

MINUTES  
CITY OF OLMOS PARK  
HIGHER EDUCATION FACILITIES CORPORATION  
SPECIAL MEETING HELD  
APRIL 15, 2021

The Board of Directors for the City of Olmos Park Higher Education Facilities Corporation Board of Directors held a special meeting at 5:00 p.m., Thursday, April 15, 2021, in the Council Chambers at City Hall, 120 W. El Prado. Members present were Dr. Gregg Anders, Steve Browne, James Griffin and Tim Kelley. William Freed was unable to attend. Others present were City Manager, Celia DeLeon; City Secretary, Kyndra Munoz; City Attorney, Richard Lindner and Adam and Tess Harden, 415 Devine.

James Griffin determined a quorum was present and called the meeting to order at 5:03 p.m.

Administer Oath of Offices to newly appointed member of the Board of Directors  
City Secretary Kyndra Munoz administered Oath of Office to newly appointed member Steve Browne.

Discussion and election of President to the Board of Directors  
Gregg Anders moved to elect James Griffin as President to the Board of Directors.  
Steve Browne seconded the motion.

Gregg Anders	Aye
Steve Browne	Aye
James Griffin	Abstain
Tim Kelley	Aye

The motion passes.

Gregg Anders moved to elect Tim Kelley as Vice President to the Board of Directors.  
James Griffin seconded the motion.

Gregg Anders	Aye
Steve Browne	Aye
James Griffin	Aye
Tim Kelley	Abstain

The motion passes.

Gregg Anders moved to elect Steve Browne as Secretary to the Board of Directors.  
James Griffin seconded the motion.

Gregg Anders	Aye
Steve Browne	Abstain
James Griffin	Aye

Tim Kelley            Aye

The motion passes.

Approve May 27, 2020 minutes

Gregg Anders moved to approve May 27, 2020 minutes.

James Griffin seconded the motion.

Gregg Anders	Aye
Steve Browne	Abstain
James Griffin	Aye
Tim Kelley	Aye

The motion passes.

Consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (St. Rose of Lima Catholic Church), Series 2021, for the benefit of the St. Rose of Lima Catholic School; Authorizing the execution of documents, which may include, but are not limited to, a purchase and investment letter, a loan agreement, an escrow and trust agreement, a placement agent agreement, and an indenture of trust and security agreement; appointing an authorized representative; and approving other matters in connection therewith.

President James Griffin opened this agenda item along with the next two agenda items.

Adam Harden, 415 Devine and partner at Locke Lord stated I was hired by these three schools for three different tax-exempt bonds. One had an issuer identified, which was Public Finance Authority out of Wisconsin and requested to use PFA for all three transactions. I have sat in on Board meetings in Olmos Park and understand the importance this revenue has to a City of our size. I am here today to talk to you about tax exempt bonds and the risks and rewards for participating in transactions like this. Generally, there are two different types of tax-exempt bonds. One is for governmental units, who can issue bonds directly without having to go through another agency other than getting the approval of the Attorney General of the State of Texas. The second is a 501(c)(3) bond, which is what we are talking about here. 501(c)(3) organizations cannot issue bonds directly to banks or purchasers; they must get an approving entity typically called a conduit issuer, which is what the Higher Education Facilities Corporation is. They are not responsible for the repayment of the debt but are just participating in the transaction by pledging the loan agreement or note from the lender to the bank and there is no recourse for the conduit. The benefit of going through a conduit is there is a tax-exempt interest rate. These three schools are all in Houston, have existing debt on these facilities and are in the process of repayment. There have been six public hearings for these three projects, three of which were in Harris County and three in Olmos Park. For these three schools, there is a Parish above them that has sent out financials for each school, all of which have a strong financial portfolio. We have been in the process of negotiating with the borrowers, financial advisor, and lenders in terms of the notes. Because we are still negotiating, we don't have final loan agreement documents. The bank has not been chosen in order to get the best deal for the

borrower, therefore the bank name is blank. This would be the first step of support from the HEFC to say we would like for City Council to consider this. It would be nice for the City of Olmos Park to do more of these transactions. When asked who I would choose for a conduit, what I would like to say is, send it to the City of Olmos Park. I know there were some concerns about why some documents haven't been filled in their entirety. Between now and the City Council meeting I hope that we have all of that nailed down so I can submit final documents at that point. I am delivering a legal opinion under my name and the Firm's name, so it is my responsibility to make sure these deals are done right. The HEFC has done about six deals before for about \$111 million of tax-exempt debt and have not paid any money as taxpayers towards the servicing of those bonds.

Gregg Anders asked who has the fiduciary responsibility to represent this Board in the matter of the current issue?

