

Minutes  
RHA Repositioning Committee Meeting  
April 9, 2021  
3:00 pm - 4:00 pm

Committee Present: Eric Braun, Arne Morris (late), Bahati Mutisya, Gregg Warren, Wayne Felton

Committee Absent: Arne Morris

RHA Board Present: Joe Whitehouse, Yolanda Winstead

RHA staff: Liz Edgerton, Laura McCann, Jennifer Morgan, Donna Perez, Gwen Wall

Visitors: Sara Ellis, City of Raleigh; Charles Francis, The Francis Law Firm; Rhae Parkes, EJP; Naomi Byrne, EJP;

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**Review and approval of minutes of 3/17/21**

Commissioner Warren asked to clarify one statement that he made:

Page 9, first paragraph states “Commissioner Warren thinks it would be better to wait on the RFQ until a development partner is identified.”

That should be modified to state “Commissioner Warren thinks it would be better to wait on the RFQ until RHA clarifies which entity at RHA will be the lead entity—CAD or OCAC.”

Commissioner Warren said that is one of the major topics for the meeting today. Mr. Felton said that is correct—RHA can’t move forward until that decision is made.

Commissioner Felton moved and Commissioner Braun seconded approval of the Minutes (as amended) from the March 17, 2021 meeting. A vote being called, the ayes and nays were as follows:

Aye: Eric Braun, Wayne Felton, Bahati Mutisya, Gregg Warren.

Nay: None

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**Update on RAD status including Heritage Park**

Mr. Felton updated the committee on RAD and Heritage Park:

- Staff had the Concept Call with HUD this week and that went well.
- Invitations have been received from HUD to submit RHA’s Finance Plan. The plan is due May 1<sup>st</sup>. However, staff has requested a 60-day extension from the date the invitation was received (which would be June 8<sup>th</sup>). RHA is on schedule to close at the end of 2021.

Commissioner Warren asked if this is for Meadowridge, Valleybrook, Terrace Park, and Berkshire Village. Mr. Felton said that is correct.

- Staff had a call today from Dominion Due Diligence (DDD) to talk about obsolescence for Heritage Park. Staff feels certain that RHA will pass the obsolescence test. Staff spoke with them about making some revisions and the final report should come in next week.
- Staff had additional meetings with the residents this week—two in-person meetings on Tuesday (4/6/21). Three people showed up for the first meeting and one person showed up at the second meeting. Staff will look at some other ways to engage more of the residents to get feedback from the residents who haven't commented or attended meetings.
- Mr. Felton talked with Congresswoman Ross last week and explained to her what RHA would like to do at Heritage Park. She was pleased with the plans.
- Mr. Felton reached out to City Council Member Stormie Forte—both via email and phone call—but he has not heard back from her yet. She had some questions about Heritage Park.

Commissioner Warren asked Mr. Felton to give a brief overview on the Financing Plan. Jennifer Morgan said the plan is fairly simple because the CNAs did not find much work that was needed. Approximately \$10,000 - \$15,000 total per property of work is needed. RHA will pay that mostly out of operations. Staff must show that information (what funding source will be paying for that). Staff will also include a 20-year proforma for the property which includes the 20-year replacement reserve annual deposit. The initial deposit also gets included in that information.

Commissioner Warren asked if the operating subsidy that RHA gets now will be converted to Section 8 project based assistance on those properties. Jennifer Morgan said if RHA closes this year, then the voucher funding begins on January 1<sup>st</sup>.

Commissioner Warren asked if each entity would now be a new single-purpose LLC for each property. Mr. Francis said that was the plan. However, staff hasn't moved forward with it because of the question about OCAC vs. CAD. The idea was that RAD would organize an LLC for each property. All of them will be single-member LLCs and the managing member would be OCAC. Each LLC would own the assets from that particular property.

Commissioner Warren said that the decision to be made is which entity would be the managing member (OCAC or CAD).

Commissioner Warren asked if CAD were the managing member, instead of RHA creating another affiliate of CAD, would it just be CAD as the managing member? Mr. Francis said he had not thought that through because the thinking was OCAC would be the entity.

