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:

EXECUTIVE
a) Presentation, Discussion, and Possible Action on Board Meeting Minutes Summaries for the meetings of January 28, 2016, and February 25, 2016

ASSET MANAGEMENT
b) Presentation, Discussion and Possible Action on Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")

01070 Sagebrush Apartments
Brady
01106 Bunker Hill Senior Village
Stephenville
03158 Red River Senior Village
Vernon
03161 Dripping Springs Seniors Village
Waco
03163 Cedar View Apartments
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Belton
98119 Sea Breeze Apartments
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c) Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit Application

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Kerrville
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Lubbock
15134 Artisan at Judson Park

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San Antonio

d) Presentation, Discussion and Possible Action regarding a modification to Housing Trust Fund ("HTF") Direct Loan 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

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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

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

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
   a) TDHCA Outreach Activities, March 2016
   b) Report Regarding Progress on the Study on Homelessness among Veterans
   d) Report on Reservation System Participant ("RSP") Agreements issued under the HOME Investment Partnerships Program ("HOME") Single Family ("SF") Programs Reservation System

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   b) Report on the proposed National Housing Trust Fund roundtables
   c) Report on 2017 Qualified Allocation Plan ("QAP") Project
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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

OPEN SESSION

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

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

Mr. Chisum?

MR. CHISUM: Present.

MR. OXER: Mr. Gann?

MR. GANN: Present.

MR. OXER: Mr. Goodwin?

MR. GOODWIN: Present.

MR. OXER: Professor Dr. Muñoz?

DR. MUÑOZ: Hurrah.

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

Tim, lead us in the pledge to the flags.

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

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

MR. IRVINE: We do.

MR. OXER: Who will read that?

MR. IRVINE: Yes. Tomorrow is April which is,
of course, Fair Housing Month, as it is every year. I like to think of it really as the first month of Fair Housing Year. So we do have a resolution which we would like for the Board to consider adopting, and Michael will read it into the record.

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

"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 purposes of the Fair Housing Act.;

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

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

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

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

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

"Now, therefore, it is hereby resolved that in 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 2016 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.

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

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

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

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

MR. CHISUM: Second.

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

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are, of course, none. Thanks, Michael.

MR. LYTTLE: Yes, sir.

MR. IRVINE: Mr. Chairman, before we take up
the consent agenda, I believe Stephanie Naquin would like
to provide a clarification with regard to item 1(i), 1-
India.

MS. NAQUIN: Good morning.

MR. OXER: Hi, Stephanie.

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

We recommend approval with these changes.

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

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

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

    MS. NAQUIN: That's correct.

    MR. OXER: All right. Thanks.

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

    (No response.)

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

    MR. GANN: I so move.

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

    MR. GOODWIN: Second.

    MR. OXER: And there's a second by Mr. Goodwin.

No public comment. Those in favor?

    (A chorus of ayes.)

    MR. OXER: And opposed?

    (No response.)

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

Okay. Because we have some key action items
that we would like to take and to assure that we have
sufficient time for, I'm going to exercise the chair's
prerogative and alter the order in which we take some of
these. We'll take the action items first and the report
items will come later once we complete the action agenda.
So that said, do we have any other modifications that you
recognize, Counsel or E-D?

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

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

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

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

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

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

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

My area played a large part in this year on what standards to recommend to you. We wanted to determine whether fair market rents in Section 8 areas were sufficiently allowing us to expand tenant housing choice. So the fair housing data management and reporting
team analyzed small market area rents for counties and zip
codes and identified areas that we believe needed adjusted
standards.

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

ESG and fair housing staff also provided
additional guidance related to serving persons with
limited English proficiency that has HUD regulatory
provisions associated with it. TDHCA is now requiring a
language access plan for all ESG subrecipients starting
with fiscal year 2016 funding. Additionally, the ESG
contract now requires that subrecipients provide program
applications and forms and educational materials in
English and Spanish and other languages as appropriate for
the service area. Spanish is a mandatory language in the language access plan. Further, the forms used by program participants are now translated into Spanish and posted online.

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

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

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

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

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

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

MS. HEMPHILL: Thanks. And we certainly work
with staff across the programs in the agency, and that was Andrea in Section 8, and it was great to be able to increase those FMRs where appropriate.

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

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

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

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

MR. OXER: Good. Any other questions?

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

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

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

(General laughter.)

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

MS. HEMPHILL: Absolutely. Thank you.

MR. OXER: Thank you, Suzanne.

Do we want to continue on the report side? I made a mistake there when I got started on that. We've got enough time? Okay.
Who's next? Get on the spot here.

(General talking and laughter.)

MR. OXER: Commence firing.

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

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

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

(General laughter.)

MR. SINNOTT: So while Fannie and Freddie Mac
are providing the funds, HUD is overseeing the implementation of the program. HUD published the interim rule a little over a year ago in anticipation of the funds being released this year. The formula grant allocation amounts are currently being finalized and it's anticipated that HUD will publish those amounts next month and a grant agreement will be executed with HUD sometime this summer.

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

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

So as far as next steps, we hope to have some roundtables next month in May with a draft of the National Housing Trust Fund allocation plan submitted to the Board in May at the May 26 Board meeting. And then the allocation plan draft will be published for public comment.
on Board approval in May. The final version of the allocation plan hopefully will be submitted to the Board for approval in July as a substantial amendment to our one-year action plan soon after the Board approval.

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

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

MR. OXER: Any questions of the Board?

(No response.)

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

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

MR. OXER: New mortgages. Okay. And then we'll wind up $3 million, more or less. It sounds like it's a moderate complex system but we have the capacity to manage these complex systems.
MR. SINNOTT: With our experience with HOME funds and these being very similar to the HOME funds, save the income targeting requirements, we think they can line up pretty easily with our other loan programs.

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

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

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

MR. SINNOTT: Exactly.

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

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

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

MR. SINNOTT: Thank you.

MR. OXER: Is this one yours, Marni?

MS. HOLLOWAY: Yes.

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

MS. HOLLOWAY: That actually was a good
meeting, I thought.

MR. OXER: It was.

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

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

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

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

MS. HOLLOWAY: Aging in place?

MR. OXER: Right.

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

DR. MUÑOZ: Good one, Marni.

(General laughter.)

