reduce or pay off the liquidity line through the Comptroller's Office, best case scenario?

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

And again, it's important for people to know that these things are complicated, but one thing to remember with these sort of termination rights is that they are time-based or time-valued. So what I mean by that is a $20 million termination right today is more valuable than one a year from now. So what we're looking at doing in particular on these next two deals, as I stated on this '04B, we have the right to terminate almost $32 million, we couldn't terminate any more than $13, well, there's $19 million worth of optionality sitting there that's valuable but we can't do anything with it.
So what we're looking to do is reorder that around, reduce the amount of optionality we have today, increase the optionality that we have into the future -- which is cheaper -- and our goal is to, on this '04B deal, take that 2033 date, move it up to 2023, let's say, so that we are pushing everything forward. Assuming that we're successful with that, it's my hope, or our strategic goal, if you will, to try to align all of these so that within ten years we can be completely out of them. Again, presently our contracts don't allow us to do that; we're hoping that we can achieve that through these restructuring.

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

MR. NELSON: I believe they were.

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

MR. NELSON: Thank you.

MR. OXER: Thanks for representing us well.

Any other questions from the Board?

(No response.)

MR. OXER: Good. Is there anything we should be doing -- not that I think this is a valid question
because I know what the answer is -- but is there anything we could be doing that we're not already? Because I know you're so meticulous in the way you approach this, you've looked at every option we've got.

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

    (General laughter.)

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

    MR. NELSON: Thank you.

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

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

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

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

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

    MS. LATSHA: Sure. I think it might be most
appropriate to leave Louis Manor for the last, so we can talk about Moss Rose Apartments for a moment. So these three items are all the same request, it's for an exemption that is allowed under Section 10.101(a)(3) of the Uniform Multifamily Rules.

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

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

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

MS. LATSHA: Yes, sir.

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

MS. LATSHA: That's correct as well.

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

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

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

MS. DEANE: Mr. Chair, just to be clear, the 101(a)(3) exemption which is for site features only, that's the one that we're talking about here that provides an exemption for a railway within 300 feet, there is no such exemption for area features. And so what staff is saying is if they later come into possession of information or realize that there might be area features that could be a problem, that because the (a)(4), which is area features as opposed to site features, allows them to
consider the confluence -- in other words, holistically
take a look at it -- that they could still look at the
presences of the railway as it relates to the other
features that they find in that area, and they're not
precluded, just because they granted this 101(a)(3)
exemption as it relates because of the federal exemption.

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

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

So what we're saying here is that we could find
the site eligible with respect to undesirable site
features because this applicant does meet the requirements
of the exemption because it's a federally subsidized
development, however, we could again look at the site more
holistically and look at all of the features that are
within 1,000 feet and still take into account that
railway.

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

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

MR. OXER: So it preexists.

MS. LATSHA: Preexisting and ongoing as well.

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

MS. LATSHA: Correct, or rehabilitation.

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

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

MS. LATSHA: Yes, sir. I have correspondence
with the applicant, written correspondence with the
applicant, and then if you'll read the writeup as well, I
included in the writeup that staff does reserve that right
to find the site ineligible.

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

MS. LATSHA: Yes, sir.

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

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

Mr. Thomas, any other questions?

MR. THOMAS: No. Thank you.

MR. OXER: Motion to consider?

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

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

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

MR. OXER: Motion by Ms. Bingham. Do I hear a
second?
MR. THOMAS: Second.

MR. OXER: Second by Mr. Thomas.

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

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

MR. OXER: Okay. Just checking.

There being no public comment, all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Good.

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

This is a slightly different type of site. Staff, on a preliminary review, does not expect to find any undesirable features or any other undesirable site features. This is a high opportunity site that is in the second quartile of the median household income for the area, and only has a 6.6 poverty rate. The area median income in this census tract is actually above $60,000.
We did confirm with the applicant, as well, that there were no undesirable area features, and like I said, staff doesn't really expect to find any upon further review. So we recommend granting the exemption.

MR. OXER: Any questions of the Board?

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

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

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

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

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

MS. LATSHA: That's right.

MR. OXER: Any questions? Motion to consider?

MR. THOMAS: So moved.

MR. GANN: Second.

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

Robbye, do you have something you wanted to say?
MS. MEYER: (Speaking from audience.) I'm good with that.

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

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

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

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

The difference with this site is that it is a pretty high poverty low income site. On a very preliminary review of the site, staff did voice some concerns about some other potentially undesirable area features and contacted the applicant. We requested some information with respect to blight or crime or any other undesirable area features that the applicant wished to disclose.
In the meantime, we had also received some comment that voiced objection to the site, and this morning I did receive some information from the applicant with respect to crime and blight, but it was minutes before the Board meeting and I honestly have not had a chance to review it.

