TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

John H. Reagan Building
JHR 140
1400 Congress Avenue
Austin, Texas 78701

January 13, 2022
9:05 a.m.

MEMBERS:

LEO VASQUEZ, III, Chair
PAUL A. BRADEN, Vice Chair
BRANDON BATCH, Member (absent)
KENNY MARCHANT, Member
AJAY THOMAS, Member
SHARON THOMASON, Member (absent)

BOBBY WILKINSON, Executive Director

I N D E X

P R O C E E D I N G S

MR. VASQUEZ: I'd like to call to order the meeting of the Governing Board of the Texas Department of Housing and Community Affairs. It is 10:02 in the morning of January 13, 2022. I appreciate everyone being here at this alternate hour just to see how it would work today. Not sure if we're going to be able to do it all the time, but pay attention to the nine o'clock/ten o'clock start times.

We will start with the roll call, and Mr. Batch is not able to join us today.

Mr. Braden?

MR. BRADEN: Here.

MR. VASQUEZ: Mr. Marchant?

MR. MARCHANT: I'm here.

MR. VASQUEZ: Mr. Thomas?

MR. THOMAS: Here.

MR. VASQUEZ: And Ms. Thomason again is also not able to join us today. However, I am present; that gives us four, which does constitute a quorum.

We will start out the meeting as usual with Bobby Wilkinson leading us in with the pledges.

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

MR. VASQUEZ: Thank you, Mr. Wilkinson.

We do appear to have a short agenda, relatively short, so we will address the consent agenda. Are there any items on the consent agenda that a Board member or a member of the public wishes for us to move to action items?

(No response.)

MR. VASQUEZ: Hearing none, the chair will entertain a motion to accept the consent agenda as presented.

MR. BRADEN: Mr. Chair, I move the Board approve the consent agenda as presented.

MR. VASQUEZ: (A chorus of ayes.)

Great. Motion made by Mr. Braden. Is there a second?

MR. MARCHANT: Second.

MR. VASQUEZ: Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Moving on to the action items, we will not be having an executive session today, so let's go with the executive director's report.

MR. WILKINSON: Thank you, Chairman.

Starting off with rent relief, you know, we started in February 2021 and we distributed approximately $1.97 billion in rent and utility assistance to more than 307,000 households across the state. We prevented evictions for over 20,000 households, meaning those were filed evictions that then got prioritized and got paid out and prevented.

This month rent relief, we'll continue to process some applications and appeals with now less than 2 percent of funds available for assistance, and we're starting the ramp-down process involving reconciliation and closeout procedures on our program operations, financials and reporting.

For the first round of reallocation we were told no after we requested several million dollars. We're given a chance to ask again; this will be kind of some interstate reallocation. I don't expect us to get much. The priority from the feds, from Treasury has been to kind of let programs that were behind catch up and kind of make a new plan, whatever. So we'll get something hopefully but not a whole lot to move the needle; it's mostly going to be done.

There will be a long tail rent relief with the housing stability service grants that we've put out there for homeless activities, et cetera, but rent relief itself is just about closed up.

A lot of the cases remaining are some like kind of appeals or some Oh, the check went to my old address; it needs to be voided and reissued, and those are time-consuming and case-by-case, but the team is working on it, and I think most of the money should be out, other than the last 2 percent even, probably by the end of this month.

The Homeowners Assistance Fund, HAF, we've still not gotten approval from Treasury about our plan. Twenty-six states have received approval, so we're not in the top half on approval there, but hopefully it will come pretty soon. We're hoping to launch the full program by February 21 or so.

We have two HAF pilots underway, as Monica Galuski reported to you last month. The first is only open to certain homeowners who are delinquent in our own portfolio, serviced by Home Loan Serve, and the second one is in Hidalgo County. It just opened on Monday and it's designed to assist homeowners with delinquent property charges, so that would be property taxes, HOA and condo fees, liens and insurance.

There's 312 homeowners in process in the system. This is going to be more of a slow-moving program than rent relief. It's going to be targeted with assistance designed for sustainable homeownership. Reinstatements require responses from servicers, and that will slow things, as every servicer in the country is dealing with

HAF programs across the country.

The Multifamily Compliance and Real Estate Analysis divisions: The IRS released a notice earlier this week, just a few things. The 10 percent test deadline for tax credit deals is further extended, in some cases up to an additional two years; rehab expenditure deadline is further extended; placed in service deadline is further extended, in some cases up to two years; restoration period for casualty loss is extended; and the physical inspection waiver is extended as well.

They're allowing common areas to be closed through the end of 2022. QAP hearings can be conducted electronically, and medical personnel and health workers continue to be treated as displaced persons, which will make then eligible to be tenants in tax credit properties through the end of 2022. Just a list of things in the latest Treasury guidance. I don't know that we'll do everything to the letter just like that.

That's all my prepared remarks, besides we got through the holidays, business as usual, 9 percent round is starting, got lots of applications, and so ready for any questions.

MR. VASQUEZ: Out of curiosity, what percentage of staff is in the office now? I mean, are you working in the office or out?

MR. WILKINSON: Sure. There's no official percentage that we were trying to hit or trying to reduce to. Several months ago I just put everything down to the manager and director level, and people are working out their long-term telework commitments or whatnot schedules.

And so my deal is as long as everything gets done, I'm not going to count heads every day. For a while agencies were reporting to the Facilities Commission on how filled the buildings were, and that is not being requested anymore. So I really don't know, because I don't check every floor and walk around, especially lately, but I would guess at least a third is there every day.

MR. VASQUEZ: But 100 percent of the work is getting done.

MR. WILKINSON: Right.

MR. VASQUEZ: All right.

MR. WILKINSON: That's really what I'm all about.

MR. VASQUEZ: Okay.

Mr. Braden.

MR. BRADEN: How many employees do we have?

MR. WILKINSON: Good lord. I would have to back out the Manufactured Housing Division, but we probably have 250.

MR. LYTTLE: It's about 315 including MH.

MR. WILKINSON: Okay. Back out MH.

MR. LYTTLE: I'd say 280.

MR. WILKINSON: They have at least 60, so that doesn't work. We'll have to get back to you on that.

MR. BRADEN: Okay.

MR. VASQUEZ: Okay. Any other questions for Mr. Wilkinson?

(No response.)

MR. VASQUEZ: If not, thank you for that report.

Let's move on to item 3(b) on the agenda, which is a report on the 2023 QAP development plan, with Ms. Boston presenting.

Brooke.

MS. BOSTON: Chairman Vasquez, Board members, I'm Brooke Boston, our deputy executive director for Programs.

This item is a report on the plans we have for next year's 2023 QAP. Yes, you just approved the other one, and I already want to talk to you about the next one. The reason I'm presenting this item, as opposed to Cody or Homer, is that one of the hats I wear in the Department is being the coordinator of all the Department's rules. To assist Cody and Homer this year, I offered to coordinate the 2023 QAP efforts; however, they're kind of in charge as it relates to actual policy development.

In your Board materials behind item 3(b) we've provided a plan for how we'll proceed. To help develop the plan we had released a survey to garner input. Fifty-three surveys were received, and then Homer, Cody, and I went through and developed the plan from the results of that survey. So there are several big changes that we wanted to point out to you today.

First and most significant is that we didn't want to have to keep saying, Sorry, that change you suggested is too big; we'll have to do it next year, because every year we say that a whole lot to a lot of commenters.

So to do that, though, we realized that we would have to plan in advance to basically have two rounds of QAP drafts, not just one, so this would allow us to release a draft, receive comment on big changes, suggest that those changes be made if we that's what we think makes sense, and then get comments on those changes, and then bring a final. So that's our plan; it's ambitious.

The second change we're making relates to our data analysis and research. We're being really transparent from the outset on what quantitative items we're doing research on. Additionally, our plan is that we'll periodically release results of our research or analysis and ask for input and feedback using the Department's TDHCA web forum or through a survey.

You can see the list of items that we're planning on doing more quantitative review and analysis on in part 3, section A of the topics in there. It's a long list, and so it's quite likely that not all items we do analysis on will necessarily result in changes, but that's kind of our hopeful list.

The last big change is our strategy for how we're getting input. In the past we had three to five roundtables. While folks generally liked those, the roundtables don't provide for more in-depth discussion on a topic, nor do they garner as much back-and-forth dialogue on actual draft language.