MS. HOLLOWAY: So we discussed elderly limitation and elderly preference requirements. You'll
remember we had that definition change that's been of concern and quite a topic of conversation. We discussed the limitations on elderly development in statute which were new for this year, and then also the scoring structure for elderly developments.

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

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

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

So the meeting yesterday, I came away with pages and pages of notes and lots and lots of input from
the development community on different approaches and
looking at some other states and what they're doing.
We're going to compile all of that information and I will
bring back a much more detailed report next month. We are
also planning to put up a form on our website so that
there's opportunity for further input and discussion
outside of our monthly meetings.

Any questions?

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

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

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

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

MR. OXER: Without creating more.

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

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

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

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

(General laughter.)

MS. HOLLOWAY: I mean, much, much, much smaller. That actually had gone out and met with all of their developers individually. We don't have the manpower to do that, and I, frankly, very much prefer the public forum process that we've been going through. Another had been doing what they called listening sessions which I think is very similar to the process that we're going
through right now with this monthly input. So I think that the governments are recognizing that input from the developers is going to be vital in getting to a really effective qualified allocation plan.

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

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

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

MR. IRVINE: Keep Texas out front. Yes.

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

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

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

MR. ECCLES: The only comment that I was going to make is that as we talk about the various definitions and components of what is opportunity, there are some necessary constraints of the metrics and data that can be harvested statewide in a state as vast as Texas that would go into that. So for all of those who have complained
about the limitations of, for instance, Neighborhood Scout, I know that there are states that, for instance, go into what are areas that are considered walkable. Unless we have the data that can reliably and uniformly substantiate one of these components of a definition of opportunity, that could be problematic.

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

MR. OXER: Definable and defensible.

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

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

(General laughter.)

MR. OXER: Anything else, Counsel?

DR. MUÑOZ: Just a comment. You know, Marni, just to pivot on, I think, what you've heard, I just think it's important -- and I don't want this to sound like a criticism, but when we say things, and I'm prepared to say
this too, other states are kind of grappling with this, so be it. Right? But we shouldn't be a state that's grappling with it. If we want to move to this two-year sort of defensible, good input in, sort of position QAP, I think often we avert our eyes to things that some other states, even smaller states, are piloting, experimenting with, looking at Definitions, operational definitions of opportunity that we could potentially modify, that we could cull, that we could adapt or something.

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

Sometimes it's easy to sort of, well, this is kind of how we've done it, and I know that we're taking input from our people in our state and I think that should always sort of drive it, but we should always keep an eye out to see what others are doing, even the small Vermonts that might be useful and appropriate here as we try to get
something in place for developers and communities to look at over more than just one year.

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

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

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

MS. HOLLOWAY: Thank you very much.

DR. MUÑOZ: I appreciate the interpretation.

What he said.

(General laughter.)

MR. OXER: And the idea when we originally some time ago started thinking of a two-year QAP, part of that was with the intent to make it easier for developers to have the time to develop the relationships, give them the opportunity to explain to those communities that see this as something they don't necessarily want, and explain to them that this is an entirely different concept that they probably haven't really truly understood yet, and that
gives them more time to explain that. Anything that does
that makes this program work better which makes Texas look
better, which is all I was looking for.

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

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

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

MS. HOLLOWAY: Thank you.
MR. OXER: Is there anything else you'd like to say? J.B., anything? Tolbert?

MR. GOODWIN: Compliments.

MR. CHISUM: Compliments.

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

MS. HOLLOWAY: Thank you.

MR. OXER: Thanks, Marni.

Okay. Cathy, hey.

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

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

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

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

I am here today to introduce to you a new report that we will be bringing to you quarterly. The report which has three components covers a two-year period on program activity in the Texas Homeownership Division. In previous Board meetings items have been presented to you by our Bond Finance director, Monica Galuski, explaining some of the many complicated financing methods used to structure our homeownership program, so I think you are somewhat familiar with the creative work being
done on her side of the floor. Her and I work in tandem. I always say she generates the funds and I kind of spend the money, so you guys might be familiar with that maybe.

MR. OXER: Sounds like my house.

(General laughter.)

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

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

The consumer can choose a 30-year fixed rate mortgage loan that includes down payment and closing cost assistance through the My First Texas Home Program. This option is attractive to potential homebuyers who may have an income that will support a mortgage loan and are credit worthy but do not have funds needed to meet the minimum
investment requirement of a traditional mortgage loan product. With this option we have various levels of assistance the borrower can consider to help with affordability of the mortgage loan.

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

To further expand the opportunity at affordable homeownership, qualified borrowers can take advantage of our third option which is our combo option. This option provides both the 30-year fixed rate mortgage loan and assistance available through My First Texas Home, and the tax credit benefits available thought the Texas MCC program. It's our way of giving the borrower the option
to super size, so to speak, their savings by maximizing their purchase benefits. And then I just want to add a little to the combo option that in this particular case there is a lot of savings but also have savings in calories because we don't include fries or a drink in this particular combo option. It's definitely something that borrowers can really maximize their savings when they're taking advantage of that particular option.

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

Another critical component of home buying, and also a requirement of program participation is completion of a homebuyer education course. Just this month TDHCA launched Texas Homebuyer U which provides free online tools designed to give homebuyers a greater understanding
of what to expect when buying a home and prepare them for the responsibilities that come with homeownership.

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

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

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

The reports behind the writeup reflect activity over the prior two years for each of the three available options just described. Monthly loan purchase trends,
average interest rates, average loan amount, demographic
and loan information are also included. As it relates to
volume, please note that a seasonal reduction in loan
origination typically occurs December through February,
and is reflected on a delayed basis to take into account
the time from loan origination to closing and purchasing
by our master servicer.

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

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

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

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

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

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

Tom, you have a comment?

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

MS. GUTIERREZ: Thank you. I agree.

MR. OXER: Mr. Chisum.

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

MS. GUTIERREZ: Yes, sir.

MR. CHISUM: And how many of those are domiciled in Texas versus I assume they come in from all over the country.
MS. GUTIERREZ: We do. Now with the ability to originate a loan online, we have lenders that are coming from other -- their corporate offices are located in other states, but most of them have a storefront.

MR. OXER: Like North Carolina and California.

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

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

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

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

MS. GUTIERREZ: Our master servicer has a loss mitigation area that handles all of that.
MR. CHISUM: Okay. Thank you.

