

MINUTES
CITY OF OLMOS PARK
HIGHER EDUCATION FACILITIES CORPORATION
SPECIAL MEETING HELD
APRIL 21, 2021

The Board of Directors for the City of Olmos Park Higher Education Facilities Corporation Board of Directors held a special meeting at 4:30 p.m., Wednesday, April 21, 2021, in the Council Chambers at City Hall, 120 W. El Prado. Members present were Dr. Gregg Anders, Steve Browne, William Freed, James Griffin and Tim Kelley. Others present were City Manager, Celia DeLeon; City Secretary, Kyndra Munoz; City Attorney, Richard Lindner; Christopher Allison, M.E. Allison & Co. Inc.; Adam and Tess Harden, 415 Devine, Councilwoman Harrison, 207 Belvidere; Councilwoman Plant, 131 E. Mandalay; and Councilwoman Rickabaugh, 302 Luther Dr.

James Griffin determined a quorum was present and called the meeting to order at 4:33 p.m.

Administer Oath of Offices to newly appointed member of the Board of Directors William Freed

City Secretary Kyndra Munoz administered Oath of Office to newly appointed member William Freed.

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.

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

Adam Harden stated thank you for meeting today to discuss these three tax-exempt revenue notes that will be issued hopefully for the benefit of these three private schools located in Houston. We sent out new documents with updated terms that were missing last time. There are ongoing negotiations with the banks in which St. Anne and St. Rose has agreed to the exact specific terms of those loans and Epiphany of the Lord Catholic School is still looking. Thank you for your patients while the schools work that through with the banks. The biggest concerns where what the terms were and who was lending the money. I hope that was enough to satisfy some of the questions. The documents are still a draft until the close of the loan, it is possible between your approval and the time they are set to close that they could call the whole thing off. We are here today to seek approval to proceed.

Steve Browne stated I have some questions regarding the drafting of the indemnity agreement and whether or not it is clear enough. Has this document ever been tested in Court?

Adam Harden stated these are existing documents my firm has used on multiple transactions. We had one charter school that was on the verge of bankruptcy in which Arlington Higher Education was the issuer. It is always between the lender and the borrower. What we ended up doing here is working with another charter school client who came in, purchased the land and assumed and renegotiated the bond debt in which everyone came out okay. The banks don't have any recourse against you and do not sue the City of Olmos Park or you as a Director for funds because you are not pledging any funds.

Steve Browne stated the indemnity language includes losses but does not identify what losses or identify other claims. Can these documents be revised to address this? Last week, I asked about attorney fees and I don't see any changes in this document from the one we received last week.

Adam Harden stated we can address that. If you have specific language you would like to recommend, we are happy to incorporate that. You also brought up trial by jury and I took a look at this. In the loan agreement, the people who are waiving their rights under those provisions are the lender and the borrower, not you. I have been doing this a long time and I have never seen any trials before.

Steve Browne stated I have been doing this a long time and have seen many trials. The venue set for these documents is set in Harris County and if there were litigation over anything it would occur in Harris County and not Bexar County. As far as overseeing in terms of who you are loaning money to and how it is being spent while compliant with all of the terms, it is a lot easier to do in Bexar County.

Adam Harden stated I can ask for that. The more terms you try to negotiate, the more it looks you are being actively involved as opposed to a conduit. You would probably prefer for it to occur in Harris County to show the distance between you and the borrower.

James Griffin stated in our By Laws there is an indemnification division. Does the Education Code or statutory law creating these types of corporations and entities include indemnification?

Adam Harden stated in the Education Code in chapter 53 and in chapter 53(a) both have a provision that states Directors are exempt and indemnified from liability for this Board.

Richard Linder stated your personal liability states a director, officer, or employer of the non-profit corporation established by the Texas Public Finance Authority under section 53(a).351 is not personally liable for 1) damages loss, or injury resulting from the performance of a person's duties and 2) on any commitment or agreement executed on behalf of the corporation. There is a provision limitation of liability that the bond language should contain. What I would like to see from the City perspective is a provision in the bond language stating the City isn't guaranteeing pledging any tax revenue. This is stated in both the proposed bond language and the resolutions.

Tim Kelley stated I would like to hear from Financial Advisor, Christopher Allison.