Commissioner Warren said either entity would be a single-purpose entity that would be the managing member.

Mr. Francis said OCAC would be the managing member for each one of those LLCs.

Commissioner Warren asked EJP if there are options that RHA should consider for non-LIHTC RAD transactions.

Ms. Parkes said she wanted to clarify some facts to make sure she was clear about the question. She said there are many ways RHA can structure how it moves forward. The issue is if a housing authority is not going to remain the owner-entity then you're talking about a transfer to an entity that the housing authority effectively has some control of. The control is the lever that HUD is going to be looking for and it can be a non-profit, as well.

Ms. Parkes said if you end up with individual phases of each deal, then the asset of each of those can be transferred to an entity that RHA has controlling interest in. Each transaction can have a single-purpose entity. RHA may or may not have an investor. If RHA does have an investor, then you're talking about setting up a single-purpose entity that will be part of that ownership entity for the purposes of that specific transaction. The asset is still owned and controlled by either RHA or an entity that has RHA's control in it somewhere.

Ms. Parkes said whether you want to do one non-profit or multiple non-profits, that's all okay.

Mr. Felton asked if they were mixing the RAD conversions and the Heritage Park redevelopment together.

Commissioner Warren said he was just talking about the RAD conversions right now—non-LIHTC deal.

Commissioner Warren asked if it will be acceptable from HUD's standpoint to have OCAC, if that's the way RHA goes, to be the sole member of each individual LLC for each of those four projects, as opposed to creating a separate controlled entity out of OCAC that is a separate entity in each deal.

Ms. Parkes wanted to clarify:

- OCAC is a new entity that RHA is creating that will be a certified non-profit.
- OCAC will be the new owner of the RAD assets—transferred from RHA to OCAC.

Commissioner Warren said he didn't think OCAC would be the direct owner—he thought there would be a separate LLC created for each entity.

Commissioner Braun said his understanding was that OCAC would be the umbrella entity that will own multiple assets through single-asset entities. Currently, under OCAC there would be four LLCs that own four different properties. The only member manager will be OCAC and it will own 100% of each of those LLC entities.

Ms. Parkes said what Commissioner Braun has described is not unusual for the industry, in terms of if you are wanting the asset to be owned and controlled by something other than the PHA when it is converted to RAD. However, OCAC is still an RHA-controlled entity so that's the

important distinction when you talk about RAD. For RAD, the PHA must have some control over that entity.

Commissioner Warren asked if there is a need for OCAC to create a separate controlled affiliate that would be a member of each LLC (and each LLC would have a different affiliate).

Commissioner Braun clarified for Ms. Parkes that the RHA Board would also be the OCAC Board and therefore meet that control test.

Ms. Parkes said that's what HUD cares about. The PHA is not allowed to transfer the assets to an entity that the PHA has no control over.

Ms. Byrnes clarified that in the straight conversions, where there are no tax credits, the single-asset LLC must be a public or a non-profit entity. That is one of the things RHA must be aware of from a RAD perspective for straight conversions. However, the structure of creating a single-asset entity for each of the four properties, in which OCAC is the sole member of that LLC is a fairly common structure that PHAs use to ensure control. OCAC could serve as the sole member of multiple LLCs.

Ms. Parkes asked if the intent is to set OCAC up as a non-profit.

Charles Francis said OCAC is already established as a non-profit. However, RHA hasn't gotten the 501(c)(3) designation yet.

Ms. Parkes said nothing is wrong with the structure that has been laid out (with OCAC owning the four LLCs).

Commissioner Warren said CAD is independent of RHA in that the Board Members are self-appointing (although there is one CAD Board Member who is also on the RHA Board). He asked if CAD currently meets the HUD requirements under the rules that they've published regarding ownership and controls for a RAD deal.

Ms. Parkes said her understanding right now is that RHA does not control CAD. If RHA does not have control, it will not pass the RAD test. However, CAD could be amended so that RHA has control over it.