MR. OXER: Is that good, Tolbert?

MR. CHISUM: Yes, sir.

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

MR. GOODWIN: Yes.

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

MS. GUTIERREZ: Absolutely.

MR. OXER: Good. Thanks.

MS. GUTIERREZ: Thank you.

MR. IRVINE: A couple of comments.

MR. OXER: Mr. E-D.

MR. IRVINE: One, except for perhaps Underwriting during tax credit season, this is the division that's they're the latest working the hardest. Whenever I go home through the mezzanine, she's always there. Like a private mortgage broker, it's all about working relationships which is, frankly, a very personal, labor-intensive activity, and it's greatly appreciated. I would also say, though, that unlike a typical mortgage broker which is looking to optimize that balance between how cheaply do I need to price it and still maximize my return, we don't do it that way. We are looking to optimize the benefit to the homeowner and
that's our focus.

MS. GUTIERREZ: Absolutely.

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

Thank you.

MS. GUTIERREZ: Thank you.

MR. CHISUM: Thank you, Cathy.

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

Monica.

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

This item pertains to authorization for various actions that are necessary to effect a substitution of liquidity related to the Department's variable rate bonds. Currently the Department has six series of variable rate bonds. These are all within the single family indenture and currently total $141,560,000. Five of these series are senior lien, that's 2004B and D, 2005A and C, and 2007A. The 2004 Series A are junior lien bonds.

The Texas Comptroller of Public Accounts, who has provided the liquidity for our variable rate bonds since 2009, has drafted amended and restated liquidity agreements to replace the existing agreements. The new
liquidity agreements add clarity to the roles and responsibilities of the Comptroller and the Department and modernize and standardize the agreements. The business terms of the existing agreements have not changed; our fees and the structure of the terms with the Comptroller have remained the same.

MR. OXER: Basically twelve points.

MS. GALUSKI: I'm sorry?

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

MS. GALUSKI: Yes. That has not changed.

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

At this time we're also amending the
remarking agreements for the variable rate bonds to update and conform those to current regulatory requirements and industry standards. One thing we're getting in conjunction with this remarketing of the variable rate bonds and the mandatory tender is we're taking this opportunity to increase our bondholder consent ratio related to the amendment of the Department's single family indenture.

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

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

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

MR. OXER: Oh, okay.

MS. GALUSKI: So with this remarketing we're
requesting bondholder consent from the variable rate holders as well.

MR. OXER: I got it now. Okay.

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

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

MR. OXER: Questions from the Board?

(No response.)

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

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

MR. OXER: The basic numbers are the same. The legal components of it are just representing what the current state of affairs are in the mortgage industry these days.
MS. GALUSKI: Correct.

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

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

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

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

MS. GALUSKI: Yes.

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

(General laughter.)

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

In today's environment, especially in our area, you have an awful lot of investors who are looking for
what's called a true pass-through structure. We did our last couple of bond issues at what we call the TDHCA modified pass-through structure.

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

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

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

MS. GALUSKI: It could definitely be different.

MR. OXER: They could vary going forward.

MS. GALUSKI: Absolutely.

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

(General laughter.)

MR. OXER: Anything else? Thanks, Monica.

MS. GALUSKI: You're welcome.

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

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

MS. GALUSKI: Correct.

MR. CHISUM: The current bondholders.

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

MR. CHISUM: Thank you.

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

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

DR. MUÑOZ: Second.

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

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

Thanks, Monica. And by the way, thank you.

You have no idea how glad we are that you are there.

MS. GALUSKI: Thank you.

MR. OXER: Okay. Raquel.

MR. GOURIS: You get me today. Sorry.

Are we ready for the next item?

MR. OXER: We're ready.

MR. GOURIS: Tom Gouris, deputy executive director.

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

The original award was for $786,147 per year in tax credits and $2 million in HOME CHDO funds repayable at
3 percent interest over 30 years. As outlined in the Board writeup, significant changes to the application were made and they include a reduction in the market or non-restricted units from 97 to 43 and a commensurate reduction in the total number of units to 140, a reduction in the number of buildings from nine buildings to seven, a shift in the unit mix to now include 13 new efficiency units and reduce the number of one- and two-bedroom units to make room for those efficiency units, a 35 percent reduction in the square footage of the development, a 28 percent reduction in the density, the replacement of a $1.6 million local political subdivision third lien financing with first lien conventional financing and/or additional tax credit equity, and an overall reduction in the conventional financing from $16.4 million to $10 million and an increase in the syndication proceeds from --

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

MR. GOURIS: Absolutely.

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

MR. GOURIS: Please.

DR. MUÑOZ: I don't remember something like $1.6- being withdrawn, $1.6 million. That seems like a
large amount. I don't remember deals like this with these kinds of dramatic changes.

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

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

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

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

MR. GOURIS: Right.

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

MR. GOURIS: Staff has spent a lot of time trying to come to terms with that, the magnitude of these changes. I think we are today recommending the changes
because there isn't a specific limitation on the size and magnitude of changes in the rule, and the applicant/developer/sponsor offered a reason for why those changes couldn't have been foreseeable, though there's a question there. The reason he provided was that the oil and gas market has fallen out and it had begun doing that prior to the application but that the lag effect on the Midland economy was not foreseeable is what his letter said.

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

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

MR. GOURIS: No. Well, not directly. For sure the number of affordable units remains the same. He is including some efficiency units in the unit mix so the size of those units, there are going to be some smaller units, but that could be looked at both ways as a positive because there's more opportunity for a variety of options for tenants, it could also be looked at as a negative
because the square footage will be reduced. So you can
look at it both ways.

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

MR. GOURIS: The 14 points?

DR. MUÑOZ: Yes, for the $1.6 million.

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

MR. CHISUM: Tom, the withdrawal of the City of Midland of the $1.6 million, what is the reason for that? Is it the economy? Did they give us a reason?

MR. GOURIS: The letter is in your packet.

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

MR. GOURIS: Basically it says they believed it was no longer necessary, and so therefore, they withdrew it.
MR. OXER: They believed it was no longer necessary. Can that be true?

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

MR. GOURIS: That's our impression.

