TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

December 15, 2016
9:00 a.m.

BOARD MEMBERS:

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

STAFF:

TIMOTHY K. IRVINE, Executive Director
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AGENDA ITEM

CALL TO ORDER 8
ROLL CALL
CERTIFICATION OF QUORUM

Resolution Commemorating and Recognizing December 15, 2016, as Homeless Persons= Memorial Day in Texas

CONSENT AGENDA

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

LEGAL
a) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Gateway Apartments (HTC 94094 / CMTS 1246)

COMMUNITY AFFAIRS
b) Presentation, Discussion, and Possible Action regarding Program Year ("PY") 2017 allocations for Community Services Block Grant Awards
c) Presentation, Discussion, and Possible Action regarding approval to Authorize 2017 CEAP and WAP Contracts, and Approve as a new CSBG Eligible Entity to Brazos Valley Community Action Programs
d) Presentation, Discussion, and Possible Action on Revised 2017 Section 8 Payment Standards for the Housing Choice Voucher Program ("HCVP") for Certain Counties

HOUSING RESOURCE CENTER
e) Presentation, Discussion, and Possible Action on the draft 2017 State of Texas Low Texas Low Income Housing Plan and Annual Report, to be published in the Texas Register for public comment

SINGLE FAMILY OPERATIONS AND SERVICES
f) Presentation, Discussion, and Possible Action on a Memorandum of Understanding ("MOU") between the Texas Department of Housing and Community Affairs ("TDHCA") and the Texas Department of Agriculture
ON THE RECORD REPORTING
(512) 450-0342

("TDA") regarding the management of Community Development Block Grant ("CDBG") funds for the Colonia Self-Help Center ("CSHC") Program

g) Presentation, Discussion, and Possible Action on Colonia Self-Help Center ("Colonia SHC") Program Award to Cameron County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant ("CDBG") Funding

ASSET MANAGEMENT

h) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement

95120 Park Yellowstone Townhomes Houston
97139 Bent Oaks Apartments Hitchcock
99003 Fairmont Oaks Apartments La Porte
99029 Rancho del Cielo, Phase II Brownsville
99086 Park Vista Townhomes Watauga
00022 Almeda Park Apartments Houston
02011 Live Oak Village Aransas Pass
04101 Pleasant Hill Apartments Austin
04107 Whitefield Place Apartments San Antonio
04108 Tamarac Pines Apartments The Woodlands
05044 Copperwood Apartments The Woodlands
08200 Ingram Square Apartments San Antonio
060040 San Jose Apartments San Antonio

i) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Application

12152 Eastside Crossings El Paso
14036 La Esperanza De Alton Alton
15028 Lometa Pointe Lampasas

j) Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extensions

14054 Whispering Oaks West Orange
14070 Lakeline Station Austin
14088 Mariposa at Spring Hollow Saginaw

MULTIFAMILY FINANCE

ON THE RECORD REPORTING
(512) 450-0342
ON THE RECORD REPORTING

(512) 450-0342

k) Presentation, Discussion, and Possible Action on the Re-issuance of Determination Notice for Housing Tax Credits with another Issuer
   15409 Pleasant Hill Village Apartments
   Houston

l) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer
   16429 The Pointe at Crestmont Houston
   16442 Independence Heights Houston
   16433 Housing First Oak Springs Austin
   16444 Alton Park Fort Worth

m) Presentation, Discussion, and Possible Action on Inducement Resolution No. 17-009 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Washington Avenue Apartments

BOND FINANCE

n) Presentation, Discussion, and Possible Action regarding Resolution No. 17-010 authorizing the filing of an application for allocation with the Texas Bond Review with respect to qualified mortgage bonds; authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 86; approving the form and substance of the program manual and the or convenient to carry out Mortgage Credit Certificate Program 86; and containing other provisions relating to the subject

RULES

o) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report and directing their publication for public comment in the Texas Register

p) Presentation, Discussion, and Possible Action on: first, an order adopting the repeal of 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single

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Family Construction Activities; and, second, an order adopting new 10 TAC Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities and directing that these be published in the Texas Register.

q) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the Texas Register.

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

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities, October-November 2016

b) Report on Department=s Fair Housing Activities

c) Report on the Draft Computation of Housing Finance Division Total and Unencumbered Fund Balances and Transfers to the Housing Trust Fund

d) Report Regarding Status of Placement in
Service for Competitive Housing Tax Credit ("HTC") Application #14130, Tays

e) Report on status of Application #16049, Bishop Courts

ACTION ITEMS

ITEM 3: REPORTS
a) Report and discussion regarding recent developments in the Tax Credit Investment Market

b) Report regarding submission to the Texas Legislature of the legislatively required reports on Homelessness among Veterans in Texas and Youth Homelessness in Texas

ITEM 4: BOND FINANCE
a) Presentation, Discussion, and Possible Action on Resolution No. 17-011 approving increase in authorization for Taxable Mortgage Purchase Program; authorizing the execution of documents and instruments relating to the foregoing; and containing other provisions relating to the subject

b) Presentation, Discussion, and Possible Action on Resolution No. 17-012 approving increases in the maximum amount of outstanding advances under Advances and Security Agreement with Federal Home Loan Bank of Dallas and maximum amount on deposit in escrow to secure such advances; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

ITEM 5: HOME AND HOMELESS PROGRAMS
a) Presentation, Discussion, and Possible Action on Conditional Emergency Solutions Grants ("ESG") Awards for Continuum of Care ("CoC") Lead Agencies to Perform an ESG Local Competition Program

b) Presentation, Discussion, and Possible
Action Regarding Authorization to Release a Notice of Funding Availability ("NOFA") for Fiscal Year ("FY") 2017 and 2018 Emergency Solutions Grants ("ESG") Program

ITEM 6: RULES

a) Presentation, Discussion and Possible Action on order adopting the repeal of 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and an order adopting new 10 TAC Chapter 10 Subchapter E concerning Post Award and Asset Management Requirements and directing its publication in the Texas Register

b) Presentation, Discussion and Possible Action on order adopting the new 10 TAC Chapter 13 concerning Multifamily Direct Loan Program and directing its publication in the Texas Register

Item 7: MULTIFAMILY FINANCE

a) Presentation, Discussion, and Possible Action on appeal of denial of carryover for Housing Tax Credit ("HTC") application for Abbington Place (HTC #16018)

b) Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit ("HTC") Application for Abbington Place (HTC #16018)

c) Presentation, Discussion and Possible Action on the 2017-1 Multifamily Direct Loan Program Notice of Funding Availability and directing its publication in the Texas Register

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

EXECUTIVE SESSION none

OPEN SESSION 151

ADJOURN
MR. OXER: Good morning, everyone. I'd like to welcome you to the December 15 meeting of the Texas Department of Housing and Community Affairs Governing Board.

We begin with roll call. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Chisum is not with us today. Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Goodwin is not with us. And I might note today that Mr. Gann is taking his birthday off since today is his birthday.

MR. GANN: Not mine.

MR. OXER: I'm sorry. Mr. Goodwin's. He's over there; no wonder I got them confused.

MR. GANN: I will leave if you'd like.

MR. OXER: I think we'd have a quorum issue if you left.

MR. GANN: All right. I'll stay.

(General laughter.)

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I'm here, so that gives us four. We have a quorum, we're in business.
Tim, lead us in the pledges.

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

MR. OXER: Michael, have we got any guests we need to recognize? I didn't see anybody.

MR. LYTTLE: Actually, one person I wanted to introduce, if I may. TDHCA has hired a new senior communications advisor who will be our main media person and working in my area and I want to introduce her today. Kristina Tirloni is here; she started this week.

MR. OXER: Your official rank will be Lieutenant Tweety.

Thank you, Captain Tweety.

If nothing else, let's get down to work here.

I think we have a resolution recognizing today. Do you want to read that, Michael?

MR. LYTTLE: Yes, sir.

TDHCA Resolution:

"WHEREAS, 23,678 persons experiencing homelessness were counted in Texas during the last two weeks of January 2016 as reported in the Point-in-Time count;

"WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") works to improve the living conditions of persons who experience or are at risk
of homelessness;

"WHEREAS, the Department’s homeless programs assisted 33,297 persons throughout the year to move toward housing stability after experiencing or being at risk of homelessness in State Fiscal Year 2016;

"WHEREAS, the Department commends all those who serve persons experiencing or at risk of homelessness to gain stable housing and move toward self-sufficiency;

"WHEREAS, the Department encourages Texas communities to create and strengthen local partnerships that can prevent and minimize homelessness;

"WHEREAS, December 21, 2016, is National Homeless Persons’ Memorial Day, which annually falls on the longest night of the year;

"WHEREAS, the Department expresses its commitment to persevere in efforts to address the issues of homelessness;

"Now, therefore, it is hereby RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby commemorate and recognize December 21, 2016, as Homeless Persons’ Memorial Day in Texas and encourages all Texas individuals and organizations, public and private, to join in this observance of National Homeless Persons’ Memorial Day.
"Signed this Fifteenth Day of December 2016."

MR. OXER: Good. We have to have a motion to formally resolve.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to adopt the resolution as Michael has just read into the record.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann.

Is there any question, any comment by the Board?

(No response.)

MR. OXER: Okay. Motion by Ms. Bingham, second by Mr. Gann. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

With respect to the consent agenda, any Board member care to pull any item? Fairly extensive consent agenda here. Raquel, it looks like you were pretty busy this month.

DR. MUÑOZ: Move the consent agenda.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Dr. Muñoz, second by Ms. Bingham to approve the consent agenda. There's no request
for public comment.

Motion by Dr. Muñoz, second by Ms. Bingham to approve the consent agenda. Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?

(No response.)

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

Okay. Tim, I think you're up talking about what's going on in the equity markets.

MR. IRVINE: First of all, as everyone knows, developing affordable multifamily housing is a very complex process, it has a lot of aspects in the financial structures, but the linchpin in so many of these deals is the tax credit piece, and as with all financial markets, there are things that occur out there that create uncertainty or instability, markets are inherently variable, and right now we are experiencing some of that variability.

I think that the value of an investment in a limited partnership doing multifamily development is harder to value when there's uncertainty as to what the marginal tax rate will be or as to what the treatment of operating losses of depreciation will be, and some syndicators are experiencing this uncertainty and taking it to heart and revising the terms on which they will
 syndicate or even pulling back from current activity. Despite things that we've heard, this is not uniform across the board. We certainly know of syndicators that are moving forward and honoring their commitments.

Individual tax credit developments that have received tax credit awards and have not yet closed, they're operating under some of this uncertainty. They are looking for tools that can help them ensure that they get their deals across the line and get them done. Staff has spent a lot of time talking with various members of the development and investor communities to understand these issues. We've looked at what our arsenal of possible tools to address or accommodate these situations might be, and I would break them into basically four categories.

One, people, obviously, the first thing they ask for is can we have more tax credits to make up for the loss in value in the tax credits that have been awarded. And my response to that would be, first of all, if you were honest about your numbers, you probably don't have eligible basis to support those additional tax credits, but even if you did, we already gave them away. So even if there were available tax credits that could be used to address this situation, the complexities of Chapter 2306 are such that we just would have a really hard time doing
that. The statute requires that tax credits be awarded to
the fullest extent possible by the end of July, and any
remaining pieces or returns are handled in accordance with
our established wait list, we've got regional allocations,
we've got deal caps, we've got aggregate caps, we've got
set-asides to meet and so forth. And so the answer, in
short, is I don't see how we could really accommodate that
under our current structure.

The second possibility is additional cash
infusions. We have programs, the HOME program, the TCAP
loan repayments, that do provide a fairly significant
source of lendable or grantable funds that could be used
to enhance the financial structures of these deals. We
overwhelmingly, as a staff, support the use of repayable
structures. Repayable structures aren't just that we like
to get repaid, it's that we use those repayments, and one
of the key sources that we've dedicated the TCAP loan
repayments to is the supportive housing initiatives of
Texas. So the concept of re-investable funds is really
key to the way that we administer our lendable funds
programs.

Another possibility is that people could pursue
the material amendments process to find ways to make
adjustments to their deals to live within the available
cash that would be raised through syndication at reduced
rates. The problem there is, again, keeping it in sync with your ability to claim eligible basis to support those credits, and also, frankly, as your structures change, you don't just have to keep your tax credit piece in place, you've got to keep it harmonized with your lending structures and your other activities, and frankly, your contractual undertakings.

The fourth process that we can use as a tool, and frankly, I think it's the one that from a practical point of view is the most responsive, is if you truly encounter a situation that's beyond your control that you couldn't anticipate that rises to the level of a force majeure event, there's the possibility of a return and a reissuance, giving you additional time for your deal to stabilize. But don't forget, as I said at the outset, this is not something that's occurring in all situations and we do have a wait list behind deals that if somebody can't move forward, perhaps someone on the wait list is in a position where they can move forward.

You know, I think that force majeure is one of those sort of Pandora's boxes, once you open it, you do not know for sure what will come flying out, but it is a potential way that some of these things might have longer to play out.

The tax credit investor world is a very large
industry. Just my 40-plus years in financial markets, I can't see major players simply taking themselves out of a market for an extended period -- that's how you kill your business. But I can see them sitting on the sidelines for a reasonable time to allow things to stabilize, and more importantly, to have enough ability to make some reasonable assumptions and come up with a revised pricing model, and then we would obviously have to react to address how that revising pricing model affected these deals.

We've got a lot of people that we've been talking to and I know that some of them are here to provide some testimony to you, so I think I've set the stage, and unless you have any questions for me.

MR. OXER: I have a question. What is the prospect that the human construct, such as the equity markets, would rise to the caliber of a force majeure?

MR. IRVINE: I think that a force majeure would contemplate that an actual change in law would be such an event. I think that when you get away from that hard bright line and you get into more subjective things, it gets really challenging. How do you say to somebody who's provided you a commitment to syndicate and then have that person back off on that commitment to syndicate, how do you really assimilate and digest all of that and figure
out what has actually occurred? You don't really have an
objective third party verifiable source to say exactly
what has occurred. It's a challenge to treat it as a
force majeure event.

DR. MUÑOZ: Tim, is that a withdrawal to
syndicate altogether, or is it to do so at a lower value?

MR. IRVINE: I believe it would be on a case-
by-case basis, depending on the syndicator. I mean, we
certainly do know of large syndicators that are honoring
their existing commitments, and we know of others that are
coming back with revised pricing.

MR. OXER: So the syndicators provide the
pricing on it and then it's their job basically to sell
the tax credits out in the market at a discount to their
syndication price which is how they make money.

MR. IRVINE: They've already closed on an
investor pool and they've obviously got a product they
need to be delivering.

MR. OXER: Any other questions?
Peggy, did we have anybody who wanted to speak?
Now, Granger, you're not a rookie at this, you
know if you want to talk, you're supposed to be sitting up
here in this front row.

MR. MacDONALD: You move too fast.

MR. OXER: Maybe you move too slow.
MR. MacDONALD: I've been accused of that in the past.

(General laughter.)

MR. OXER: All right. For the record, for some housekeeping, hold your fire there, on an item, when we want to speak on this, when we're working on this, those who wish to speak have the front up here to our stage left. We'll take it from the aisle out that way.

Mr. MacDonald, welcome back. Nice to see you again. Happy holidays to you.

MR. MacDONALD: Thank you, sir. Same to you, same to all of you.

I think the executive director really summed up the state of the union of where we are in the tax credit business fairly accurately. I'd like to add to that and then go a little further, if I could.

First of all, I think if you're going to do anything for the people that are in trouble with the 2016 round, perchance what you ought to do is just say: Bring your credits in immediately, turn them in and we won't put a penalty on you in future years, basically man up and say you can't get the deal done. That would allow some of us who are on the wait list who are ready to go, to go.

I personally have a deal in Fredericksburg, Texas, Rolling Hills. I can pro forma it at 90-cent
credits which is below the current market rate, I can make the deal work at 5 percent interest. If you gave me the go-ahead on that today, I could make carryover by December 31, I could have the deal closed in 120 days and hand you the keys in a year.

And so you have to think of the unintended consequence. When you go and do extraordinary measures for someone else, you might be hurting someone else. And it's not fair to those of us who've been at this and have the wherewithal to close our deals, to stand behind folks that might be from out of state or not experienced enough to get the job done.

And frankly, those folks who expected dollar five credits to last forever, shame on them. Those folks who thought interest rates were going to stay low forever, shame on them. The National Association of Homebuilders has been saying construction costs are going up for the last 18 months, so that's not a valid excuse. These factors have been there. Those factors were there when they filed their applications, and they should have known that.

Now, I can understand using the HOME funds, the TCAP funds that have been returned. And you're welcome. I've returned a lot of the TCAP funds. I can see doing that, but bear in mind, some of these very novice
developers who are having trouble will then be forced to
use Davis Bacon if they use HOME funds, and most of them
don't know the problems that occur with Davis Bacon. They
don't know Davis-Bacon from Oscar Mayer Bacon.

(General laughter.)

MR. MacDONALD: It's really an intricate
process.

And frankly, there's nothing in Section 42 or
the QAP that says a developer has to make a profit. And
we take a big risk.

MR. OXER: From what I hear, there's several of
you here that haven't as a consequence of that.

MR. MacDONALD: I understand. But you're going
to have bad times, you're going to have bad times you need
to live through. This is part of the learning curve. And
if this washes out a few developers, it washes out a few
developers. I'm sorry to say that, but that's just the
reality of the market taking care of the market.

