MINUTES OF THE
HISTORIC TAX CREDIT SUBCOMMITTEE OF THE
TAX CREDIT REVIEW COMMISSION

Thursday, October 14, 2010
8:00 a.m.
1307 Washington Avenue, Suite 300
St. Louis, MO 63102

I. CALL TO ORDER

The meeting was called to order at 8:05 a.m. by Chairman Boyers in the offices of U.S. Bancorp Community Development Corporation, 1307 Washington Avenue, St. Louis, Missouri.

II. ROLL CALL

Members Present:

Chairman Zack Boyers, Greg Smith, Peter George, Rodney Crim, Bill Bayer, Wendy Timm, Debra Sheals, Mike Wood, Peter Noonan, Elizabeth Rosen, Ray Wagner, Karen Bode-Baxter, Robert Espeland, Eric Friedman, Jerry Schlichter, Don Roseman (by phone)

Members Absent:

Senator Matt Bartle, Joe Maestes, Luana Gifford, Tom Reeves, Steve Kramer, Shannon Weber

Others Present:

Ernesto Segura, Tom Sullivan, Tim Logan, Vicki Webster (by phone), Leon Craig (by phone), Ann Auer (by phone), others by phone who were not identified

III. NEW BUSINESS

A. Approval of Minutes: Minutes from the October 7, 2010 meetings were distributed to the committee prior to the meeting. Submitted changes were read aloud by Chairman Boyers. Rodney Crim made a motion to approve the minutes, as modified. Wendy Timm seconded the motion. The motion was approved by unanimous consent.

B. Discussion of Opportunities to Modify and/or Improve the Historic Tax Credit Program: Chairman Boyers began this discussion by noting that the goal of the meeting was to move toward a consensus, acknowledging where there are disagreements, but working toward recommendations that the Subcommittee may make to the full Commission.

1. Program Efficiencies: The Subcommittee reiterated its desire to have the Department of Economic Development provide an overview of how the process used to review applications for tax credits has changed with the approval of SB 191 (2009). Peter Noonan reviewed a list of concerns that the development community has with the current process, and noted that some projects are not being pursued due to such concerns. Jerry Schlichter noted that many procedural

concerns may be addressed through regulatory changes, as opposed to statutory changes.

Action: The Subcommittee agreed to consider recommending regulatory changes to ensure that the approval process follows the law as written.

2. Annual Limit on Tax Credits: The Subcommittee next discussed the "cap" on the tax credit program which was established in SB 191. Peter Noonan provided a review of historic rehabilitation tax credit programs in other states and the caps which many of those states use. The Subcommittee was provided with a 2010 report from the National Trust for Historic Preservation which summarized the historic rehabilitation tax credit programs in 31 states, including Missouri. Members of the Subcommittee stressed that Missouri is often used as the model program for other states, and that the impact of the imposition of the annual limit in 2009 can not yet be assessed. Chairman Boyers noted that tax credit approvals are not expected to hit the annual limit this year, and therefore any reduction in the annual limit would likely not have a budget impact on the state for several years. Ray Wagner suggested indexing the annual limit to population or revenue projections.

   Action: The Subcommittee agreed to consider proposing that the annual cap on tax credit allocations remain at the current level, in consideration of the compromise resulting in the imposition of the cap in 2009, the belief that a reduction would not result in any significant positive impact to the state budget, and the lack of any meaningful history since the cap was put in place.

3. Carry-forward/Carry-back of Tax Credits: Jerry Schlichter raised the issue of redemption of tax credits for prior tax years and suggested that the Subcommittee may want to recommend reduction of the "carry-back" period currently available to recipients of the tax credits from three (3) years to one (1) year. Robert Espeland also noted that the "carry-forward" period could be an area in which the Subcommittee makes a recommendation. Elizabeth Rosen suggested reducing the "carry-forward" period from ten (10) years to five (5) years for credits which are transferred by the original recipient. Karen Bode-Baxter added that this would help small projects where the credits are not transferred. Greg Smith added that these modifications could provide more state budget predictability.

   Action: The Subcommittee agreed to consider proposing (a) a reduction of the "carry-back" to one (1) year from the year of issuance, and (b) a reduction of the "carry-forward" to five (5) years from the year of issuance for any credit that is transferred in accord with state law. The Subcommittee also agreed to consider a proposal that the "carry-forward" remain at ten (10) years for any credit that is retained by the party to whom it was originally issued (i.e. non-transferred credits).

4. Deferred Developer Fees: Peter Noonan next raised the issue of deferred and accrued costs being included as qualified rehabilitation expenditures (QREs). In particular, Mr. Noonan suggested that deferred developer fees (i.e. fees deferred and paid over a number of years from the cash flow of a completed project) could be excluded from the definition of QREs. Greg Smith noted that the concern with such fees is that if the project goes into default after seven years and the fee is deferred over twelve years, that the fee is never actually paid, but was included as an up-front QRE for which tax credits were calculated and issued. Karen Bode-Baxter noted that there are a number of projects in default where the non-payment of the deferred developer fee has drawn the attention of the Department of Economic Development. Chairman Boyers proposed that only those developer fees which are actually paid be considered a QRE. Greg Smith suggested allowing accrual of the fee for no longer than the construction period for a project. Wendy Timm suggested using a "stabilization" period rather than the construction period, although concerns were raised as to the ability to define "stabilization". Jerry Schlichter noted that the exclusion of the deferred developer fees from QREs would effectively reduce the amount of credits being issued, since there would accordingly be a lower amount of QREs for each project.