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

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

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

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

DR. MUÑOZ: Here's my hesitation, Tom, as I read it. When you look at this letter from Midland, okay, it says: In '14 and '15 DDC Merritt applied for funding through TDHCA to construct affordable housing in Midland. As part of that application, the city committed to a loan of $1.6 million to assist in qualifying. DDC Merritt has since qualified for the program and no longer needs the loan that was established. The resolution will eliminate the commitment.

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

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

DR. MUÑOZ: Yes, I don't know either, but this
is what I'm looking at from their letterhead.

    MR. CHISUM: That's what it seems like.
    MR. ECCLES: Let me interject with just the
    rule that is in play here which would be 10 TAC
    10.405(a)(4): Amendment requests will be denied if the
    Department finds that the request would have changed the
    scoring of an application in the competitive process such
    that the application would not have received a funding
    award, or if the need for the proposed modification was
    reasonably foreseeable or preventable by the applicant at
    the time the application was submitted, unless good cause
    is found for the approval of the amendment.
    DR. MUÑOZ: I don't think the second part
    applies but the first part seems to apply. I don't know
    that they could have anticipated this, but it would have
    absolutely affected their scoring eligibility.
    MR. OXER: Mr. Chisum.
    MR. CHISUM: Mr. Chairman, I make a motion.
    MR. OXER: I know you're going, but is there
    anything else?
    MR. GOURIS: I was going to actually read the
    rule.
    MR. OXER: Staff recommendation is?
    MR. GOURIS: It is to approve the amendment
    sort of subject to you being comfortable with the
MR. OXER: Where we're going with this is in the event that we do not move with staff recommendation, we have to defend why and put on the record why. Okay? We've got an eloquent description of that.

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

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

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

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

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

DR. MUÑOZ: Well, Tom, again, that has to be, I think, part of our calculus. I mean, it's not just anticipated, it is categorically and unequivocally impacting that city and that region. I mean, businesses are closing. And so does that impact the viability of the project? Because from what I understand, based on people
that I know living just an hour and a half from this
general area, there are still adjustments taking place.

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

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

MR. OXER: If we table this item until the next
meeting, what's the net impact on the project?

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

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

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

MR. CHISUM: Mr. Chairman, my concern continues
to be that the project has been significantly altered from
what we approved. And the City of Midland, like my fellow
trustee, I can't interpret what their purpose was to make
a commitment and then to withdraw it. In deference to the
staff, I think coming here next month we're going to rehash exactly what we've gone through.

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

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

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

MR. GOURIS: That's correct.

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

MR. GANN: Second.

MR. OXER: Second by Mr. Gann.

MR. GOURIS: And I apologize. As part of my notes I would have said and meant to say that the city's withdrawal of the funds doesn't mean that they don't support the transaction and aren't going to be participating in assisting the transaction. There is a road that they are going to be participating in funding along the one side of the project, and they have and the state rep have expressed continued support for the project.
as adjusted. I should have said that in my speaking notes, and I apologize that I didn't get that out.

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

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

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

MR. OXER: Okay.

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

MR. OXER: Yes, sir.

MR. GOODWIN: Does Merritt have the opportunity to appeal this under our rules, or if we vote on this
motion is this final?

MR. ECCLES: This is it under our rules.

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

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

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

Hi, Cynthia.

MS. BAST: Hi. Cynthia Bast from Locke Lord. We do represent the applicant in this matter, and I have to admit that I've been feeling a little helpless here because honestly I have not been involved in all of the extensive conversations between the developer and the City of Midland and the developer and TDHCA. So I don't have all of the details which is why I was in the
back of the room texting my client and found out that he
was sick, which is why we ask for the delay.

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

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

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

MS. BAST: I do not know that. I cannot say
that for sure.

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

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

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

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

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

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

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

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

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

MS. BAST: I would.

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

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

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

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

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

MR. OXER: You're going to be at a disadvantage
here, Cynthia, but stay right there for a second.

Tom.

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

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

MR. GOURIS: Potentially, as it was originally.

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

MR. GOURIS: Right.

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

MR. GOURIS: That's correct.

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

The other thing too -- and while you're
probably representing him, Cynthia, but he's not here and
we recognize that these sorts of things happen, but for an
amendment, an item before the Board that has such impact
to him and to his deal and to his business and constitutes such a radical change from the original deal, as Mr. Chisum pointed out, that's going to invite attention from our adherence to our rule, even if he wasn't going to be here, I would have had somebody else up to speed so Cynthia could make sure she could present his case. That's a passing comment that's not aimed at you, or at you, Cynthia, but for anybody else here, being sick when it's your turn, you know, the dog can't eat your homework. Okay?

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

MR. GOURIS: Two brief comments.

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

MR. GOURIS: I would imagine, based on the conversations we've had with him, that he would suggest -- because it's been impressed upon me -- that this deal is not likely to move forward without this amendment. But from our perspective, that would be his decision and his choice and he could come up with another amendment. But I wanted to share that it has been our impression that this was necessary in order for it to move forward; otherwise, we wouldn't have brought it up as an amendment, we would have negotiated that.
MR. OXER: So in your perspective, it's necessary for the deal to move forward, if he doesn't get this amendment or something like it.

MR. GOURIS: Yes.

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

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

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

MR. GOURIS: Yes, that's true.

The other issue that I was going to bring up was that I chatted with our underwriter and he had confirmed the $225- was what the city's contribution was to the road, about half of the contribution to the road,
and that that was contemplated in the initial application, though I'm not sure if it was perfectly clear how much the city was going to contribute or if that was finalized at that point, but that the road had always been part of the transaction.

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

MR. GOURIS: That's what I understand.

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

(General talking and laughter.)

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

There was indication up front early in the deal that the city was very much behind this deal and they were going to support it with the million six and they were going to support it with some other infrastructure types of improvements that were referenced in the initial -- I'm not sure if it was an official city resolution but some documentation. What's happened since is the million six is no longer there, there is a new resolution that formally commits to this amount of money for the road and
also indicates that they still support the project. That resolution is very clear on that part.

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

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

MR. OXER: Okay.

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

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

MR. GOURIS: Right.

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

Thanks, Cynthia. Thank you, Tom.

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

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. It is unanimous.
Okay, Jennifer. Wipe the blood off up there.

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

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

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

This situation prompted staff to develop an action plan to ensure the completion of the home in Texas City currently under construction so that the household would no longer be displaced. And since the last Board meeting we've also inspected the other three homes to ensure there were no other deficiencies in those as well,
but unfortunately each home does have items that need to be corrected, ranging from minor to severe.

