

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the December 11, 2013 Meeting

1. Roll Call.

Bettina Redway for State Treasurer Bill Lockyer chaired the meeting of the Tax Credit Allocation Committee (TCAC). Ms. Redway called the meeting to order at 1:20 p.m. Also present: Alan Gordon for State Controller John Chiang; Eraina Ortega for the Department of Finance Director Michael Cohen; California Housing Finance Agency Executive Director Claudia Cappio; Department of Housing and Community Development Representative Laura Whittall-Scherfee.

County Representative Lois Starr and City Representative Lucas Frerichs were absent.

2. Approval of the minutes of the November 13, 2013 Committee meeting.

MOTION: Mr. Gordon moved to adopt the minutes of the November 13, 2013 meeting. Ms. Ortega seconded and the motion passed unanimously.

3. Executive Director's Report.

Mr. Pavão reported that the 45-day public comment period related to the proposed regulation changes for 2014 had concluded. He stated that staff was in the process of reviewing numerous comments received in writing and during the TCAC public hearings. He announced that the final proposed regulations would be brought to the Committee for consideration at the January 29th TCAC meeting.

Mr. Pavão reported that staff completed the 2013 allocation of credits to all but one project. He stated that by federal law the 2013 credits must be allocated by December 31st. Mr. Pavão stated that staff had one remaining project, which they referred to as the sponge project. He explained that a sponge project was typically funded at the end of the year and usually had credits from the current year and the following year. The sponge project soaked up the balance of credits available for the current year and was completely funded by a forward commitment from next year.

4. Discussion and consideration of the 2013 Applications for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Pavão stated that 18 projects were listed on the Agenda. He reported that 1 project was withdrawn because it was not quite ready for consideration prior to the meeting.

TCAC development manager, Anthony Zeto, brought the Committee's attention to revised Staff Reports printed on golden rod paper. He explained that the first report was for City Heights Ten (CA-13-893). He stated that the income targeting for 5 of the units was changed from 50% to 60%. The second report was for Laurel Village (CA-13-898). Mr. Zeto explained that the approved developer fee in the eligible basis increased and now equaled the amount in the cost.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Ortega seconded and the motion unanimously.

5. Public Comments.

Ms. Redway invited William Leach to comment. She noted that the Committee members received and reviewed most of the related materials.

Mr. Leach stated that he was the Vice President of Public Finance for Palm Communities. He reported that on November 13th, he advised the Committee of his concern that Verano Apartments (CA-13-138) may not have met the requirements of the regulations. Mr. Leach stated that he complimented staff for their thorough administration of the issue and the program. In addition, he advised the Committee that he filed a lawsuit against the Housing Authority (HA) of the City of Perris and sought a legal determination on the matter. Mr. Leach reported that on December 5th the court heard the issue and made a ruling, which made him certain that the application for CA-13-138 did not meet the requirements of the regulations.

Mr. Leach requested that the Committee call a special meeting and create an actionable Agenda item wherein they could discuss the merits of the case and staff could provide legal advice on the matter and the issue could be reviewed in detail wherein action could be taken. He stated that he understood that public comment was not the time to discuss the merits of the aspect; however he wanted to prove to the Committee that there were enough facets to the issue and enough interest to the public and those involved to discuss the item with the Committee having the option to act on it.

Mr. Leach announced that he provided the Committee with copies of the outline of his comments. He reported that on December 5th the court ruled that the agreements provided in the application for CA-13-138 required HA board approval in order to be binding. The court also ruled that the agreements were not provided approval from the HA board until November 21, 2013. Mr. Leach stated that 20 days ago on November 21st the HA board held a special meeting and ratified the former agreements provided in the application. He stated that the agreements were executed by individual employees of the HA. Mr. Leach stated that the court, which met on December 5th, stated that the HA had the authority to ratify agreements since it had already happened November 21st, therefore the court denied his original petition to invalidate the agreements. He stated that even though the court was not willing to invalidate the agreements, it ruled that the agreements required HA approval to be binding and that the agreements did not receive said approval until November 21st.

Mr. Leach stated that since there were many program regulations requiring applications to be judged based on information and timing and because there was contention on the legal authority of the agreements provided, his firm obtained a legal determination from a competent court, which stated the agreements required board approval and did not have the approval until November 21st. Mr. Leach stated that he made no contention that the sponsor for CA-13-138 did something nefarious, but acted in good faith. He stated that he wanted to clarify for the Committee that the agreements did not meet the regulations. He stated that if the applicant was not at fault, he could understand the Committee making the judgment that no punishment

was required. Mr. Leach stated that the Committee should meet and discuss whether the CA-13-138 was actually the highest ranking project and whether the project that was the highest ranking and met the regulations in the competition deserved a chance to be funded.