I like the track that Mr. Irvine is on track.

Speaking as the 2017 chairman of the National Association
of Homebuilders, I want to tell you the tax credit
business is in trouble.

MR. OXER: It's actually a question whether or
not it's going to be here in three years.

MR. MacDONALD: I think it's a large question.
In fact, we've had three reiterations of the rewrite of the Ryan tax bill which has been adopted by Mr. Trump as his own, had several meetings with Ways and Means Chairman Brady, one of which is going on as I speak right now, and the tax credit program, Section 42 is not -- is not in the current code. We think it will be there. I don't think it will be in any way, shape or form what we have today. I think if it comes back, it will be more like the exchange program.

I think that we need to take a really broad look at where we're going, and we should be really more concerned not about 2016 but about the entire procedure and the entire program.

Thank you.

MR. OXER: Appreciate your comments, Granger.

MS. FLORES: Good morning. My name is Nicole Flores, and I'm actually here wearing a couple of hats this morning. I'm here as an executive vice president with R4 Capital, a nationwide tax credit syndicator. I'm also here as the president-elect of the TAAHP organization and the chair of the Governmental Affairs Committee for TAAHP. And I did have an opportunity to speak with Tim and staff in the last couple of weeks about the state of the equity market, and the situation is such that I felt compelled to stand in front of the Board this morning and
also talk.

And I think, first of all, thank you, Granger. And I think Granger is correct that we have a bit of a long term crisis, but I'm here to talk to you about the unintended consequences of the potential for Tax Code reform.

So realistically, what has happened -- and in my 25 years in this industry in front of this Board, it's unprecedented, and I was here in 2008 in front of this Board testifying about the impending crisis in credit pricing and I'm here again today just to tell you there has been an absolute disruption in that market. And actually, it's not just tax credit pricing, it's what I'm calling the trifecta, and the trifecta is sometimes a good thing when you're at the horse track but the last couple of weeks it hasn't been a great thing for affordable housing.

When I checked the ten-year this morning, it's at 2.59 which is almost a hundred basis point increase from where we sat just 30 days ago or 40 days ago just prior to our election. And certainly we can say shame on you, developers, you didn't put enough interest rate shock or you over-assumed your tax credit pricing, but for the last year and a half we have had historic interest rate lows and we've had historic high tax credit pricing. So
we have seen production from the 4 percent program in Texas and other states at unprecedented levels, and that's because interest rates, the ten-year has been at 1.50, and that's because tax credit pricing in key markets was a dollar ten.

So the first two weeks after the election, myself and many of my colleagues and most of the developers in the room absorbed the shock of hundreds of thousands of dollars of interest rate reduction in their borrowing capacity, and that was on both 9 percent deals and 4 percent deals. But as many of you know, the dynamics of a 4 percent transaction is that it's very debt heavy, so if you have a 50 or 100 basis point swing in interest rates, you're having hundreds of thousands, in some cases a million dollar reduction in your borrowing capacity. And as you know, again, we've seen extraordinary production out of the bond program, so just that reduction in interest rates.

And then the tax credit crisis hit, and it hit so swiftly, as I would reiterate, to be unprecedented in my career. On the Monday after Thanksgiving, within 48 hours I had listened to 20 different developers tell me their deal had either been repriced, they had been rocked. And standing here as a syndicator, I will certainly take the brunt of ire for not honoring my commitments, but what
I want the Board and the development community to understand is that the investment community as a whole took a step back when they started hearing 15 percent corporate tax rates, because all of our models assume a 35 percent corporate tax rate. And then they started to hear maybe depreciation would be accelerated.

And so what we have right now is wild speculation. You are absolutely right, this is a case-by-case basis. There's wild speculation in the market as to what the long term corporate tax rate might be, and there's long term speculation about depreciation. I mean, some of us in the room remember the 1986 tax reforms and what a sweeping change they had to real estate, real estate investments, depreciation. That's the same sort of speculation we have now. And so I just wanted to be here to reiterate and to thank you for acknowledging that there is a disruption in the market.

And let me just finish the trifecta. So we had interest rates, we have had an adjustment in the tax credit market that will be long term, somewhere around a 20 percent correction in terms of where pricing is. And until we have a Tax Code, we're going to have a lot of uncertainty as to which investors are in the market, what kind of pricing we can assume going forward.

And then the third thing is the speculation of...
a large infrastructure bill, combined with finally stabilizing oil prices. So we're starting to see construction pricing that has inched up year over year, 15 to 20 percent in costs over the last three to four years, continue to increase. We saw some of those oil and delivery premiums because of oil prices reduced in the last year, now we're seeing those premiums again as oil prices start to tick up, and as steel and iron and timber and all the petroleum based products.

So you really have a development community -- I mean, we can shake our fingers at the development community and say shame on you, you should have known this. I didn't know this. I have a 25-year career based on affordable housing. You could have knocked me over with a feather two weeks ago when the industry started to collapse overnight in terms of our investor base. So I don't think that shame on you is the right approach. I think the right approach is what the Department is doing, is to look a sources to gap the deals that are going to be walked, because there are deals that will close, they were in a fund, they had a committed investor, that investor has already put their money into the fund.

But there are deals, many of them in the 2016 round, that do not currently have an equity investor, but that developer spent $500,000 on plans and specs, he was a
month or two months from closing. We should not turn the
baby out with the bath water. We need to make sure we
save the 2016 deals. We need to work collectively
together to find the new normal in our market and make
sure that Brent and Tom have the information that they
need to underwrite the deals going forward at a fair and
equitable level, but understanding there will be a new
normal in the interim and in the long term when we have a
new Tax Code.

So I know I went over this morning but I feel
very passionate as a long term advocate for affordable
housing. And I also don't think we should lose any
affordable developers, this business is tough enough. We
shouldn't leave them hanging on the vine because of an
unintended consequence of our change in government.

So thank you for your time this morning and
happy to answer questions. But on behalf of TAAHP and on
behalf of my organization, R4, thank you.

MR. OXER: Thank you, Nicole.

Any questions from the Board?

(No response.).

MR. OXER: Thanks.

I suppose that there would be a long list of
folks who could potentially be knocked over by a feather
as of the morning of November 9. There were a few
surprises that happened that morning. So dealing with that unpredictability is one of those things. The unpredictability, of course, is that the market just gags on, so we'll figure it out, we'll work it out.

Good morning.

MR. KIERCE: Good morning. My name is Dan Kierce. I'm with RBC Capital Markets. Like Nicole, I'm wearing two hats today. I represent one of the largest syndicators in the country and one of the largest syndicators in Texas. In addition, I'm a TAAHP board member, so part of what we wanted to do today was just kind of get information to you in terms of what's happening in the market. Fortunately, Tim has already kind of outlined a few things that are happening and things that they're thinking about in terms of trying to help these deals.

But we really have two problems. So the long term problem is tax reform is coming. I think we have good representation through our affordable housing coalition, through our members of Congress, the folks in the Senate, they know who we are, so if they do change the tax rates, whatever they drop them to, I think we'll get that fix to our program to keep it viable so that we still have the same amount of proceeds coming through. Whether they shorten the tax credit period or accelerate
depreciation, something to kind of keep those yields where we need them to be for the deals to pencil out. So long term I think we're going to be okay, we just don't know how long that's going to take.

But short term what's happening is all the 2016 deals are getting kind of caught in that web. And so, Tim, to your point, there are some deals that are getting done but it's really kind of falling into a couple of different buckets. There are those deals that were very close to closing and what we've seen most investors do is they've come in and said, Hey, we've got to redo everything, we've got to look at a 20 percent tax rate or 25 percent -- most are gravitating toward the 20 now. But if they had a couple of deals that were closing within a couple of weeks, they said, We're going to let that one go, we'll still close it; but everything else going forward, we're going to look at this 20 percent rate.

And what we've found is when you drop from that 35 percent tax rate, for every percent you drop, it's pretty much a penny, so dropping from a 35 percent tax bracket down to 20, you're really talking about a 15 percent pricing movement. And so as Nicole highlighted, adding in the cost increases that we've seen that come year over year and the interest rate spike, it's harder to absorb that hit of 15 cents. And also, too, as we've seen
over the years with the QAP, most of these deals are going into nicer neighborhoods and better school systems which comes with a higher cost, the land is more expensive, the quality of build that's required by the towns is more expensive, so we've seen that spike in costs and it just never seems to go down.

So in the short term what you're going to see is, I think, immediately there will be some deals that still close, but the vast majority of the investors that are in the market have decided to sit out of the market until such time as they can figure it out. Most of these folks are sitting on billions of dollars worth of tax credits which overnight might become worth a lot less, and that raises some concerns. So they've got to figure out what they're doing first and then on a go-forward basis as they're looking at new deals, they're doing it very cautiously.

So realistically, when I look at the investor environment that's out there, there's probably only 10 or 20 percent of those investors that are actually looking at new deals currently, and when they do look at those new deals that pricing is significantly different. And again, there's really no way to gap that difference, and so that's why we're going to look to TDHCA and kind of work on a deal-by-deal basis and see what can be done to help
these deals, because at the end of the day we all want the same thing, we all want to get affordable housing on the ground in these communities, we want to help the developers get that done and bring the investors into the State of Texas and get this affordable housing on the ground.

MR. OXER: Thanks, Dan.

Any questions?

MR. KIERCE: Thank you.

MR. OXER: And let me make a quick note. Dan, did you sign in?

MS. SISAK: Dan did, Nicole didn't. I'll just sign her in.

Janine Sisak. I'm here today on behalf of TAAHP.

You know, I've met with Tim and the staff a couple of times over the past couple of months about a variety of things. It's all becoming a blur we've been talking so much.

MR. OXER: Turbulence does that to you.

MS. SISAK: I know, it does.

But DMA is in receipt of a 2016 award on a deal outside of Waco, it's not a CRA market. Right after Thanksgiving we were pretty much left at the altar by our investor on a deal that we are very, very pregnant on, so
it was kind of like being ditched at a shotgun wedding, as we were talking about last night.

MR. OXER: That's why there's the shotgun.

MS. SISAK: Right, exactly. So we have plans fully complete, we're in for permitting, we bought the land, we can meet carryover, and our investor didn't offer to replace the deal, it was a flat out walk. So of course, some of my investor friends called right after that. We were all kind of talking about the state of the market and 98 cents was being thrown about, and I said, Oh, I can do it at 98 cents. We went in at 98 cents at application, I pro formed very conservatively, so I was like I think I can get that done. A week after that people were talking about 90 cents and not so much anymore.

Plus, the fact, I probably could make it work with 90 cents and perhaps more HOME funds, but I was in a roomful of investors last night and no one was offering me 90 cents. I mean, really, because this particular deal is not in a CRA market, I don't know if I could get 90 cents and I don't know if that offer would be firm for any significant amount of time. So you know, we can probably get the deal done.

But I want to talk just globally about some of the solutions that we've talked to Tim about and what some
of my concerns are. I mean, I do appreciate Tim's time and any sort of ideas that staff has and the Board has in terms of helping 2016 deals, but I just want to mention a couple of concerns that I've raised to Tim so none of this will be news to him.

But going to the material amendment concept, I think there's some merit there. It just kind of upsets me to think about reducing the size of these projects in order to get a better leverage on the credits. I mean, you know, you lose the economies of scale in construction, people that are waiting for this housing in some of these smaller communities lose the opportunity to live in affordable housing, operating expenses get more stretched because you're having to do the same for less rental income. So while it's something that I would consider for our deal, it just doesn't seem like in the best interests of the state, quite frankly.

You know, we've talked about this concept of bonus points in 2018. Again, on our deal we are lucky enough to have site control and we own the site now, but some people aren't in that position where they can buy the site without an investor on board, so I don't think that's an option for a lot of 2016 applicants.

The HOME loan, we talked about that, I'll testify more about that later. I have concerns about some
of the terms. I do think the NOFA that's out will help a
couple of deals but I just don't think it's far reaching
enough in terms of giving the agency flexibility on some
of the terms to help some of the applicants that are in
some of the smaller markets and really might not have a
shot at closing. So we've talked about these things
before, you know, the 3 percent interest rate, allowing
for those funds to be soft.

And really my big thing about the HOME loan is
that you have to reapply. I mean, I was kind of hoping
that if you a HOME award from the 2016 round or TCAP, that
you would get some sort of bump because we were just
underwritten a couple of months ago. Now, I understand
things have changed but the math is pretty easy on what's
changed. So that's some of my concerns about that.

And I really would like to consider allocating
leftover 2016 credits to 2016 applications that already
have awards. I mean, I know it's not a lot --

MR. OXER: Not a lot, there's like six.

MS. SISAK: Yeah. I mean, really anything
helps these deals, anything helps these deals. And I
really just encourage you all to just consider as many
tools in the toolkit and let's get there. I think there's
some opportunity, I think there's more opportunity. We're
just scratching the surface on what you can do to help.
And you know, we'll see what happens in the next month or two, we'll see. But I think force majeure is going to be a provision that will need to --

MR. OXER: It's a highly discussed concept, it's going to have its own set of problems, but it's still a tool in the toolbox.

MS. SISAK: Right. And I hope that the position isn't waiting for actual change of law because who knows how long that's going to take, and we just can't afford as a state to just sideline all these 2016 deals and wait and see.

So I thank you for your time.

MR. OXER: Any questions?

(No response.)

MR. OXER: Thanks, Janine.

Barry, you're up.

Dr. Muñoz, did you have a question?

DR. MUÑOZ: I might have a question for Tom or Brent. The point earlier made by Granger about sort of other projects that might be able to go without great assistance, are there many of those, are there a few of those? Is there just one?

MR. OXER: How deep is the standby list?

DR. MUÑOZ: That point of ready to go without any intervention.

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MR. STEWART: Brent Stewart, Real Estate Analysis.

Most of those deals that are kind of parked out there are deals that we haven't done the math on to understand them at all, so we don't know that answer.

MR. OXER: You did the ones down through the ones that qualified.

MR. STEWART: Right, exactly.

MR. OXER: So if we were go to into an aggressive approach to this, you'd have to go back and do some aggressive REA to evaluate these deals.

MR. STEWART: That's right. We're working on a number of amendments right now where we're having conversations with the lender and the syndicator to understand what's happened specifically with those deals and we're getting a mixed reaction of what's happened. We're having some where they're still committed to the deal but they can't commit to a price. We have others that are holding their price and their commitment. And then we have the ones where when we ask the question, you know, they're not there at all, and in some cases haven't been there in a while, and so the applicants are struggling to get somebody else to step in.

DR. MUÑOZ: You know, I recall like in '08-ish, right, when people were talking about 70 cents, 75, 75.
Remember that? I mean, there was a real like panic. Is that where we're at right now? I mean, not that number but in terms of that sense of dread.

MR. STEWART: Yes.

DR. MUÑOZ: Really?

MR. STEWART: I think that uncertainty is out there. I think it's being driven by something different than it was in 2008.

MR. COCHRAN: Hold your crown there.

Tim.

MR. IRVINE: I have a couple of comments. One, I believe somebody mentioned the possibility of bonus points in the 2018 round for 2016 deals that returned, and conceptually that's an attractive concept, but obviously it's subject to the rulemaking process, public input, the Board's input, your decision, and ultimately the governor's decision. So I don't want anybody leaving here thinking there's a commitment to give bonus points in the 2018 round because it's not there.

The issue of the wait list, the depth of the wait list is going to vary from subregion to subregion and under the different set-asides. Some are deeper than others. But it's also December 15 and we don't have a lot of time to sort this out and then it automatically goes into next year's round. So my thinking is that there's a
strong likelihood that these are deals that will ultimately get done in the next cycle.

MR. OXER: Anything else to add, guys?

(No response.)

MR. OXER: Barry.

MR. PALMER: Barry Palmer, Coats Rose.

So I have proposal that won't solve all the problems but that will solve some of them and won't cost you anything.

MR. OXER: Turn the clock off, we want to hear what he's going to say.

(General laughter.)

MR. PALMER: In a number of cases there are developers who could get their local housing authority or housing finance corporation to come into their deal and partner with them and bring an ad valorem tax exemption into the deal, and that would allow them to generate a million to two million of additional debt because of the reduction in expenses. So it wouldn't require any more credits or any soft money, just the Board or the staff to allow the developers, on a case-by-case basis, it would be subject to a previous participation review, but to allow the developer to bring in as a partner their local housing authority or housing finance corporation.

MR. OXER: Good idea. Any questions?
(No response.)

MR. OXER: Okay. Thanks.

Sarah.

MS. SARAH ANDERSON: Good morning. Sarah Anderson with the Texas Coalition of Affordable Developers.

We want to echo much of what we've heard today. Especially with TAAHP, we're in agreement with all of their comments. Tim has been very helpful in trying to work through some of these issues.

The two items that I'd like to address, one, I think I'd like to reiterate with Janine that I think it would be preferable to see amendments that came in that allowed a little bit more changes to your deal that didn't impact the number of units that we're providing, which would be maybe doing fewer buildings, things that can be value engineering to the deal and expediting that sort of thing so that we can lower our costs so that we can make the deal work. To me, that's much more preferable on every level than trying to cut the number of units.