Ms. Byrnes said there are additional nuances to it as well. In a straight conversion you are limited in how control is evidenced. If CAD were to participate in a LIHTC conversion, where there was a tax credit entity, control could be evidenced through not only control of the entity but also other ways such as holding a fee simple interest in the property. RHA could retain control under RAD by having a ground lease with CAD for the RAD conversion. RHA would not necessarily have to control CAD but there has to be some control of the property or the project for RAD purposes.

Mr. Felton asked if a reverter clause or a first option to purchase would be a way to suffice.

Ms. Byrnes said the alternate options for evidencing control include:

1. Holding a fee simple interest in the real property
2. Being the lessor under a ground lease with the project owner.
3. Having direct or indirect legal authority via some contract, partnership, share, agreement of equity partnership, voting rights or otherwise to direct financial and legal interest of the project owner.
4. Owning 51% or more of the general partner interest in a limited partnership, or 51% or more of the managing member interest in an LLC.
5. Owning a lesser percentage of the GP or managing member interest and holding control rights as approved by HUD.
6. Ownership or owning 51% or more of all ownership interests or some other ownership and control arrangement approved by HUD.

Ms. Byrnes said, while what you are saying is not specifically outlined within the RAD notices evidencing control, you could propose it to HUD. However, the idea is that the PHA or a wholly-owned subsidiary of the PHA is going to retain the right to some significant portion of the property and/or the decision-making process. Just having a reverter clause may not be a strong enough ownership protection for the PHA.

Ms. Parkes said HUD would not accept having just a reverter clause.

Commissioner Warren asked if it would be fair to say that one way to have CAD comply with the HUD notice would be that RHA would appoint a majority of the Board Members.

Ms. Parkes and Ms. Byrnes both replied “yes”.

Ms. Parkes said another way could be that RHA could enter into a ground lease with CAD. The idea would be that CAD could not just go off on its own, if you wanted to use CAD without having some mechanism to ensure long-term affordability and conformity to the HUD requirements on the RAD side.

Ms. Parkes said it sounds like RHA now has another tool in its toolbox with OCAC (a development entity that would meet that test).

Ms. Byrnes said HUD requires it to be a public entity or a 501(c)(3) non-profit, depending on how your state regulates entities that are created by the PHA. It may already qualify as a public entity, even without a 501(c)(3) designation.

Commissioner Warren suggested moving the discussion to Heritage Park, which adds some new complications because of LIHTC deals. He said in his days as a non-profit LIHTC developer, they created a separate controlled entity for each transaction that they did. That was a requirement of the investors and the lenders (in some cases). They wanted a single-asset entity to serve as managing or co-managing member. In the RAD deals, CAD or OCAC could be the managing member and sole member across multiple LLCs.

Commissioner Warren asked EJP if that was the way LIHTC deals typically work with RAD (where there is a single-asset entity established by the PHA's non-profit).

Ms. Parkes said that it is not uncommon.

Ms. Byrnes said it is also not uncommon in that structure that even though you have those single-asset entities that you have the same sole member across multiple LLCs. OCAC could still serve as the sole member of multiple LLCs, and that is not unusual.

Commissioner Warren asked Commissioner Winstead if that was her experience in the world of syndication.

Commissioner Winstead said the arrangement that was just described is what is being used most recently in the deals that she has been involved in.

Mr. Felton asked, in the scenario that was laid out, would CAD or OCAC, as a part of the development team, be able to get the developer experience for tax credits so that in the future they would be able to do their own tax credit deals?

Commissioner Winstead said the experienced developer would have to stay in a minimum of two years and then RHA would need to get everyone's permission for them to step out. The affiliate of RHA could then become the general partner. During that two-year period, the idea is that you would get the training and staff necessary to make everyone comfortable that you would be able to manage all of the tax compliance issues going forward.

Mr. Francis asked if there is anything that would preclude reaching an agreement with the experienced developer on the front end that, once RHA had acquired sufficient experience, they would exit.

Commissioner Winstead said all of that can be negotiated up front.