Richard Lindner stated, I as City Attorney have a fiduciary role to the Board and to City Council. I will be quick to say I am not a bond lawyer and my competence is limited on bond matters. As for questions on how these transactions are done and the ultimate risks to the City, I can read the bond language and laws and say there are provisions that limit the risk for the City and the HEFC.

Gregg Anders stated is it correct to say there is no one with a fiduciary role to the Board or to the City with bond expertise regarding this issue?

Adam Harden stated I am. My firm's role is to make sure your interests are protected and we have a fiduciary responsibility to make sure these bonds that are issued are valid. We are bond counsel to the issuer, and in this scenario, you are the issuer on the bonds. The adverse party in this transaction would be whoever the lender or the bank ultimately becomes.

Steve Browne asked who employed you as the fiduciary role to this corporation?

Adam Harden stated that is what we are doing here. If you approve the bonds, there is a resolution to say you would like to participate in this and will list bond counsel, co-bond counsel and the parties.

Steve Browne asked do you have a financial interest in this?

Adam Harden stated my firm was hired back in January for these three transactions and the fee was set at that point.

Steve Browne stated it seems that you are on both sides of the argument. You are representing the issuer but you are also representing the borrower.

Adam Harden stated you can have both interests align. Your interests are not adverse to the borrowers.

James Griffin asked would there ever be a situation in which our interests are adverse to the borrowers?

Adam Harden stated there would not be. In a situation where there is bankruptcy report closure, that would be between the lender and the borrower. There is no pledge of credit, tax revenue or anything else by the City for repayment of these bonds. It is just like the St. Mary's deal from last year. If St. Mary's were to default, Olmos Park would not be responsible in any way for repayment. The school financial statements show they are financially supported and have the Archdiocese of Galveston-Houston as a guarantor.

Steve Browne stated it seems that this corporation was set up to benefit our community and residents of Olmos Park as opposed to Houston, or anywhere else bonds would be brought in from. Why is this a good idea as opposed to a local entity?

Adam Harden stated that would be up to the Board to say what deals you would like to participate in. As a bond lawyer I would say if you are legally allowed to participate in bond transactions in Houston and collect these fees, there is nothing that would prevent you from doing that. You are also allowed to not to participate in deals from Houston or Dallas, rather only do deals that are local and in the City.

Tim Kelley stated as Board Member of the Higher Education Facilities Corporation, we need to have the discussion of what type of projects we want this entity to participate in. There are corporations like this that are conduits who actively try to solicit deals to receive the fee. I would like to revisit this topic, but I do have a few questions regarding the transactions. How do these schools intend on spending the money, are they buying a property, constructing something or refinancing outstanding debt?

Adam Harden stated they are refinancing outstanding debt for school facilities that have already been constructed in place and service or in the process of being constructed for place and service.

Tim Kelley asked who owns the current loan?

Adam Harden stated Epiphany of the Lord Catholic Church went through PFA in Wisconsin which is already a tax-exempt note. The other two are a taxable debt and have been drawing down on those taxable lines of credit with a Texas savings and loan Bank.

Tim Kelley asked if the money is being spent immediately, would they qualify for the ongoing rebate listed in the documents?

Adam Harden stated they would qualify for an exception to rebate. The IRS has spending exceptions to rebates and do not want you to over-issue bonds. If they issue the bonds, spend the money quickly and diligently, they are able to keep that small stub of investment earnings.

Tim Kelley stated from the documents provided there are different options for the terms, but what are the terms of the issue? Is it a 5-year deal that they would have to re-market?

Adam Harden stated it could be. It depends on what they agree to with the bank. That could be good for you, if it triggers a re-issuance and they need to come back for a conduit.

Tim Kelley stated I have not sat on this Board for very long, but this is a different type of transaction than the ones this Board has done in the past. Most notably, for projects that are outside of this community. I do not know if the original intent of this Board was to facilitate transactions like this. In bond issues, I am used to seeing schools such as Incarnate Word or St. Mary's that have measurable financials against the debt that is outstanding. It is harder to gage that in what we have been presented with. Having said that, is there a financial advisor to the City?

City Manager Celia DeLeon stated Christopher Allison is the financial advisor to the City of Olmos Park, he wasn't able to attend the meeting today. The financials were received from Adam yesterday evening around 7:00pm and were sent to Christopher for review. Christopher stated he was uncomfortable with the financials because they were un-audited. He made the recommendation this morning to not move forward.

Adam Harden stated Christopher Allison has only done 11 deals in the past 5 years and only 1 in the last 3 years. In the last 3 years I have done about 400 deals. I am not saying Christopher doesn't know what he is doing, but he certainly is not an expert.

James Griffin asked is there a fuse on this deal? Since there are still questions regarding the deal, will the City lose out if a decision isn't made today?