And with all due respect to Granger, I've got deals above the line and below the line, and so I can answer and say that where you were on the list is not a function of what credit pricing you put in, that everybody came in with pretty much the same assumptions, maybe a
penny here or there, but I don't think looking down the
list you're going to find deals that made significantly
different assumptions in credit pricing. You're going to
see the same thing below the line as you are above the
line. And I can state that as a fact because I've got
both and there's nothing that I've got below the line that
has any different assumptions than those above.

MR. OXER: The depth of the waiting list has
less to do with the pricing on the deal than it has to do
with the competition in the zone.

MS. SARAH ANDERSON: It's all about scoring and
that's it.

Thank you.

MR. OXER: Thanks. Any questions?

(No response.)

MR. OXER: Terri, you're up.

MS. TERRI ANDERSON: Good morning. Terri

Just a quick comment that came from someone
watching from home, who wanted to follow up with Barry's
comments that not all housing authorities actually receive
a tax exemption. So to allow us to use every possible
tool but understand that every particular transaction
isn't going to be afforded the ability to receive a tax
exemption. For example, DHA does not receive a tax
exemption on housing tax credit developments.

MR. OXER: Don't forget to sign in.

MS. TERRI ANDERSON: Yes, sir.

MR. OXER: I think it's fair to say, just as a generic comment on this, that it's a state of significant transition, the whole market is in a turmoil at this point with respect to our participation and our sector of it. I don't think we're trying to find any mass application. It's obvious we're going to have to take this deal-by-deal and case-by-case to see what we can work out. As the markets would suggest to you, some are going to work and some aren't. So just prepared to recognize that while TDHCA and the staff are going to be working with you, you're going to have to work with the staff and be ready to do something to get to the middle ground there to make these work. We do have projects that are waiting on a wait list.

Janine, did you have anything else you wanted to say.

MS. SISAK: No, but I want to take my pen.

MR. OXER: Well, that's efficiency. I can see things are getting tight out there.

(General laughter.)

MR. OXER: With respect to the report, I guess we accept your report?
MR. IRVINE: Sure. I would just say that I would anticipate that the first few months of 2017 will be absolutely insane. The window will be starting to close for when these 2016 deals can commence construction, close and still meet placed in service, and their partners will be getting increasingly antsy as the clock ticks. So I would anticipate the first several months of 2017 we will be looking at a lot of different requests for amendments, inclusion of new partners to exercise the options Barry discussed, people looking to access different financing assistance, and so forth. And we're going to be doing that while we're administering the 2017 tax credit round and going through a legislative session, so it's going to be a crazy spring.

MR. OXER: What are you going to do in the afternoons, though?

MR. IRVINE: Going to the park with the dog.

MR. OXER: Okay. Well, with respect to that, is there anything else to add? I think we all recognize it's going to be a turbulent few months.

MR. IRVINE: I just want to actually make a shout-out, just a thank you to my teammates, to the internal teammates and the external teammates for everybody's willingness to just drop everything and come sit around the table and kick ideas around. That's how we
get stuff done.

MR. OXER: There's an emergency pending here, it's trouble, it's problematic, this is not business as usual. We've got to figure out how to do this, we've got to figure it out now because we've got a short clock running on getting all this worked out.

Michael, you have an item you want to bring up, 3(b)?

MR. LYTTLE: Yes, sir. This is report item 3(b) just on our agency's submission to the 85th Legislature on two reports that were mandated, one of them being Homelessness among Veterans in Texas, and the other was Youth Homelessness in Texas. Just a few comments.

Each of these reports were mandated last session as a result of legislation that was passed by State Senator Sylvia Garcia and former Representative Sylvester Turner, who is now the mayor of Houston. Each had a statutory deadline of December 1, which we submitted on time.

The thing, I guess, to point out is that really both of these studies couldn't have been done without the good help of the Texas Interagency Council for the Homeless, which is chaired by Mike Doyle. Mike and his council members were very actively engaged in the review and culmination of these reports and studies. So I just
want to offer a big thank you to Mike and to the TICH for the outstanding that they did.

The Homelessness among Veterans in Texas study was also coordinated -- I wanted to bring this up -- by our own Naomi Cantu, who is here today. Naomi, raise your hand. Naomi did a phenomenal job with this study. She worked long hours, a lot of weekends. In fact, if I'm not mistaken, she even convinced her husband to postpone their honeymoon so she could do work on this study, so that's dedication.

MR. OXER: That's a fact.

MR. LYTTLE: Yes. So she and the TICH coordinated work groups related to the study that involved a number of organizations to get input on homelessness issues regarding veterans. There were multiple public roundtables that were involved, and also, Naomi presented on this item to several conferences around the state to kind of gather input.

The study basically, I won't get into the details of it, but it did report that the good news is that there are several large cities in Texas that have significantly reduced veterans homelessness, Houston, San Antonio, and here in Austin. And while the study does document some good strategies that have been used to help alleviate the problem, there's clearly a lot of room to
There were five recommendations in the study and generally they dealt with increasing partnerships with the rental markets, identifying veterans and sharing information, increasing coordination among the groups, increasing housing and service resources, improving access to employment resources, and also improving access to mental and physical health resources for veterans. So now we'll see how the 85th Legislature responds to the study and the further work that they'll mandate as a result of that.

The other study which was the Youth Homelessness in Texas report, you received several reports during the year on that. If you recall, we had a video earlier this year that I know resonated with a lot of us that saw it. And as with the Veterans Homelessness study, TDHCA could not have submitted the report without the great work and contributions from several external parties. The two that I'm thinking of are the Texas Network of Youth Services, TNOYS, led by Christine Gendron, and also the University of Houston Graduate College of Social Work -- Dr. Sarah Narendorf, I believe, was the head there. Both did great work.

And really it's a pioneering piece of work because to our knowledge it's the first study of its kind.
in the State of Texas that was done about youth
homelessness. So both organizations provided a lot of
opportunity for the public to chime in and work with us on
the study and to gather input, as well as the TICH was
involved with that also.

And again, just from a staff perspective, there
were two people at TDHCA that really invested a lot of
time and energy to help get this thing across the finish
line: Brenda Hall and Elizabeth Yevich, who is our
director of the Housing Resource Center. Elizabeth is
here today. So again, great work by the both of them.

There's a ton of good information in the
report. One of the things, just very quickly, that blew
me away, and I don't think a lot of people really
understand the gravity of the situation, in the 2014-15
school year it was reported in the study that there were
more than 110,000 children in the State of Texas who are
homeless. That's basically anybody ages three and up
during the school year. The reasons why they were
homeless varied, as well as the length of time that
they've been homeless, but 110,000, and it's estimated
that that number is probably a conservative figure as
well.

Finally, just the reports. The recommendations
from this report were improving data sources to help us
count homeless youth, providing a full continuum of
housing related supports, increasing service delivery and
supports to youth identified through schools, trying to
prevent homelessness by addressing the needs of youth in
foster care, and then removing barriers in terms of
existing homelessness strategies.

So again, we've submitted both of those reports
on time, we're waiting to see what the legislature decides
to do now, and that kind of culminates my comments.

MR. OXER: Any thoughts from the Board?

DR. MUÑOZ: You know, Mike, it's timely that
you should bring up in particular the case of veterans.
Last night I had dinner with one of the Texas Workforce
commissioners, Julian Alvarez, and one of the three areas
that he's looking at, disabled veterans and recently
adjudicated adults in Texas, and I was stunned by the
number of veterans who he was aware are homeless, are
under-employed, unemployed, that are still suffering
debilitating psychological conditions, often, related to
their service. It was a very large number, and so I mean,
I'm glad that we're involved in some measure with
understanding that population.

I know that a good friend of mine, Commissioner
Raymond Paredes, a commissioner for higher education, who
is also a Vietnam era Veteran who was there, is also
concerned. As one of the largest sort of veterans states, with one of the largest military presences in the country and large number of veterans, we've got to pay closer attention to the care of veterans, post-uniformed service, and how to get them trained, either traditional post-secondary education or trades, so that they're contributing as they did in uniformed service to the state.

I served and so I appreciate that we're involved. I'd like a copy of the report, the one that's specifically related to veterans, because I'd like to get that to the commissioner and then have him share that with the other two commissioners as part of their preparation for the legislative session.

MR. LYTTLE: Absolutely.

MR. OXER: Do you post this report, Michael, both reports, on our website?

MR. LYTTLE: Yes. I believe they're both on the website right now.

But I'll make sure, Dr. Muñoz, you get a copy.

MR. OXER: Without getting too deep in the weeds on this, I'm looking for an answer, does it suggest that the number of homeless veterans we have and number of homeless children, is it going up or down? Do we have a trend line in any direction, or is it suggesting going
down? Even though the population is increasing, the population may actually increase, but as a percentage of the population is it going down? Do we know, do we have a sense of that?

MR. LYTTLE: I would probably ask Naomi if she could step up for a minute and speak to that. She's our subject matter expert on this.

MR. OXER: Cool.

MS. CANTU: Good morning. My name is Naomi Cantu with the Texas Department of Housing and Community Affairs. I'm the coordinator for Homelessness Programs and Policy.

For veterans, the good news is that the trend line has been going down since 2010. We have seen a 66 percent decrease in veteran homelessness for the point in time count. For the youth homelessness, it depends on which measurement we're counting, I'd have to look at that more closely in the study. I do know that for the schools, they're counted a bit differently.

DR. MUÑOZ: Mr. Chair, maybe we could ask Naomi to come back at a future meeting and just give us a synopsis, give us an executive summary of both reports so that we can understand it for ourselves a little bit, but also further appreciate the work that you've done. It's a very important subject for both populations. Those young
people are eventually going to become older people, and we obviously want them to have the stability of a home, the academic achievement that comes from the stability of a home, the employability, the social benefit, so I see it all related. And so maybe you'll consider an invitation to come back and give us a little bit more detail.

MR. OXER: We would welcome that. Thanks, Naomi.

Any more questions or comments on that one?

(No response.)

MR. OXER: Let's go to item 4. Monica. You've been busy.

MS. GALUSKI: Good morning. Monica Galuski, director of Bond Finance.

This is the presentation, discussion and possible action on Resolution 17-011, approving an increase in authorization for the Taxable Mortgage Purchase program, authorizing the execution of documents and instruments relating to the foregoing, and containing other provisions relating to the subject.

The Department's Taxable Mortgage Purchase program, which we call TMP-79, was implemented in October of 2012 with a maximum dollar amount of loans that could be purchased under the program of $600 million. That amount was increased to a billion dollars in December of
2014. The program is currently nearing the billion dollar
maximum with approximately $900 million in purchased loans
and over 300 million loans in process. Now that the
program has been up and running for over four years, and
given our current and projected loan volume, we're
recommending an annual maximum of a billion dollars for
the TMP-79 program.

MR. OXER: So what you're saying is we're going
from getting out of that category of being a sleepy little
backwater agency to being a serious economic contributor
to the state.

MS. GALUSKI: I think that's a fair statement.

And because this item and the next are both, at
least in part, related to the increased loan volume we've
seen, I thought I'd give you just a little bit of
perspective o that. It's a little embarrassing to be back
in front of you so quickly after we implemented the
changes requesting additional changes --

MR. OXER: Hey, that just means things went
well.

MS. GALUSKI: -- but again, it's also very
exciting to be standing in front of you doing that.

On October 1, that was the release date for our
restructured program and that was when we put Idaho HFA in
as our new master servicer, we were able to lower our
mortgage rate due to several changes including the bank loan we took through Woodforest for down payment assistance. So when we put the structure together, we expected and factored in increased origination. We thought the program would be well received; I assumed a 50 percent increase in loan volume. I was way, way off.

So just from a perspective standpoint, fiscal year '14 was the highest year in terms of the dollar amount of loans that the Department pooled under the program. We pooled $236 million that year. Based on our current volume, we expect to pool somewhere between $650 million and $800 million in the next twelve months, maybe more -- I'm not going to say the "B" word out loud -- but we're on a very strong, fast trajectory. The response has been overwhelmingly positive. So while it's a good problem to have, there are some adjustments that have to be made along the way, such as escrow amounts, program limits and other changes.

So in addition to increasing the dollar amount of loans that can be purchased under TMP-79, we're also requesting approval to, if necessary, use available funds to purchase up to $7 million of TMP-79 mortgage loans with Department funds with available funds under our indentures that could be released to pledge as additional collateral to our Federal Home Loan Bank line.
Under the current structure, we purchase the mortgage loans using advances under the Federal Home Loan Bank line, but we're finding -- you'll see in the next item -- we're bumping up against escrow amount limits, etcetera, and one option is to increase escrow funds. We have to do that in $5 million chunks, number one; number two, you have to tie that up for a minimum of twelve months. So if we're looking at addressing just a spike in origination or something that's unanticipated, it might be more efficient for us to go ahead, we fund some of the loans, post them as collateral, and then as they move through the process, we bring the money back in.

So that's authority we're requesting just to keep the program continually functioning without any interruptions and at the most efficient level.

MR. OXER: So you're essentially asking for authorization and authority to implement those responses to the market that you see faster than we could respond to as a board that meets only once a month.

MS. GALUSKI: Absolutely. We may not always have time.

MR. OXER: I get it.

MS. GALUSKI: So I'm available for questions.

MR. OXER: We're doing all right so far, so we're inclined to see this.
MS. GALUSKI: But the staff does recommend approval of Resolution 17-011, and any questions, I'll be happy to answer.

MR. OXER: So you're showing this as it's not a spike, this is a long term trend.

MS. GALUSKI: This appears to be a trend.

MR. OXER: This is a big deal.

MS. GALUSKI: This is a big deal.

MR. OXER: This could be a ten-figure deal eventually.

MS. GALUSKI: This is a big deal.

MR. OXER: That other word starts with a B too. Right? B in big and B in what's that other word, Tim? That's all right. Don't say it.

(General laughter.)

MS. BINGHAM ESCAREÑO: I'll move to resolve.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation to resolve on item 4(a).

MR. GANN: I want to second that one.

MR. OXER: And a second by Mr. Gann. No request for comment.

Motion by Ms. Bingham, second by Mr. Gann to approve staff recommendation resolving 17-011. Those in favor?

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

(No response.)

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

4(b).

MS. GALUSKI: Still Monica Galuski.

Presentation, discussion and possible action on Resolution 17-012, approving increases in the maximum amount of outstanding advances under the advances and security agreement with Federal Home Loan Bank of Dallas and maximum amount and deposit in the escrow to secure such advances, authorizing the execution of documents and instruments relating thereto, making certain findings and determinations in connection therewith, and containing other provisions relating to the subject.

Again, this is very similar to the prior item.

In this one the advance agreement we have with Federal Home Loan Bank currently has a maximum and we set it up with a maximum of $75 million of dollars in the advance line at any one point in time. Given where we're at with our origination and the way the pooling process works, et cetera, the $75 million is not enough.

MR. OXER: We're easing the constrictions on the process to open it up and give you some more latitude to implement.

MS. GALUSKI: Right. Because we only pool MBSs
once a month and so we're capping out. So we'd like to move the advance line to a maximum of $125 million. At the same time we post an escrow and so concurrent with the increase in the advance line, we would request an increase in the amount that we can take that escrow fund up to. It's currently at $5 million, we're requesting the ability to increase it to $15 million, but we're looking at an immediate need and an immediate response of another $5 million. We wouldn't add any additional until we see that we really need to.

MR. OXER: Okay. So you're going to run the escrow up from $5 million to $10 million, with the prospect of taking it up to $15-- later? So why would we not give you that now with the idea that you would inform us when you use it?

MS. GALUSKI: Because, again, I just don't know timing-wise if we're going to --

MR. OXER: Actually, I suspect we'll probably give you the add up to $10 million and I hope we see you next month.

MS. GALUSKI: My projections show that it won't be that long before we need to take it to the $15 million, we just don't want to do that today because that is locking it up. But if you would prefer that we come back for another $5 million increase, whatever the Board
prefers, we will do.

MR. OXER: Any thoughts from the Board? I like
the idea of hearing from you because I think we have the
best bond shop in the state, in any agency in the state.

MS. GALUSKI: We will be happy to come back and
request additional.

MR. OXER: Any thoughts? Let's do that.

Do we have to change this resolution, Tim?
What we're saying is you've got it at $5-, you want to
take it to $10-, you have the authority to take it to $10-
now but you have the authority to take it to $15- later.

MS. BINGHAM ESCAREÑO: It looks like the
resolution gives them to $15-, so it moves the agreement
from $75 million to $125-, and then increases maximum
escrow deposit to $15- from $5-, so they could go to $10-
and then this would allow them to go to $15-.

MR. OXER: Just gives you a little more
breathing room to be able to loosen, they're still exactly
the same constraints, they're just wider, so you've got
more room to work within those constraints.

MS. GALUSKI: Right.

MR. GANN: We're really just saying if we stay
with this resolution, she can still come back and tell us,
hey, we're going up to the $15-. That would be easier on
them. So let's stick with the resolution. I'll make the
motion.

MR. OXER: I was going to say we're about to hear a motion from Mr. Gann.

MR. GANN: The resolution as written.

MS. BINGHAM ESCAREÑO: I'll second.

MR. OXER: Motion by Mr. Gann, second by Ms. Bingham to approve staff recommendation on item 4(b) for Resolution 17-012. No request for public comment.

Motion by Mr. Gann, second by Ms. Bingham, item 4(b). Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

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

And just for the record, Monica, good job.

MS. GALUSKI: Thank you.


MS. MOLINARI: Good morning. I'll be continuing on one of our themes for today's Board meeting.