So the plan for this year adds two new components in addition to hosting roundtables still. One of those is that we'll be hosting three separate virtual intensive work groups. The work groups will convene remotely multiple times for in-depth discussion and drafting focused on specific topics.

Based on the survey results, the three topics for this year are all scoring items, and they are proximity to jobs, underserved and tax credit density, and development of the tenant right of first refusal scoring item. We plan to release revisions based on the work group input through the TDHCA forum and discuss those at roundtables.

The other approach is that we'll be doing what we call micro revisions, in which staff will draft preliminary language on very specific small sections that will be released, and we'll get feedback.

So for some of these issues, the first time they see it won't even be the first of those two drafts; it will be something that we've had kind of on the web for people to comment on.

So TDHCA is committed to being very inclusive and any and all of the methods of input are going to be open to everyone, nothing is exclusionary or small work group based; however, we realize that by having membership open to everybody, that makes conversation and productive engagement potentially less and will reduce the help we can get from that. To help mitigate that we're planning on doing some surveys on specific language, especially on items that seem hard for us to garner consensus on when we're in discussion groups.

The time line for all of this is in your materials, but the second draft of the QAP will still come to you in September, as the original draft would have, and then you guys will adopt the QAP in November, so pretty much all of what I've talked about will take us up though the fall, and then in September it will just pick up the way you would have expected it to.

I would also note that the topics we plan on covering are also in your Board materials, and with that, I'm happy to answer any questions.

MR. VASQUEZ: Great. Thank you, Brooke.

Questions, Mr. Braden?

MR. BRADEN: Thanks for the report, Brooke.

So the virtual work groups, is that going to be through some type of like Teams meeting or internet?

MS. BOSTON: Yes. GoToMeeting or Teams.

MR. BRADEN: And then the roundtables, are they in person or are they also virtual?

MS. BOSTON: The roundtables will be in person.

MR. BRADEN: With no virtual component to it?

MS. BOSTON: Correct.

MR. BRADEN: And typically with roundtables, how many people have typically shown up?

MS. BOSTON: I'd say maybe 50 to 70.

MR. BRADEN: Oh, a large group.

MS. BOSTON: Yeah.

MR. BRADEN: Where do you conduct them?

MS. BOSTON: Last year we did one, gosh, it was a hotel meeting space, and they literally did a huge round table that was enormous, but we all had mics.

Historically before that we had been doing them in some of the state buildings here, which I want to try and avoid, just because there's a lot of construction and parking is challenging for people. So either a hotel, maybe the Pickle Center, somewhere like that.

MR. BRADEN: Okay.

MS. BOSTON: We did ask in the surveys if people wanted them to be in Austin or if they have suggestions for other cities -- we didn't want to feel presumptuous about that -- and the vast feedback was to keep them in Austin.

MR. BRADEN: Makes sense. I appreciate the additional outreach to the community. I think that's a good idea.

MS. BOSTON: Thank you.

MR. VASQUEZ: Again, Brooke, thanks, and to the whole staff, because having gone through seeing this process for a number of years, I like the way you keep improving on it, and again, encouraging input and interaction with all the constituencies early on is just so critical in making this happen smoothly. It makes it so much easier at the end, so again, thanks. This looks like a great strategy, and keep us updated.

MS. BOSTON: We will.

MR. VASQUEZ: All right. Thank you.

MR. WILKINSON: I'd just like to add that QAP development has been a little abbreviated the last couple of years, COVID, not meeting in person, that kind of thing, and so we're really coming back with a vengeance here. This is a pretty ambitious plan, and I'm pleased with it.

Also for the record, I said 250; apparently it's 249, so 313 FTE count, minus 64 Manufactured Housing, gives me 249. I assume that has all the Article 9 employees in that 313.

MR. LYTTLE: Actually, no, it does not.

MR. WILKINSON: Okay. Then again, we will get back to you. Anything that's purely federally funded and it's new money, Article 9 employees from the General Appropriations Act, and they're outside of your cap. So I'll get back to you.

MR. BRADEN: Are they under your supervision?

MR. WILKINSON: Yeah. They're still regular employees. The idea is that you don't want to stunt an agency when all of a sudden they get a billion dollars and they're already at their cap and they need 20 more accountants or whatever.

MR. BRADEN: Makes sense.

MR. LYTTLE: 270 is that number. Breaking news.

MR. WILKINSON: There we go.

MR. BRADEN: Thank you.

MR. VASQUEZ: And I guess we should also know how many open positions do we have, how many unfilled positions. You don't have to tell me right now.

MS. BOSTON: I would guess 10 to 15.

MR. WILKINSON: Yeah, that are posted.

MR. VASQUEZ: Does that include Manufactured Housing? I'm just kidding.

(General laughter.)

MR. VASQUEZ: We need to keep moving right along here, because Mr. Braden has got a tight schedule today, so thank you.

Moving on to item 4 of the agenda. Oh, you're still here.

MS. BOSTON: It's still me.

MR. VASQUEZ: Presentation, discussion, and possible action on an order proposing the repeal and proposed new rule for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, Section 1.5, Waiver applicability in the case of federally declared disasters, and an order directing their publication for public comment in the *Texas Register*.

Ms. Boston.

MS. BOSTON: Brooke Boston.

This is item 4. Currently this rule provides that when a federal waiver relating to a federal regulation is granted and that requirement has been put into our rules, the executive director can then also waive or suspend that rule if there's been a federal waiver. So there's a federal requirement, we put it in our rules; a federal agency makes an exception because of a disaster, and we let that trickle down, so that's what the rule does right now.

So what we're proposing is to expand that authority and make sure that it would also apply to state statute, and that could be state statutes on a state program or state statutes on a federal program.

So for instance, a lot of our Government Code 2306 applies to tax credits, so if the governor wanted to grant a waiver of one of those but we had put it in our rule, this would let that flow through and allow that same waiver process to happen.

We also were adding that it would apply if there was a state disaster, so if a state disaster gets declared and there was a statute that the Governor's Office agrees to waive, then we can make sure that trickles through our rules as well.

That's pretty much it. We are going to take this out for comment from January 28 to February 28, and then we would bring it back to you for final adoption.

MR. VASQUEZ: Great. So this is facilitating matters during disasters when declared either federally or state, or we already have one of those covered, so this is getting the other one?

MS. BOSTON: Correct, correct. We already have federal, and we're going to make sure it's applicable for state issues, whether that's on a federal or state program.

MR. VASQUEZ: Right.

Okay. Do any other Board members have questions for Ms. Boston on item 4?

(No response.)

MR. VASQUEZ: If not, the chair will entertain a motion on item 4 of the agenda.

MR. THOMAS: Mr. Chairman, I move the Board approve the repeal and proposed new rule for 10 TAC Section 1.5 for publication and public comment, as described in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. BRADEN: Second.

MR. VASQUEZ: Seconded by Mr. Braden. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Moving on to item 5, Presentation, discussion, and possible action on approval of a draft HOME-ARP plan to be released for public comment and to release notices of funding availability after plan acceptance.

Ms. Cantu.

MS. CANTU: Yes. Good morning, Chairman Vasquez and Board members. I'm Naomi Cantu, director of HOME ARP, and I'm speaking today on item 5, which Chairman Vasquez just read.

HUD has allocated approximately $132 million to TDHCA in a new program called HOME-ARP. These funds are built on Foundations of HOME annual program with waivers and new activities that focus primarily on homeless and other high risk populations. HOME-ARP must be expended by September 30, 2030.

In October of last year we held nine consultations on how we should use HOME-ARP. While the public input varied greatly, one need received strong support in each consultation: the need for capital investment for long-term solutions.

This need is reflected in the plan before you as rental housing rehabilitation and development and non-congregate shelter rehabilitation and development. In addition, to address possible issues with nonprofit capacity to administer the capital funds, the plan also programs nonprofit capacity building and operating cost assistance.

The non-congregate shelter is a new activity allowed under HOME-ARP. I wanted to point out that traditional shelters are typically one or more large rooms with a number of beds. These are congregate shelters. Non-congregate shelters require households to have individual rooms, which will help stop the spread of airborne viruses.

The draft plan presented before you will be released for public comment and two public hearings, one virtual and one in person. The public comment period will start tomorrow, Friday, January 14, and run until Monday, January 31, 2022.