Mr. Leach asked how TCAC staff addressed clarifying information received from the court after they already made a reservation of credits.

Ms. Redway stated that the item was not on that day's Agenda as Mr. Leach noted. She stated that this was the first time the Committee had to consider facts in the situation. She stated that she was not sure if Mr. Pavão had an answer. Ms. Redway suggested the best course was for the Committee to hear all the public comments followed by comments and questions from staff and board members. She reminded the Committee that they were only permitted to hear comments and not actually discuss the issue. She reiterated Mr. Leach's request that the Committee hold a special meeting to hear the item.

Mr. Gordon asked Ms. Redway if it would be appropriate for TCAC counsel to give his interpretation of the court ruling.

Ms. Redway stated that she preferred to hear all the public comments. She warned that the board might cross over into a discussion about the issue if they asked for counsel's interpretation. She invited Dan Horn to comment.

Mr. Horn stated that he was the President of Palm Communities. He requested that the Committee create an Agenda Item for the issue his firm submitted. He stated that he did not come to the meeting to place blame, but he wanted to advise the Committee that certain aspects of the application did not meet the letter of the regulations, which prejudiced and harmed his project. Mr. Horn stated that the regulations did not accommodate good faith, but they required appropriate government approvals. He stated that he did not know why the other applicant did not accomplish that. Mr. Horn stated that he was concerned about the Committee issuing tax credit commitments and then rescinding them. He explained that the only item an investor could depend on until a project received Form 8609's was the commitment letter from TCAC. Mr. Horn commented that it was an extremely problematic issue and if his firm met the letter of the regulations, there should be some discussion about those who tried with good intentions to meet TCAC goals. He stated that the issue warranted a Committee meeting to have a public discussion.

Ms. Redway invited Arjun Nagarkatti to comment.

Mr. Nagarkatti stated that he was the President of AMCAL and developer of CA-13-138. He acknowledged that Palm Communities submitted a letter to TCAC, which his firm also responded to. He stated that he was available to answer any questions the Committee had. Mr. Nagarkatti stated that Kyle Arndt, his firm's attorney, was also present to answer questions.

Ms. Redway invited Mr. Arndt to comment.

Mr. Arndt stated that he appreciated Mr. Horn's comments about not wanting to create uncertainty in the regulations by pulling applicants that were already assigned

an allocation. He stated that he was concerned because on December 6th, TCAC was given a petition asking that tax credits reserved for CA-13-138 be rescinded. He explained that the petition created a lot of concern for the applicant and their equity investors and lenders who were trying to meet the 180-day readiness deadline in March. Mr. Arndt stated that he would be very concerned if the Committee scheduled a meeting with the subject of rescinding the credit reservation for CA-13-138. He commented that from a policy perspective, there was no question that the applicant acted properly and in good faith. He noted that he disagreed somewhat about what the court ruled earlier that week. Mr. Arndt stated that the court simply stated "It shall be ordered that the petition of writ of mandate is denied." He offered to provide the Committee with copies of the court order.

Mr. Arndt reported that Palm Communities requested remedies twice and were denied twice, thus validating the fact that the commitments for CA-13-138 were legal and binding. He stated that court ruled that the commitments were binding as a matter of law from the date they were executed.

Mr. Gordon asked what remedies Palm Communities requested that were denied by the court.

Mr. Arndt stated that Palm Communities requested a restraining order and a determination that the commitments were not valid and binding. In addition, the firm requested that the Perris HA inform TCAC of the remedies and that the HA not take any action in connection with the commitments.

Mr. Leach stated that his firm petitioned the court to invalidate the agreements and also mandate the HA to communicate the court ruling to TCAC.

Mr. Gordon asked Mr. Arndt to confirm that the court denied both of the requests Mr. Leach described.