Chairman Oxer, Board members, my name is Jennifer Molinari, and I'm the director of the HOME and Homeless Programs Division. And today I'm pleased to present my first Board action request as director of the HOME and Homeless Programs Division.

And I don't know if you're aware, but in
October of 2016 this year, the Emergency Solutions Grants Program, or ESG, and the Homeless Housing and Services Program, or HHSP, was combined with the Department's HOME Investment Partnerships Program into a newly formed HOME and Homeless Programs Division. HOME, ESG and HHSP support a continuum of services spanning homelessness to rental assistance to homeownership, and in addition, HOME and ESG share common federal oversight through the U.S. Department of Housing and Urban Development, or HUD.

So with that, item 5(a) is possible action on conditional Emergency Solutions Grant awards for continuum of care lead agencies to perform a local competition of ESG grant funds on behalf of the Department. The ESG program focuses on assisting people to regain stability quickly in permanent housing situations after experiencing a housing crisis or homelessness. By federal statute, ESG subrecipients are required to work closely with housing and service programs, including continuum of care agencies, known as CoCs. The CoC program is a HUD program designed to promote community-wide commitment to ending homelessness. There are eleven CoCs in Texas and ESG funding is allocated in each CoC region for competition.

So in October of 2016, we released a request for applications for CoC lead agencies to locally manage our 2017 and 2018 ESG program award process. The
Department is building on the success of a similar process that we used during 2016 ESG awards which allows for greater local decision-making of priority in the community's homeless programs. So the CoC lead agencies are selected to run local competitions, they will release locally tailored ESG applications, they will rank those applications and recommend awards to the Department.

Four CoC lead agencies applied to the Department, and if awarded today, will receive ESG administrative funds as indicated in your Board action request. And with that, staff recommends award for the following four agencies to run local competitions on behalf of the Department: the Metro Dallas Homeless Alliance, Tarrant County Homeless Coalition, El Paso Coalition for the Homeless, and Coalition for the Homeless of Houston and Harris, Fort Bend and Montgomery Counties.

And with that, I'll be happy to answer any questions that you might have.

MR. OXER: Any questions?

(No response.)

MR. OXER: We're essentially outsourcing the administrative operation of this program to those guys by giving them some money to handle their costs.

MS. MOLINARI: Yes. They'll be awarding out about $3.5 million in ESG funds locally. We're
recommending awards for that amount.

MR. OXER: I like it. Hear a motion to consider.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation on item 5(a).

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. There's no request for public comment.

Motion by Ms. Bingham, second by Dr. Muñoz to approve staff recommendation on item 5(a). Those in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

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

Somebody has got 5(b). Naomi, you're back.

MS. CANTU: Hello again. My name is Naomi Cantu, coordinator for Homelessness Programs and Policy.

Item 5(b) is authorization to release a notice of funding availability, or NOFA, for fiscal years 2017 and 2018 of the Emergency Solutions Grants Program, also known as ESG. The Department receives ESG funding from the U.S. Department of Housing and Urban Development, or HUD, in the amount of approximately $8.8 million per year,
depending on federal allocations.

As you heard in item 5(a), once the NOFA is released, continuum of care agencies in four regions will run a local competition on behalf of the Department for ESG funding. The Department will administer a competition for funding in the remaining seven continuum of care regions. HUD requires the Department to commit ESG funding within 60 days after receipt of an award letter, which typically comes in the summer of each year.

In order to commit the funding, staff is requesting authorization of the NOFA in front of you today which will open officially in early January. Applications will be due in late March. After time for scoring and any appeals, the awards and recommendations will be presented to the Board in the summer of 2017.

The ESG NOFA under consideration has several changes from last year's ESG NOFA as a result of a public input process from September to November of this year. The Department held two roundtables and an online forum on key issues for the application cycle. For example, the NOFA reflects a two-year award cycle which received broad support during the roundtables and the online forum. A two-year award allows for greater predictability for subrecipients and program participants, and reduces administrative costs for subrecipients and the Department.
In addition, three different allocation models were presented during the online forum. As a result of public input, a fourth model was also presented on the online forum which addressed several concerns of public input. The allocation formula in the NOFA includes two new factors and new rates.

Staff recommends that the NOFA in front of you today be approved for release, and allow for release in early January to prepare for the next program year.

With that, I'm available for any questions.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Then we'll have a motion to consider.

DR. MUÑOZ: So moved.

MR. OXER: Motion by Dr. Muñoz to approve staff recommendation on item 5(b).

MR. GANN: Second.

MR. OXER: And second by Mr. Gann. No request for public comment.

Motion by Dr. Muñoz, second by Mr. Gann to approve staff recommendation on item 5(b). Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?
MR. OXER: There are none. It's unanimous.

All right. Here's what we're going to do.

We've got a couple of significant items coming up here. It's quarter after 10:00, we've been in our seats here for a while. We're going to take a 15-minute break. It's 10:12. Let's be back in our chairs at 10:30.

(Whereupon, at 10:12 a.m., a brief recess was taken.)

MR. OXER: All right. Let's get back to it, folks.

Okay. The action item 6 on the rules. Raquel.

Good morning.

MS. MORALES: Raquel Morales, director of Asset Management.

Item 6 is presentation, discussion and possible action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter E, and an order adopting the new 10 TAC Chapter 10, Subchapter E concerning our post-award and asset management rules.

At the last meeting, the Board approved the draft 2017 asset management rules to be published in the Texas Register for public comment. Public comment started on October 28 and ended at 5:00 p.m. on November 28. The Department received comments from a total of six
individuals and/or organizations, and that comment is summarized for you in the Board action item that's in the Board book. I don't think there was anything really huge or mind blowing, so I'm not going to go into any detail, but if you guys have any questions, I'm happy to answer those.

MR. OXER: Just a little buffing and polishing on the thing?

MS. MORALES: Yes. Otherwise, I recommend approval of the asset management rules.

MR. OXER: Leslie, did you have a question, did I see that?

MS. BINGHAM ESCAREÑO: No.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Motion to consider on item 6(a).

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation on item 6(a). Do I hear a second?

DR. MUÑOZ: Second.

MR. OXER: Okay. Second by Dr. Muñoz. There appears to be no request for public comment.

Motion by Ms. Bingham, second by Dr. Muñoz to approve staff recommendation on item 6(a). Those in favor?
(A chorus of ayes.)
MR. OXER: And opposed?
(No response.)
MR. OXER: There are none. It's unanimous.
MS. MORALES: Thank you.
MR. OXER: Marni. We knew we'd see you today,
Marni.
MS. HOLLOWAY: I know. Just a few things today.
MR. OXER: You're pulling anchor on the whole thing today from here on out. Right?
MS. HOLLOWAY: Exactly. I'm just going to take this all home.

Item 6(b) is presentation, discussion and possible action on orders adopting 10 TAC Chapter 13, concerning the Multifamily Direct Loan rule and directing its publication in the Texas Register. This is the final rule that will provide a framework for our direct loan program in 2018 and the NOFA that relies on this rule is item 7(c) on today's agenda.

I need to shout out to Andrew, who has done a tremendous amount of work, and Megan, who has helped us quite a bit with making sure that this brand new rule meets all of our needs and requirements moving forward.

The Board approved the draft of the new Chapter
13 at the October 13 Board meeting, and it was published in the Register for comment. During the public comment period between October 28 and November 28, a public hearing was held here in Austin on November 10. The transcript from that meeting is included in your Board materials, as are the comments received from six organizations and individuals.

There are several changes to Chapter 13 to the final that we made in response to the comments we received. We changed the requirement for eligibility determinations for applications that have received awards or allocations from the Department in previous rounds so that their eligibility is determined with their award rather than having to request an earlier determination. We also changed the limitation on expenses incurred prior to the application to align with other fund sources.

It’s important to note here that we can only use TCAP funds for projects that have already started. Limitations on HOME and National Housing Trust Funds make it almost impossible to use those sources if construction is already rolling. We also amended one of the tiebreakers so that an applicant is limited in how many 15 percent units they can pledge. We removed the requirement that an applicant certify they can provide a letter of credit or guarantee. While the requirement in rule was
only for certification, we believe this item could use a little more development prior to implementation. We may bring it back next year.

Staff recommends approval of the final order adopting the proposed 10 TAC Chapter 13 concerning the Multifamily Direct Loan rule.

MR. OXER: Any questions?

MS. BINGHAM ESCAREÑO: Move to approve.

MR. GANN: I'll move to approve.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Okay. Motion by Mr. Gann to approve staff recommendation on item 6(b), second by Ms. Bingham.

No request for public comment.

Motion by Mr. Gann, second by Ms. Bingham to approve staff recommendation on item 6(b). Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?

(No response.)

MR. OXER: There are none.

Take it on home, number 7.

MS. HOLLOWAY: 7(a) is presentation, discussion and possible action on an appeal of the denial of carryover for housing tax credit application for Abbington Place. This is application number --
MS. SARAH ANDERSON: We were coming up to comment on the last item but the vote went so fast.

MR. OXER: Well, you know, we were talking about and she was up there.

MS. SARAH ANDERSON: The vote just went really fast.

MR. OXER: Well, all right. Everybody hold your ground. We'll take your comments.

MS. SARAH ANDERSON: Sarah Anderson.

And we worked with the Department, we appreciate some of the changes made, but we still are concerned about some of the flexibility on these loans. A lot of the discussion that we've heard from the Department is that the Department is trying to operate more like a bank, and unfortunately, we don't feel like that that is necessarily the exact role of the Department. These funds are necessary to do what banks can't do. A bank can do market rate and to have your loan program mirror market rate lending practices is a little problematic.

The biggest item is the hard debt, the 3 percent hard debt number is problematic and we were hoping that there would be some language that would allow for a little bit of flexibility, especially as the 2016 deals come in, some of those are going to need to maybe have zero percent interest rates.
So we've spoken with staff, they obviously don't agree with us, but I think that based on the discussion that we had earlier today in needing flexibility, we really feel like it would be nice to have some language in there that would allow staff to go outside of some of the hard rules that are in it right now. And specifically, I'm mostly concerned about the interest rate, and 3 percent is good if it's my only debt, but it doesn't help me if I've got a huge gap now because of credit pricing issues.

MR. OXER: All right. Terri.


I would like to echo the majority of the information Sarah just provided to you all and then broaden more specifically the 20 percent equity component that has changed and to at least discuss the difference in the rule. And the rule that we had previously would require 10 percent equity on a multifamily only type loan, and the rules have now been modified to require 20 percent equity on any transaction that has multifamily loans as the only source of Department funds, but it doesn't consider if there are other sources outside of the Department. So the rule essentially is requiring 20 percent equity, essentially hard equity, if a multifamily
direct loan is the only source of financing from the Department that goes into your sources.

    And when Sarah was talking about the banking type criteria, when you're looking at 20 percent equity, any typical investor who's putting private equity in would expect market rate returns. And HOME money and TCAP money, for example, would be the actual vehicle through which any level of affordability or the sole level through which any affordability is being achieved or attained. So if you can receive an 80 percent loan from any bank, then there would be no creation of new affordable housing using this program if that is the sole opportunity to do so. So if you've got 20 percent equity coming in that's private and you can get an 80 percent bank loan, essentially, then those developments would no longer even seek a multifamily loan from the Department which would negate the affordability associated with it.

    Thank you.

    MR. OXER: Appreciate your comments.

    Janine, did you want to say something on that item?

    MS. SISAK: Yes, just very quickly.

    MR. OXER: Okay.

    MS. SISAK: Janine Sisak on behalf of TAAHP.

    We also would like to see some flexibility in
the rule about the terms of the direct loan, either
allowing for the funds to be soft or lowering the interest
rate, and in the absence of getting in the rule, I really
hope staff can make that recommendation to the Board for
exception to those rules for 2016 deals and 2017 deals
that have greater gap due to the uncertainty in the equity
market.

And then I'll have further comments about the
NOFA and some of the requirements there, but these are
similar requirements what you've heard and what I
mentioned earlier.

MR. OXER: Okay. Marni, quick question here.

MS. HOLLOWAY: Yes.

MR. OXER: Does the rule as it's being approved
or would be approved under this motion -- or as it was
just approved under this motion, we still have the
flexibility to adopt waivers and such on that. Is that
correct?

MS. HOLLOWAY: Yes. And actually, the loan
terms section was modified just a little bit to clarify.
The NOFA and the application are going to be at 3 percent
because we have to start somewhere. There's language here
that says: The Department may recommend an alternative
that makes the development feasible under all applicable
sections of 10 TAC 10.300 which would be our underwriting
rules, and 13.8(c) which would be our rules. The interest
rate amortization period and term for the loan will be
fixed by the Board at award.

MR. OXER: Okay. All right. Based on that,
Mr. Gann or Ms. Bingham, do you care to modify your motion
or to move to reconsider?

MR. GANN: No. I think it works.

MR. OXER: Ms. Bingham? We have to have that
on the record, Leslie.

MS. BINGHAM ESCAREÑO: My second stands.

MR. OXER: It stands, but does any Board member
have a motion to reconsider the motion that we just
completed? The answer is no.

All right. The rule is there. Apparently the
flexibility exists that they appear to be looking for.

MS. HOLLOWAY: We made sure to include that
flexibility because we've run into some issues in the
past.

MR. OXER: Okay. Next one.

MS. HOLLOWAY: Next one. 7(a) is presentation,
discussion and possible action on appeal of the denial of
carryover for housing tax credit application for Abbington
Place. This is application 16018.

Abbington Place received an award of 9 percent
tax credits in 2016 for the construction of 60 units in
four two-story garden style buildings for which a zoning change was pending. The applicable rule at application is 10 TAC 10.204(11)(c) which requires that applicants provide evidence that they are in the process of seeking a zoning and states: Documentation of final approval of appropriate zoning must be submitted to the Department with the commitment or determination notice.

Further in the process, 10 TAC 402(d) which relates to requirements at commitment, includes at number four the requirement that applicants provide evidence of final zoning to construct the development as proposed and awarded no later than the expiration date of the commitment.

The applicant returned the commitment package on the due date, and rather than providing evidence of zoning for the development, as proposed at application, they included a material amendment request to change the development plans. The new plan meets the existing zoning of the site because the applicant's request for zoning that was necessary to construct what they originally proposed had been denied by the city.

The development plan presented in the application and approved by the Board at the July 28 meeting again indicated this was going to be a garden style development which included ground floor units. The
new plan with ground floor retail space and parking
underneath the buildings meets the local requirements for
commercial zoning but is markedly different than the plan
presented at application. So they took their buildings
and lifted them up, put parking and retail underneath.

It should be noted that while the site is
currently zoned for a commercial use, the fields and
generally rural character of the surrounding area does not
align with the character of neighborhoods we generally see
proposing this type of mixed use development.

Staff issued a deficiency requesting that the
applicant show us how they met the requirement in the
rule. Their response acknowledges that they did not get
the zoning change they needed for their original
development and again requested the material amendment.
Such an amendment would not have been allowed prior to
award, though it is clear that the applicants anticipated
the amendment prior to receiving the credits or prior to
the July 28 meeting. The allocation of credits was based
on part on the applicant representation regarding the
zoning change that would allow the development to move
forward as presented.

Staff recommends denial of the appeal of the
termination notice because the applicant failed to meet
the requirement at 10 TAC 402(d)(4) to provide evidence of
zoning necessary to construct the development as proposed.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: No questions from the Board. Do I have a motion to consider?

DR. MUÑOZ: So moved.

MR. OXER: Motion by Dr. Muñoz to approve staff recommendation on item 7(a). Is there a second?

MR. GANN: Second.

MR. OXER: Second by Mr. Gann.

Okay. It looks like several people want to talk, so have a seat, Marni.

Don't forget to sign in and tell us who you are when you step up to the mic.

MR. REA: Good morning. My name is Bill Rea. I'm with Rea Venture. I'm the developer of Abbington Place.

We've been in the affordable housing development business for 30 years and have done over 100 affordable housing developments and every one has some small or material change. In this case, the change that we're making is actually less than a number of the properties that were on the consent agenda today. We had garden apartments, and all we've done, we've got the same number of apartments, exactly what we put in our
application, although we have put some of our community spaces and some parking on the ground floor level and we've simply raised the number of units up to the second, third and fourth levels. So everything we put in our application, we're still delivering exactly the same thing, we've just changed the design.

And again, the change that we've made is less than what we've seen in other approved material changes. So we're not out of line in what our request is. We're not asking for any more resources, we're providing exactly what we proposed to provide, and we're ready to proceed. We've got equity providers, we're in a CRA area, and we are prepared to deliver exactly what we proposed in our application.

Thank you.

MR. OXER: Hold on. Juan.

DR. MUÑOZ: Well, I understand what you're saying but there's something that doesn't seem to comport with my understanding. I heard Marni say that this request would not have been approved prior to award. Is that right, Marni? So if we had known about it earlier, it wouldn't have been approved. We find out about it after the fact. I'm no familiar with what cases you're indicating in the consent agenda were materially less significant than what you're proposing, but I can't help
but hear the staff say we wouldn't have approved this before.

        MR. REA: And I think I'm going to have to let some of the other people speak to that, but there is a reason that should allow us to do what we're asking for. Thank you.

        MR. OXER: Marni, just a question on that before we have the next one come up.

        Thank you, Mr. Rea.

        MR. REA: Thank you.

        MS. HOLLOWAY: yes, sir.