If comments are not extensive, staff is requesting that the executive director be authorized to proceed with submission of the plan to HUD without further Board action. If comment is extensive, the plan will be returned to the Board for final approval prior to submission to HUD. We're looking at the February 10 meeting for that one.

After HUD approval of the plan, staff will develop notices of funding availability for HOME-ARP rental housing and HOME-ARP non-congregate shelter, each offered with capacity-building and nonprofit operating cost assistance. Staff requests approval to release these NOFAS and action to expedite the HOME-ARP application cycle.

I'm available for any questions.
MR. VASQUEZ: Thank you.
Any questions for Ms. Cantu? I have one that may be more for Beau than you, than Mr. Eccles.
So do we have -- when we're publishing this plan for public comment, is there a certain number of days it needs to be open before we can finalize, the comment period can be open or has to be open?
MR. ECCLES: Typically the public comment period is about a month.
MS. CANTU: It is typically. They did expedite this in the HUD notice, so it's 15 days and we're opening for 17 days.
MR. VASQUEZ: Okay. So this is acceptable it's not the 30 days.
MS. CANTU: Correct.
MR. VASQUEZ: All right. That was my only concern.
MR. ECCLES: And that would be the exception as if the Feds say this is as long as you need to.
MR. VASQUEZ: Okay. Any other questions?
(No response.)
MR. VASQUEZ: Sounds like a good plan.
Actually then we will entertain a motion on item 5 of the agenda regarding the draft HOME-ARP plan.

MR. BRADEN: Mr. Chair, I move the Board approve the draft HOME-ARP plan to be published for public comment, as described in the Board action request on this item, and that notices of funding availability be released after the plan's acceptance by HUD, all as expressed in the Board action request on this item.

MR. VASQUEZ: Thank you.

Motion made by Mr. Braden. Is there a second?

MR. THOMAS: Second, Mr. Chairman.

MR. VASQUEZ: Seconded by Mr. Thomas. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

MS. CANTU: Thank you.

MR. VASQUEZ: Thank you, Naomi.

Moving right along to item 6, Presentation, discussion, and possible action on delegation of authority to the Department's executive director or designee to make up to $10 million in awards to HUD-approved housing counseling agencies to provide housing counseling and homebuyer education services for the Homeowner Assistance Fund.

Ms. Birks.

MS. BIRKS: Good morning. All right. I'm Tanya Birks, director of the HAP Program, working in conjunction with the rest of the HAP team to keep our pilot moving forward and then hopefully have our live kickoff mid to late February if everything goes well.

So this request is similar to the last meeting where we were discussing the intake centers. So the housing counseling element of the HAP Program is fairly important, it's fairly substantial, $10 million in our budget for statewide coverage.

Treasury does provide a lot of specific guidance to the states that is encouraging us to participate in the housing counseling to make sure we have housing counseling services secured, contracts with HUD-approved counseling agencies. There's about, I think, 45 to 50 HUD-approved agencies that can handle housing counseling across the state.

So this Board request will give us the flexibility to finalize the contract template for the housing counselors that we expect to contract with, and this being passed will also give us the flexibility to go ahead and start allocating out the $10 million into actual real budgets for the different organizations across the state, understanding that some areas of the state are going to have a lot more participation, a heavier pool, so we want to make sure we can quickly -- as we meet with these organizations and they're ready to roll, having this approval will allow us to quickly go ahead and start gett5ing those agreements signed, and then the homeowners across the state can receive benefits as soon as possible.

So this is a big part of our kickoff, this is a big part of the implementation. You know, we have a lot of organizations that are very interested in participating as housing counseling agencies and/or intake centers, so this will allow us to be ready to jump to action when the time comes.

So I think that's all, if there's any questions or follow-up.

MR. VASQUEZ: Okay. Actually I have a question. Does this relate in any way or are we leveraging off of the previous monies that we allocated to different agencies?

MR. WILKINSON: The last time we did the intake centers, and so is there going to be some kind of relationship or will there be some overlap, I guess, maybe?

MS. BIRKS: Yeah, that's a great question. While we do have two distinct budgets for intake and for housing counseling, we do expect, based on the conversations we've had, that some organizations -- some of the larger organizations across Texas, they do have the capacity and the certified counselors to serve in both roles if they seek to do that.

The only caveat is if these organizations are going to serve both in intake capacity and housing counseling capacity they still have to meet the criteria for both and they have to make sure they can show us they have the capacity to handle both so they're not possibly getting in over their head, but part of that is on us compliance-wise to stay on top of that

But yeah, there could be some overlap and actually that might be helpful because then that's less amount of agencies and then get full coverage, but we'll see what happens. So far so good, a lot of interested organizations that we're still pushing through to talk to now and getting this squared away will give us a little more wielding power there.

MR. VASQUEZ: No. I think it's great that we're strengthening all these community organizations. It really just multiplies our reach.

MS. BIRKS: And it makes the homeowners feel better knowing that we're working with people who are in their neighborhood, that we're not just coming down there, you know, trying to tell them what they need. Their local agencies can help guide us in our policy too, so it's a win-win there.

MR. VASQUEZ: Okay. Thank you.

Any other questions on item 6 of the agenda?

MR. THOMAS: One quick question, Mr. Chairman.

MR. VASQUEZ: Please, Mr. Thomas.

MR. THOMAS: Ms. Birks, just for clarification, is the $10 million in awards an annual number or is that just a one time?

MS. BIRKS: That's the total budget.

MR. THOMAS: Total budget.

MS. BIRKS: That's the total budget, and we're anticipating the contracts that we sign, they'll be about 18 months unless there's something in the policy that we find is different, so that's our total.

MR. THOMAS: Total allocation. Very good. Thank you.

MR. VASQUEZ: Great. Thanks, Mr. Thomas.

I'll entertain a motion on item 6.

MR. THOMAS: Mr. Chairman, I move the Board grant the executive director and his designees to make up to $10 million in awards to HUD-approved housing counseling agencies to provide housing counseling and homebuyer education services for the Homeowner Assistance Fund, all as expressed in the Board action request on this item.

MR. VASQUEZ: Great. Thank you.

Motion made by Mr. Thomas. Is there a second?

MR. MARCHANT: Second.

MR. VASQUEZ: Seconded by Mr. Marchant. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Moving right along to item 7(a), Presentation, discussion, and possible action regarding a waiver of 10 TAC Section 11.1003(b) of the 2022 Qualified Allocation Plan relating to the maximum supplemental request limit for the Villas at Pine Grove in Lufkin.

Cody Campbell.

MR. CAMPBELL: Cody Campbell, director of Multifamily Programs. As always, it is a pleasure to be here.

The next item on your agenda is a waiver request concerning the limit on supplemental tax credits that may be awarded to a development in the 2022 competitive round.

Villas at Pine Grove is a 68-unit development in Lufkin which received an allocation of about $1 million in housing tax credits in the 2019 round. The development has experienced cost increases due to the pandemic and the winter storm of 2021 and as a result has applied for an allocation of supplemental housing tax credits under the

2022 Qualified Allocation Plan to fill the funding gap.

The QAP stipulates that supplemental allocations are capped at 7 percent of the initial tax credit award, which in this case would put the limit at $70,370 for Villas at Pine Grove.

According to the applicant's request, an award of $153,500 -- and keep in mind that's an annual amount for ten years -- which is 15.27 percent of the initial allocation, is necessary for the development to maintain feasibility.

The applicant has attempted to secure MFDL funds from the Department; however, the site was found ineligible due to federal environmental regulations. Part of the site is located on the wetlands, and as it turns out, the federal government frowns on any kind of development on the wetlands.

10 TAC 11.207 establishes requirements for waivers from the Department. Among these is a requirement that the waiver must establish how it better serves the policies and purposes articulated in the Texas Government Code Chapter 2306.

2306.6701-2 requires that the Department maximize the number of suitable affordable residential rental units added to the state's housing supply, which appears contrary to the applicant's request to exceed the allowable funding for a single development.

If the Board grants this request, the credits will be awarded and deducted from the 2022 9 percent competitive ceiling that is available to other applicants. If the Board denies this request, then the applicant has represented that the development will be terminated, which will result in the previously allocated credits being returned to the Department for allocation during the 2022 round.