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

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

MS. LATSHA: Yes, sir.

MR. OXER: All right. The 40 feet, what was the distance on the other two?
MS. LATSHA: I think it was similar, 80 feet and one was adjacent.

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

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

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

MS. LATSHA: I think the only adverse consequence to the applicant is just that there's still a little bit of uncertainty, but in my estimation, the uncertainty is there regardless because the uncertainty with the eligibility of this site really lies with respect to undesirable area conditions.
MR. OXER: And so even with this exemption, the uncertainty remains until you consider the area characteristics.

MS. LATSHA: Yes.

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

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

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

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

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

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


MS. BINGHAM ESCAREÑO: I apologize. I'll
correct myself. 10.101(a)(4).

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

MR. GANN: I'll second.

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

(No response.)

MR. OXER: All in favor?

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

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

MS. DEANE: Well, I wanted to mention that we got a handout this morning, that's why I thought there might be someone here related to this handout. It was provided with regard to the new public comment rule. It was brought in and given to staff this morning. I'm going to assume there are copies out front for everybody. And so because this has been turned in at the meeting, then it becomes within the discretion of the chair to allow it, subject to any objections by other Board members, to allow it into the record. But I will say they did follow the new rule.
MR. OXER: Okay. That being the case, guidance from counsel suggests we can consider this. Does any Board member have an exception or an objection to considering the material?

(No response.)

MR. OXER: Okay. Chair accepts.

You have a comment?

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

The letter is from Appleseed and Texas Low Income Housing Information Service. We object to granting an exemption for the undesirable site features. There are two public housing developments about 600 yards away from Louis Manor that the state and the public housing authority are using CDBG Disaster Recovery funds to relocate. In part, because of a 2011 letter from the Environmental Protection Agency urging that that happened because, to quote from the letter: "The residents of Carver Terrace face greater chronic risk from air pollution, e.g., releases due to process malfunction or insufficient equipment shutdowns, as well as a higher risk of emergency events, such as a chemical or oil spills. Significantly, during hurricanes, these risks become amplified and more probable."
And I think in the case of something like a chemical or oil spill, if there were a train derailment, 40 feet is -- I mean, 300 feet is probably not enough, but I think there are significantly greater risks from something like that happening for Louis Manor. Particularly since the train tracks we're talking about go from the petrochemical refinery to the port, I don't know exactly what those trains carry but I am guessing it is related to petrochemicals.

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

MS. SLOAN: Yes, yes.

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

This is also a high poverty census tract. It contains the highest concentration of the poverty in the city, it's 55 percent. It is also extremely racially segregated; according to the ACS data it's 99.3 percent
Black, .07 percent Hispanic and 0 percent White, non-
Hispanic. We pulled some crime data from a service called
Neighborhood Scout which collects I believe it's the FBI
crime data. A resident of this census tract is subject to
a risk of violent crime 203 percent higher than the City
of Port Arthur as a whole.

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

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

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

(No response.)

MR. OXER: Your point is well stated and well
taken. The evidence seems appropriate. Staff has only received that this morning, we've only received it this morning. In an effort to be consistent, we're balancing some things here, as is the case with the two others in this, they get an appeal because of the specific exemption -- they get an exemption -- I'm sorry, I'm sorry. The cattle prod reaches all the way over.

MS. DEANE: They just are granted an exemption.

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

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

MR. OXER: Okay.

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

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

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

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

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

This is a difficult case because we do have
information that we have not been able to review yet. And
I have a feeling that information will even prompt staff
to request additional information and that this review
could take some time. I don't know if that helped at all.

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

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

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

(General talking and laughter.)

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

MR. OXER: We have a motion.

MS. DEANE: Is there any additional comment?

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

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

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

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

MR. THOMAS: I'm sorry. I'm not the chair; I'd
like to hear from the applicant but I'll defer to our
chair.
MR. OXER: Excuse me. You'll have to identify yourself.

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

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

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

We're aware that there's potential to be some
problems but that's why the monitoring is taking place, and I think the arguments that are being made here are not really well founded. And we don't mind the scrutiny and we don't mind providing additional information, but I would hope that based on the exemption request that we've made, which really was a noise issue, that we would be granted that, subject to us providing additional information on the other issues that have just been raised here today that we haven't had an opportunity to respond to.

MR. OXER: Thank you, Mr. Baugh.

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

MS. LATSHA: That's right. And as helpful as this discussion is going to be in our review of undesirable area features, staff is not prepared to respond to either of these folks today because we just simply haven't had a chance to review the documentation.

And I do want to be clear that this is about a very, very
specific provision in the rule, this is exemption and it is about the railway and that is all.