        MR. OXER: It would not have been approved before for what reason?

        MS. HOLLOWAY: Prior to award it would have been -- so when an application is submitted to us, that is the development that they are proposing to create, that's what we're evaluating, that's what we're underwriting. They can't change it in the middle of that process. I mean, imagine what would happen to our competition if everybody was changing stuff in the middle of it.

        MR. OXER: So underwriting, Brent and his crew take a look at what's there as is what's there.

        MS. HOLLOWAY: Yes.

        MR. OXER: Would this have changed -- we'll get to you in a second, Brent. Keep going. I want to hear
the rest of your comment.

MS. HOLLOWAY: So just to remind everyone, item 7(a) is about the termination of that commitment notice because they did not meet the zoning requirement. The next item is about the material amendment, and yes, this is an amendment that further down the road probably we could work out having that amendment move forward, but the concern here for staff is that that requirement in several places in our rule was not met at commitment.

MR. OXER: Okay. Brent, I have a question on this, and then we'll get to the next one. I have a question for underwriting.

MR. STEWART: Brent Stewart, Real Estate Analysis.

MR. OXER: Would the underwriting evaluation of this in its original expectation, original design, be different from its current design or the one that's proposed, including the proposed change?

MR. STEWART: Right. We have underwritten the proposed change and we have not published that report but we've underwritten it. Costs certainly went up but the transaction as a whole still fits within the feasibility rules of the REA -- still is feasible within the REA rules. So the only issue that we have, not an issue, but like I said earlier, we talked with the equity and lenders
on these transactions and the equity is still committed to the deal, although they would not confirm a price. We did some sensitivity on it and it looks to be that there's a fairly wide gap between where they were and what they need, depending on what the final interest rate is on the debt. So it's within the realm of what we would be okay with recommending from a feasibility standpoint.

MR. OXER: Okay. They could essentially get by your shop with what they have now?

MR. STEWART: That's right. Costs went up because of the tuck-unders and because of elevators and things like that, but it still fits within the rules.

MR. OXER: Okay. Thanks, Brent.

Any other questions?

(No response.)

MR. OXER: Let's hear the next one because there are going to be a couple more questions. You'll get there, Cynthia, don't worry. Miss a chance to hear from you? We don't hear from you that often; of course, we're going to listen to you.

MR. BRADY: I wanted to make sure I signed in first so I don't forget.

My name is Sean Brady. I'm the vice president of development at Rea Ventures. I've been involved in this development since the beginning really, for the past
three years that we've been working on this.

A couple of points I want to just correct, and then I'd like to kind of go briefly through the timeline because it is very relevant as to how we ended up where we're at.

First off, we did not propose a two-story development at application. We proposed three-story garden style walk-up apartments. We're not proposing any commercial space down there. What we're really proposing are garages and office space. We have about 1,400 square feet -- I'm sorry -- garages and common areas. We have about 1,400 square feet of what we're considering flex space that may be for a third party office tenant, it may not, but that's it. And so just to kind of underscore and just to take a second to look at the different designs.

This was in our amendment. I know there was a ton of information that we submitted, but in Appendix C, this is the original design, the site plan for building 60 units, same unit mix, same amenities. Our proposed amendment is in Appendix D, I mean, it's basically the same thing: it is four buildings, 60 units, same unit mix.

MR. OXER: Same square footage per unit?

MR. BRADY: Actually, that's a good point. The square footage of the common space increased, we've added
amenities that we didn't have before. And so I mean, I
guess we're having trouble seeing -- I mean, this is a
positive effect to the development, we're meeting all of
our commitments to the Department.

And really, this was our last choice, not our
first choice. We worked extremely hard with the city,
which I'll touch on in a minute, and they helped us
develop this. And they do, by the way, think that this is
a better fit. I understand the rule, the character of the
area, and we talked ad nauseam with the planning board
about this, but they have targeted this area for higher
density development, and contrary to the council, that's
what they have in mind.

I do also want to mention, just to mirror a
comment that Granger had made, and this had a lot of
discussion earlier, not all developments that have
received allocations will be able to close. One of the
big things that's going to be a distinguishing factor this
year is if you're in a CRA area, and we are, and I can say
that not all the other folks on the waiting list are in
that same favorable situation.

We have gone back to debt and equity. I think
we have five different investors at this point that are
interested in this deal, assuming that we have our credits
reinstated. Three of those are CRA investors. And what
we've been told is that prices have definitely dipped right now, and a lot of that is due to uncertainty. In the next three of four months it's expected to come back up, certainly not to the dollar five, dollar ten range that it was before, but it's coming back up and the numbers still work.

MR. OXER: We got spoiled.

MR. BRADY: We sure did. But just keep that in mind that we are meeting all of our commitments, we're able to move forward with no additional resource request, which other people were proposing, from the Department. I mean, we're the guarantors, Bill is the primary guarantor. We're confident I this. We've reviewed the costs, the numbers, I works. Underwriting has confirmed that. And so just keep all of that in mind.

The other thing I want to just mention, because we had challenged an application years ago based on this same reason of zoning and we were told correctly by the staff that that is not a factor of consideration prior to award, and so our challenge was dismissed. That is not a consideration of award. We're allowed to submit an amendment any time after the Board votes to award credits, and because of the timing where we had thought we were going to get a decision in August from the planning board, they chose not to take any action for some reason, and so
we were put on the September agenda, which literally the
council voted on their final decision. And we thought
right up to the last minute that we had a very good chance
of getting our zoning approved. I mean, we literally had
the decision the night before the commitment was due, and
so we had no other choice. So we submitted our amendment
which we were allowed to do at that time as well.

I realize that it's an unusual situation, but
please keep in mind it's also an unusual situation to have
that ability. Usually when your zoning is denied, that's
because you can't build multifamily there. Well, we
could, and the city helped us develop this to kind of
figure out a way to solve their political issues, which
frankly, were caused by one guy that was our neighbor in
his mid eighties that suddenly became an expert in the QAP
and which projects are going to be funded. I mean, it was
amazing, and he had a long list, I don't know where he
came up with all of this. And we had met with the guy.

MR. OXER: We run into that a lot, by the way.

MR. BRADY: Our realtor had met with the same
guy and they were friends from high school, and he had
said, I have no problem, just build me a privacy fence.
And then he shows up to the planning board meeting with, I
think, six to eight of his neighbors and they're all
reading off the same sheet. But yeah, I mean, I don't
know where he got all of his knowledge all of a sudden.

But the planning board really fed off of that and council kicked us back to planning board because they had a whole laundry list of questions which we spent months researching about property value impacts, crime, impact to schools, and we quantified all of that, that we're a net positive, economic impact, like somehow we're not going to be an economic benefit to the community. And they ultimately, at their September board meeting -- I'm sorry -- their August board meeting which is what really gave me hope, they acknowledged after receiving our response that we had satisfactorily addressed all of their comments.

And they went around and polled everybody in the room and they indicated that they were leaning a lot more positively in our direction but they were still kind of weighted towards their Vision 2020 plan, which when I first talked to the original city manager there three years ago, he said, It's great, this is what we've been trying to attract, this is what our Vision 2020 plan calls for.

But for whatever reason, we believed during the research and discussions with people that it ultimately had to do with the school superintendent thinking that all seven deals that because of the rules this year were all
clustered in the same -- we were all within like a half a mile of each other -- in the same census tract. He had made a comment at a school board meeting that there were going to be seven deals funded in Whitehouse and we can't handle that. And so that's, I think, what happened behind the scenes. It became some kind of political.

So I'm sorry, I realize I've beeped out of time and I planned to go through a little bit more detail, so I'm just kind of trying to hit the high points. But this was our last choice and we're very, very sorry that it is here kind of at the eleventh hour. But the deal works. I mean, if you look at it, it's the same basic deal, development design. If you look at the architecture, you know, we were in the fortunate position that we could reconfigure to still meet and exceed our commitments to the Department. We're fortunate we have enough investors interested because of our CRA location. The deal still works, even now.

And you know, frankly, I guess I don't understand why the amendment wasn't considered, which is what I thought the process was supposed to be, before having our credits rescinded. So I just feel like if we could have had an opportunity to discuss the request on the merit of the amendment that we could have avoided a lot of this. I mean, I guess we just really don't see how
this is -- I mean, I know it qualifies as a material
change under significant architectural and site plan, but
when you look at what is actually happening here, putting
our common areas under our residential units and basically
working with the city to figure out a way to still make
this happen, I just don't see how that's a problem.

DR. MUÑOZ: Are you saying you're not clear
what constitutes, according to staff definition,
significant modification of the plan?

MR. BRADY: No, sir.

DR. MUÑOZ: And significant modification,
that's not modest. That's significant. So it's not clear
in your mind how they define that?

MR. BRADY: Well, I guess what's not clear to
me is that that to me is the definition of what a material
amendment request is, not necessarily grounds for a
denial. The grounds for the denial, as I understand it,
would be if it's a negative effect.

DR. MUÑOZ: Let me interrupt you. Respond to
my question and then we're going to ask you to bring to a
close your comments.

MR. BRADY: Yes, sir. I understand.

So yes, I do understand that those are
significant and I believe that was part of the staff's
basis. And I will also admit I am not an expert on the
rules, but I had just understood that that was the
definition of what staff couldn't administratively
approve. I had understood that the criteria were: is it
still financially feasible, is it a negative effect, would
it have affected the scoring outcome.

MR. OXER: Let me tell you how this fits.
Okay? I'm going to cut to the chase for you to make sure
that you get a good clear image on this. We've got a set
of rules on this, everybody gets to play by the rules,
they get to tell you what the rules are. If you fall on
one side of them or the other, they don't get to change
the rules, only we do. Okay?

MR. BRADY: Yes, sir.

MR. OXER: So that's why it comes to us because
you don't understand the discussion with them, you
argument was not with them, they're applying the rules
that we gave them to guide you on how this development
works. The question that I have on this is why is it that
the neighbors in there, in working with the planning and
zoning, did they suddenly go away when you made these
changes?

MR. BRADY: No. I mean, they came to every
meeting. The planning board was a lot happier, honestly,
with the changes. It was the mayor and the city manager
who kid of helped us develop and think through that, and
basically the planning board felt that our alternative
design was more in keeping with the Vision 2020 plan, but
they felt that stand-alone apartments in that location
were not. They basically said that we addressed all of
their concerns, but that they still felt that stand-alone
apartments in that location -- they basically didn't want
to change their future land use plan, they had a policy in
place for that.

MR. OXER: That's the right answer. So you
basically accommodate their request to be able to get your
zoning. Our staff says you can't get this unless your
zoning has to be there. There's certain things that have
to happen, there's a schedule on this. And it could go up
to December 30 too, but if we do that, there's a whole lot
of work that everybody has to do, so there's a reason we
got all these milestones and these gates to get everybody
through.

MR. BRADY: Yes, sir.

MR. OXER: The good news for you is that Brent
still says the deal will work, and you say you have a
commitment for the financing and for the syndication on
the credits.

MR. BRADY: We're confident the deal will still
work.

MR. OXER: That's apparently better than a few
others that are in the room.

MR. BRADY: Yes, sir. We are fortunate in that regard.

MR. OXER: All right. Okay.

Any other questions?

MS. BINGHAM ESCAREÑO: I have a couple of questions.

MR. OXER: Ms. Bingham

MS. BINGHAM ESCAREÑO: I think for Marni.

MR. BRADY: Do you want me to have a seat?

MR. OXER: Good plan.

MS. BINGHAM ESCAREÑO: Thank you.

MR. BRADY: Sorry for going on.

MS. BINGHAM ESCAREÑO: So the development was characterized as originally a two-story.

MS. HOLLOWAY: Two- or three-story typical garden style apartments.

MS. BINGHAM ESCAREÑO: I don't want to nitpick, but in our Board book and in your report it went from being a two-story and that the part of the significant material change -- which I don't even know if this is appropriate questioning because I thought we were talking about the zoning and that there's another agenda item, but just since this came up as part of her report, I just want to ask. Because, I mean, clearly the renderings look like
it went from a three-story to a four-story or three and
four stories, but you know, it was characterized in the
report as garden style, two stories, and then that it was
materially changed to three and four stories and mixed
use, and I don't see mixed use. I don't see mixed use in
the renderings, the second set of renderings, I don't see
anything.

I get it. What I was picturing in my head was
we went from a kind of suburban rural area, typical
apartment kind of setup to something that sounded more
appropriate for a large metropolitan area, and ooh, that's
materially different, we're out. And I don't see that.

MR. IRVINE: I believe that the space on the
ground floor that Mr. Rea alluded to that says it's kind
of indeterminate as to exactly how it will be used, it may
be that somehow or another that complies with the zoning
definitions for mixed use, although it is not contemplated
that it would actually be active commercial in nature.

MS. BINGHAM ESCAREÑO: Okay. Gotcha.

MR. OXER: So they've got mixed use meaning
more than one resident would be able to use that in mixed
use.

MS. BINGHAM ESCAREÑO: That's how they got
there with the city.

MS. HOLLOWAY: Or it would be office space for
a business of some sort.

MR. OXER: Right. Something going on.

MS. HOLLOWAY: The mixed use would be the commercial use on the ground floor and the residential use above.

MS. BINGHAM ESCAREÑO: Okay. Gotcha.

DR. MUÑOZ: Yes, but I thought that they said that they would be used like common use area, not necessarily commercial.

MS. HOLLOWAY: Their common areas are now on this first floor, and they have parking underneath the buildings, they've raised the buildings.

DR. MUÑOZ: I guess I understand common area like people it the structure could commonly use the area, not somebody could appropriate it for purposes of a proprietary business.

MS. HOLLOWAY: As I understand it, this plan that was presented to us includes both.

DR. MUÑOZ: Oh.

MS. HOLLOWAY: Is that not correct?

MR. OXER: Sean. Don't talk there, get up to the mic, please. We have a transcript.

MR. BRADY: Yes, sir. I'm sorry.

It's basically our clubhouse is what's on -- we have clubhouse space and garages. Let's see, it's made up
of the leasing office --

    DR. MUÑOZ:  Hey, Sean, let me interrupt you.
You're saying it's clubhouse space.

    MR. BRADY:  Yes, sir.

    DR. MUÑOZ:  And they're saying it's clubhouse
space but it could serve as office.

    MR. BRADY:  Yes and no.

    MR. OXER:  That's not a good answer.

    MR. BRADY:  Well, it's the correct answer.

There are four buildings, just like we had originally.
Two of those buildings, the ground floor is nothing but
garages for the exclusive use of the residents. So then
we have two other buildings, the ones on Highway 110.
There's a big one and a small one. The big one is our
clubhouse. In there it has a fitness center, a leasing
space, we've added a media center, a computer center,
basically all the amenities that we had in the
application -- we added the media center. And that's just
for the residents so that's our clubhouse.

And so then in the small building we have 1,400
square feet -- I'm sorry -- the back half of that small
building is garage space. The front half of that small
building has 1,400 feet of flex space that could be office
for a third party but also could become additional amenity
space if no one leases.
MR. OXER: So it could actually become like a local office for the county constable.

MR. BRADY: It could. But it just depends. We do not have any tenants lined up for that space.

MR. OXER: So how is the structure? And I don't mean the deal structure but how is the physical structure in terms of the number of floors, the location and that plans and all that different from when you applied for it to start with and what you're suggesting now?

MR. BRADY: One story. Basically, the zoning ordinance that we fit within only says no residential units on the ground floor, second floor or higher, that's it. So we have a wide variety of what we can do on the ground floor, and this is where we worked with the city staff and the mayor to kind of figure this out is that it could be all garages but then obviously we need our community space. So we basically stuck our clubhouse underneath there and added garages to fill up all the other space that we needed on the other buildings, and they said sounds good.

MR. OXER: So where was the parking and the clubhouse before?

MR. BRADY: The parking before was all surface parking, we didn't have any garages, so that's new, we've
added that. The clubhouse was a stand-alone building before and now it's not. That's about it. I mean, it's four buildings.

MR. OXER: So that's a cost reduction you can take off which is part of the reason the deal works for Brent.

MR. BRADY: Yes. And we were able to save a good bit of money there by doing that. We're building the same number of structures on the property, but we were able to work out through the city because their zoning ordinance was broad enough for our category that we were already in that we basically built the same development but just put it up a floor. We did have to add elevators but they're still walk-up garden style apartments but we've had to add -- for accessibility reasons, we've had to add elevators.

MR. OXER: Okay. So Marni. Thanks, Sean.

MR. BRADY: Thank you.

MR. OXER: So were there points awarded for this for accessibility based on living space?

MS. HOLLOWAY: Accessibility is not necessarily a point item, it's a threshold item.

MR. OXER: But I gather the elevators that they've arranged to put in satisfy the accessibility threshold.
MS. HOLLOWAY: I believe so.

The change to the plan could have impacted scoring in that the cost per square foot went up, but because it's now considered a four-story building, right, it's now considered high cost so they didn't lose those points for their costs going up because it's now a four-story structure.

DR. MUÑOZ: Hey Marni, you say that it may have affected their scoring but is there anything that jumps out to you sort of kind of immediately and definitively about the changed plan that absolutely would have negatively affected the scoring?

MS. HOLLOWAY: As I understand it, if this plan had been presented at the application, so if they had presented the plan that matched the 2020 land use plan for the city, if that's what they had sent us at application, it would have just gone right on through and we wouldn't be standing here today. The plan that was submitted to us required a change in zoning and they told us at application that they were applying for that zoning change, they did not get that zoning change. This item 7(a) is about that zoning change and that was the basis for our termination.