Ms. Parkes wanted to make sure they separate the ownership structures as it relates to RAD vs. the business arrangement that you will negotiate with whatever developer you get. With Heritage Park, you know you have a minimum 2-year bar you must meet, you will want to find:

1. A developer that is willing to want to exit sooner rather than later.
2. An investor that will be comfortable going in with the idea that the developer is going to exit after two years.

Mr. Francis said that is also something that can be negotiated on the front end with the investor. He said the thing that's important to keep in mind is that RHA, because of its record, experience, and the value of this property, will have more leverage than the normal housing authority in negotiating with an investor. That should be something to negotiate on the front end with the investor.

Commissioner Warren agreed that RHA will be successful in these negotiations. However, you will always find some caveats on the part of the investor's side. They won't say yes for sure, no

matter what, that they will allow the exit. He believes there will be a lot of legal language related to that.

Commissioner Winstead said RHA will have to get their consent at that time.

Ms. Parkes said an important metric will be who is putting up all of the guarantees.

Commissioner Warren said if RHA is signing on to all of the guarantees it will put you in a much stronger position negotiating with the developer.

Commissioner Warren wants to make sure they are perfectly clear on the LIHTC deals:

- With either CAD or OCAC, serving as the non-profit, there will still need to be a separate entity created to serve as a managing member in the LIHTC deals (that will be controlled by that non-profit). In other words, CAD cannot be in the ownership structure in multiple LIHTC deals directly.

Ms. Byrnes said the requirement for ownership of a project changes when you have tax credits involved. HUD can allow for ownership of a project to be slightly different with tax credits involved, and some of that difference is in how ownership is evidenced. That could be just a simple ground lease. You wouldn't necessarily need to have CAD in the ownership structure if you can show control of the project through one of these other means. That is specifically for leveraged financing with tax credits, not for the RAD-a-matics.

Ms. Parkes said the way RHA wants to do Heritage Park is by being a co-developer and have the other developer go away quickly. RHA can solve for the HUD piece either by OCAC or CAD. Under this structure, each phase of Heritage Park becomes its own single-purpose entity, whether it's under CAD or OCAC.

Mr. Felton said one of the questions from the committee was whether EJP would be involved in the selection of the development partner. The answer to that question is that the intent of staff is to include them in that selection. They will also be part of the Heritage Park redevelopment as well as any RAD transactions going forward.

Ms. Parkes added that EJP is providing technical guidance – they might sit on the committee but aren't voting members. They will review the proposals and discuss them with the committee to make sure they meet all of the requirements.

Commissioner Warren said his general question is why OCAC needed to be created if there was a simple fix for CAD. He asked what would be so bad about having additional RHA-appointed Board Members on the CAD Board.

Mr. Felton said it goes back to why it was separated from RHA to start with (reducing the ability to pierce the corporate veil). By putting them back together, you would be increasing the liability for both entities. When they were separated, CAD did not have as many assets as they do today. By putting them back together, there will be a greater liability.

Mr. Felton said another reason to create OCAC was to keep all of the RAD properties under OCAC and all of the affordable market rate communities under CAD. This keeps the RAD properties and affordable market rate properties separate. Creating OCAC gives the RHA Board the control they want and allows RHA more flexibility for future deals.

Commissioner Warren said he thinks anytime you have a lawsuit people will try to get to the parent, where all of the assets are.

Mr. Felton said they will cast a wide net. However, the more separated they are, they less likely you are to get caught up in the net.

Mr. Francis said there are two things to think about if RHA Commissioners became the majority of the CAD Board:

- That would require CAD's permission.
- Why would you want to transfer RHA assets that are in these four developments, to an entity that only half of the RHA Commissioners get to have a say in? Which four RHA Commissioners are not going to participate in the control of those four assets?

Mr. Francis said, if that happens, those that are excluded would quickly begin to say this is not what they were appointed to do.

Commissioner Braun said right now the whole RHA Board has no say in what's happening with CAD (except Commissioner Morris, who was recently appointed to the CAD Board). He said four RHA Commissioners is better than one.

Commissioner Braun said the bigger policy issue is that CAD should be a tool for implementing the broader policies of RHA. Right now the RHA Board has no say or influence over that. A reverter clause is not a way to influence policy.