Adam Harden stated I will fight to keep it here because I fought to bring it here and I would like for us to participate. If I say the Board needs more time to review the documents because they weren't provided in time, I think I can get that. But if you say we do not want to be involved in these transactions, we have Arlington Higher Ed Cultural Education Facilities Corporation who wanted to do these deals in the first place. We held the public hearings in Harris County already and paid \$6,000 for publications in the Houston Chronicle that Olmos Park would be participating in these transactions. If we switch, we would have to get new approvals and post new publications that would delay the project. Right now, we are hoping for a May closing.

James Griffin stated my thought is if the Board and City have absolutely no liability for anything and receive the fee for being the conduit, we should jump at the opportunity. In the past we have benefited from the San Antonio area.

Tim Kelley stated I don't disagree with you. There are entities that seek out these opportunities to receive the fee, and I am trying to figure out what this Board would like to be.

Gregg Anders asked does Mr. Christopher Allison have a fiduciary duty to this Board and the City as the Financial Advisor?

Richard Lindner stated yes, he does.

Adam Harden stated I would like to make a distinction. He is not the Higher Education Facilities Corporation Financial Advisor, he is the Financial Advisor to the City. Christopher has not been involved in this transaction at all, but has only reviewed documents that have been sent to him.

Gregg Anders stated if this Corporation recommends passage of these bonds to the City Council for final approval, he would engage in a fiduciary function with the City Council. I will say, this is significantly different than previous experiences this Board has seen in the past. We are used to seeking advice from individuals who are labeled advisors to the Board, we are used to seeing projects that are local, we are used to bonds that are less than \$20 million, and we are used to seeing the lenders identified. I would agree with you the chance of litigation is infinitesimally small. When we have someone who we are familiar with that recommends against this, I take pause in that. I do not have any doubt in the Archdiocese of Galveston-Houston, PFA, or your firm but I have some hesitation because it is different procedurally than what we have seen.

Adam Harden stated in 2016, I was part of the Bond Council team. While the Board may not have seen my face, I did all of the tax due diligence for the project. There was a different person up here presenting, but the expertise delivered was mine and the Board was the beneficiary of my hard work. Four or five of the deals the Board has done have been bank qualified debt, which is \$10 million or less. In 2009 we issued, I want to say a \$50 million deal and is how we were able to get up to \$111 million for all deals. What we have here are 3 small deals, each of the 3 deals will be under \$10 million and be privately placed. The aggregate will be \$20 million, but each is exactly like the St. Mary's University transaction last year.

James Griffin asked was Mr. Allison uncomfortable because he did not have enough information?

Celia DeLeon stated Mr. Allison would not move forward because he was not comfortable with the un-audited financials.

Steve Browne asked is it normal to give a presentation with un-audited financials?

Adam Harden stated yes, it is normal and particularly in small schools. You are not relying on the financials. The lender will be extending the debt. The diocese has audited financial statements and have around a \$400 million net asset balance sheet.

Steve Browne stated there was a lot of information that the Board has received in just the last 24 hours and last 12 hours for that matter, which makes it harder to assimilate and say this is a great deal.

Adam Harden stated I apologize for not getting this information to you further in advance. Unfortunately, these transactions are on a tighter time line and they would like to get this done as quickly as possible. Usually I like to see this stretched out over 60 or 90 days. I would be happy to provide you with the

information and we can reconvene. You can also kick this up to City Council and I can take that information to the City Council. Please don't hold my tardiness for these documents against the City and not allow us to participate as issuer on these transactions.

Gregg Anders stated it is a procedural issue. I would like to see some of the completed tables, we have an advisor who says he would not move forward, and we do not know who the lender is. I am not prepared to send approval right now and I still have more questions regarding the transactions. There are archdioceses within the Country that have had significant financial challenges other than foreclosure on the property. I am trying to discharge what I think is my duty as a member of this Board.

Adam Harden stated I appreciate that, and what we are really asking you to do is say we are an HEFC, are allowed to issue 501(c)(3) bonds and would like to participate in these transactions. If the lender does not like un-audited financial statements or if they do, it would be between them. There are risks with University's and especially during COVID; they have lost a significant amount of their tuition revenue. As a member of the Planning and Zoning Commission, it is not uncommon for us to ask for additional information, pass at the Planning and Zoning level then send to Council for approval of the zoning variance. You could approve this, state you have concerns, the Financial Advisor can be present at the City Council meeting to state his concerns and address them at that point. If you are not comfortable with that I would be happy to sit down with you and present these details that are very reasonable to ask for.

Steve Browne stated on the indemnity language in some of the agreements, it does not cover attorney fees.

Adam Harden stated PFA charges \$15,000 on their issuer fee and Olmos Park charges \$25,000. The way I was able to bring these in was to do a lot of free legal work, draft a lot of the documents, and did not increase my fee that I set back in January. I froze my attorney fees and agreed to work a lot of extra manhours in exchange for the deals coming to Olmos Park.