MR. OXER: So let's speculate here for a second. Let's assume this goes -- that we accommodate
their interest in the zoning change. So if they had
proposed what they have now, it would have slipped right
on -- not slipped -- it would have gone through, we
expect.

MS. HOLLOWAY: We expect, yes.

MR. OXER: Brent would have been happy, you
would have been happy.

MS. HOLLOWAY: We expect it would have fit
within the box. Yes.

MR. IRVINE: It would have complied with the
rules and would have scored the same.

MR. OXER: Okay. So based on the fact that
there's a local consideration for zoning, and they get
caught up in timing, scheduling, angry neighbors that
don't understand tax credits -- because I've got to tell
you, I've heard the crime, I've heard the traffic, I've
heard the crowding. One of the things, just as a
collateral comment heard, in the six years I've been here,
going on the six years I've been here, I've heard that
from every opponent for a tax credit deal, and every one
of them say that but I've never heard the numbers that
support that. So after 30 years, since we've been doing
the Tax Credit Program since '86, somebody ought to be
able to generate the numbers to show that's true or not.

So just for the record, I'm tossing this out
here for the next developers and the opponents, the next
time you come up and want to oppose one of these deals for
traffic, crime, overloading the schools and that sort of
thing, bring numbers or be prepared to just sit down and
be quiet.

MS. HOLLOWAY: So regarding the zoning issue,
we had at least one other application that I can think of
that comes to mind immediately that did not get a zoning
change and they withdrew because they were not fortunate
enough to have this site that they could change their plan
to fit. So the basis for the termination was the
requirement that the zoning at commitment fit the
development that was proposed.

DR. MUÑOZ: But they've modified it and the
zoning is no longer --

MS. HOLLOWAY: So as Chairman Oxer mentioned,
all we can do is apply the rule so the rule says if you
don't have the zoning at commitment for the development
you originally proposed, that's a termination. So that's
the item that we're discussing.

MR. OXER: Beau.

MR. ECCLES: And let me just ask you a few
questions that may contextualize this within the rule.
What you were just citing to is 10 TAC 10.402(d).

MS. HOLLOWAY: That's for the commitment. Yes.
MR. ECCLES: Right. Which also says that failure to provide these documents, which includes at (d)(4), evidence of final zoning that was proposed or needed to be changed pursuant to the development plan. And that's the development plan in the application. So failure to provide those documents may cause the commitment or determination notice to be rescinded. So when your staff got essentially an amendment, that amendment is not what matches (d)(4), it's not evidence of the final zoning that was proposed.

MS. HOLLOWAY: Correct.

MR. ECCLES: You have this unique situation where you have instead of Mohammed going to the mountain, you have the mountain coming to Mohammed, you have the plan that's changing to meet the zoning that already existed. So then the next question goes over to the amendment rule, and I think we're all agreed this is a material amendment, we're at 10 TAC 10.405(a) which says that, first of all, they couldn't make a material amendment during the application period. Correct?

MS. HOLLOWAY: Correct.

MR. ECCLES: It's only after an award is made that they could make a material amendment. But 10.405(a) says: regardless of the development stage, the Board shall reevaluate a development that undergoes a material
change. That's not you, it's not staff, it's the Board reevaluating the material change with the underwriting being considered, and then they need to demonstrate that the material change fits within 10.405. Correct?

    MS. HOLLOWAY: Correct.

    MR. ECCLES: So that's why we have these two agenda items that are back to back. You have what staff did which was apply the rule, documents come in that didn't match the rule, so they exercised their option to say we can't go forward on a commitment. They have submitted, I believe it was in September, their amendment request.

    MS. HOLLOWAY: September 28. Yes.

    MR. ECCLES: Right after they first got notice that this wasn't going to work within the zoning that they expected, they submitted their amendment. This is now before the Board in the second agenda item whether the Board would accept that amendment which then makes it their development plan as would have been reflected in their application, but that's getting kind of temporally behind what staff had.

    Is that a fair summation of the rules and how all of this works together with the two agenda items?

    MS. HOLLOWAY: Yes, it is.

    MR. OXER: So essentially, unless we give them
a waiver on the zoning timing, they don't get to play in
the material amendments game.

    MS. HOLLOWAY: Correct.

    MR. OXER: But given the fact that they managed
to change this, put those amenities in the right place,
got this in this other space which was considered
commercial, potential mixed use optional space, I can see
how that would be something to be considered. But as long
as the deal works, and apparently from the earlier
discussion about the equity collapse here recently, Mr.
Rea, I'll assume -- you give me a thumbs up on this --
you've got a commitment that this is going to work. And
that's 60 more units that we can get in.

    So the question to my understanding, and from
what I'm hearing from you, Beau, is we give them a waiver
on this, on just the sequencing and the timing on this --

    MS. HOLLOWAY: If the Board wishes to grant
their appeal.

    MR. OXER: If we grant the appeal.

    DR. MUÑOZ: Let me help out here. So I mean,
look, this discussion is very helpful because to me the
commercial mixed use sort of inflection and then when you
understand that it's 1,400 square feet of one building
that may or may not actually translate into this kind of
third party use, you make these changes, it still pencils
the cost, you get these 60 units where the originally
determined the units would be built. I mean, sometimes it
helps to listen to additional detail to clarify in your
mind.

So Mr. Chair, I'd like to withdraw my motion to
approve staff recommendation.

MR. OXER: Mr. Gann?

MR. GANN: I'll withdraw my second.

DR. MUÑOZ: And I'll make a motion to grant the
waiver --

MS. HOLLOWAY: Grant the appeal.

MR. OXER: Grant the appeal.

DR. MUÑOZ: -- grant the appeal regarding the
zoning in 7(a).

MS. BINGHAM ESCAREÑO: I'll second.

MR. OXER: Okay. Motion by Dr. Muñoz, second
by Ms. Bingham to oppose staff recommendation and to grant
the appeal.

MS. HOLLOWAY: To grant the appeal.

MR. OXER: In item 7(a). Any other questions?

(No response.)

MR. OXER: Now, Cynthia, I'm going to ask
you -- this is going, I think, the way you want it to --
have you got anything to say? Do you want to say
anything, or do you want to just say thank you and wait
till the next item, or what?

MS. BAST:  I will be brief.  Cynthia Bast, Locke Lord, representing the applicant here.

There are just a couple of things that I would like to put in the record.  First of all, thank you, Mr. Eccles for your explanation.  You basically did exactly what I was going to do, is to dig into the rules and the law here --

MR. OXER:  I love how great minds follow those parallel paths.

MS. BAST:  -- to explain how this all works together.  With having two agenda items, it seems like a procedural quagmire but it's really not, in that we have an amendment and we have rules and law about amendments that are mandatory, that say if an amendment is submitted after the application has been awarded credits, that it shall be considered.

At the same time, with regard to the commitment notice and providing the evidence of zoning, we have a rule that is permissive, that says failure to provide these documents may -- may cause the commitment to be rescinded.  And so I would actually have argued that the amendment should have been taken first as item 7(a) and the commitment condition should have been taken as item 7(b) because if you had looked at the amendment as item
7(a) and approved the amendment, then you would have, I think, had a better path to item 7(b).

MR. OXER: Certainly clearer.

MS. BAST: I think so. And on 7(a) -- excuse me -- on the amendment it needs to be considered on its merits and I think Dr. Muñoz, Mr. Oxer, you have expressed what you understand on that amendment now and I think you understand that, again, according to our rules, it is a material amendment but our rules say the material amendments will be denied when they would have affected scoring, when they were foreseeable, when they were preventable and things like that, and we don't have those grounds. So we have merits to approve this amendment.

And with that taken under consideration, then we get to the issue of the condition on the commitment notice. And first of all, I don't think a waiver is necessary, I don't think you're waiving anything because your rule is permissive. It says that if a document is not provided, then the commitment notice may be rescinded. And to me, then this becomes a timing issue. If you boil it down and you say if this development owner had sufficient zoning at the time of commitment notice to build a multifamily complex that's consistent with what was in the application but we're just basically moving some residential units up a floor, then should that
commitment notice be rescinded in that permissive environment? And I would argue that the answer is no. And further, that the only reason we're sort of tripped up here is because of the timing. Had the zoning issue occurred earlier and an amendment been able to be submitted earlier, we wouldn't have had a problem. Had we met the commitment notice but then something else come up that we had to change our site plan somehow with an amendment later, again, it wouldn't have been a problem. The only thing that created a problem was the timing here. Mr. Eccles indicated the temporal adjustment of the fact that this literally happened in a 24-hour time span. At any other point in this entire development process, this amendment would be acceptable in accordance with your rules. And so I don't think that we can allow that kind of timing issue to trip up a development that is otherwise ready to go.

And I do appreciate you giving me time. Thank you.

MR. OXER: Sure. Any questions for Cynthia?

DR. MUÑOZ: Cynthia, I appreciate the clarification. I hope I remember in the future, you know, sometimes how this gets interpreted by you and your colleagues in terms of permissibility, you know, I hope I can remind you and others in the future when this gets
brought up in a way that is not quite as amenable to your position about how you might have the permission to go this way but you certainly have the permission to go this other way. Because that's what happens is we're going to be reminded, just like we were earlier. There are earlier cases where you exercised some discretion and we're not quite in violation as much as those, and we're going to be reminded of, well, there was this policy and rules are rules and yet you took this. And usually the people at the microphone making that argument have letterheads similar to yours.

(General laughter.)

MR. ECCLES: And if I could also just tag onto that. Rules are almost always a simple matter of timing, and what staff was looking at was the moment in time when the commitment notice was coming due and what they had to look at did not satisfy their rule as it existed at that time. So I think that they were not at all in the wrong for making the call that they did.

MR. OXER: Go ahead, Beau. I'm sorry.

MR. ECCLES: It is merely that we are in this somewhat bizarre circumstance where usually when we're looking at you didn't get the zoning that you needed to make this development, it's usually it was zoned commercial and not residential and there's no way to do
this flex that we're looking at here. But the submission
of the amendment and all of the expectations and the
minute adjustment in the grand scheme of things, it's
still a material amendment but the ability to go from just
essentially build it up one floor and then it's within the
zoning and it's also within the material amendment rule
and the window of the material amendment rule, as well as
the requirement that the Board shall consider it, is this
interesting confluence of events there it's the Board's
purview, in a mandatory sense, to consider that amendment
but it already was staff's purview to consider that the
commitment was not satisfied.

So I think we have opposite conclusions but
both were correct.

MR. OXER: You'll get a shot at it here, Toni.
Hang on a second.

And kudos and compliments to staff because your
job is to apply the rules. It's our job to call when we
can say out of bounds or make excretions, and that's why
even for something that ultimately becomes more clear, I
want to make sure we've got a record built that there's a
clarity on some of these things, that we're not doing this
quickly, suddenly, or with any sort of lack of
consideration or discussion.

TJ, your turn.
MS. JACKSON: Good afternoon -- or it's still morning.

MR. OXER: Still morning.

MS. JACKSON: Good morning. My name is Toni Jackson and I am here to support staff recommendation and to oppose the current motion that is on the floor.

MR. OXER: See, you're one of those that he just said was going to be showing up here.

DR. MUÑOZ: I didn't know it would be this soon.

MR. OXER: But I'm willing to bet you don't have the same letterhead as she does.

(General laughter.)

MS. JACKSON: Different letterhead.

So I respect all of the comments that I've heard and particularly as it relates to what has been indicated in terms of the timing. However, I am here to speak to the fact that, as you have already pointed out and as staff has simply moving forward, with the fact that there are rules, be they permissive or otherwise.

But I also want to point out something that was stated by the applicant themselves, and that is the fact that they have been pursuing this for the last three years, and so I do not agree that this is a simple matter of late timing because they knew over the last couple of
years that there was a zoning issue, and so for it to come up at this late time, is a concern for us.

I represent the applicant that follows and the thing that is very significant here — because I know that this is sometimes a concern in your mind — is that if you take these credits away or this award is not given, then the city goes without an award. In this particular case, the next applicant in line is in the same city.

MR. OXER: Didn't they say there were seven applicants in that same zip code or same census tract?

MS. JACKSON: That is correct. And so the city of Whitehouse would not be losing credits.

MR. OXER: What have they got over there that was attractive to so many? We need to buy some real estate over there.

MS. JACKSON: Real estate is good.

But Haven has 72 units proposed. Like has been the question of the day, it has the ability to close, we're ready to go, if we were given our commitment notice today, we are ready to meet all of the requirements of that commitment notice.

But again, we are talking about the rules here and the fact that when they got the commitment notice, they did not meet the requirements of that commitment notice. Again, granted, they did, as they have indicated,
say that they submitted their amendment the very next day
after they received the information that they did not get
the zoning approval. However, one of the things that
developers do when they put a contract on land, they do
their due diligence, they do their inspections, and they
knew that they did not have the zoning for what they were
proposing in the application that they put forward.

But we don't control, obviously, when we get to
a planning committee, however, they indicated themselves
to you that they've been working on this for the last
three years. So for them to not have gotten zoning by the
time of that commitment notice is a concern because they
had that opportunity to do so and to follow the rules. And
we have a concern and we look to you, again, for
consistency and to have those rules applied consistently.
And in this case, we feel that is a concern and they had
plenty of time to have done this before now.

MR. OXER: Thanks.

Any questions?

MR. ECCLES: Just as a point of clarification, the vote that's been moved on and has been seconded now is
dealing with 7(a) which is addressing the appeal from the
rescission of the commitment. What you're talking about
is foresee ability which would actually be in 7(b) which
would be the amendment.
MS. JACKSON: Well, Beau, I beg to differ, and my comments had to change up a bit because I feel that you have argued the position from the podium, which concerns me, but more importantly, all of you have spoken to both (a) and (b), so my comments have been convoluted because I'm speaking to (a) and (b) as you have all done from the podium.

MR. ECCLES: And that's actually what I'm trying to make sure happens is that your position regarding --

MS. JACKSON: My position is clear that we ask for you to stay with staff's recommendation and oppose -- to terminate this commitment.

MR. OXER: To deny their appeal.

MS. JACKSON: To deny their appeal.

MR. OXER: Thank you.

MS. JACKSON: Is that clear?

MR. OXER: Seems pretty clear.

MS. JACKSON: Thank you.

MR. OXER: Sean, one quick question. You've been working on this for three years, you got there, why did you not propose the current circumstance or current design in the original application?

MR. BRADY: That's a great question. Because I've had a different site every year. In fact, I started
off on the site that the other applicant in line is on, that was my first site the first year. The second site I went for a site that was on the north side of town. This is my first year --

MR. OXER: So you've been working in Whitehouse for three years, not on this site for three years.

MR. BRADY: I've been working in Whitehouse with the community, and they've supported this every year, for three years, but every year they've supported a different site. I didn't know about all of these problems.

And furthermore, on the foresee ability, I didn't get a chance to talk about the steps we took ahead of time. We met with staff, the zoning, Nathan Higgins and the city manager, and they indicated they'd be supportive of our location for re-zoning. This was back in October-November. Unfortunately, the city manager got fired afterwards that had said that -- another whole story. But his one comment was you need to go talk to your neighbor to the north because he's kind of loud and opinionated. Which we did, which is what I did get into my comments that he's the mid eighties guy who told us that we're fine, just build us a fence.

And so we also, two weeks before we turned in our application -- we typically bring our whole design team out, engineer, everybody, to meet with the city and
make sure all of our costs and utility locations are
figured out -- we asked the new city manager at the time,
hey, we're coming up, we're about to submit this
application, are you aware of any problems. What we were
told was: No, we've heard nothing about you, no concerns
from planning, no concerns from anybody in the community,
however, I have heard concerns about some of your
competitors. He didn't say who. And he said, They might
have some trouble, but I haven't heard anything from you.

And in fact, the city manager called me after
the planning board voted and wanted to know what bar I had
stopped in because he was shocked with all of that and
kind of figured I was too. I was pretty floored. We were
all trying to figure out what just happened.

I mean, it's not like we didn't do our due
diligence and it's not like we've been on the same site
for three years, every site is different, and every
indication we had from the city was that they were going
to be in support of this, until they weren't.

MR. OXER: Okay. Thank you.

MR. BRADY: Which occurred two weeks after we
submitted our application.

MR. OXER: Okay. We have one more comment on

7(a)?

MR. APPLEQUIST: Chairman, members of the
Board, thank you very much. My name is Chris Applequist. I'm with Miller Valentine, and we are supporting the denial of the appeal.

As was mentioned, we are the next one up in line and we've also worked in Whitehouse for three years. It hasn't been on a different site every year. Think in their presentation, they said initially it was three years on the same development and that's not true. For the past two years we have had the same site that we've been working on, it's zoned correctly, it's zoned for multifamily, we've had support all three years, and we know what it's like to submit and not get awarded.

We think this is very simple. We think they didn't meet the rules of the commitment, it's laid out very clear. We've seen a lot of people get killed over the years here just because maybe a check box wasn't marked or you miss a date. I mean, that's a deadline, your deal is dead at that point. We all know that.

Zoning, that's another risk. That's a risk we wouldn't take. We've been there for three years; we would not have contracted that site. It adds more risk.