Commissioner Warren said he's not suggesting that a certain number of RHA Commissioners go to the CAD Board. The RHA Board would appoint a certain number of new members to the CAD Board. They may be external people – not necessarily RHA Board Commissioners. The appointment power would be given to RHA and RHA could have the ability to remove them with or without cause.

Mr. Felton said regarding the reverter clause, during a previous discussion, there was concern that CAD has property at Capitol Park and could do something separate from RHA (since there are no reverter clauses at Capitol Park). CAD's mission is the same as RHA, just as it has always been. It was mentioned earlier that they should be a tool of RHA and that's exactly what they've been over the years. The reverter clause was mentioned to put to rest any concerns about Capitol Park and Chavis Heights. Going forward, that's not the sole way to control but it certainly addresses that issue.

Commissioner Warren said CAD now has significant resources and doesn't have any developments on its plate. He would like CAD to have conversations with the RHA Board and

leadership of RHA to determine how they can best play a role in serving the needs of RHA's communities. Right now they're on their own.

Mr. Felton said they're not on their own. CAD's intent is to be a developer, just like they were at Walnut Terrace. They would have some role in the redevelopment, just like they have in any of the other redevelopments. RHA must figure out where CAD fits in.

Commissioner Warren said you could ask them to have a role but they don't have to accept it.

Mr. Francis said that statement is legally correct. However, you can't point to any instance where RHA has asked CAD to participate in one of these developments and they declined. They exist to support RHA.

Commissioner Warren said their By-Laws don't say that. They talk about serving the housing needs in the community. He doesn't see that there's harm in having greater control over CAD through Board-recommended appointees to the CAD Board.

Commissioner Warren said he doesn't think having CAD or OCAC being the entity that does the RAD-a-matics vs. CAD being the development entity adds undue complications if there was just one entity. In fact, you can argue that it makes auditing simplified to have just one non-profit out there doing things rather than two.

Mr. Felton said staff wanted to keep the RAD properties and affordable market rate properties separate for financial and accounting reasons.

Commissioner Warren said you have to anyway, because they are separate entities. They will have to be accounted for separately.

Mr. Felton said that's why OCAC was set up – to keep that separate.

Commissioner Warren said each one will be an LLC so CAD could be that entity, too. The LLC will still be doing the same financial accounting, no matter if it's CAD or OCAC.

Mr. Felton said staff looks at it as keeping them separate and that gives the Board the control they want. That made it clean by having RAD under OCAC and affordable market rate under CAD.

The EJP consultants, Ms. Parkes and Ms. Byrnes, needed to leave the meeting but offered their services at future meetings, if needed.

Commissioner Warren said the committee is anxious to resolve the issue regarding CAD and OCAC. He said they are also anxious to see EJP's involvement in the Developer RFP and the committee looks forward to working with them and their team.

Ms. Parkes said they reviewed the first draft of the Developer RFP and offered their comments.

Commissioner Warren said that as RHA gets ready to do the RAD transactions, it's important that they are clear as to how RHA is going forward with any non-profit entities. His opinion is that it would be okay to have one entity that RHA would exhibit control over.

Commissioner Braun said there was a comment during a previous discussion that CAD was like a teenager and that at some point it would need to grow up. Having CAD brought in to a piece of Heritage Park is a fairly sophisticated transaction and becomes more of an arms-length transaction. If CAD acts independently, with Mr. Felton administering as CEO of CAD, you run the risk of potential conflicts. That seems more problematic than if RHA exerted more control over CAD.

Commissioner Braun said it's fine to say CAD and RHA are on the same team. However, when there are millions of dollars involved, things change.

(Commissioner Morris joined the meeting.)

Commissioner Warren said he's still having trouble understanding why adjustments can't be made to the CAD By-Laws so that additional Board Members are appointed by the RHA Board that would give more control than what currently exists. That's not to say CAD has done anything wrong in the past because it certainly hasn't and should be proud of what it has accomplished. It has significant assets now and there could be a divergence of interests and it would make for a smoother corporate structure if there was a stronger relationship between RHA and CAD. OCAC would not be needed if those changes are made.