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

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

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

MR. THOMAS: Actually, Mr. Chair, I'd like to go on the record as opposed to that motion. I was still deliberating it when you were moving it through.
MR. OXER: Okay. Let the record reflect that the vote on the prior motion was four to one, with Mr. Thomas opposing.

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

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

MS. LATSHA: Correct.

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

MS. LATSHA: Not at all.

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

MS. LATSHA: I would say, if anything, it might be beneficial to future applicants who might not be reading their underwriting reports, and so maybe they will.
MR. OXER: We don't do those for our health. That said, we'll have a push to consider.

DR. MUÑOZ: A motion to reinstate?

MS. LATSHA: Yes, sir.

DR. MUÑOZ: Motion to reinstate.

MS. BINGHAM ESCAREÑO: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

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

Traditionally, conventionally applicants who want to combine Housing Tax Credits with Department-administered HOME funds apply for those funds at the same time. What happened here was this applicant was awarded tax credits and then some of the financing terms changed.
which created a gap in financing for them. They were able to apply under the 2013 NOFA for HOME funds to fill that gap, and so staff is simply recommending that HOME award which is basically on top of the 2013 Housing Tax Credit award that the Board has already granted.

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

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

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

MS. LATSHA: No.

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

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

MR. OXER: Any questions of the Board?

(No response.)

MR. OXER: Motion to consider then.

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

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

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Is there any
public comment? Madison, just for the record, you're sitting there.

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

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

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

(General laughter.)

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

Item number 4.

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

What happened here was this application was submitted without a site and feasibility study which is required under Section 10.205 of the Uniform Multifamily
Rules. The rules specifically call for staff to terminate any applications that do not include any of the required third party reports. The applicant has argued in their appeal that this should be considered an administrative deficiency.

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

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

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

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

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

MR. OXER: Okay. Questions from the Board?

DR. MUÑOZ: I've got a few questions.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: You say that the third party sort of report wasn't maybe attached in some sort of discernible way, but are the elements -- is the information that would have been contained in that report elsewhere in the application?
MS. LATSHA: Part of it, yes. What was essentially missing were some elements of the site plan. Very specifically, it called for water and wastewater tie-ins and detention ponds and things like that, and then also the executive summary from the engineer.

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

MS. LATSHA: And what I mean is that staff has used, on average, I would say, over a dozen administrative deficiencies per application that we receive. There's quite frequently similar types of information that is missing, whether it's just a form that was filled out incorrectly or some backup documentation with respect to site control or something like that. So yes, the type of information that you're talking about, sometimes those
executive summaries are redundant, sometimes they provide some information if you've got some particularly strange circumstances surrounding a site. But those administrative deficiencies that we allow to be corrected are found under a different section of the rule that allows for those types of clarifications.

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

MR. OXER: Any other questions from the Board? I have a couple. While the executive summary could add some dimension to this, the executive summary is simply the applicant's assessment, rather than a third party technical provider, to provide that information which is the key component of the application.

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

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

MS. LATSHA: Yes.

MR. OXER: Okay. I'd also point out that there
were things that we've done before that we don't do again that we don't do anymore. So are there any similar waivers or administrative deficiencies that you've repaired or allowed to be repaired by the applicant in this round?

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

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

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

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

MS. DEANE: That would probably be a question
1 for staff.

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

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

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

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

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

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

15 MS. LATSHA: That's correct.

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

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

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

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

25 Right.
DR. MUÑOZ: But the third party falls under what rule?

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

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

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

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

MS. DEANE: Not HOME.

MR. OXER: So this is a HOME application.

MS. LATSHA: Yes.

MR. OXER: Go ahead, Dr. Muñoz.

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

MS. LATSHA: I think you could.
DR. MUÑOZ: So I mean, would you be willing to?

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

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

MR. IRVINE: Sure.

DR. MUÑOZ: So moved.

MR. THOMAS: Second.

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

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

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

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

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

DR. MUÑOZ: No.

MR. OXER: Say it again.

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

MR. OXER: Return it to staff for further
consideration. Does that oppose the staff recommendation?

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

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

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

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

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

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

DR. MUÑOZ: Yes.

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

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

MS. LATSHA: Yes, sir.

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

Would you like to state that, Dr. Muñoz?

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

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

DR. MUÑOZ: Essentially disregard current staff recommendation.

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

MR. THOMAS: Yes.

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

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

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

All right. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed?
MR. OXER: There are none.

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

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

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

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

MS. BINGHAM ESCAREÑO: So moved.

MR. THOMAS: Second.

MR. OXER: Motion by Ms. Bingham, second by Mr.
Thomas to adjourn. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

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

MEETING OF:     TDHCA Board
LOCATION:       Austin, Texas
DATE:           March 6, 2014

I do hereby certify that the foregoing pages, numbers 1 through 71, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

/s/ Nancy H. King  03/11/2014
(Transcriber)         (Date)

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