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

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

Today we are requesting Board authorization to proceed with our action plan, which includes working with IBTS to complete construction of the home in Texas City, as well as to fix deficiencies on the other three houses,
two of which may be fixed using HOME funds and the third
another funding source. At this point, our greatest
interest is to make sure that the homes assisted under
EBENZ's RSP agreements are up to par, particularly for the
displaced household, and we will continue to report to the
Board on the resolution of this matter.

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

MR. CHISUM: Mr. Chairman.

MR. OXER: Mr. Chisum.

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

MR. OXER: What's the delay?

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

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

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

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

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

MS. MOLINARI: Yes, sir. That's the action plan that we've kind of laid out for you here for the particular homes under construction. We did move forward with notifying the public that we were looking for a partner to help us with this. We have an organization, IBTS, that has a relationship with us in another program that we fund, that stepped up and said that they would be
willing to take this on. They did apply to us, they did
go through our normal procedures. Nothing about this
agreement will allow them to waive any of our requirements
or any of our rules, provisions or anything like that.
This is just them simply stepping up and saying, you know,
we have the ability and the capacity to take this on. And
staff has looked at them and has found that they do, in
fact, have the ability to do this for us.

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

MS. MOLINARI: We are.

MR. CHISUM: I didn't get that.

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

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

MR. OXER: You can handle it.

MS. MOLINARI: Yes.

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

MS. MOLINARI: That is correct. His contract with us expired at the end of October of 2015, and just to refresh your memory a little bit, he had received all the extensions that were authorized to provide him. When he came up to the October 2015 deadline, we notified him of his right to appeal to you to get his contracts extended. He did not request an appeal timely that would have allowed us to present that to you because also during that time we were starting to identify the other issues with the contract.

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

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

MR. OXER: But he's got a few things he's got to work through in terms of getting paid back, but essentially, what we're doing is replacing him to get this finished.
MS. MOLINARI: Yes. We're doing kind of a dual track, we're working with him on that side. From my part of it, our concern is making sure that the houses that he did work on under the HOME Program can meet --

MR. OXER: Were complete and satisfactory.

MS. MOLINARI: Yes.

MR. OXER: Okay. Any questions?

(No response.)

MR. OXER: And so the staff recommendation is?

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

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

DR. MUÑOZ: So moved.

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

MR. GOODWIN: Second by Mr. Goodwin.

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

(A chorus of ayes.)
MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

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

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

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

(Whereupon, at 12:10 p.m., the meeting was
recessed, to reconvene this same day, Thursday, March 31, 2016, at 1:30 p.m.)

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

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

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

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

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

In July of 2015 you guys of the Board had approved the awards for the 2016 CSBG funds to the existing network of eligible entities. At that time there were eight entities that we were noting to you that were not being considered for an award yet or we had awarded with conditions, and over time six of those eight had
their issues resolved in one way or another, however, two
of those, CWCCP and UCC, still had issues or concerns, and
staff had been continuing to work with both of those
subrecipients.

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

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

MR. GOODWIN: So moved.

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

DR. MUÑOZ: Second.

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

(A chorus of ayes.)

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

Okay. Here's Marni.

MS. HOLLOWAY: Here I am.

MR. OXER: Number 8.

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

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

On January 25, 2016, Representative John Smithee submitted the letter attached to this item in your Board book a Exhibit A. There are multiple exhibits. The letter did not reference any pre-application specifically, and so staff considered it a general comment. The QAP requirement for representatives' letters says in part that: This documentation will be accepted with the application or through delivery to the Department from the applicant or the state representative and must be
submitted no later than the final input from elected
official's delivery date, as identified in Section 11.2 of
this chapter. Once a letter is submitted to the
Department, it may not be changed or withdrawn.

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

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

Upon being made aware of the specific
requirements of the Department's rule, Representative
Smithee prepared a third letter which conforms to the
rules requirements. On March 1, 2016, which was within
the time frame for timely submission of the letter, the
email attached in your Board book as Exhibit D was
provided to the Department. The attachment to that email
was the same letter as Exhibit B which was the February 15
letter.
The representative's office quickly identified that this transmission had been made in error, and on March 3 of 2016, the email attached as Exhibit E was provided. Attached to that email was the letter that is now Exhibit F which clearly states the representative's intent that his letter is a letter of support and not to be taken as neutral.

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

Staff believes that the core issue before the Board is whether a state representative should be afforded an opportunity to clarify a letter of support by the deadline when the letter is believed by the representative to follow the statute but does not adhere to the technical requirements of the Department's rule. If the answer by this Board is that a state representative should be allowed to clarify such a letter of support by the deadline, then the next issue is whether the representative's clerical error of attaching the previous
letter at the deadline should be permitted to be corrected, and whether the letter dated March 1, 2016 should be substituted for the letter submitted on February 15, 2016.

MR. IRVINE: Might I add a comment?

MR. OXER: Sure.

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

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: I have a question for the executive director and Beau. So when you read the letters dated in February, particularly the letter on the 15th, just above the final development Valencia: My office has neither the resources, this letter should not be taken as an opinion as to either matter, provide this statement of the level of community support as reflected in the following information, et cetera. Okay, so that's how it ends. But when you go to the March 1 letter, which to me falls into
the category of neutral. Under the final development Valencia in the new letter submitted, I believe, if I'm understanding correctly: This letter is intended to express clear and unequivocal community support for these projects. Which to me seems like a much more sort of definitively other than neutral letter. Is that then the same letter?

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

MR. OXER: Any comments from the Board?

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

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

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

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

MR. OXER: Any questions?

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

(General laughter.)

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

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

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

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

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

MR. OXER: February 15.

DR. MUÑOZ: While I'm not qualified to judge the most qualified applicants and have very little background. I'm kind of basing my interpretation on that. Clearly the representative is indicating there's we, but I don't know firsthand as to the viability or quality of these developments. And then I read in the next letter that he's been made aware of these developments, we don't have the resources to evaluate them, they seem honest, but we can't conduct any kind of investigation, and so it should not be taken as an opinion of dissent or affirmation, but these conversations were held on these dates.