Mr. Arndt confirmed that both requests were denied by the court. He stated that the city validated the action, which may have suggested to some that the city did something wrong. He explained that President Obama was inaugurated on January 20, 2009. He stated Justice Roberts recited the oath of office incorrectly causing an eruption of blogs suggesting that Mr. Obama was not the President. Mr. Arndt commented that most people did not believe Mr. Obama was not the President, however in an abundance of caution; Justice Roberts re-executed the oath of office the following day. He stated that the City of Perris performed a similar validation action because it did not want to spend a lot of time and resources fighting a frivolous lawsuit about its approvals. Mr. Arndt stated that he would be glad to review the court ruling with TCAC counsel, although the court denied the requested action twice. He commented that if the Committee wished to discuss procedures for the future, he believed greater clarification would help the community. Mr. Arndt stated that rescinding a carryover allocation 2 months after the reservation was made and after the court denied the remedy sought by Palm Communities would set a horrible precedent, which he felt was unwarranted.

Ms. Ortega asked Mr. Arndt if there was any part of the regulations that could have been clarified to change what happened leading up to the questioning of whether the commitment was valid.

Mr. Arndt stated that Palm Communities had raised questions to TCAC, which prompted staff to call the city attorney of Perris to ask if commitment was valid. Mr. Arndt stated that the city attorney confirmed the commitment was valid. He stated that his firm conducted similar diligence and moved forward with the approved commitment. He commented that he was not sure if TCAC should develop a rule that required developers to take commitments that were deemed valid and reaffirmed by the city attorney as valid to be obligated to get a written opinion from the city attorney. Mr. Arndt stated that he was not sure how a developer would request that the city attorney validate the fact that they were correct and the city was correct in its actions. He reiterated that there was no fraud or deception on the part of AMCAL or the city, as the Palm Communities representative admitted. Mr. Arndt stated that he did not know how the developer community could have faith in public financing commitments if someone was able to go back 2 or 3 months and question the validity of the developer's application. Mr. Arndt stated that one of great things about the California system was that it provided certainty for equity investors and lenders.

Ms. Redway stated that Mr. Leach wished to respond to Mr. Arndt's comments. She stated that the board could consider the request to create an agenda item after comments were taken. She cautioned the Committee not to cross over into a discussion of the item.

Mr. Leach stated that he wished to address Mr. Arndt's comments. He stated that the order Mr. Arndt read, which stated that remedies sought by Palm Communities were denied, was a proposed order drafted by counsel for the city of Perris and had not been approved by the court. He stated that his agency filed a petition with the court to have the entire ruling written out in the order. He commented that Mr. Arndt would of course only put the one ruling that mattered to his firm's position on the proposed order. He stated that his firm requested the court write out the entire order and all its findings.

Robert Hedrick, counsel for TCAC, advised the Committee that TCAC received a copy of a signed order, which was consistent with the characterization given by Mr. Arndt.

Mr. Leach stated that his firm was not provided the document Mr. Hedrick described. He reiterated that he filed a petition with the court to have all its findings written out. He stated that he could easily quote in the transcripts where the judge stated that the agreements required HA board approval and did not have the board's approval. Mr. Leach stated the DDA approved by the HA expressly prohibited the executive director from doing something, which he later did on his own authority. He commented that it was easy for applicants to determine whether or not they had a board's approval. He stated that the court found that the executive director acted in excess of his authority and to amend the agreement required the approval of the city council. Mr. Leach stated that if the Committee took the court order and transcript into account, the court ruled that the agreements required the HA board's approval. He commented that any reasonable person would assume that when a person committed an agency's funds, they would need that board's approval to do so. Mr. Leach commented that everyone present felt that it was wrong to rescind an applicant's credits if they acted in good faith.

Mr. Leach stated that he felt the Committee would find that a different applicant should have been funded if they were willing to put the issue on an agenda and have staff determine who should have received the award if the agreements or the additional \$800,000 that was contested was not calculated in the tie-breakers. He stated that his firm could be remedied by an actionable agenda item without damaging the industry or the people and still upholding the regulations. He requested that the Committee hold a special meeting to discuss the merits of the issue. He stated that his firm would agree to the Committee's decision.

Mr. Gordon stated that Mr. Leach raised several issues.

Ms. Redway stated that the issues were not on the agenda.

Mr. Pavão stated that the written submittal to TCAC specifically stated, "I hereby petition the Committee to rescind the tax credit reservation made to the Verano Apartments and make those credits available to the most deserving applicant." He asked if the submittal was being amended.

Mr. Leach stated that the submittal was being amended.

Ms. Redway stated that Mr. Leach made a specific request during his comments. She asked if one of the board members wished to ask staff to put the item on a meeting agenda.