Christopher Allison stated my company, M.E. Allison & Co. Inc. and I have served as the City's Financial Advisor to the Higher Education Facilities Corporation since it was founded in 2007. I want to apologize for not being able to attend last week's meeting due to a prior commitment. I would like to give a little history. Since 2007, there has been seven financings through the Higher Education Board. Three have been for St. Mary's University, three for Texas Lutheran and one for Incarnate Word University. When we started this, the City directed me to write a letter for each financing to the Higher Education Board and to the City that I have reviewed the financial capability of making all interest and principal payments. Financing before this, have been local entities. This financing is a step outside of that. If you proceed, the City will need to take a different approach that we are going to have the financial review, make sure all of the documents are in order and rely on the fact that the law protects the Corporation as well as the City. From my financial review, it is harder because we are dealing with three separate organizations. All three have different financial capabilities. Personally, I think St. Anne Catholic Church is the strongest of the three. All are unaudited financials and I have never approved a financing that has unaudited financials. These schools are not new and have operating history, but they do have limited cash assets and you are relying on continued donations from parishioners. Both this Board and the City Council would move forward on a different path on how these conduits are traditionally done. I cannot provide the same type of comfort letter that I have in previous deals. This is based on these being small entities and unaudited financials. The third issue is we have a guarantee as the Archdiocese of Galveston-Houston. They have audited financials, but unfortunately the Archdiocese has a negative fund balance which has grown a large amount since 2018. As of June 2020, the negative fund balance is negative \$113 million. If you add in the restricted assets, it is negative \$55 million. There have also been more than twenty Archdiocese in the United States that have declared bankruptcy in the recent past.

James Griffin stated we do not want to make the wrong decision, but we are not lending the money nor guaranteeing the loan. Should the City approve and they default, would that effect the City at all?

Christopher Allison stated, probably at the end of the day, the worst thing that could come out of it is perception of a failed issue. There are multiple organizations such as Arlington Higher Education who review the documents, make sure the paperwork is done, stamp it and move along down the line. Generally, I would say those are entities that have chosen to make it a side business of the City. Olmos Park has made the business of we have good credit and the Financial Advisor knows the City does not have any anticipated bond needs. The Higher Education Facilities Corporation has an insurance policy that indemnifies the Officers and is currently paid by the three Universities. I am not aware of any other entity that has this type of policy, that but at the time there were members of the Board who were concerned and requested the insurance policy. This policy goes to the conservative nature that has previously been approached.

Gregg Anders asked Mr. Allison, could you qualify the term bank qualified credit as far as amount goes?

Christopher Allison stated bank qualified means a bond that a bank can buy. Right now, a City can issue up to \$10 million in a fiscal year. The bank buys this debt and they receive tax-exempt interest and can deduct their net interest costs on their deposits.

Gregg Anders stated by your earlier comments, historically the Corporation has granted limited number of issues, all to local institutions of higher learning and to local bank lenders. The tenor of the Board was that of a conservative one.

Christopher Allison stated multiple of these issues were not set for local lenders, rather bid out to multiple lenders. The City is happy to allow the Higher Education Corporation to approve issues if someone is going to make the representation that there is not going to be a credit problem. On these three deals, Allegiance Bank which is a Houston based bank, is a lender on two and Capital One is the lender of the third. I am not making the representation that these are poor quality credits, I am making the representation compared to the previous credits, it is a step down and a different type of financing. I am trying to establish the argument there is limited liability for the Directors, Corporation and the City is true, but the City has had a conservative nature and certainly did not seek out financing in other parts of the State.

Steve Browne asked as a fiduciary to the City and this Board, how often do you allow unaudited statements?

Christopher Allison stated I have not participated in a bond financing where we have had unaudited financials.

James Griffin asked is it out of the ordinary for lenders such as Allegiance and Capital one to rely on unaudited financial statements?

Christopher Allison stated banks are making loans on all the time on unaudited financials.

William Freed asked from a velocity perspective, how many opportunities state wide and in our local market are there financing originations that take place? The fee for the participating for the conduit is attractive, but it is also not everything in the equation. Are there other potential opportunities that might be out there for us?

Christopher Allison stated there are a lot of opportunities for financing if you wanted to go after that business. There are Higher Education Corporations and Cultural Education Facilities in which this a regular occurrence. Arlington is a good example in which it is a regular occurrence; they take the money they earn and donate it back to education causes.