Mr. Felton said the way OCAC is set up is perfectly fine and works for the RAD deals. It gives the Board the control that they want. Also, by having CAD and OCAC, it gives RHA the flexibility for future deals. RHA has always had a working relationship with CAD and there is no reason that will change. There doesn't seem to be a reason to change the structure and take control of CAD since they haven't done anything wrong and they haven't changed.

Commissioner Warren said CAD has significant assets that were largely created by RHA.

Mr. Felton asked what he meant by the assets having been created by RHA.

Commissioner Warren said with the deals that were structured, RHA lent them money, provided land, and provided them 0% loans. All of that was favorable to create a financially viable deal structure to build CAD assets. That was Steve Beam's model and it was commendable. He said he would have done the same deal structure.

Mr. Felton said that's where they have the same mission – because they're looking to do affordable housing, just like they've always done. By creating OCAC, it will give the Board and RHA more flexibility. The money that was loaned was 0% interest but it was for the affordable housing mission. CAD was the developer for all three properties and put money back into the properties. Even though they purchased that land at a lower rate, they were still able to work with the development and make it better by putting money back into it.

Mr. Felton said CAD is the one that has the loans for the properties at Walnut Terrace.

Commissioner Warren said CAD was RHA and Steve Beam was on the Board of CAD.

Mr. Felton said Steve Beam was not on the CAD Board after 2010. That goes back to why it was severed – to separate the two entities more because Steve Beam, as CEO of CAD and Secretary of RHA, was signing contracts for both entities.

Commissioner Braun said you need to be careful when you say that because RHA staffs CAD.

Commissioner Morris asked if RHA staffs CAD or does CAD pay RHA a management fee.

Mr. Felton said CAD pays a management fee to RHA.

Commissioner Morris said RHA does not staff CAD.

Mr. Felton said there are no CAD staff members.

Commissioner Braun asked what Mr. Felton's role is for CAD.

Mr. Felton said he is CEO of CAD.

Commissioner Warren asked if that is in the By-Laws. He thought the Board Chair was the CEO.

Commissioner Braun said legally you can either be separate or not separate. You can't have it both ways. His concern is, if somebody looked at this arrangement, and they said CAD is going to be involved in multi-million dollar transactions going forward, this structure creates some problems. CAD should be totally independent or it should be an affiliate. You can't just say "why would anybody do anything wrong" because everybody gets along until they don't. The only thing you can judge it by are the controlling documents and what governs the relationship. The fact that RHA's Executive Director and CAD's CEO are the same person is problematic.

Mr. Felton said at Heritage Park, RHA will need to partner with a tax credit developer and RHA won't have control over them. There will be an agreement between RHA and the developer.

Commissioner Braun said their CEO won't be sitting in the room while RHA is talking about confidential deal structures and how we will negotiate the deal.

Mr. Felton said we're not going to be talking about structuring a deal to buy something from CAD. CAD is not an adversary – they're a partner with RHA and will always be a partner. There are other ways to have a partnership with them. This is a mutually beneficial relationship between CAD and RHA. CAD has their properties managed by RHA –they're not a separate entity like a tax credit developer.

Commissioner Warren said RHA will try to have control over the tax credit developer to the maximum extent possible.

Mr. Felton said you won't ask to be put on their Board and take control over them.

Commissioner Warren said that isn't how it's evidenced in a LIHTC agreement.

Commissioner Braun said he likes internal consistency. The original situation with CAD is that you were worried about piercing the corporate veil and separating the entities. If someone sues CAD and wants to get to RHA assets, when they hear that CAD and RHA share office space and CEOs, it will come into court. You can't have it both ways.

Mr. Francis said the primary concern is the other way around. It's not someone suing CAD and getting to RHA, it's the other way around. You've seen the way CAD's assets have multiplied. RHA is a public agency and has a limit on its liability. If they try to tie CAD in and there's too much connection between them, that's the concern with piercing the veil. CAD is not a public agency like RHA.