And really, this year was pretty interesting because we were at a disadvantage by starting early. I mean, for two years we had the same site. Whitehouse Church of Christ had that site, they enjoyed working with
us, they trust us, we've been working on it, everyone knew where we were. Everyone scored the exact same so it went to a tiebreaker. The tiebreaker is farthest from another deal. So because we started early, we were working on a site that had support, had zoning, was ready to go, people could easily just go down the street and they would win, and that's exactly what happened here. They just went down the street and applied for zoning.

Because I don't know how they're going to make their numbers work. Honestly, we just spent an hour talking about the equity markets. I don't know how you make it work. Your costs go up and your sources go down. I don't know how you make that work. We would not do it, we would not do that deal. But essentially, they just went down the street and got the award.

And we're ready to go, we have equity lined up, we have an in-house civil engineer, we know the site inside and out, and we think it makes a lot of sense for our deal to be awarded. Again, the city supported it two years in a row. I know they got a ton of opposition. I think 34 people came out. I mean, it just doesn't make a whole lot of sense. All of a sudden they're looking at a mixed use development that you would see in Austin, downtown Austin, and it's going in a field in rural East Texas, and people are upset and they're going to drive by

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it and say that's a strange use of resources. Why are we putting money into this? Why are we building a five-story, four-story mixed use development on a farm in far East Texas where they just went as far from the city center as possible, farther from the amenities than us, farther from the schools?

We're actually building more units, we're building 72 units, and we're ready to go. We've got our equity lined up. We do this in 14 states, we're the largest affordable developers in the United States, and we've been trying to get this done for three years.

Thank you very much.

MR. OXER: Good timing.

Any other questions?

MR. GANN: Where are we on this?

MR. OXER: All right. The current circumstances, here we are: there's been a motion by Dr. Muñoz and a second by Ms. Bingham to disapprove staff recommendation, which is to grant the appeal. Staff recommendation is to deny the appeal, the motion would be to grant the appeal.

Ms. Bingham, Dr. Muñoz, do you have any other thoughts?

(No response.)

MR. OXER: Marni.
MS. HOLLOWAY: I have nothing further regarding that particular item.

MR. OXER: Okay. And this was for item 7(a) which is for granting the appeal on the determination with respect to the zoning. Is that correct?

MS. HOLLOWAY: Yes.

MR. OXER: This is only the zoning.

MS. HOLLOWAY: Yes. This is only the zoning that's addressed in item 7(a).

MR. OXER: So it's the timing issue of this that's one of those little quirks that invariably we seem to have one that runs into this every year.

MR. GANN: Mr. Chairman.

MR. OXER: Yes, sir.

MR. GANN: Are we still in discussion?

MR. OXER: We are.

MR. GANN: I just listened real close to that last gentleman and what he was saying as far as Whitehouse, Texas and what building looks good in Whitehouse, Texas. But that's not what we're here for, we're here for a voting on this particular issue, but I think we have to underwrite that, just like we have to underwrite everything else.

I think I heard Brent say that you used -- because it goes to two-story, three-story, four-story,
whichever one it was, you get a different comparison in cost. Is that correct? And if it is correct, is that what qualified it?

MR. OXER: Brent Stewart, Real Estate Analysis.

MR. STEWART: Yes, sir. Brent Stewart, Real Estate Analysis.

So the original construction was all three-story garden style buildings. The amended structure is they took the three stories and they stuck tuck-under garages underneath it and they reconfigured some of the commercial space.

MR. OXER: Commercial space or mixed use?

Commercial means something, in my estimation it means something.

MR. IRVINE: Non-residential space.

MR. STEWART: Non-residential space.

MR. OXER: Okay.

MR. STEWART: So the costs went up because of that, and it went up over the $70 per square foot scoring item, but because it then became a high cost development under the rules, they're allowed to go to $75 for those points, so they stayed under the $75 and then made those points.

One thing to watch out for is that the non-residential space cannot be used for anything residential
purposes or that cost per foot number then busts over the
$75 per foot because it is then included in the number
that's calculated. So they would not be allowed to use
that space for tenant purposes, it would have to be office
or retail or what-have-you. So taking all that into
account, we underwrote it.

The reason financially that this deal, again,
under the rule works, is because the 2016 rents went up
which allowed them to support more debt to then cover some
more of that gap that would get created if the syndication
price went down.

MR. GANN: But if all the same rules we use for
it under the first presentation, it would not have
qualified. Is that correct?

MR. STEWART: The 2015 rents would not have.

MR. GANN: But I mean I'm talking about because
it went from a three-story to a four-story. You used a
different group of numbers, did you not, $75 instead of
$70?

MR. STEWART: That's right.

MR. GANN: And it would not have qualified at
that point. Is that correct?

MR. STEWART: The costs would have been above
$70 so it would not have achieved those points.

MR. GANN: I think that that zoning ticker in
there has several other different elements to it, and it keeps you from making mistakes. And I think that this has a functionally obsolescent mistake. That building looks good in Galveston but it doesn't look good in Whitehouse, Texas. And we're underwriting something that costs more than a regular unit would cost over there, and I don't think that's really what we want to do. I think the reason for it is the zoning change because they had to add more cost because they were in a commercial zoning area.

MR. ECCLES: Well, if I could just ask a question, because we've gotten -- before the discussion led to the conclusion that had the proposed amended design than the development plan in the original application, I heard before that it would have scored the same as it would have.

DR. MUÑOZ: That's what I asked, Beau, that's the question I asked, and I'm hearing a different answer to that.

MR. ECCLES: This sounds different now. So if that could be clarified.

MR. STEWART: They would have submitted originally at the $75 level, not the $70 level, so that would have gotten them the same points. That's why it's equal.

MR. GANN: But it's not the original plan.
MR. ECCLES: Yes, but when you amend the plan, that's what you're judging it against, would they have lost points under that rule.

MR. GANN: But I'm just saying that's part of the complex situation here, in my opinion. The costs have gone up and the functionality of the building has actually gone down. Crime starts underneath there where there's parking lots underneath buildings -- it's probably better because it's actually a parking garage, but it's just problematic as far as the structure goes. That's not part of the zone change, but I think the zone changes protects you from some of that in this case. There was no zone change.

MS. HOLLOWAY: There was no zoning change. The plan as presented in the amendment meets the zoning requirements for the site which this is a letter from the City of Whitehouse. It says: It is currently zoned C-H which is retail/office high intensity. This zoning allows for the construction of multifamily apartments on the second floor or higher. So that's the zoning that's currently on this piece of property, that's been on this piece of property. What they had sought really was a down zoning to a less intense use.

MR. OXER: They had sought a down zoning to change but if they had stayed with the original zoning
which would have accommodated the current design, it would have gone right through at the zoning office and with the application. Is that right?

MS. HOLLOWAY: So far as I can tell at this point, yes, without having all of the schedules and everything in front of me.

MR. OXER: Everybody is telling us what they believe to be true.

MS. HOLLOWAY: And I'm sure that the applicant had a reason for not proposing this plan.

MR. OXER: I'm not because we just asked and didn't get a good answer.

MS. HOLLOWAY: At application, this was what it was zoned for.

MR. OXER: TJ.

MS. JACKSON: Toni Jackson.

I'd like to also point out, as the applicant has stated and Brent has confirmed, that costs will go up because they are now changing the site plan as it is, and there are other things. And Dr. Muñoz asked specifically what glaringly would change or impact the application, and leveraging would change if the costs have gone up. And so that would be something that would not be meeting the qualifications of the application at this point.

MR. OXER: Come on up, Cynthia. One more shot.
Make it short.

MS. BAST: Cynthia Bast.

I was just going to throw out a suggestion since it seems that this is hard. Does it make any sense to table this one and go to 7(b) first and look at the amendment and then come back to 7(a)? Just throw it out.

MR. OXER: Any interest in doing that by anybody?

MR. GANN: Not right now.

MR. OXER: Tim, did you have something?

MR. IRVINE: No. I think procedurally we've put it together correctly. The applicant applied to do a very specific transaction which required a zoning change. As a result of that, we issued a commitment notice that said, Hey, you've got to prove up your necessary zoning at commitment. They were unable to do that. As a result of that, it is our assessment that you didn't meet the requirements of commitment. And I think you have to dispose of that issue before you decide if you're going to take up the other matters.

MR. OXER: There is currently a motion by Dr. Muñoz and second by Ms. Bingham to oppose staff recommendation. Staff recommendation is to deny the appeal, the motion would be the equivalent of granting the appeal.
All right. As described, motion by Dr. Muñoz, second by Ms. Bingham to oppose staff recommendation on item 7(a) on this agenda. Those in favor?

(Ayes: Dr. Muñoz and Ms. Bingham.)

MR. OXER: Okay. That is Dr. Muñoz and Ms. Bingham.

Those opposed?

(Nays: Mr. Gann and Mr. Oxer.)

MR. OXER: That's Mr. Gann and myself. So we'll reconsider. Anybody else have anything else they want to say?

MS. Meyer: I didn't want to speak but I guess I'll have to.

I'm going to go back and go back to Cynthia.

The rules state that you have after initial award that if an amendment is submitted that it must be considered by the Board. We were denied that right. We put that amendment in and you haven't considered that amendment. Now we've got an agenda item on the agenda that you haven't considered our amendment yet, but yet you're denying our commitment and you're terminating our application, in essence. So I really think that it makes better sense to hear the amendment and allow that process to be heard and allow that amendment to have consideration.
Because we did follow the rules, it states that. It wasn't foreseeable for us to do that. We have worked with Whitehouse for three years, we've been there. We had no reason to believe that anything was going to go wrong when we submitted that application. We ran into a hiccup. We just so happened we lucked out that we were in a zoning area that would allow to do what we've put in as an amendment. You don't normally have that ability when there's a zoning change if you're in a commercial zone and you've got to change because they don't allow residential. We just happen to be in an area that did that. That wasn't what we anticipated doing; we never even considered that.

MR. OXER: I have a question. So the actual zoning change is not actually a zoning change on the development, it's a zoning change in our application.

MS. MEYER: It's a zoning change in the site.

MR. OXER: They were looking, basically, to down rate the zoning from commercial to residential, if I gather that right.

MS. MEYER: Correct.

MR. OXER: They said, No, you can't do that, we're putting it back up as long as you have this mixed use. Is the zoning now the same as it was before, or was there actually a zoning change?
MS. MEYER: No. It is exactly what it was. We're not changing anything.

MR. OXER: So everything is what it was with respect to the zoning, so there's actually been no zoning change in Whitehouse.

MS. MEYER: Correct.

MR. OXER: So the zoning change that we're talking about is changing the description of the zoning on the application that we took on the project.

MS. MEYER: Well, it would be amending our application to not have to change the zoning. It's amending our application saying here's a new development that fits in with the existing zoning that's there that meets the 2020 plan with the City of Whitehouse that was already there, and they didn't want to change their plan.

There was a statement made a little while ago that sounds like our development is out in the middle of nowhere. It's not. There's residential development around us. We're cater-corner across from the elementary school. We're not out in the middle of nowhere, we're in rural Texas. I mean, yeah, we're a little further away from amenities because we're right down the street from the other applicant. We're not that far from the other amenities, and we're closer to the elementary school than they are. We're surrounded by residential development,
we're not out in the middle of nowhere.

MR. OXER: Okay. Comments received.

MS. MEYER: Thank you.

MR. OXER: Thanks.

Since we voted on that motion and had that, we'll have to have a reconsideration on the motion on 7(a). Is that correct with your interpretation, Counselor?

MR. ECCLES: Or move to 7(b).

MR. OXER: Or move to 7(b) since 7(a) is not resolved yet. We're going to table 7(a) at the chairman's discretion, we'll have comments on 7(b), take a look at that, make sure that works, assuming that it does, and then we'll come back to 7(a).

MS. JACKSON: So hold my comments, because they were still staying on the zoning issue.

MR. OXER: Yes, keep your comments and we'll get back to you.

Marni.

MS. HOLLOWAY: Item 7(b) is presentation, discussion and possible action regarding a material amendment to the housing tax credit application for Abbington Place. This is application number 16018.

As the Board is well aware, this material amendment was submitted with the commitment notice on
September 28. At the time that we had to post the amendment under the statutory requirements, the day prior to 15 days prior to the Board meeting, underwriting was not complete and for that reason and because of the commitment notice issue, staff is recommending denial of the material amendment request in this Board item.

MR. OXER: At the risk of throwing gasoline on the fire, I'll ask if anybody has any comments. Mr. Gann, do you have anything? You were requesting some information with respect to the nature of the site and its context.

MR. GANN: No. My position on that was that if it didn't qualify underneath the written set of rules, you know, you can't change it in midstream it doesn't seem like. So that where I was on that particular question. And the complete looks of the thing changed from residential to commercial.

MR. OXER: But did it change to commercial?

MR. GANN: No. It was commercial to start with so they had to change their look to commercial which means you've got a high rise there next to that 80-year-old man, for instance.

MR. OXER: Next to an elementary school.

So staff recommendation is to deny the appeal for the material change.
MS. HOLLOWAY: To deny the request for a material amendment. Yes.

MR. OXER: Or the material amendment. Okay. Have to have a motion to consider.

MR. GANN: I move we deny the request.

MR. OXER: Okay. Motion by Mr. Gann to approve staff recommendation on item 7(b) which is to deny the request for material amendment. I hear no second. Do I hear an alternative motion? It's deafeningly quiet in here. Yeah, this is a hard one. Don't anyone take it for granted that this is easy. We have spent a lot of time, and I'll tell the applicant, Mr. Rea, you guys have been working out there for three years. This is one of those things, we've denied people's applications for being 15 minutes late. Not checking the box on something is going to get your application shot quickly.

MR. GANN: Let me ask a question. They have the financing and we're just a few months away. Why couldn't they recycle through next year? I mean, it's possible. Right?

MR. OXER: They've been working out there for three years.

MR. GANN: I mean, I think they've got local financing too, which I don't know that. Is that what you said, investors? Well, it's not going to be due to some
other things

MR. OXER: Robbye.

MS. MEYER: Robbye Meyer, Arx Advantage.

The new QAP, the competitive nature, if the other awards are there, then we won't have an under-served area, and so therefore, the competitive nature of Whitehouse is no longer there.

MR. OXER: It changes it. Because there's nothing there which is why it attracted all of that attention.

MS. MEYER: Right. So we would lose points.

MR. OXER: The target has got a lot of red dots on it.

MR. GANN: I was just hoping for some relief there.

MR. OXER: This would be way too easy if it was that easy to get out.

MS. BINGHAM ESCAREÑO: I'll second Mr. Gann's motion.

MR. OXER: Okay. So Mr. Gann, would you care to restate your motion, please?

MR. GANN: I move we approve staff recommendation.

MR. OXER: Item 7(b) is motion by Mr. Gann, second by Ms. Bingham to approve staff recommendation on
item 7(b) which is to deny the appeal for material amendment.

MS. HOLLOWAY: Deny the request for a material amendment.

MR. OXER: Deny the request.

MR. ECCLES: If I could ask the question. Has this amendment be reevaluated by the Department? You said that underwriting was not complete.

MS. HOLLOWAY: Was not complete.

MR. ECCLES: By the time of posting.

MS. HOLLOWAY: At the time of posting. That was part of our reason for the denial. The other part was the commitment issue. You've heard Brent discuss the feasibility of the development with the material amendment.

MR. ECCLES: And Underwriting's evaluation was that it was feasible.

MS. HOLLOWAY: Yes, it was.

MR. OXER: But only at this elevated level of $75 a square foot as opposed to the $70?

MS. HOLLOWAY: Yes. Well, the other important piece, and we received an email from staff back at the office -- thank you -- that if the office spaces that are designated as office spaces right now are used for tenant activities, the cost would be included in the total...
building cost and would exceed the $75 per square foot scoring threshold, so they would lose a point.

MR. ECCLES: We've also heard from the applicant that they have no prospective tenants lined up. But now that Underwriting's evaluation is complete, just on the issue of the material amendment in 7(b), does that change staff's recommendation?

MS. HOLLOWAY: No, it does not.

MR. OXER: What you got crossed up with a schedule that we have to complete to be able to exercise this program, issue these tax credits and there are certain gates you have to go through, and the schedule, deadlines and that sort of thing are not casual, of course, knowing that we have lots of competition, lots of people want these. You know, we've run into the case before where I have to say that TDHCA doesn't work according to somebody's local city schedule, we have to work on our schedule, and if you want that schedule, that means somebody has got to have their zoning board meeting ahead of when we need our deadline. Is that clear?

MR. GANN: Can I move the question?

MR. OXER: I was going to ask is there any more comment to be made. Cynthia.

MS. BAST: Cynthia Bast of Locke Lord.

As I mentioned in my prior comments, I feel
like this amendment needs to be reviewed on its merits and
I don't think that I have ever seen a staff recommendation
against an amendment based on the fact that underwriting
wasn't complete. That's not the merits of the amendment,
that's not the substance of the amendment.

The Government Code says that the Board may
reject an amendment -- permissive language, Dr. Muñoz --
if the Board determines that the modification proposed in
the amendment would materially alter the development in a
negative manner or would have adversely affected the
selection of the application in the application round.
Your rules say: 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 applicant would have not received the award, or
if the need for the proposed modification was reasonably
foreseeable and preventable.

You've received testimony on all of that, and
having worked on a number of material amendments over the
years, and even, as was mentioned, looking at some that
are on your agenda today for significant changes, for
changing unit types, for changing numbers of buildings,
for changing a lot of things, I believe firmly that if you
look at the merits of this amendment standing on its own,
that this is an amendment that would otherwise be approved
in accordance with the law and the rules.