Staff has reviewed this request and determined that it does not appear to satisfy the waiver requirements established under 11.207, and therefore, staff recommends denial of the waiver request.

I'm happy to answer any questions that the Board may have, although I heard some shuffling behind me, so I feel like there might be some other people that want to talk too.

MR. VASQUEZ: So just to clarify before we have speakers, is the request for 15 percent supplemental or 7 percent supplemental?

MR. CAMPBELL: So 7 percent is the cap under the QAP, and they're requesting 15.27 percent.

MR. VASQUEZ: Okay. Is the staff saying no to the 15 percent and yes to the 7?

MR. CAMPBELL: Well, according to the waiver request, if they can't get the 15 percent, the deal is going to fall apart. If they do decide to pursue the 7, we would be happy to send it to REA and see if REA can get the numbers to work and make this deal be feasible, but from what they've told us, we're not optimistic that that would happen. It seems like it's kind of 15 percent or nothing at this point.

MR. VASQUEZ: Okay. And then on the direct loans, the only option are these federal funds or are there others that don't have those limitations?

MR. CAMPBELL: The site is ineligible for the multifamily direct loans that we have available at the moment. So we have National Housing Trust Fund and HOME money, and the site doesn't qualify for either.

MR. VASQUEZ: There are no other programs?

Okay. Well, let's set those aside and hear from speakers. And again, if anyone wants to speak on this item or others, please come up to the front. When you come up, please sign in -- I assume there's a sign-in sheet on the front -- and we'll give you three minutes to make your presentation. So whoever wants to come up first, please.

MR. DEYOE: Members of the Board, Mr. Wilkinson, appreciate the opportunity to be able to speak before you. My name is Rick Deyoe. I'm president of Realtex Development Corporation.

A little bit of history about the project. We received tax credits in 2019 in the amount, as Cody said, of a little over a million dollars. The property is located in Deep East Texas in Lufkin.

The project and its lenders and equity partners already were selected after the receipt of tax credits and moved forward under normal circumstances with the consultants and general contractor and closed without issue in February of 2020, one month before the federal government announced to the world "Shelter in place," and then in March the government basically shut down.

The project having undergone its underwriting and approved based on its 2019 budget was based on an early 2019 construction cost per the 2019 QAP and has seen cost increases since the beginning of 2019 as high as 20 to 30 percent from the original construction bids given to the general contractor.

Also, because the project is located in Deep East Texas it's been very difficult to get adequate subcontractors to the site because there's so much work in and around the major metropolitan areas. The subs, such as MEP subs, roofers, and framers are all charging premiums to come up to East Texas.

As mentioned in staff's background presentation, we appreciated the staff and the Board recognizing these extreme cost increases, that they were totally unforeseen and beyond the developer's control, and when the Board approved the initial direct loan NOFA as a way to cover these cost increases, we jumped at the opportunity and immediately submitted an application through the MFDL program.

We received several deficiency notices and questions back and forth with staff on underwriting, and we passed and resolved all those to satisfaction, and we were told and were optimistic that we were on the way to resolving this issue.

Obviously it was a blow to us whenever the environmental specialist said that HUD wouldn't allow a project that had wetlands onsite, even though we had properly permitted and mitigated the wetlands.

When we looked at other possibilities to close the gap in financing, we spoke with our financing team for the partnership. The permanent lender has agreed to increase the permanent debt by approximately $850,000 so long as he stays within a 115 debt service coverage ratio.

The construction lender on this project has agreed to cover the additional cost during the construction period, being $2 million, and our equity partner, AHP, has agreed to purchase all of the federal tax credits that would be awarded for the site. The remainder of the costs would be covered by increased deferred developer fee.

Understanding that the supplemental --

MR. VASQUEZ: If you could just go ahead and wrap up.

MR. DEYOE: I'm almost done -- would detrimentally affect the amount of tax credits which we, as the developer, will be able to utilize in 2022, we obviously want to utilize the least amount of supplemental tax credits as possible. We must make the 2019 project whole before worrying about new deals in 2022 for ourselves.

As outlined above, we have fully exhausted all other efforts to cover these cost increases; therefore, on behalf of the partnership we would respectfully request that the Board take into consideration the unforeseen issues that have caused the current situation and grant an approval of the tax credit waiver of the 7 percent cap for supplemental tax credits.

Some projects were able to limit their request to the 7 percent because they were able to tap into other TDHCA resources, such as the direct loan program. Unfortunately, we weren't able to do that although we tried.

MR. VASQUEZ: Okay. Thanks.

Let's get all the speakers up, and then I'm sure we'll have some questions.

MR. BOTTS: Good morning. My name is Hunter Botts. I'm here on behalf of Affordable Housing Partners, Inc., or AHP for short. We are the equity investor in this development.

We are wholly owned by Berkshire Hathaway. As such, we are not a syndicator; we invest our own funds into these affordable housing developments, and we've done a number of them here in Texas. I'm sure you guys have seen our names on other deals and so forth.

I'm here to just confirm and affirm that we are prepared, willing, and able to acquire any amount of additional credits that TDHCA may award this development. As such, we don't rely on other investors or upper tier people. We make our own decisions. We invest our own money. So we're here to make sure that this development gets done and increase our equity investment in this transaction as needed.

Any questions?

MR. VASQUEZ: Thanks for reaffirming that.

MS. SNEDDEN: Good morning. Michele Snedden with Shackelford. I'm here representing the applicant and in support of the waiver request.

I'm not going to repeat everything that Rick talked about and why the project is where it is; we're all fully aware of that. I want to focus more on the waiver and what you need to know to be able to grant the waiver.

As Cody said, the waiver needs to better serve the policies and purposes articulated by statute and requires that the Department administer the Tax Credit Program to maximize the number of units in the state's housing supply.

The Department made a decision that 5 million supplemental credits was a number that fulfilled that purpose, and also just as a reminder, the initial draft of the language in the QAP did allow for a cap of 15 percent before it was reduced to 7 percent.

Of that 5 million, only 2.8- has been requested. The 7 percent cap presumably does bridge the gap for some developers and/or they add the multifamily direct loan, and I feel sure this developer is not a one-off, and there's probably other developments that could use more of that 5 million to bridge the gap.

As you've heard, we cannot get the direct loan on this deal, and they have exhausted all other avenues, including, as you heard, the loans have been increased.

The deal is 75 percent complete, just for a little bit more background at this point, and by granting the waiver it still stays under the 5 million that is under the QAP; it allows the project to move forward and fulfills

TDHCA's purpose to put units on the ground. They add 68 units to the state.

That said, we do understand and the developer understands the concern with affecting the 2022 round, and with that in mind, we would like to suggest that to the extent you do grant the waiver, anything over and above the 7 percent -- this developer, I believe, has four pre-apps in -- would reduce its request for 2022 credits for the corresponding amount over and above the 7 percent cap if you do grant the waiver.

So I think by granting the waiver, not only does it better serve your policies and the intent of this program by allowing the project to be complete and it also, if you make it subject to what I just suggested then takes away the concern that it's essentially taking away 2022 credits from other developers.

Thank you.

MR. VASQUEZ: Okay. Thanks, Michele.

MR. SHANKLE: Good morning, Mr. Chairman, members of the Board. For the record, my name is Glenn Shackle. I have worked for the state for 33 years, retired, became a lobbyist. I am required to tell you all that I am a lobbyist.

I have relatives in and around Galveston who is benefitting from services provided by GCCAC.

MR. VASQUEZ: I'm sorry, sir. Are you here to speak about this item 7(a) on the agenda, the Village at Pine Grove in Lufkin?

MR. SHANKLE: No, sir.

MR. VASQUEZ: Okay. At the end of the meeting there will be an opportunity for open public comment.

MR. SHANKLE: I'm sorry.

MR. VASQUEZ: I'm sorry I've got to cut you off here. We need to address this agenda item.

MR. SHANKLE: Oh, okay. I thought we had gone to public speaking.

MR. WILKINSON: It will be soon.

MR. VASQUEZ: We're going to get there pretty quick; we're almost done here.

MR. SHANKLE: Okay. Thank you.

MR. BOWLING: I'm Bobby Bowling. I'm a developer from El Paso. I am here to speak on item 7(a).

A couple of things. I wanted to talk more big picture instead of just specifically with this appeal and how it affects the rest of us that are applying for supplemental credits.