Commissioner Braun asked if it wouldn't be better to keep control over them and argue that it's a public agency. If that's not the case, if you have dual CEOs and share office space, you're underwriting that position.

Mr. Francis said plenty of people set up the single member LLCs and the LLC has office space in the office of the parent and some of the people running it are the same. He doesn't think that's the determinative factor in whether you will be able to get through to the assets of the entity.

Mr. Francis suggested there's no reason why you couldn't move forward with the four RAD properties under an OCAC structure and continue to have this discussion about CAD. There's very little cost in completing the establishment of the OCAC entity and getting its 501(c)(3) designation. This argument seems to be about the control of the RHA Board over the larger operations of CAD.

Commissioner Warren said he sees this as a governance issue. It would be interesting to look more at Wayne's position as CEO, given that CAD has no employees.

Commissioner Morris said it sounds like EJP discussed a structure where could use either OCAC or CAD.

Commissioner Warren said RHA can go either way. RHA can use CAD – even as it's structured right now if there are ground leases. If RHA controlled the majority of the CAD Board, it would easily satisfy HUD for RAD deals.

Commissioner Warren said if RHA does move forward with OCAC, he would ask that it not be set up such that all RHA Board Members are members of OCAC. That would probably be too many Board Members. He suggests RHA be able to appoint the Commissioners of OCAC and

be able to remove them with or without cause. It could be RHA Commissioners or others outside of the Board.

Mr. Francis said the By-Laws currently say that the RHA Board is the OCAC Board. However, the OCAC Board can easily change that to what you just suggested.

Commissioner Warren said CAD originally had a provision that they couldn't change their By-Laws without the permission of RHA. That provision was deleted. OCAC shouldn't need a similar provision, given that RHA controls the Board.

Commissioner Braun said let's assume RHA appoints all of the Board members and can remove them at any time. Theoretically, the Board could get together and say they're going to change the By-Laws, and the By-Laws will now say that the OCAC Board appoints the Board going forward.

Mr. Francis said a provision could be inserted into the By-Laws that precluded that. Another thing you can do is state that all of the RHA Commissioners – or a subset – will be the Board Members.

Commissioner Braun said the By-Laws could state that the Board would need to give 90 days' notice if there are any By-Laws changes (if the Board Members are appointed outside of the RHA Board). The RHA Board could intervene, if needed.

Commissioner Warren asked Commissioner Mutisya and Commissioner Winstead if they have anything to add to the discussion.

Commissioner Winstead said if the unrestricted assets that the investors are looking for to back up those guarantees lie with CAD and not RHA, then CAD would somehow need to be pulled into the agreement with the investor for guarantee purposes. RHA can't pledge any public assets to backup guarantees. If the cash unrestricted assets are with CAD, then the investors will start digging through who has the financial means to back up the guarantees. At some point they will be looking at CAD.

Mr. Felton said RHA has the Local Fund which are unrestricted and they could be used as part of that deal.

Mrs. Edgerton said that is correct – those funds are defederalized. Staff will research whether or not there are no restrictions for LIHTC deals.

Mr. Francis asked about the amount of the unrestricted funds. Mr. Felton said it's approximately \$17 million.

Mr. Francis said both CAD and RHA have the strength to provide guarantees.

Commissioner Braun asked if RHA, as a municipal corporation, can guarantee funds. Are there any restrictions?

Mr. Felton said the Finance staff will check into that.

Commissioner Mutisya asked if Commissioner Winstead's point was about piercing the corporate veil. Commissioner Winstead said it was more about going through the underwriting for the tax credit equity investor. The investor will be looking to the financial strength of the guarantor and perhaps that being a vehicle to exert that control over the transaction and the co-developer. The question was more around which entity has sufficient unrestricted assets that could be pledged to the investor for the guarantees involved.

Commissioner Warren said CAD's strength of \$10 million would get somebody's attention.

Commissioner Winstead said yes – especially when they start looking into financials.

Commissioner Mutisya asked if the structures that we currently have now will be helpful or will they be more helpful to change?