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

MS. HOLLOWAY: Well, so that was the question. We weren't clear, frankly, with the February 15 letter what the intent there was. Representative Smithee chose to compose his letter based on the statute, so we were having difficulty fitting it into the rule either way. The later letter we think clarified his position, and that was the consensus of where we wound up after numerous conversations regarding these letters.
MR. OXER: The application of the concept of administrative deficiency, that administrative deficiency -- and I'll invite your comments, Counselor and Mr. E-D -- that invites rectifying administrative deficiencies by the applicant. If there had been no letter and it was simply missing, you could say that that letter got in perhaps as something they left out. But having had the letter put into it, does changing that letter constitute an administrative deficiency?

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

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

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

MR. OXER: Okay.
DR. MUÑOZ: The previous letter dated the 15th?

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

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

MR. OXER: Staff recommendation on this item is?

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

MR. OXER: And that's on the eight points in the event of a neutral letter.
MS. HOLLOWAY: So it would be zero points for a neutral letter, eight points for a positive letter.

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

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

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

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

MR. OXER: Tim.

MR. IRVINE: I would say that staff obviously, when a representative speaks to us in writing and takes a specific position, we are appropriately deferential, and when Chairman Smithee provided his initial letter, we believed on its face that it was problematic and would be treated as a neutral letter. We received followup communication from the office indicating that it had been their intent, based on their reading of the statutory requirement, to be providing a letter that would be scored positively, and there were obviously logistical issues, such that we did not finally have in our possession until after the deadline anything from the office clearly indicating a letter of unambiguous support.
I think that there's certainly a timing issue, but then there's also, frankly, the issue does staff have the latitude to allow for a clarification, and if so, is it consistent with the rule.

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

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

MR. ECCLES: Of course not.

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

(General laughter.)

MR. ECCLES: No comment.

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

MS. HOLLOWAY: The initial judgment. Yes.

MR. ECCLES: That's it.

MR. OXER: Okay.

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

MS. HOLLOWAY: This is a report and possible
action. Staff's recommendation is that you accept the
report. You have the option, because it's titled report
and possible action, to take this as an action item and
take the action that you feel is appropriate.

  MR. OXER: When was the scoring log posted?
  MS. HOLLOWAY: The last one went up on the
  16th.

  MR. OXER: A couple of weeks ago.
  MS. HOLLOWAY: Yes.

  MR. OXER: Had any blowback?
  MS. HOLLOWAY: I'm sorry?

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

  MR. IRVINE: It obviously impacts other
  applicants.

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

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

  MS. HOLLOWAY: Yes, three of them.

  DR. MUÑOZ: Right. So not necessarily one, but
the need.

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

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

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

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

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

MR. ECCLES: Well, the rule does contain an example of wording that would garner a neutral, and that is specifically saying either that you don't endorse the specific development but you say I'm in favor of fair
housing. But I believe the example in the rule is the local support the development and I support the locals. The sort of transitive support via somebody else's support indicates that the rule is looking for the state representative's support as if it were a vote. It is the representative's endorsement of this development.

DR. MUÑOZ: Okay, Beau, let me ask a question. However, in this letter that's not what I believe is being sort of stated. The letter essentially claim that our office -- the representative's office is aware of several expressions of local support, either through city council action, an article in the Globe supporting these, statements by the City of Amarillo leadership.

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

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

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

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

MS. HOLLOWAY: The March 1 letter lists the
community support citations.

DR. MUÑOZ: Right.

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

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

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

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

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

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

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

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

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

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

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

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

MR. ECCLES: Figuratively speaking, of course.

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

DR. MUÑOZ: Run through those two options
again. If one of us makes a motion to accept the report
and no action, then staff would do what?

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

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

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

        MR. IRVINE: I don't think you need to accept
or reject the report, I think you simply need to decide if
you want to take action to resolve this matter
definitively right now, you have the posted legal
opportunity. If you want to say we determined as a Board
that we want this to be scoring outcome, then you can
articulate it and we will implement it. There are
administrative processes to protect all the parties'
rights going forward if that's what you do. If you don't
take such action, I don't want to sugarcoat it, I think
it's inevitable that this conflict will come back to this
Board. So it's a matter of do you have enough information
to say where you fall on it.

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

MS. HOLLOWAY: It did.

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

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

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

MS. HOLLOWAY: Yes.

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

I would, frankly -- I want to close the door. I
recognize that there have been mistakes that were made,
that you guys missed it the first time through, it's been
brought to your attention and we're looking at it. Can we
get something in the record so this doesn't happen again?

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

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

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

MS. HOLLOWAY: That's exactly the case.

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

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

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

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

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

MR. OXER: Okay.
MR. GOODWIN: And you've currently scored it as zero. Right?

MS. HOLLOWAY: We've currently scored it as eight. We've scored this as a support letter. The log as it sits right now has language on it that says this hasn't been verified because we're still so early in the process. But that said, if the decision is not to accept this as a support letter, then we will issue a scoring notice to the applicant and go through that process.

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

MS. HOLLOWAY: Yes.

MR. GOODWIN: Do we do that?

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

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

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

MS. HOLLOWAY: No pressure.

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

MR. IRVINE: I think you just moved.

MR. OXER: The structure would be --

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

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

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

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

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

MR. GOODWIN: That was exactly what I intended.
to say.

(General laughter.)

MR. GANN: And I will second that.

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

MR. GOODWIN: As neutral.

MR. ECCLES: As neutral.

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

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

MR. OXER: Okay. As described?

MR. GOODWIN: I accept that.

MR. GANN: My second was that also.

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

Is that sufficiently stated, Beau?

MR. ECCLES: Yes.

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

MS. ANDERSON: Yes, it is.
Thank you. My name is Sarah Anderson and I'm not here necessarily to represent the developer but I did want to ask legal counsel about a general point of order about some of this process real quick.

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

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

MR. ECCLES: Who are representing?

MS. ANDERSON: I'm representing the developer, the person who received the five letters we've been talking about.
MR. ECCLES: The developer of the Residence at Coulter.

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

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

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

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

MS. ANDERSON: Well, or appeal the determination on another application. In other words, I can't come up to you and appeal what staff has done on somebody else's application. I have to go through an
appeal process that goes through staff and then ends up on your agenda.

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

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

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

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

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

MS. ANDERSON: Correct.

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

MS. ANDERSON: I have an administrative issue that is still going through the process which does not allow for somebody else to step in and muddy the waters
yet. That's at least what the rule implies.