Thank you.

MS. JACKSON: Toni Jackson, Jones Walker.

I agree in most circumstances you would look at the merits of the amendment on its own, however, I think in this case you have to look at the whole picture here, and you do have an amendment that is being requested simply because the criteria of the original application could not be met.

I think it was actually pointed out that they're not asking for a zoning change now. This is an amendment based on the way the property was already zoned. However, we do have to also take into account the applicant had the chance to submit an application in the first place as the zoning was already in place and chose not to, and there was a reason that they chose not to, that they wanted to build something different and now they're changing it. And so I think that has to be taking into consideration because they submitted an application that they did not have zoning for, that zoning was not approved by the city, there was opposition, significant opposition, obviously, that caused the city to not approve the change in the zoning.

And therefore, we respectfully ask that you consider the fact that the rules are here for a reason, we
look for consistency in those rules. The applicant himself even stood before you said, Well, I'm that good with the rules. But this is a rule focused program, it's a competitive program, and each of us in this audience have to follow those rules that you have put into place. And we ask that you remain consistent with the program and follow those rules and deny the request.

MR. OXER: Thanks, Toni.

Any other questions from the Board? Any other public comment? Sean. Sixty seconds so make it quick.

MR. BRADY: Yes, sir.

I just wanted to clarify that our revised design is what the planning board wanted. I certainly understand your belief about what fits in Whitehouse, but the planning board wanted this revised design. That was part of the reason that they denied our request is they didn't want simple garden style, they wanted more of gateway feature on the southern side. That's why we're zoned what we are. Their application is very close to ours too; we're all basically clumped up right next to each other because of the distance tiebreaker rule. So this is what the city wanted, this is what the planning board wanted.

So we've met the rules for the scoring and all of that, as I understand it, and that's part of what led
to all of this is the city does want this design, which
we've done as minimal changes as we possibly could from
the application.

MR. ECCLES: Let me ask this question very
quickly. If this is what the city wanted, why didn't they
tell you that a year ago at application?

MR. BRADY: That is a great question.

MR. ECCLES: Or did they tell you that a year
ago at application?

MR. BRADY: Well, honestly, there's been three
different city managers there since we have been there,
really all in the past year, and we've gotten different
direction from those different city managers. The initial
city manager, who I first talked to three years ago, was
more inclined just for the apartments. Then there was an
interim city manager which is who we had talked to before
the zoning hearing, and then they now have a full-time
city manager there, and they were kind of more inclined
towards the mixed use concept.

There was also a lot more discussion from the
planning board about the importance of their Vision 2020
plan which we had received a different interpretation from
the original city manager, that they were more simple
apartments focused. And the new city manager, they were
more inclined towards kind of a mixed use concept on that
southern side. Honestly, that was a lot of it is
different directions from different individuals we were
working with in the city, and we've been trying to be
responsive to all of that.

We got that revised direction after the
planning board hearing which happened two weeks after we
turned in our application, and so honestly, they were
dealing with a political situation, I believe, that they
didn't expect, and so that's part of kind of what I
believe we got all wrapped up in there, and I think they
were kind of trying to move with the response. I mean, we
had been in the paper and nobody had ever showed up
before, and so I guess they changed their tune because of
the politics of the situation. That happens a lot.

MR. OXER: Yes. Okay. Thanks for your
comments.

Chris.

MR. APPLEQUIST: Thank you, Chairman Oxer.

I'll make it very quick.

MR. OXER: Sixty seconds, please.

MR. APPLEQUIST: Absolutely.

You know, really when we look at it, we feel
like we really followed the rules to a T, and that seems
to be what the Department has been asking for a number of
years, more due diligence, engineering reports,
feasibility reports, really understanding your site and having something ready to go. We did that, we met all the deadlines, we checked all the boxes. Had we been awarded, we'd already be closed. I mean, we're ready to go, we don't need zoning.

They're commercial retail zoning, and I wish we had an aerial to show what we're talking about because the reality is if you look at the site and you look at the area, it is rural East Texas. I mean, you buy land out there a lot of times by the acre, you don't buy it by the foot. It's a rural site, and I should have brought a large blowup to show that to you guys, I think.

I've had the privilege of working with Ms. Bast a number of years. She's very, very good at what she does, she's very good at what she does. I think if she weren't here, this would have gone a lot faster. I think it's pretty straightforward. I think we met the rules, I think they missed their deadlines, I don't think they followed the rules.

I think staff is absolutely correct, and I thank you for your time, and with a favorable vote, we're ready to go today. Thank you.

MR. OXER: Thanks.

Marni, you indicated there as a point differential?
MS. HOLLOWAY: If the designated office spaces, the flex space that doesn't have a tenant, if that is used for tenant purposes, then the cost for that space would be included in total building costs which at that point would exceed the $75 per square foot threshold to get twelve points on this item and they would get eleven points. That's a future use but something that is important to consider.

MR. OXER: Okay. Any other questions?

(No response.)

MR. OXER: All right. With respect to item 7(b) on the agenda, there's been a motion by Mr. Gann, second by Ms. Bingham -- if I recall back that long ago -- to approve staff recommendation which is to deny the request for material amendment.

Is that correct, Marni?

MS. HOLLOWAY: Yes.

MR. OXER: Okay. There's been public comment motion by Mr. Gann, second by Ms. Bingham. Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?

(No response.)

MR. OXER: Motion passes four-zero. It's unanimous. The request is denied.
Given that the request is denied, item 7(a) becomes immaterial, if I recall. Is that correct?

MS. HOLLOWAY: I believe there's still an appeal that's been filed.

MR. OXER: It's still an open agenda item but it also becomes less material. We'll take up item 7(a) again. I'll hear a motion to consider for item 7(a) which is staff recommendation to deny the appeal.

MR. GANN: I move staff's recommendation.

MR. OXER: Motion by Mr. Gann.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham to approve staff recommendation on the appeal which is to deny the carryover. Is that correct?

Getting signals from the dugout?

MS. HOLLOWAY: That's all right.

MR. OXER: Just checking. I just want to make sure Tom is not telling tractor jokes.

(General laughter.)

MR. OXER: We've already considered comment on item 7(a). There's been a motion by Mr. Gann, second by Ms. Bingham to approve staff recommendation to deny the appeal. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?
(No response.)

MR. OXER: There are none. It's unanimous.
We'll move to item 7(c).

MS. HOLLOWAY: Item 7(c) is presentation, discussion and possible action regarding approval for publication in the Texas Register of the 2017-1 Multifamily Direct Loan notice of funding availability. This ties directly back to the final rule that we took up just a little bit ago.

This year we have in total for this NOFA $32,549,905. We are splitting these funds up into set-asides, of course. For CHDOs we have $4,723,589; for our supportive housing/soft repayment set-aside, so this is our old deferred forgivable, we have $4 million this year, so we actually have more than we had last year as a result of interest payments received; the balance of $23,826,316 is going into the general set-aside. We have increased maximum requests just a bit this year. For CHDO the maximum request is $3 million; for supportive housing/soft repayment that maximum is $800,000; new construction under the general is $3 million, and rehabilitation is $2 million.

We will open for applications on January 9, and the funds will be regionally divided until February 9. I'd like to point out that we are doing a separate RAF for
the soft repayment funds so that hopefully that will sort of mitigate some of the issues that we had out of the last year's round. We will close for applications on August 31.

I need to point out that National Housing Trust Fund is not included in this NOFA. We have submitted our response to their disapproval of our original plan to HUD and we have not received that back yet. Once we have that resolved, then we will bring forth an amendment to put those trust fund dollars into this NOFA.

Staff recommends approval of the 2017-1 Multifamily Direct Loan Program NOFA.

MR. OXER: Thank you. Any questions from the Board?

MS. BINGHAM ESCAREÑO: I move staff's recommendation.

DR. MUÑOZ: Second.

MR. OXER: Motion by Ms. Bingham, second by Dr. Muñoz to approve staff recommendation on item 7(c).

Have you got something you want to say, Janine?

MS. SISAK: Janine Sisak. I'm here today on behalf of TAAHP, just really quickly.

MR. OXER: Keep your pen in your pocket.

MS. SISAK: I didn't even bring it up, I lost it somewhere in the back of the room during that long
appeal.

(General laughter.)

MS. SISAK: So I really appreciate staff's ability to put this on the Board meeting in short order after having discussions with staff about the uncertainty in the equity crisis only recently, really in the last three weeks, so we really appreciate that. And we wouldn't as -- TAAHP wouldn't ask for a postponement of this NOFA at the time.

But in looking at it -- I know that the NOFA will help some people and I think that's great. I think there's an ability for these direct HOME and TCAP funds to help a greater number of people, as we discussed, in terms of soft loans or lowering interest rates. But I'm mostly concerned about the process. I mean, when I read the NOFA -- and I haven't quite thought it through with regard to our particular situation -- it sounds like the request is for a full application to be resubmitted and that would require all 2016 deals to meet threshold requirements under the 2017 rules, so I foresee some problems in that respect.

I also see -- and I might not be right about some of this stuff and I need to sit down with staff and make sure I understand how it's going to work -- if we're looking at a RAF, so for our situation in Region 8,
there's some language in the NOFA that says if you have previously received funds that you can only get TCAP funds on a 2016 deal, so in our case I think it's maxed at, I don't know, $180,000 or something like that. Which is helpful, as I said, every little bit counts, but if I need to do a whole new application and meet a whole new set of rules and the rules will require us to submit an application that's feasible at 3 percent with hard repayments, I don't know how we would ever effectively get to a lower interest rate or a soft repayment if we need to go in with a feasible development.

Again, I need to think it through but I'm very concerned about this concept of 2016 deals having to reapply. So those are my comments. And again, I might be wrong and would like to talk with staff about it, and again, we certainly don't want to hold up passing this NOFA because there are some people that -- I think the people that can kind of get their deal done with one big HOME loan, I think that that is an option for them and I would not want to take that option away from those few deals that can really benefit. And so in that respect, for them to do an application when they're getting a $3 million HOME loan, that makes sense, but too get like an extra $150,000 with hard repayments at 3 percent, I don't know that that helps in a way.
So those are my comments. Again, I might not be thinking it through properly, so I'll talk to staff about it.

MR. OXER: So your position is that you support staff recommendation to issue the NOFA, you compliment them on bringing it to fruition quickly, and so you're putting this in the record to be considered, but I assume that when you call the staff, they talk to you.

MS. SISAK: I would love to have the Board correct this aspect of reapplying on the fly today, but if not, if you feel like you can't do that, then I would like staff to consider issuing another NOFA soon after this one to make the program work better for the large number of 2016 deals that I think will be troubled.

MR. OXER: Well, I will offer up that making any sort of sudden movements on the fly is what has historically gotten us in trouble, so we are inclined not to do that. Not to mention, I'm getting signals in from every attorney that's ever talked to us that that's not the right way to do this, and it hasn't been issued on the agenda to be considered. But that said, we have the option to issue others later on.

MS. SISAK: Right. And if staff would like to respond, maybe I'm misunderstanding how this is going to work.
MR. OXER: With respect to that, what I'm going to offer up is that Marni is going to be amenable to a phone call and you and she can chat about it. Is that good, Marni?

MS. HOLLOWAY: Yes.

MR. OXER: Okay. With respect to item 7(c), anything else you want to add, Marni?

MS. HOLLOWAY: No.

MR. OXER: Good.

MS. HOLLOWAY: I'm all done for now.

MR. OXER: Brought it home, anchor lady on this one.

Item 7(c), there's been a motion by Ms. Bingham, second by Dr. Muñoz to approve staff recommendation on the NOFA. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

That takes us to the end of the formal agenda. Mr. Duncan, I think you'd like to make a comment on one of the items we took up first thing this morning on the consent agenda.

MR. DUNCAN: I'm starting to lose my voice now that I need to talk.
MR. OXER: The first thing you need to start off with is to formally tell us who you are.

MR. DUNCAN: Charlie Duncan, Texas Low Income Housing Information Service. Thanks for giving me the last minute opportunity here to comment on application 16442 for the Independence Heights project.

As the Board is aware, the U.S. Department of Housing and Urban Development, HUD, is currently conducting an investigation into the City of Houston for possible Title 6 and Fair Housing Act violations related to the siting of public and affordable housing in the city, and whether said policies and practices discriminate on the basis of race, color, national origin, and/or other protected class status.

Despite the ongoing investigation, the City of Houston has continued to make housing siting decisions that continue the practice of locating affordable housing exclusively in these areas. This includes the resolution of no objection for this application at Independence Heights, as well as for the Point at Crestmont which was also placed on today's consent agenda. And there's some pending issues with that one related to the removal of blight in the area. In contrast, the city refused to bring a similar resolution to the city council for a vote when the development at issue was located in a low poverty
area with high quality schools that would have promoted integration.

We'd like to emphasize that the fair housing issue we see is not the Independence Heights application in and of itself but the city's failure to balance this investment and those like it with integrated developments in low poverty areas. Whether or not the Independence Heights site taken in isolation meets federal civil rights and housing standards is at this point irrelevant. Two and a half years ago HUD explicitly warned the city that development in Independence Heights must be accompanied by a plan to deconcentrate poverty and put develop of housing in high opportunity areas that are not impacted.

The City of Houston has blocked the housing authority's attempts to develop in low poverty, high opportunity areas while advancing developments that perpetuate segregation and further concentrate poverty in citing this civil rights investigation.

Over the past several years TDHCA has demonstrated an ongoing commitment to fair housing and ensuring that it promotes equal access to opportunity for all Texans. We urge the Board to not move this application forward until it has been balanced with an affordable housing development in a high opportunity area.

Thank you.
MR. OXER: Thanks, Charlie. Appreciate your comments.

MR. DUNCAN: Are there any questions?

MR. OXER: Any questions for Mr. Duncan?

Donna, did you have anything you wanted to say on this, or are you just moving up front? Do you have a comment?

MS. RICKENBACKER: Public comment, not on this item.

MR. DUNCAN: It's too bad that it was moved to the consent agenda. We passed along a letter to Mr. Eccles last week and he informed there's no rule that staff could act on to do anything about this, and we'd like to have seen staff exercise its discretion in at least delaying this vote until the HUD investigation resolved and not enable the City of Houston to potentially commit a violation. I thank you for your time.

MR. OXER: And you know, we are cautious not to get in refereeing any local cat fights.

Do you have a comment to make there, Counselor?

MR. ECCLES: And I appreciate your comments, and I'll note that the materials that you forwarded were placed in the Board book and they are under agenda item 1(l) under this application 16442. But I agree with myself and my previous statement that I know of no either
statutory or rule-based mechanism to indefinitely delay an otherwise facially sufficient application that this development has made. Staff treated this application like every other application and it did not hit the triggers that exist in our rule and in statute.

MR. DUNCAN: I understand that, and that's why I wanted to bring this to the Board, who has discretion, and this is, I think, a unique circumstance that certainly doesn't apply to a lot of 4 percent or other tax credit applications. That's all I can do is bring that to your attention and hope that you act. And thanks for the opportunity to speak.

MR. OXER: I suspect there are some folks, like Lance Gilliam, who would like to have another outcome on that deal anyway.

MR. DUNCAN: Definitely.

MR. ECCLES: And certainly the Board is within its discretion to reconsider this matter that they've already voted on through the consent agenda that was on item 1(l).

MR. OXER: With that I mind, does any member of the Board wish to reconsider that item on the consent agenda, under advice of counsel?

(No response.)

MR. OXER: Okay. Thanks for your comments.
MR. DUNCAN: Thank you.

MR. OXER: Does that complete the final agenda?

Now we're at the completion of the agenda, so we are at
the point in the agenda where we accept public comment for
items to be used to build up the agenda for coming
meetings.

Donna.

MS. RICKENBACKER: Well, this isn't for
purposes of adding anything to the agenda. My public
comment -- Donna Rickenbacker, by the way -- is to
recognize and congratulate Dr. Muñoz for accepting a
position with the University of Houston Downtown.

MR. OXER: Indeed.

(Applause.)

MS. RICKENBACKER: So very much congratulations
to you. I obviously live in Houston and I've been
watching Dr. Couture since Welcome Wilson and others
brought here to the City of Houston and watched her turn
around that school into now a tier one program, and now
the third largest city in the nation, and our only public
tier one program in Houston, and to add you to it is kudos
to her. And congratulations to you and welcome to
Houston.

MR. OXER: Looking forward to it.

Okay. Is there any other comments from the
audience? Anybody on staff?

(No response.)

MR. OXER: I'd like to say happy holidays and Merry Christmas to everybody.

Any member on the dais like to say anything, any Board member?

(No response.)

MR. OXER: Okay. As chairman I get the last word. So Merry Christmas, be careful, Happy New Year, careful with your celebrations. What we do here is an important thing that we do and it's a good thing that we do, and we need you all back.

So with that, I'll consider a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to adjourn.

MR. GANN: Second.

MR. OXER: And I hear a second by Mr. Gann.

Those in favor?

(A chorus of ayes.)

MR. OXER: See you in a month.

(Whereupon, at 12:30 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF:    TDHCA Board
LOCATION:      Austin, Texas
DATE:      December 15, 2016

I do hereby certify that the foregoing pages, numbers 1 through 152, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

12/17/2016
(Transcriber) (Date)

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