Gregg Anders asked is there a D&O policy in effect for this Board and independent from any particular deal or bond issue?

Celia DeLeon yes there is.

Gregg Anders stated there are some items that need to be cleaned up in order to bring some comfort to me, the greatest of which is Mr. Allison's opinion.

Adam Harden stated it is certainly not our standard operating procedure to present terms that are not full. We are usually prepared for closing well in advance and before the hearings. Usually the approvals are the final step in our process and start to close is about 60 to 90 days. The very last document in the new envelope is addressing the warranties that will be associated with this issuer.

Tim Kelley asked will these bonds go to the Attorney General for approval?

Adam Harden stated these are non-negotiable debt instruments for private placement so we are not seeking these through the Attorney General's office. There are requirements that certain types of debt instruments have to be presented before the Attorney General's Public Finance Division who will review the transcripts and provide a document that makes the bonds unpunishable from a state law perspective. The bonds can always be audited and determined taxable in which they lose the tax-exempt interest rate. On these private placements with banks, you can structure them to be non-negotiable debt instruments in which it does not have to go to the Attorney General.

Tim Kelley asked did the St. Mary's deal go to the Attorney General for approval?

Adam Harden stated yes that one did. Some will want their 501(c)(3) borrower to pay a little extra money to give their bond lawyer comfort in the State law immunity. Some firms will say they are confident in their legal opinion particularly on bonds that do not get voted on that have potential voter challenges.

Tim Kelley asked were the public hearings in Houston separate hearings?

Adam Harden stated yes, they were three separate hearings. Pre-COVID, The Tax Equity and Fiscal Responsibility Act for public hearing and public approval required 501(c)(3) borrowers to hear public voices and concerns in person. In the COVID area, they allow the hearings to be telephonic. You provide an eight hundred number to make it easy for anyone in the County to call in and express their concerns. Some borrowers say you must publish in a newspaper and this one was published in the Houston Chronicle for \$6,000. The issuer regulations allow for online publication and here we published on the Olmos Park website to include the public hearing and a description of the project. For Olmos Park, there were no responses in person or by phone to the public hearing. For Harris County, I received one phone call from a gentleman who was interested in finding work as a subcontractor on the project.

Tim Kelley stated I am having a hard time moving forward when the City Financial Advisor has concerns and I think we need more information.

Adam Harden stated it is atypical for a City's Financial Advisor to review bond transcripts because the 501 (c)(3) has their own Financial Advisor. We have a Financial Advisor on this transaction negotiating between the borrower and the bank who is nationally recognized and specializes in these Catholic school transactions.

Gregg Anders stated I think it would be prudent for us to discuss the details of Mr. Allison's concerns before the City Council meeting.

Gregg Anders moved to table consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (St. Rose of Lima Catholic Church), Series 2021 until Wednesday, April 21<sup>st</sup> at 4:30pm to receive additional documentation and address the concerns of City Financial Advisor, Christopher Allison.



James Griffin seconded the motion.

The vote in favor of the motion was unanimous by all Board Members present.

Consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (St. Anne Catholic Church), Series 2021, for the benefit of the St. Anne Catholic School; Authorizing the execution of documents, which may include, but are not limited to, a purchase and investment letter, a loan agreement, an escrow and trust agreement, a placement agent agreement, and an indenture of trust and security agreement; appointing an authorized representative; and approving other matters in connection therewith

Gregg Anders moved to table consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (St. Anne Catholic Church), Series 2021 until Wednesday, April 21<sup>st</sup> at 4:30pm to receive additional documentation and address the concerns of City Financial Advisor, Christopher Allison.

James Griffin seconded the motion.

The vote in favor of the motion was unanimous by all Board Members present.

Consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (Epiphany of the Lord Catholic Church), Series 2021, for the benefit of the Epiphany of the Lord Catholic School; Authorizing the execution of documents, which may include, but are not limited to, a purchase and investment letter, a loan agreement, an escrow and trust agreement, a placement agent agreement, and an indenture of trust and security agreement; appointing an authorized representative; and approving other matters in connection therewith

Gregg Anders moved to table consideration and approval of a resolution authorizing the issuance of the City of Olmos Park, Texas Higher Education Facilities Corporation Tax-Exempt Revenue Note (Epiphany of the Lord Catholic Church), Series 2021 until Wednesday, April 21<sup>st</sup> at 4:30pm to receive additional documentation and address the concerns of City Financial Advisor, Christopher Allison.

James Griffin seconded the motion.

The vote in favor of the motion was unanimous by all Board Members present.

There was no other business and the meeting adjourned at 6:39 p.m.

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James Griffin  
President

ATTEST:

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Kyndra Munoz  
Secretary