   Action: The Subcommittee agreed to consider proposing the removal of deferred developer fees paid out of future cash flow beyond the qualifying construction period from the definition of QRE, thereby eliminating the risk that credits are issued for costs not incurred due to defaults of projects.

5. "Stacking" Credits: The Subcommittee also discussed the matter of a single project receiving tax credits from various programs, otherwise known as "credit stacking." Ray Wagner noted that the concern with credit stacking is the appearance of "double dipping" and that this is an important issue for the Subcommittee to consider, if only for the sake of addressing this perception. Greg Smith noted that the real issue is a policy matter of how much public assistance is too much for one project. Mr. Smith suggested that the state needs to decide this as a matter of state-wide policy, and not just in terms of the state historic rehabilitation tax credit program. Chairman Boyers suggested that perhaps the Subcommittee could consider a decrease in the amount of tax credits available to 20% of QREs when historic rehabilitation tax credits are combined with other tax credits, but also stressed that this is a global policy issue that cannot be cured only by a change to the historic rehabilitation tax credit program.

   Action: The Subcommittee agreed that this issue is an overarching concern that reaches beyond just the historic rehabilitation tax credit program. However, in order to demonstrate support for this policy concern, the Subcommittee agreed to consider proposing that the percentage of the total QREs of an eligible project for which credits may be claimed be reduced from the current twenty-five percent (25%) to twenty percent (20%) for any project which also receives other state tax credits.

6. Percentage of Credit: At various points throughout the discussion, the issue of whether to reduce the percentage of total QREs of an eligible project for which credits may be claimed was raised by the Subcommittee. Ray Wagner asked why credits in several states with a small percentage credit (e.g. Montana provides a 5% credit) are considered "throw-away" credits while the 25% credit that Missouri currently has is considered "essential" to the success of the program? Chairman Boyers responded that a program with a 25% credit would drive development, whereas a low-percentage credit has an impact to the state budget in that credits are issued, but does little to incentivize the actual projects because the credit is too low.

   Action: The Subcommittee agreed to consider proposing that the percentage QREs for which credits may be received remain at 25%. The removal of the deferred developer fees from the definition in QREs and the limitation on the percentage of credits available to "stacked" projects is expected to lower the overall amount of credits issued, therefore minimizing the need to accordingly reduce the percentage of credits.

7. Cap on Owner-Occupied Projects: Chairman Boyers also raised the issue of the existing requirement that no more than $250,000 in tax credits may be issued to any one rehabilitation project of eligible property which is a non-income producing single family, owner occupied residential property. Peter Noonan suggested that a reduction of this cap to $100,000 in tax credits would not negatively impact these developments. Deb Sheals agreed with Mr. Noonan, noting that a reduction is acceptable, but that tax credits do need to be available for those "pivotal" projects in neighborhoods which could spur further rehabilitation. Wendy Timm proposed that the Subcommittee consider lowering the cap to $150,000.

   Action: The Subcommittee agreed to consider proposing a reduction in the cap on owner-occupied projects to $150,000 in tax credits.

8. Third Party Cost Certification Review: Jerry Schlichter next raised the matter of outside review of final cost certifications for credits, with the review to ideally be completed within 30 days. Elizabeth Rosen noted that such a procedure could aid transparency to the final review process. Mr. Schlichter suggested that the costs of such a review process could be paid from the 2.5% application fee currently collected by the Department of Economic Development. Eric Freidman stated that this concept was discussed with Rex Burlison and Mr. Burlison stated that the Governor's office was not opposed to such a concept. Chairman Boyers added that a third-party review process could aid predictability and efficiency of the final review for projects.

   Action: The Subcommittee agreed to consider proposing a implementation of a neutral, third-party review process for review of all final cost certifications, with such reviews to be completed within thirty (30) days of submission of the final cost certification, and costs of this new review process to be paid from the funds collected from the existing 2.5% application fee imposed by the Department of Economic Development

9. Finally, Chairman Boyers stated that he would work to have the proposed action items summarized in advance of the next meeting, so that proposals could be finalized and included in the Subcommittee's final report to the full Commission. Rodney Crim also requested that the Subcommittee include in any final recommendations an acknowledgement that the Subcommittee reviewed other state tax credit programs and noted the findings of the National Trust for Historic Preservation with regard to the ideal percentage of tax credits and the factors which most influence effectiveness of such programs. A member of the public joining the meeting by phone also raised the matter of the appearance of improper pricing of tax credits with regard to particular projects. Chairman Boyers welcomed the comment and requested that the gentleman send additional information regarding his concerns to the Chairman.

C. <u>Next Meetings</u>:

1. A Subcommittee meeting is scheduled for October 22, 2010 at 8:30 a.m. to review proposed actions of the Subcommittee. The meeting will be held in the offices of U.S. Bancorp Community Development Corporation, 1307 Washington Avenue, Suite 300, St. Louis, Missouri.

IV. MEETING ADJOURNED

There being no other business to come before the Subcommittee, Chairman Boyers adjourned the meeting at approximately 10:55 a.m.

Submitted and approved by the Subcommittee the
___ day of October, 2010.