I don't dispute or disagree with the case that's been made. I'm sure all of that is true, and I just want to add to that that all of us that are in the supplemental round are in the same boat.

It happened that a lot of other sources of funding surfaced during this crisis for a lot of developers, and those of us that came in in the supplemental round had exhausted all those other opportunities and had been told no.

Some of the more forward-thinking affordable housing municipalities in this state made funds available for developers in their community; mine did not. That's why you'll see in Region 13 all of the developments from 2020 -- and I speak for all three of us developers, Investment Builders, Tropicana Building, and the Housing Authority of the City of El Paso -- we have no other sources. So we all came in and we came in at the maximum of 7 percent cap and we all need more money than the 7 percent cap.

I just want to point out, like Michele stated, the original staff draft and the original staff recommendation from Brooke and from TDHCA was to put 15 percent as the cap on a per-development request.

It was us, the development community, from gathering together in our own kind of circles and trade groups realizing that there might not be enough money for everybody to get some, and we were the ones that requested that the rule be changed back to 7 percent.

Well, in that interim period between us having internal discussions as a community and the rule getting published, a lot of developers found other sources of funds: multifamily direct loan funds, municipalities, federal funds, all kinds of different things, and it turned out that now you're tremendously undersubscribed in this program. I think you've only got 2.8 million in requests of $5 million that you set aside.

So my request, my proposal to you all would be just do the mathematical calculation, and everyone who submitted the supplemental application, all of the numbers will justify a larger request, I assure you without even looking at them, but they will, but they won't be oversourced or infeasible by underwriting rules if you went to whatever that number is, 12 percent for all I think there's 26 requests or somewhere around 30 requests. So that's my request, that you all look at this bigger picture; instead of hearing 26 different appeals with the same situation, just do this.

And I do believe it is good public policy; I believe you're serving 2306. I do think that getting these units built and ensuring that they get completed is the primary public policy that's before you.

And one last thing -- I know I'm out of time -- when we submitted these applications, these supplemental applications, the price of lumber per thousand board feet was in the range of 800 to 900. You can check it right now on one of the apps; it's above $1,200 per thousand board feet again. So we got a 33 percent increase in lumber between the time we submitted our supplemental applications and today right now when we're buying the lumber.

And I'm here for any questions if you have them.

MR. VASQUEZ: Great. Thank you, Mr. Bowling.

MR. BOWLING: Thank you.

MR. ECCLES: Just as a legal point, this Board can only address those matters that have been presented in the Board action request; it can't come to a decision on doing an across-the-board unstated waiver, as has been requested. We can really just only deal with the motion that will be made as a result of the Board action request on this one application for waiver.

MR. WILKINSON: But if the Board was interested, we could bring an item next month.

MR. ECCLES: Absolutely.

MR. VASQUEZ: Okay. Do any Board members have questions for staff? I have a couple.

MR. BRADEN: I do too.

MR. VASQUEZ: Do you want to go first?

MR. BRADEN: Mine are some of the numbers, so you probably go ahead.

MR. VASQUEZ: Okay. One of my questions is have the numbers -- are those correct that we only have 2.8 million in supplemental requests?

MR. CAMPBELL: Yes, that is correct. Of the $5 million that was set aside for supplemental allocations, we received approximately $2.8 million in requests; it's about 35 requests in total.

MR. VASQUEZ: Okay. And does that include this item?

MR. CAMPBELL: That does include this request, yes, sir.

MR. VASQUEZ: Is that the 7 percent figure or is that the 15 percent figure?

MR. CAMPBELL: It includes the total amount they requested, which is the 15.27 percent, yes, sir.

MR. VASQUEZ: And then just to clarify, what we're talking about here, the difference between the 7 percent is, according to the figure, 70,000 and change?

MR. CAMPBELL: Yes, sir.

MR. VASQUEZ: Versus at 15 percent it's 153,500.

MR. CAMPBELL: That's correct.

MR. VASQUEZ: So we're talking about $73,000 tax credit difference.

MR. CAMPBELL: That is correct, yes, sir.

MR. VASQUEZ: Eighty-three? Did I say seventy-three? Eighty-three.

Okay. Again, I think all of our intent or wish is that we can get as many of these deals done as possible. I don't know if this is proper to be talking out loud, but let's just hypothetically talk out loud here. Let me understand. Will one of the developers help me?

MR. DEYOE: (Speaking from audience.) Ours is already 75 percent complete.

MR. VASQUEZ: Okay. So it's 75 percent complete.

Let me ask you a question, Mr. Deyoe. The wetlands, is this in the middle of the project or is it on an edge?

MR. DEYOE: There's a creek that runs right through the middle of the project, and so obviously there's wetlands in the creek. We did have the wetlands that touch the boundary of one of the buildings.

Obviously we built the project per the plans, and we built it per the requirements where the building was elevated out of the flood plain and out of the wetlands area, but we did have to mitigate, and it was a small string piece of wetlands so we had to go to the Army Corps of Engineers to get it all permitted and get their approval, and inspection and then mitigate a small portion of the wetlands, which is not uncommon, by the way.

MR. VASQUEZ: Well, I guess what I was getting at, there's no way to technically break your project up into two projects: you have the Villas at Pine Grove Apartments and then completely separate and apart the Villas at Pine Grove Wetlands so that's carved out so you'd be eligible for a loan that way. I'm just talking out loud here as a way to skin the cat.

MR. DEYOE: It's already been permitted, like I said. The building is already in place, the project is 75 percent complete already, so we would be losing -- we being the state -- would be losing the affordable housing units on a project that was 75 percent complete.

MR. VASQUEZ: Okay. Mr. Marchant, microphone.

MR. MARCHANT: I guess the bigger question I have is how many of these projects have been approved and you've signed off and they got the cap and the money is good.

MR. CAMPBELL: As of right now, none of them. The intention is that we'll be bringing all of them to the February Board meeting. We just received the full requests in December, they are currently in underwriting right now. We have a little bit more review to do on them, but none of them are ready for final.

MR. MARCHANT: How many, if they knew they could get 15 percent, would have requested 15 percent of the loans that you make up the 2.8 million?

MR. CAMPBELL: Unfortunately I can't answer that question.

MR. MARCHANT: But some, most?

MR. CAMPBELL: Presumably it would have been some of them.

MR. VASQUEZ: Of course that would be too much; that would be double.

MR. MARCHANT: So how are you going -- this may be a legal question -- so none of them have finally been awarded, so we would not be backtracking or adding to an approval?

MR. CAMPBELL: That is correct. There is a consideration to be made, I think, that if we open up the supplemental process for increases of the established cap, it could delay the February approval of some of these, because we would have to go back to REA and re-underwrite some of them. Certainly we can get that done. You know, I don't want you to make a decision based on that but it is a consideration.

MR. MARCHANT: So you would suggest that we just stay with the waiver of anything over 7. You have the power to grant 7 -- or you have the power to recommend to us 7, but the over 7 you'd like to bring in this forum.

MR. CAMPBELL: Anything over 7 would require a waiver from the Board. Yes, sir.

MR. MARCHANT: I just wonder how many of the people that have already requested will come back in and reapply up to that waiver amount, and then does that defeat the whole purpose of the group trying to make a decision on it?

MR. CAMPBELL: Mr. Bowling certainly is an expert on the development side of things, and I'm willing to put some weight on what he says that likely we would be seeing more requests like this.

MR. MARCHANT: That's my questions, Mr. Chairman.

MR. BOWLING: If I could add something to your question, Congressman Marchant.

MR. VASQUEZ: Mr. Bowling.

MR. BOWLING: So the IRS just yesterday announced that they have extended the placed-in-service deadline across the country for 2020 awards. We now have an extra year to place them in service than we do with the regular Section 42 rules and regulations, so an extra 30 days of review for a resubmittal of like additional lumber costs from our original is not going to hurt us as much as it would have six months ago, or as much as it would have last week because they extended the deadline.

And one other thing I failed to add. I don't know if the entire development community would be in favor of this, but I can speak for myself, and I think I can speak for the other El Paso guys too -- and that's the executive director for the Housing Authority of the City of El Paso -- we would be okay with knocking out a portion of our maximum requests for 2022 to the extent that we were awarded supplemental credits for 2019 and 2020 deals. So we wouldn't be able to apply for, you know, at some ratio, some penalty, as you would have it, for those of us that tapped into this additional credit beyond the 7 percent.