Mr. Hedrick stated that there needed to be clarification as to what action would be contemplated if the issue was going to be put on an agenda as an action item.

Ms. Redway stated that she believed Palm Communities was requesting an agenda item to re-score the two projects assuming the \$800,000 was not awarded to AMCAL's project.

Mr. Leach added that his firm was also requesting the ability to create a waiting list. He stated that a waiting list would be required if, at a future meeting, the Committee found it did not wish to take credits away from AMCAL or disadvantage the next applicant.

Ms. Redway asked Mr. Leach to confirm he was requesting the Committee create an agenda item to discuss the facts as found in the court and for staff to score the projects under both scenarios and then for the Committee to take action to rescind credits awarded to AMCAL if they felt it was appropriate.

Mr. Leach stated that if the Committee decided not to rescind AMCAL's credits, his firm would request that the Committee provide an allocation to the most worthy project.

Mr. Arndt stated that if Committee created an agenda item to re-score the AMCAL project thus creating the potential for credits to be taken away, AMCAL would not be able to move the project forward. He stated that AMCAL would be faced with a huge hardship if the Committee created an agenda item that suggested AMCAL's credit might be rescinded. Mr. Arndt noted that his firm was facing the readiness deadline and spending thousands of dollars every day to move the project forward.

He stated that he did not know if he could provide TCAC with a letter of intent to meet the December 24th deadline if there was a question of whether or not the project had credits. He stated that the Committee would be putting his firm in a position where it might not be able to comply with the regulations for providing letters of intent.

Mr. Gordon asked Ms. Redway if 3 affirmative votes were required to create an agenda item.

Ms. Redway stated that the Committee could not vote because the item was not on included on the agenda. She stated that in the past if one board member wanted to put an item on an agenda, the other members, as a courtesy, had allowed that to happen.

Mr. Hedrick stated that the practice had been that when a member made a request, the other two members typically supported it. He stated that such actions would technically be recorded as a unanimous vote to put an item on an agenda. He stated that if one Committee member requested creation of an agenda item and other two members strongly objected, then the majority would control the decision to add the item. Mr. Hedrick stated that this was the only action that could be taken given that there was no action item on the agenda.

Mr. Hedrick asked Mr. Leach and Mr. Arndt if it was a fair characterization that the court was aware of the TCAC regulations and the impact of its ruling at the time it acted.

Mr. Leach stated that it was not a fair characterization. He stated that the court was aware of the regulations; however it took the position that TCAC regulations did not limit state law. He stated that the court was judging on state law.

Mr. Arndt stated that the court was clearly aware. He stated that the court set the specific date because when the temporary restraining order (TRO) hearing was made, Palm Communities determined that it needed to meet with TCAC to resolve the issue before the end of the year in order to move credits around. Mr. Arndt stated that the court set a rather expedited briefing schedule. He stated that he only had the entered agenda stating that the order was denied. Mr. Arndt stated that it was brought up in Palm Communities papers that the TCAC staff was there and the remedy requested was for the court to notify TCAC that the agreement was not valid and binding.

Ms. Redway stated that TCAC itself was not in front of the court. She stated that she believed the judge must have been aware that the reason Palm Communities raised the issue was because it had implications for tax credits and there was a timeline associated with them.

Ms. Ortega asked if the regulation in question addressed how the local body made its approval of a commitment.

Ms. Redway stated that it was up to the local jurisdiction to decide how they did their business. She noted that the regulations only stated that the approval must be complete.

Mr. Leach commented that the regulations stated the commitment may not require any further approvals.

Mr. Hedrick stated that Ms. Redway's characterization was correct. He stated that the regulations did not speak to what format approvals must be in or the method of process that a local government must use.

Ms. Redway added that no further approvals were required.

Mr. Leach clarified that the regulations stated that it must be expressly authorized by the governing body. He stated that it does speak to delegating authority.

Ms. Redway stated that the Committee was getting close to re-litigating the issue in addition to discussing the issue. She stated that she believed the request was to create an item for a future 2014 agenda, whereby the Committee could vote on whether or not to re-score AMCAL's application and deny it credits and, alternatively or in addition, find a way to fund the Palm Communities project.

Ms. Redway stated that she was not prepared to make a motion or to suggest that the Committee agendaize the item.

Mr. Gordon stated that he was also not prepared to make a motion or to agendaize the item.

Mr. Leach thanked the Committee for its consideration.

6. Adjournment

The meeting adjourned at 1:57 p.m.