Tim Kelley asked have you seen the terms for these three issues?

Christopher Allison stated I have seen some indicative rates with some variable options. I have only seen the terms for Epiphany and St. Anne's and I haven't seen St. Rose, but none of these are set.

Adam Harden stated St. Anne has been agreed to and I believe St. Rose was also.

William Freed asked as our Financial Advisor, what would you recommend?

Christopher Allison stated if the City wants to stay with the same conservative path as it has in the past, it would be: thank you so much for the offer to earn this money and serve as a conduit. It would be a big change, and since I have not heard anything from the City Council level that the conservative philosophy has changed, I would not recommend proceeding. If the City Council has had a change of view they can approve it, but I just cannot write the letter. My letter is not a guarantee, only that I have reviewed the financial capability.

James Griffin stated I reviewed the By Laws of this Corporation and there isn't a narrow focus of what we are going to do and not do. I looked up Arlington Higher Ed and they have a whole website where you can tell they are in that business. If we don't have any liability, do this every so often while doing our due diligence, that \$75,000 can go towards a number of different things that are on the City's wish list. Is there an informal policy of what Olmos Park wants to target, whether it be local and certain types of institutions?

Christopher Allison stated the narrow of the focus would be more of the policy of the City Council as opposed to something in your documents. It has just not been the practice. As you pointed out, there are issuers that are in the business. Adam was doing a favor to the City of Olmos Park by bringing in this money. From everything I have been previously told from 2007 to around a month ago is, we only want to finance local institutions with high credit.

Celia DeLeon asked does the Corporation only issue to Higher Education entities such as Universities?

Christopher Allen stated there have been issues for multiple high schools and charter schools.

William Freed we have not had an opportunity to gage with City Council, on whose behalf we serve, on exactly what direction they would like us to pursue and I am not sure how we could go about that.

Richard Lindner stated the quick way is to send this up because City Council has to approve it. The City Council can apply whatever policy they feel like they want to apply to this decision. A broader, more in depth way would be to set an agenda item at the City Council level.

Gregg Anders stated the agenda item to City Council would be in regards to what preferred direction they would have us take and not a modification of our By-laws which clearly supports the proceedings we are engaging in today.

Richard Linder stated Council has a differently policy procedure. The only way this gets implemented and limits your power is to not approve something you

recommend that go beyond what they think their policy is or limit your By-laws and what you can do.

Steve Browne stated the By-laws are pretty limited in our power in that we can approve or not approve a request for the City such as this. We exist to consider these financings. Ultimately it is the City Council who decides, so why would you amend the By-laws?

Richard Lindner stated if City Council felt so strongly they wanted to narrow you in, that is one way they would do it. I would not recommend it because you typically want By-laws as broad as possible to negotiate and entertain anything you legally can.

Councilwoman Plant stated historically the Higher Education Board is here to make recommendations to the Council. I have been on City Council since 2011, and since then there hasn't been anything presented to Council that has not been recommended by the Higher Education Board. You sit here as the experts you are to make recommendations to us. As Dr. Anders mentioned, it would make sense to discuss the entire historical scope with all of Council if you so want direction. When Jeff Kuhn created this and John LeFlore was involved, the idea and history was trying to help local universities, private placement to local banks, and have a financial advisor that stamps it.

Steve Browne stated when this came to us, we were on a time deadline because of the way the Adam and the lenders had this set up. Mr. Allison, in all of the previous financing situations that you have dealt with, has there been a more relaxed time period?

Christopher Allison stated in the past, I have had at least a 60 day notice the Corporation will be entertaining a financing and begin collecting data.

Richard Lindner stated I would like to clarify when I was citing personal liability, it is only in Chapter 53 for public institutions and it is not in Chapter 53(a) private institutions. My understanding of the liability is generally a bad headline and an administrative burden. If we get sued, there will be a little bit of effort to trigger indemnification even though we do have very strong limited liability for the Board and the City.

Gregg Anders stated what I hear everyone saying is there isn't a huge risk of losing litigation here. I am concerned though about the historical nature of what started with this organization. This is a change in what we have done and we are trying to pin our fiduciary members down to try and make sure we are doing the right thing. At some point, I would like to hear from City Council outside of those proceedings about a specific issue.