MR. VASQUEZ: Mr. Braden, you have some questions?

MR. BRADEN: I think most of mine have been answered, but I just want to clarify a couple of things. So when we say this is an $83,000 problem, the difference between the 7 percent and the 15.2 percent, that's not like they need $83,000 of sources; that's a tax credit number.

MR. CAMPBELL: That's exactly correct, yes, sir.

MR. BRADEN: So that's more money than it appears as $83,000.

MR. CAMPBELL: Right. So that's 83,000, but it's a ten-year amount, so they would get that annually over the ten years.

MR. BRADEN: I just wanted to clarify that in case people got the misimpression when we talk about that amount of money, which they should be able to find somewhere in the project.

And then when the developer said 75 percent complete, you mean actually it's on the ground being built, stick up.

MR. DEYOE: (Speaking from audience - inaudible.)

MR. BRADEN: So if we were to pull it and the project wouldn't be completed, besides the money you lose, Lufkin would have this project that's an eyesore, not completed and not really functional.

MR. VASQUEZ: That's rhetorical. Right?

MR. BRADEN: Yes, it's rhetorical. That's all I have.

MR. WILKINSON: If this is the direction the Board wants to go, you would grant this waiver and then you would ask us to come back in February with a proposal to let everyone go to 15 percent?

MR. VASQUEZ: I guess I'm not necessarily of the mindset to go to 15 percent; I'm not of the mindset that we have to spend all 5 million.

MR. WILKINSON: It was a ceiling.

MR. VASQUEZ: And I guess if Mr. Bowling and his associates are willing to do like a three-to-one penalty, that might be okay. I was just trying to give you a hard time.

MR. BRADEN: If we grant this waiver, which frankly, I'm sort of in favor of because of the situation, how would we prevent everybody who thinks they need more tax credits to make application in February and seek the same waiver. Right? We'd have to take all those.

MR. VASQUEZ: Or is this a first come, first served process? I agree, I don't want this all of a sudden to trigger ten more applications.

MR. BRADEN: Or maybe we do. I mean, I'm not sure I'm complaining about it. I just think of the fact that we haven't awarded anything yet so they could all show in February before we make these awards and these people feel strongly about it and say they actually need this amount will seek a waiver.

MR. VASQUEZ: So maybe the number is 10 percent, or something like that, 10.5.

MR. BRADEN: Right. So we're really talking procedurally how we put that into effect. I mean, if we didn't do anything, I'd expect a bunch of waiver requests in February.

MR. VASQUEZ: Well, and at the same time I understand, especially with this in service extension, that the applicant would not be -- on this item wouldn't be upset if we tabled this for this month and we address the overall program and the pending applications next month, unless legal or staff says this would wreak havoc on us and don't do this, please.

MR. WILKINSON: I think it's a developer question if they are fine waiting a month.

MR. VASQUEZ: Well, I mean, it sounds like that's palatable.

MR. BRADEN: We ought to ask them to confirm. Right?

MR. VASQUEZ: Mr. Deyoe, if we table this for a month, is that a death knell or not? I mean, can y'all survive another month?

MR. WILKINSON: Sir, can you come to the mic?

MR. DEYOE: (Speaking from audience - inaudible.)

MR. VASQUEZ: If you're going to speak, we have to have you come up at the microphone. Sorry.

MR. DEYOE: The question was asked by somebody, you know, are all the other deals going to come in asking for the 15 percent or up to 15 percent if that was a possibility, and I just wanted to add we've also got a 2020 deal, and our only request there was, I think, like 4 percent, because you can only ask for what you can justify.

MR. VASQUEZ: Right.

MR. DEYOE: So it may not be that all the developers are going to come back asking for that, some of them may not need it. This happened to be a project that was an early 2019 deal, got started out right out of the box before the COVID-19 pandemic hit, and then hit a brick wall.

MR. VASQUEZ: Sure. You're not the only one in that position. Right?

MR. BOWLING: Right. And let me just --

MR. VASQUEZ: Mr. Bowling.

MR. BOWLING: This is Bobby Bowling. You had some that requested less than 7 percent in this round in the supplemental because they could only justify 4 or 5 percent. So he's right, it's not going to be -- I mean, lumber prices have still gone up, but I don't think everyone is going to come. If you set a cap at 10 percent, I think you'll still have some that can't justify that for whatever reason.

MR. VASQUEZ: Okay.

MR. CABELLO: I was reluctant to come up here.

MR. VASQUEZ: Can you identify yourself for those who don't know you?

MR. CABELLO: Homero Cabello, the deputy executive director Program Controls.

In talking to the Real Estate Analysis group on a regular basis, the first few that we've underwritten, they're oversourced. They have multifamily direct loans and tax credits. So the question that I'm asked is: what do we cut first? Do we cut tax credits or do we cut direct loans? And the response is work with the development community and try to figure out what you've got.

From the Department side we have commitment deadlines for these direct loan funds, so we've got till June of this year to commit these National Housing Trust Fund dollars. So it's a struggle. These are only a few that we've touched and that REA has brought to my attention, but I just thought you should know.

MR. VASQUEZ: Okay. And that's part of my question I was asking, is this infeasible administratively.

MR. WILKINSON: I think we can make it work, but as a possible side effect, people might withdraw their direct loan applications and go for credits instead, and then we wouldn't hit our goals and might lose some of that money.

MR. CABELLO: We might not meet our commitment deadline.

MR. WILKINSON: Yeah. But maybe we could structure it to where you're not allowed to withdraw and bust your cap.

MR. CABELLO: We try to be very creative and work with all of the development community, but these are some of the issues on the first few that we've touched is which one do we cut: tax credits or direct loans.

MR. VASQUEZ: But I believe that it's been the consensus of the Board that we try to use direct loans where possible rather than supplemental tax credits, so those will be -- and I believe that's still our feeling, that we'd rather not be borrowing from the future on tax credits wherever possible. This sounds like it has these wetlands mitigation circumstances.

MR. CABELLO: So I just wanted to bring that to your attention. I think we have three or four that are in that situation right now, just of the few that we've touched.

MR. BRADEN: So this is more a procedural question maybe for Beau and Bobby. So Leo is suggesting it's probably a good idea, do we take a step back, and we bring something in February that's more holistic to deal with this issue.

So let's say that is instead of 7 percent we move it to a 15 percent cap and let people justify an increase, procedurally does that mean then the Board would take action in February to do that and these people would have until March and we're not awarding things until when? How would that work in terms of timing?

MR. WILKINSON: I think we could come back in March. I don't know. It's a program question, do the awards in March.

MR. CAMPBELL: Cody Campbell, director of Multifamily Programs.

Presumably of the 35 that we've gotten so far, some would want to stick with their initial time line, so I don't know if we're anticipating that all -- it remains to be seem, but I don't know if we're anticipating all 35 to come back and request an increase.

If we did allow an increase, we could certainly attempt to keep the ones that want to keep with their original request on track for the February Board meeting; there's no requirement that these all come to the same Board meeting.

And for those who make the decision to try and increase their reward, if they can justify it, we can get those to the Board as they're available to come to the Board. So procedurally I don't know if this is insurmountable. We can always get the job done.

MR. BRADEN: Okay. So if people don't ask for more money, we can move forward with the schedule you currently planned: more tax credits, not more money.

So what about the current applicant? So he's sort of the test case, came early, we're reconsidering our rules because of it, so if we defer action on his, I mean, then could we take action in February, or is he relegated to wait until March as well?

MR. VASQUEZ: I think we take action in February, the awards happen in March.

MR. WILKINSON: But rather than table it, if you granted this waiver, we can probably bring him back and he'd get awarded in February. But if you want to wait and treat it at the same time, then he would be in March

MR. BRADEN: I guess I'm a little concerned, and maybe as Bobby pointed out, they've got an extra year, but it seems to me if he's 75 percent completed, at some point they need to finish the job and get going, and are we delaying those type of things.

MR. CAMPBELL: From my conversations with at least a couple of the applicants in the supplemental credit pool, I know that there are at least a few who would prioritize getting their money sooner versus getting more money. That's the temperature I've gotten from a couple of them.

So I don't know if all 35 are going to end up wanting the same thing. If we decide to start making waivers or if the Board decides to start making waivers, we can certainly proceed with getting everything done just as quickly as we can, but it won't be February for those who want more money, of course.