Commissioner Winstead said she wasn't sure. She was just pointing out that there could be some implication as the transaction progresses.

Commissioner Braun said the co-developers are going to look to whatever entity for some amount of guarantee.

Commissioner Winstead said the equity investor will. They will be looking at the liquidity and net worth of the guarantor.

Commissioner Braun asked what would happen if they went with the OCAC entity and it has no assets. How does that work?

Commissioner Winstead said the following questions will be asked:

- Who controls OCAC?
- What do they have?
- Are there any other entities affiliated with it that we can look to for securing the guarantees?

Commissioner Winstead said that a co-developer will do it if they have the capacity. However, they will also want more of the developer fee and more control because they are giving those guarantees for tax credit delivery and performance. We will have to think through that as we talk to potential co-developers.

Commissioner Warren said there are probably developers out there who would be willing to sign on to all the guarantees themselves for the equity investor without RHA being exposed – either through CAD or OCAC. However, you'll have much less control over the deal and maybe a little more difficult exit because the developer is pledging the assets – and if you boot them out the equity investor is more exposed.

Commissioner Winstead said at the end of the two years, a part of their consent is going to be to look at the financials of who they are left with as the guarantor and can they continue to meet the financial covenants for the remainder of the investment period. Their concern will be that they don't get their full benefit, there's some recapture event, or the IRS comes in and calls back the credits and they will be owed their equity back. There are several things that can go wrong.

Commissioner Warren asked for thoughts about moving this forward. He asked if the pros and cons should be brought to the RHA Board since this committee is only advisory.

Mr. Felton said that would be the next step.

Commissioner Morris said an advisory board usually has a direction that's preferable. They may bring it to the full Board but, in the end, the Board will ask for a recommendation because the advisory board has done the research. He said he's not hearing anyone giving their recommendation. If the RHA Board looks back to this committee and asks for a recommendation, can we give them an answer?

Mr. Francis said that's a good point. The committee should have a more comprehensive discussion with more information on the table. Commissioner Warren and Commissioner Braun have a strong point of view but he's not sure there is consensus within the committee. You might want to have a meeting dedicated to trying to resolve this issue at the committee level.

Commissioner Morris said if the committee has a real issue with CAD it can be removed. RHA doesn't need to use CAD.

Mr. Felton asked Commissioner Morris what he means by not needing to use CAD – in what capacity?

Commissioner Morris said in any capacity with the new project. Does RHA need to use CAD for anything if there are genuine concerns with it? CAD can stay where they're at and RHA doesn't need to involve them in this next deal. RHA can create OCAC and move forward.

Mr. Felton said that's correct.

Commissioner Morris said, right now, that's the option he feels strongly about.

Mr. Francis said OCAC was created for the RAD transactions. RHA doesn't need CAD or its financial strength to do RAD.

Commissioner Warren said CAD would provide a better negotiating position with the equity investor and the developer for Heritage Park, given its asset base. Instead, RHA might need to put its asset base on the line and we don't even know that it can do that as a municipal corporation.

Mr. Francis suggests that the committee consider in the discussion whether it wishes to authorize staff to move forward with the OCAC process for the four RAD properties.

Mr. Felton said that decision will need to come from the full RHA Board.

Commissioner Morris said there are the following options:

- Involve CAD.
- No involvement from CAD.
- OCAC in both of those options.

Commissioner Morris said the committee should outline those options and get comfortable with them. Then the committee needs to decide which one they're behind the strongest and present the decision to the full RHA Board.

Commissioner Warren said that's a good recommendation – to lay out the options with the pros and cons. He offered to write a first draft for the review of the committee and staff. After the draft is circulated, they can vote on concurrence of an option to bring to the full RHA Board.

Commissioner Braun asked for an org chart of the options. He asked Mr. Felton if there is a deadline for the decision.

Mr. Felton said an RHA Board Meeting will be scheduled for the end of April/beginning of May to approve bond inducement resolutions and it could be taken to the Board at that time.

The next Recommissioning Committee Meeting was scheduled for April 20<sup>th</sup> at 11:00 am.