Tim Kelley stated I am struggling with what City Council would like to see this opportunity turn into. From a personal perspective, I don't want to see this Board turn into a Board that facilitates transactions from other parts of the State and for other purposes. That was not the original intent of the legislation that allows Cities to do this. It was not a way to generate revenue, but a way for people to facilitate financing to institutions of higher learning. I appreciate what Adam has

done in bringing this opportunity to the City, but I hope we don't become a conduit choice for people across the State who have deals to bring in.

Adam Harden started I want to answer a couple of questions that have been asked. Mr. Freed asked typically how many transactions are out there. Last year, I did two transactions for Catholic schools in Fort Worth and two in Austin that we combined. We used Arlington Higher Ed because they are in this industry and although I didn't ask, I didn't think Olmos Park would want to do those. I am not sure if Olmos Park has ever turned down any transactions. Prior to my involvement in Arlington Higher Ed, they had only done one transaction. I saw an opportunity for them to expand and I met with the Board to discuss the risks, rewards and entering this space. Since then, they have done at least 70 transactions and brought in \$1.4 million dollars for the City of Arlington. I can't promise that you will get \$1.4 million, but I have three deals here, I just got hired by the University of Incarnate Word, and there is another 501(3)(c) here in town that wants to do a deal. I spent about 10 hours drafting paperwork to form a Cultural Ed Facilities Corporation for Olmos Park and if you are interested in that, it is another \$25,000. There is money out there if you are interested, if not there are no hard feelings if you say we are only open for large colleges and universities but do not want to do Catholic school deals.

William Freed stated from a financial fee perspective, if we don't do this deal I think there are better opportunities as it relates to the historical deals we have done. For many years, I sat on a Board of a local community bank that participated in a couple of these types of financing. With what I saw, I probably would not have voted at the bank level to finance this particular series given the issues that have been raised by Christopher and the other members. Unfortunately, as we talk about the long shot legal ramifications, making \$75,000 on one side and on the other of having to give a substantial portion of all or even more of that back just for defense. At the end of the day, from a community perspective, it all comes back to what does Olmos Park want to be as it relates to the Higher Ed financing conduit business? I think the more direction we can get from Council, we will be better able to give you direction. We appreciate that you are significant bond counsel and as our neighbor are an eminent path to push opportunities in our direction. I believe we can be comfortable with the right kind of deals and the right kind of timing.

Adam Harden stated I appreciate that and certainly do not want headline exposure. Also, there are those that rate these bonds, issuers and borrowers. Saint Mary's and TLU were non-rated, this one is non-rated as well. When we do that, we rely on the underwriters at the banks because ultimately it is their dollars that are at risk. A couple of years ago, I was not in the Catholic school K-12 industry and asked the question why are these unaudited because I am used to seeing three years of audited financial statements. If you are a 501(3)(c) you also have significant IRS filing requirements and a normal 501(3)(c) college is filing a 990 every year. In an Archdiocese setting, you have a Catholic school with unaudited financials which will then flow up to the Parish who operates the school and an ultimate flow up into an audited financial statement on the Archdiocese level. There is another point to address where there is potential exposure, but not on these three transactions because we are not doing them as

bank qualified. There is a restriction that prevents us from doing any one of these as bank qualified.

James Griffin stated I will be inclined to vote yes for these to go up to City Council and would definitely like to see some further discussion on what our target and policy is going to be moving forward. If it is winding down to the simplest of there is no liability, we are not on the hook for any debt and we can benefit from the \$75,000, I am for it.

William Freed moved to recess the Higher Education Facilities Corporation until 6:05 p.m. to allow Olmos Park City Council to open their 6:00 p.m. meeting.

Steve Browne seconded the motion.

The vote in favor of the motion was unanimous.

James Griffin recessed the meeting at 6:00 p.m.

James Griffin reconvened into regular session at 6:06 p.m.

James Griffin moved to approve 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.

There was no second and the motion died.

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

James Griffin called for a motion for or against 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.

There was no motion heard from the Board, therefore the item failed.

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

James Griffin called for a motion for or against 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.

There was no motion heard from the Board, therefore the item failed.

There was no other business and the meeting adjourned at 6:10 p.m.

James Griffin
President

ATTEST:

Kyndra Munoz
Secretary