MR. THOMAS: So one question I had, Mr.

Chairman, of these 35 that are estimated that might come and ask for more money, sounds like this particular project in front of us, if they don't get granted the waiver, the project may not complete and we lose the units.

And some of the ones that you may refer to or you're referring to, if we went forward and denied the waiver, they're still going to complete their project, they'd figure out a way to get their project done, presumably.

Do we have any feel for how many of these are like 75 percent complete, or are all of them going to go under if they don't get an increase in tax allocation of some sort?

MR. CAMPBELL: So I'm hesitant to give you a firm number, because I haven't looked at that, but most of these are 2020 allocations so I wouldn't expect that they are quite as far along as this particular development.

MR. ECCLES: If I could maybe help Cody out and provide a little just perspective procedurally on how this would come about, the 7 percent cap is in the QAP so it's in our rules.

So the only way that they can get past that and for staff to actually say okay, that's an acceptable award would be for them to request of this Board a waiver of that rule.

They have to satisfy the fact that it was unforeseen, the circumstances that brought about the need for this request for a waiver, that it couldn't be avoided or have been avoided any other way, and that it satisfies the greater goods that are stated in our statute in Chapter 2306 of the Government Code. That is by necessity a very individualized look at this applicant and their needs.

So it may be that sort of broadening out, as Mr. Bowling seemed to suggest, that maybe it should be instead of 7, 15, well, the rule says 7 percent so in order to go north of that 7 percent there needs to be a request for a waiver which needs to be justified.

So rather than looking at perhaps this will open the flood gates to waiver requests, well, it should because the Board would need to look at each request to see if it could justify. And then on the back-end staff would need to see if such an award was made would it be, as Mr. Cabello suggested, oversourced.

So there is the staff need to adhere to the rule, the Board's desire to fulfill the policies, as well as REA's need to make sure that no more credits are given than are required to justify the financial feasibility. So those are all the elements at play, and I hope that provides a little bit better perspective.

MR. THOMAS: Absolutely. I appreciate that.

So what I'm hearing that we as a Board then should take this action item independently as a case-by-case basis based on the rules that are before us, and then if we get subsequent requests for waivers, we can tackle those in February and so forth, either as a broader policy goal, if that's the agenda item that comes before us, or individually project by project.

MR. ECCLES: Well, I think the waivers are inherently individual. I think it may even say in the waiver rule that it doesn't change the rule when you give a waiver, and as fans of TDHCA Board meetings have heard me say many times, the Board's action on a single waiver request does not set up precedent for other people. It's merely if the Board wishes to remain consistent with its reasoning it can certainly look to those.

That said, granting one waiver doesn't mean that it's open season and anyone who wants to go north of 7 percent under the rule will get it. It has to still be justified to this Board why there should be a deviation from the rule per our waiver rule.

MR. BRADEN: I agree with your conclusion, Ajay. It seems to me that what Beau just said, minus that last part, is we ought to consider this item on its merits today, and then February we'll see what happens.

MR. WILKINSON: We can combine into one BAR though so you only have to vote once, several waivers. We do awards that way.

MR. ECCLES: Oh, absolutely. You mean like if six applications say we want more -- and they'll all want differently, it's not that they'll all want 15 percent because they couldn't necessarily justify to REA that they need 15 percent -- then they should bring those requests and then we could have six applications each requesting their different things, justify them to the Board, yes, in one BAR.

MR. WILKINSON: One vote, yes.

MR. THOMAS: I know as a member of this Board, I would like to see the justification of the waiver and the amount request and where the status of the projects are before just liberally just granting a waiver to increase it to a max amount or a set percentage.

So I know it's extra work and I feel for that, but I would rather know that on a case-by-case basis and then determine where we're going to vote and come out as policy.

MR. CAMPBELL: If I may offer one more consideration that the Board might want to take into thought. Developers that are preparing their applications right for the various subregions across the state are looking at the amount of tax credits that are available in that subregion, and I know that they're taking the supplemental requests that we have received so far into consideration when they're deciding what to apply for and where to apply for it.

This has the potential to interrupt their process, because if we move forward with something like this, there would be less certainty in terms of what money is available. I'm not saying that's a reason not to do it, but it is a consideration from a developer standpoint that the Board might want to ponder.

MR. BRADEN: I don't understand that comment. So you're saying if we grant this waiver for $83,000 more in tax credits, that's going to disrupt our tax credits for 2022?

MR. CAMPBELL: Disrupt might not be the right word, but we've already -- actually, Colin Nichols, the manager of the 9 Percent Housing Tax Credit Program, and myself have already gotten several emails from developers who are very interested in the amount of supplemental credits that are going to come out of each subregion that are available, and so if we start wavering from those amounts, there is less certainty with what they need to do in terms of moving forward with their applications.

And especially if we're getting into February and maybe even March, which is when the full applications are due, the certainty from their perspective would be removed at that point.

MR. BRADEN: Of course we have established a $5 million cap thus far.

MR. CAMPBELL: Correct, yes, sir.

MR. BRADEN: And even the 2.8 million that you've said have been applied for, this larger amount was already in that 2.8- number.

MR. CAMPBELL: Yes, sir.

MR. BRADEN: So making a grant of this would have no effect on what, presumably, you've been telling people so far because you received $2.8 million of applications.

MR. CAMPBELL: Certainly. For this particular waiver, yes, sir.

MR. VASQUEZ: Okay. One more comment, Hunter.

MR. BOTTS: Hunter Botts with AHP again.

Five million dollars was already set aside as the ceiling for this, so I'm assuming that that has been taken into consideration by the staff in terms of what impact it may be on next year's, and we're not anywhere close to that amount yet. I just wanted to remind everyone of that.

MR. VASQUEZ: Okay, thanks.

Okay. Let's try to wrap this up so we can move forward. I'm hearing the Board members -- well, let's see if we want to have a motion to table this till the next meeting, which it sounds it would come up in a batch of several other requests for additional supplemental tax credits, or do we want to make a motion to go ahead and approve this one as is and then hear the rest next month?

MR. THOMAS: Mr. Chairman, I move the Board approve the waiver of 10 TAC Section 11.1003(b) of the 2022 QAP relating to the maximum amount of supplemental credits that may be requested, as submitted specifically by the Villas of Pine Grove.

MR. BRADEN: Second.

MR. VASQUEZ: Okay. Motion made by Mr. Thomas, seconded by Mr. Braden. Is there any last minute discussion?

(No response.)

MR. VASQUEZ: All those in favor of granting the waiver -- Mr. Cabello.

MR. CABELLO: That exceeds the 15 percent, the waiver, so I just want to make that clear.

MR. VASQUEZ: I'm sorry?

MR. CABELLO: This waiver request exceeds 15 percent.

MR. VASQUEZ: It's 15 point --

MR. CABELLO: I just want to bring that to your attention.

MR. VASQUEZ: For simplicity, why don't we make it an even 15 percent, and I'm sure they can come up with the -- so we'll keep it at the motion made.

MR. THOMAS: Modify the motion with the clause that it's capped at 15 percent.

MR. CABELLO: Pending REA approval.

MR. THOMAS: Pending REA approval.

MR. VASQUEZ: Motion clarified for Mr. Thomas. Does the second still stand?

MR. BRADEN: I don't really care about the .2 percent, but yes, the second still stands. I would have allowed the .2 percent.

(General talking and laughter.)

MR. VASQUEZ: Okay. All right. Hearing no further discussion, all those in favor of the motion say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries. And we look forward to an exciting February meeting.

Okay. Item 7(b) has been withdrawn from today's agenda and may be addressed on a future agenda.

MR. WILKINSON: The applicant withdrew their appeal request, so it's not eligible for a future agenda.

MR. VASQUEZ: I stand corrected. The appeal has been withdrawn and it's not eligible for a future agenda.

Leaving us to item 7(c), Prevention, discussion, and possible action regarding awards from the Multifamily Direct Loan 2021-3 NOFA, as amended.

And Mr. Campbell, you're still up.

MR. CAMPBELL: Thank you. Fortunately this one is a little bit more straightforward.

Item 7(c) on your agenda recommends a development for approval of HOME funds under the 2021-3 NOFA. Lofts at Temple Medical District was approved in 2020 for a housing tax credit award of $1.5 million and an MFDL award of $2.75 million.