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

    MS. ANDERSON: Okay.

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

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

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

    So the developer will actually be speaking on this. I will say that it's messy and it's messy because we have a state rep who is an attorney, who read the statute, who is angry at having to opine to begin with.
This is a city that has not had a letter written or even the city support for five to ten years. There were issues with a developer there. Anybody who has a longstanding history might know that the City of Amarillo has not supported affordable housing for a very long time.

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

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

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

MR. OXER: And I understand that. But at this point it's not a matter of what he thinks, it has to be a matter of that we think because we're the ones scoring it.
MR. ECCLES: And more to the point, it's what the letter says. I appreciate and I have no doubt of the veracity of your statements, but you can hardly expect the Board to take your expressions of conversations with the representative to trump what they have to do under the statute, and that is statements here in the letter as positive.

MS. ANDERSON: Correct.

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

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

MR. OXER: In his estimation.

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

MR. OXER: Well, I can tell what it would it be. Not only the intent, write it in the letter.
MS. ANDERSON: Right. And we asked him to clarify because you cannot rewrite a letter, and his mind, what he told us was it was a support letter. And I believe he spoke with staff and called and said it was a support letter and couldn't understand why nobody would understand why it wasn't a support letter.

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

MS. ANDERSON: Well, sure, absolutely.

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

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

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

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

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

MS. ANDERSON: I want to run away too.

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

(General laughter.)

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

MR. OXER: Okay.

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

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

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

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

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

DR. MUÑOZ: And is that what he said?

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

MR. OXER: As much as he could?

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

MR. OXER: He couldn't come out and say I
support the project, rather than saying I see no option to oppose it?

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

MR. OXER: Next. Three minutes.

MR. STELL: Mr. Chairman, members of the Board.

My name is Paul Stell. Good afternoon. I'm with Stellar Development Company. Our headquarters is in Lubbock, Texas. We've been in the tax credit business since 2006, and my partner, Madhouse Development, and I have a competing application in this region.

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

Specifically, I have two concerns. The final letter, as it was submitted, was submitted late, and deadlines in the rules have always been considered sacrosanct, they've always been inviolable. And there have been numerous occasions when developers turned something in late, sometimes even of no fault of their
own, that might have been days, it might have been hours or even minutes, and their applications were denied. This was late.

Secondly, the final letter is a change from the previous letter. As Dr. Muñoz quoted, and I quote from his letter, he says, "My office has neither the resources nor ability to assess the applicants or to determine to what extent they are reputable or honest, neither are we in a position to evaluate the individual projects. Therefore, my office has conducted no investigation into any of the applicants or their projects, and this letter should not be taken as an opinion as to either matter."

The final letter, of course, takes that out.

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

The rule has very specific language prohibiting changes in it, and so much so that it even gives an admonition to the developer that he is not to turn in a letter in early for that every reason, you cannot change it. And so the burden is not on the state rep to get it
right, the burden is upon the developer to make sure it is right. Whether it's coming from a state rep, a city council, a market analysis firm, whatever we turn in, we have to ensure that it is turned in in the form that you need. The language in the rule has very sharp edges and it is not ambiguous or confusing in any manner.

And so I believe the letter violates the rules twice: it was late, first, and secondly, it was changed. And so I encourage you to stand by and continue to uphold the rules as you've proposed and as the motion that sits on the floor as it speaks.

MR. OXER: Great. Thanks, Paul.

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

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

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

Our client presented this question to me and when I looked at the materials, I honestly felt fairly certain that I knew what the staff would recommend, and to be honest, I was surprised when the staff assessment came out in the Board book because I did think that the
position of accepting that March letter and declaring it support was not consistent with the rules that you've exactly been talking about, the fact that deadlines must be met, the fact that the plain language of the rules must control, and so I appreciate and do support the motion that is on the floor.

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

And in this particular circumstance the support letter was received by the deadline, the withdrawal letter was received before the deadline, and then the senator said, Oops, I didn't mean it, I want to withdraw my withdrawal so that we can go back to support. He even came and personally appeared before this Board and expressed his regret and asked you all to please take his support for that application. And the Board said, No. They said, We have a rule that says that a withdrawal letter once submitted cannot be changed, and we must follow our rule. Over deference to the senator and the
applicant's appeal, my client's appeal was denied at that point.

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

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

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

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

    MS. BAST: That's exactly right.

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

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

    You know, one of the comments you made, Mr. Chairman, was about trying to have this very carefully worded so that we, as developers, have clear direction on what the state rep. This is not the state rep's problem. The state rep is our responsibility, not this Board. The
letter that was wrong was the developer's mistake, not the
state rep's mistake. In the QAP it reads: To qualify
under this paragraph for the four points letters must be
on the state representative's letterhead, be signed by the
state representative, identify the specific development,
and clearly state support for or opposition to a specific
development. That's pretty clear. Anyone can read that,
the developer should have read that, they should have
known what they needed from that state rep. Again, this
is not the state rep's problem, this is the developer's
problem.

Thank you again for your thoughtful
consideration of this issue.

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

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

MR. FLORES: Point well taken.

MR. OXER: And we obviously wholeheartedly with
what Beau has offered up on that, and we know you can't
control any of those, but in the end, any administrative deficiency is with the developer and the applicant, now with the legislator.

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

MR. OXER: All right.

Hi. Welcome aboard.

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

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

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

MS. WATSON: So the issue was Representative Smithee believed that his February 15 letter was a letter of support because it did satisfy that requirement. So I believe he intended to have the February 15 support is a letter of support. He had never -- there was some discussion of a 2011 letter where the rep changed and
flip-flopped. There is no issue of the representative flip-flopping; it's an issue of how his support was communicated and his interpretation of statute and him feeling that he met the statute.

And again going back to the letter on the 15th was his intent for the letter of support. He never changed on that. It was staff that requested clarification from him. Had he felt it was a neutral letter, he would have not followed up with clarification.

He did not change his position, he was just, at the advice of staff, clarifying his initial letter.

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

MS. WATSON: Yes, sir.

MR. OXER: Okay. Any questions?

(No response.)

MR. OXER: Okay. Thank you.

Sarah, you've got one minute.