The application proposes the new construction of 140 units to serve an elderly population in a three-story, elevator-served building.

Since the initial award, the applicant has documented increased costs of just over $3 million, which includes a building cost increase of $2.9 million, acquisition cost increases of $200,000, and an additional $2,970 in operating expenses that relate to resident supportive services.

Because a written agreement has yet to be executed for the initial MFDL award, the Department recommends increasing that award from $2.75 million to $4,490,490, an increase of about $1.4 million. The remaining gap is filled by an increase the development's permanent loan.

The increased TDHCA loan will be secured by two notes: $490,490 will be structured as a hard repayable loan with an 18-year term at zero percent interest with monthly payments, and the remaining $4 million will be structured as a deferred repayable loan with an 18-year term and again zero percent interest.

Critically, the development has not applied for supplemental housing tax credits in the 2022 round, and the 2021-3 NOFA requires that the total developer fee cannot increase from the original underwriting. So just know that if you make this approval today, they're not increasing their developer fee.

Staff recommends approval of this award, and I'm available for any questions that the Board may have.

MR. VASQUEZ: Great. Thank you, Cody.

Do any Board members have questions for Mr. Campbell?

(No response.)

MR. VASQUEZ: Again, just to clarify, this is actually eventually going to be repaid; it's not just grant money.

MR. CAMPBELL: That is correct, yes, sir.

MR. VASQUEZ: Okay. And they're using loan funds rather than supplement tax credits, is another positive.

MR. CAMPBELL: Yes, sir.

MR. VASQUEZ: Okay. And there's no wetlands.

MR. CAMPBELL: If there are, I'm unaware of them at this point.

MR. VASQUEZ: Okay. Any questions on item 7(c)?

(No response.)

MR. VASQUEZ: If not, the chair will entertain a motion.

MR. BRADEN: Mr. Chair, I move the Board approve the 2021-3 NOFA application as recommended for action in this Board action item, subject to conditions and adoption of previous participation reviews, as described therein.

MR. VASQUEZ: Okay. Motion made by Mr. Braden on item 7(c). Is there a second?

MR. MARCHANT: Second.

MR. VASQUEZ: Mr. Marchant seconds.

No one wants to comment on this one. Right?

(No response.)

MR. VASQUEZ: Okay. All those in favor say aye.

(A chorus of ayes.)

MR. VASQUEZ: Any opposed?

(No response.)

MR. VASQUEZ: Hearing none, motion carries.

Okay. This concludes the business items on the agenda. Now that the Board has addressed all the posted agenda items, now is the time of the meeting when members of the public can raise issues with the Board on matters of relevance to the Department's business or request that the Board place specific items on future agendas for consideration.

Is there anyone who would like to provide public comment at this time? If so, please come up to the front. Again, the three-minute rule is still in effect. I'll have our legal counsel cut you off or I will if it's not relevant to our business that the Board can address.

We may lose our quorum here any moment but there are no other action items so we can finish the meeting without Mr. Braden who needs to go ahead.

So with that, let's have our first speaker. You want him to come up first? Okay. Please remember to announce who you are, who you represent, and sign in.

MR. FLOWERS: Good morning and thank you for the opportunity to speak on behalf of Galveston County Community Action Council. My name is John Flowers, and I am an outreach coordinator with the agency. I'm here today on behalf of executive director, Robert Quintero. He's ill and sends his regards.

What I want to talk about are the two funding programs, CEAP and CSBG, which the TDHCA Board recently voted to terminate. These programs are being taken away from us based on our performance to distribute CEAP funding. We did not meet our obligation with twice the amount to spend in the middle of a pandemic.

Our performance with regard to the CSBG program is a completely different story. I have a document that I'd like to leave with you today that shows you exactly what happened with CSBG.

This report shows how GCCAC was able to expend all contracts from 2018 to present, including 2020 CSBG CARES and 2021 CSBG with those two that we did not request an extension. The fact that the program is being stripped from us is not right according to federal regulation.

At the time the TDHCA Board approved to terminate CSBG contracts and eligibility status on December 9, GCCAC had only $58,000 unspent in CSBG funds. All contracts had been successfully completely and only the 2021 CSBG normal contract was outstanding.

We believe that this critical information was not provided to the Board before the vote was taken. In fact, the CSBG CARES contract was completed in July 2021; however, it was requested that the Board terminate this already completed contract, completed for months.

In addition, Federal Regulation IM-16, provided in the handout, requires that the awarding agency consider the status of corrective action when a final determination is made to terminate contracts and eligible status.

We did get behind in 2019; however, we implemented corrective actions in early 2020. As a result, despite the negative impacts of the pandemic, GCCAC spent 107 percent of the annual allocation, and in 2020 $2.1 million, 132 percent of the annual allocation in 2021.

We met our obligation with CSBG. Our expectation would be that we would receive in 2022 and we request a meeting with the TDHCA Board and leadership to iron out all of these inequities as soon as possible, and I believe based on this information that's a valid request.

Is there a protocol I can leave this with you?

MR. VASQUEZ: I think with the secretary.

MR. FLOWERS: Thank you.

MR. VASQUEZ: Thank you, Mr. Flowers.

Who's up next?

MR. SHANKLE: I do apologize earlier, Mr. Chairman and members.

MR. VASQUEZ: No problem.

MR. SHANKLE: My first time before this commission.

I'll do a rewind. My name is Glenn Shankle. I worked in state government for 33 years; I retired as the executive director of the Commission on Environmental Quality, basically known as TCEQ.

After that time I would retire and just do nothing, but my daughter had other plans for me, so I became a lobbyist, and I'm required to tell boards and commissions that I am a lobbyist.

I have relatives in the Galveston area that have benefitted from the services provided by GCCAC. I became concerned when I learned that the Housing and Community Affairs canceled their contract, so I made contact with a couple of members of GCCAC to get more insight on the matter, and I asked them is there anything I can do to help them, and they agreed.

I need to make note when I registered them as clients as a lobbyist I registered them as zero dollar. I am not charging them anything for my lobby work.

As I visited the members, I learned they had two contracts in 2020, the worst year this country has ever seen in 100 years with COVID-19. This country lost 600,000 souls to COVID-19 in 2020.

However, I also learned that GCCAC had completed one contract to 100 percent that year and they completed a CSBG contract on time, but still TDHCA still wants to penalize them for doing what I would call a miraculous job, if not a miracle, under the consequences or circumstances that they were confronted with with COVID-19.

I learned a long time ago that you don't have to be a chicken to tell a rotten egg. I have looked at this matter, and it just doesn't pass the smell test for them to be -- for their contract to be --

MR. VASQUEZ: Please wrap up, Mr. Shankle.

MR. SHANKLE: Okay. That their contract be terminated based on what I would consider a remarkable performance.

I'll wrap it up real short. As I listened to the members, I asked myself why are they doing this work, why are they wanting to work for somebody who don't want them to work for them.

Then the more I listened is I learned it's from faith. They wasn't doing it just for a paycheck; they was doing it from faith to help other people out.

Mr. Chairman, commissioners, I respect that you reconsider the termination of this contract and reinstate them as a contractor for the Texas Commission Housing and Community Development.

I thank you for all indulging me in my presentation today, and I just pray that you look at the matter and find that these people did a yeoman's job and the best they could under the circumstances of the climate of this country as the pandemic continues to soar.

We lost 600,000 souls in 2020. In 2021 --

MR. VASQUEZ: Thank you, Mr. Shankle. We appreciate you coming and speaking before us and addressing this issue which the Board has addressed for years and years and years. So appreciate it.

MR. SHANKLE: Thank you, sir.

MR. VASQUEZ: Okay. That appears to be all of our public commenters for today, so again, the meeting is now at the end.

The next scheduled meeting of the Board is Thursday, February 10, 2022 at this same location at a meeting time either at 9:00 a.m. or 10:00 a.m. Pay attention as we publish it. I don't expect that the agenda is going to be quite this short.

But seeing that there's no further business, it is 11:34, and the meeting stands adjourned.

(Whereupon, at 11:34 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: January 13, 2022

I do hereby certify that the foregoing pages, numbers 1 through 74, 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.

DATE: January 19, 2022

(Transcriber)

On the Record Reporting
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