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

The discussion came out about whether or not clarification is allowed for the state rep letters. I will point out that every single other player in the tax
credit process is allowed clarification. The local neighborhood organizations, when they submit documentation on their support or opposition, are allowed to go through deficiency and clarification process. The applicant is allowed to go through a deficiency and clarification process. If I receive a letter from the city that is in my application that may be a little weird, I'm allowed a clarification process with the city. I don't see why the state rep should not be allowed to clarify.

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

MS. ANDERSON: I would only say --

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

MS. ANDERSON: So technically, if we were to follow that down the road, if staff scored this as a zero, it would be an administrative deficiency that says we're unsure of what this letter should be and we want clarification, at which point we could have gotten back to the state rep. Which I would say that should be the process that should be followed at this point is that if you've got the rep saying he believes it said one thing and you guys aren't quite sure, then we should be able to,
through the deficiency process, get that clarification, only talking about the letter on February 15.

Thank you.

MR. OXER: Thanks.

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

MS. WATSON: I'm signing in.

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

Any questions from the Board?

(No response.)

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

MS. HOLLOWAY: Understood.

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

MR. GOODWIN: Yes.

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

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.
I suspect we're going to see some more activity on this one way or the other, and so if nothing else, we made clear what our intentions are and we'll deal with the aftermath which I'm sure we'll have to deal with.

All right. What else you got?

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

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

So HUD's definition, their regulatory definition says: A community housing development organization means a private nonprofit organization that is organized under state or local laws, has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual, and three, is neither controlled by nor under the direction of individuals or entities seeking to derive profit or gain from the organization. So that's HUD's definition of a CHDO, in
The Center for Housing Resources was actually the applicant on the CHDO application and they were determined to be an eligible CHDO and staff believes that that organization continues to meet those CHDO requirements. At the time of the application, the ownership developer structure for the project was not examined in light of the CHDO designation. The Center for Housing Resources was awarded $4 million of CHDO funds and a $50,000 CHDO operating grant for the development of Westridge Villa.

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

Staff has discussed this concern both with the applicant and with applicant's counsel and with our contact at HUD and has received a good deal of information from the applicant seeking to mitigate these concerns. For instance, Terri has recused herself from votes by the nonprofit on these issues, and we have those records. We
have discussed multiple options for resolution of our concerns regarding control. Staff has taken steps to assure that this unique circumstance will not happen again through changes to our review process, so if someone comes in with a CHDO app again, we're going to look at that CHDO within the larger construct of everyone who is coming into the deal.

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

If the applicant is not able to produce documentation from HUD, staff is recommending that the award be moved from the CHDO set-aside in the direct loan NOFA to the general set-aside. This change is possible because funds were previously shifted from general to CHDO as a result of applications received. The general set-aside in the 2015 direct loan NOFA had a cap of $3 million for new construction, so the full $4 million award would not be available under that set-aside.
The Real Estate Analysis review indicates that the project is feasible with a $3 million HOME loan which would cause an increase in the level of deferred developer fee in order to make that deal work. The applicant has objected to a reduction of the loan amount, stating that the underwriting for their FHA loan has been completed with TDHCA funds at $4 million, and the delay created by re-underwriting the FHA loan would cause them to lose their purchase contract for the land.

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

I'd be happy to answer any questions.

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

MS. HOLLOWAY: Basically.

MR. OXER: Any questions? Motion to consider?

MR. GOODWIN: So moved.

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

DR. MUÑOZ: Second.
MR. OXER: Second by Dr. Muñoz.

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

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

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

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

MR. LYTTLE: Chairman, may I tweet that?

MR. OXER: Please do.

(General laughter.)

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

MS. ANDERSON: Yes, sir.

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


MR. OXER: Good job. T.J., come on. All right. Now, see that's the way we like the responses. Anybody else on 8(b)?
MR. OXER: We have a motion by Mr. Goodwin, second by Dr. Muñoz, to approve staff recommendation on 8(b). Those in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: There are none.

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

MR. OXER: Okay. Good enough.

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

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

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

At the Board meeting of December 17, 2015, the Board approved rulemaking regarding utility allowances. At that time staff was proposing changes to align our rule
with HUD's requirements regarding the HOME Program. The public comment period for that action was January 1, 2016 to February 1, 2016. Staff gave a presentation about the rule and fielded questions from the Board at the meeting of January 28, 2016. Staff also held an additional roundtable to discuss the rule at the request of commenters.

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

The new Treasury regulation clearly prohibits the use of the public housing authority utility allowance schedule for areas where there is no applicable housing authority. Our current rule allows owners to request the use of a PHA method in this circumstance if it can be justified, but with this new regulation we must curtail that flexibility. In addition, the regulation made changes to the energy consumption model which has been a
particularly challenging method to implement. We're incorporating those changes into Section C, paragraph (3), subparagraph (d) and we are hopeful that these changes provide an opportunity to overcome those challenges.

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

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

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

MR. OXER: Any questions of Stephanie?

(No response.)

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

MR. IRVINE: Motion to approve.

MR. OXER: Motion to approve staff recommendation.

MR. GANN: I so move.

MR. GOODWIN: Second.

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

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

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

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

There was language in the draft that said that this could be all changed if HUD came out with new
regulations. We think that's going to change this, put the language back in the draft, and then we'll make comments during the comment period.

That's all. Thank you.

MR. OXER: Okay. Thanks, Dan.

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

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

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

MR. GOODWIN: So moved.

MR. GANN: Second.

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

(A chorus of ayes.)

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

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

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

We've got a taker.

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

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

MR. ALCOTT: You certainly have.

So at the last Board meeting, as we were here, there was a discussion about Senator Ruth Jones McClendon and that she had resigned her seat, and J.B. Goodwin was here earlier and I said I would come back next month and tell you what we did with this unusual situation whereby there was no state rep and how do I go about getting a letter of support.
MR. OXER: A letter of support being one of those casual things we don't spend much time on.

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

(General laughter.)

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

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

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

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

MR. OXER: Appreciate your time. Any comments? You understand we can't respond to it but we appreciate the information.
Is there anybody else? Is there any staff that wish to make a comment? Anybody from the Board here or at the dais?

(No response.)

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

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

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

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

I do hereby certify that the foregoing pages, numbers 1 through 138, 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.

04/06/2016
(Transcriber) (Date)

On the Record Reporting
3636 Executive Cntr Dr., G22
Austin, Texas 78731