

SUPPLEMENTAL BOARD BOOK
OF
July 14, 2020



Leslie Bingham, Vice-Chair
Paul Braden, Member
Sharon Thomason, Member
Leo Vasquez III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

| Owner Financing and Down Payment | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <ul style="list-style-type: none"> 30-year, fixed interest rate mortgage loans Mortgage credit certificates Down payment, closing cost assistance Homebuyer education | |
| Programs: | |
| <ul style="list-style-type: none"> Homebuyer Assistance Program (HBA)* Single Family Homeownership | |
| Expended Funds: | \$1,693,834,604 |
| Total Households Served: | 9,605 |

| Energy Related Assistance | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <ul style="list-style-type: none"> Utility bill payment assistance Energy consumption education Weatherization for energy efficiency | |
| Programs: | |
| <ul style="list-style-type: none"> Comprehensive Energy Assistance Program (CEAP) Weatherization Assistance Program (WAP) | |
| Expended Funds: | \$147,270,662 |
| Total Households Served: | 162,668 |

| Multifamily New Construction | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <ul style="list-style-type: none"> Affordable rental units financed and developed | |
| Programs: | |
| <ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds Multifamily Direct Loan Program* | |
| Expended Funds: | \$108,945,178 |
| Total Households Served: | 7,062 |

| Homelessness Services | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <ul style="list-style-type: none"> Shelter building rehabilitation, conversion, operations Essential services e.g., health services, transportation, job training, employment services | |
| Programs: | |
| <ul style="list-style-type: none"> Emergency Solutions Grant Program (ESG) Homeless Housing and Services Program (HHSP) | |
| Expended Funds: | \$12,162,959 |
| Total Individuals Served: | 71,350 |

| Multifamily Rehab Construction | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <ul style="list-style-type: none"> Affordable rental units financed and rehabilitated | |
| Programs: | |
| <ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds | |
| Expended Funds: | \$56,792,063 |
| Total Households Served: | 2,503 |

| Supportive Services | |
|---------------------------------------------------------------------------------------------------------------------|--------------|
| Provides administrative support for essential services for low income individuals through Community Action Agencies | |
| Program: | |
| <ul style="list-style-type: none"> Community Services Block Grant Program (CSBG) | |
| Expended Funds: | \$31,103,729 |
| Total Individuals Served: | 561,906 |

| Owner Rehabilitation Assistance | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <ul style="list-style-type: none"> Home rehabilitation, reconstruction Manufactured housing unit replacement Accessibility modifications e.g., ramp, grab bar installation | |
| Programs: | |
| <ul style="list-style-type: none"> Homeowner Rehabilitation Assistance Program (HRA)* Amy Young Barrier Removal Program | |
| Expended Funds: | \$11,384,025 |
| Total Households Served: | 251 |

| Rental Assistance | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <ul style="list-style-type: none"> Short, long term rent payment help Assistance linked with services Transitional assistance Security, utility deposits | |
| Programs: | |
| <ul style="list-style-type: none"> Tenant-Based Rental Assistance (TBRA)* Section 8 Housing Choice Vouchers Section 811 | |
| Expended Funds: | \$11,021,909 |
| Total Households Served: | 1,932 |

| Single Family Development | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <ul style="list-style-type: none"> Single family development, reconstruction, rehabilitation Do-it-yourself, "sweat equity" construction, rehabilitation Contract for Deed refinance | |
| Programs: | |
| <ul style="list-style-type: none"> Single Family Development Program (SFD)* Contract for Deed (CFD) | |
| Expended Funds: | \$3,769,888 |
| Total Households Served: | 85 |

| | |
|------------------------------------------------------------------------------------------------------|-----------------|
| Total Expended Funds: | \$2,076,285,016 |
| Total Households Served: | 817,362 |
| All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP). | |
| Note: Some households may have been served by more than one TDHCA program. | |

* Administered through the federally funded HOME Investment Partnerships Program

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
July 14, 2020

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/8581326923452013835>

Dial-in number: +1 (415) 655-0052, access code 663-666-850 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

Leslie Bingham, Vice Chair

CERTIFICATION OF QUORUM

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

ASSET MANAGEMENT

- a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

Rosalio Banuelos
Director of Asset Management

17288 Forest Trails Lindale

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

04302 Sierra Royale Robstown

BOND FINANCE

- c) Presentation, discussion, and possible action authorizing the extension of the Mortgage Acquisition, Pooling and Servicing Agreement between the Texas Department of Housing and Community Affairs and the Idaho Housing and Finance Association

Monica Galuski
Director of Bond Finance

SINGLE FAMILY & HOMELESS PROGRAMS

- d) Presentation, discussion, and possible action authorizing extensions to Neighborhood Stabilization Program 1 contracts and Program Income reservation agreements

Abigail Versyp
Director of Single Family & Homeless Programs

- e) Presentation, discussion, and possible action authorizing extensions to Neighborhood Stabilization Program 3 contract and Program Income reservation agreement for Community Development Corporation of Brownsville, Inc

HOUSING RESOURCE CENTER

- f) Presentation, discussion, and possible action on the 2021 Regional Allocation Formula Methodology

Elizabeth Yevich
Director of Housing Resource Center

RULES

- g) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, §1.21, Action by Department if Outstanding Balances Exist; an order proposing new 10 TAC Chapter 1, §1.21, Action by Department if Outstanding Balances Exist; and directing their publication for public comment in the Texas Register

Brooke Boston
Deputy Director of Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Report on the Department's Swap Portfolio and recent activities with respect thereto

Monica Galuski
Director of Bond Finance

ACTION ITEMS

ITEM 3: FAIR HOUSING DATA MANAGEMENT & REPORTING

- a) Presentation, discussion, and possible action on a Reasonable Accommodation Request denial in accordance with 10 TAC §1.1(c)(4) relating to Reasonable Accommodation Requests to the Department

Cate Tracz
Manager of Fair Housing Data Management & Reporting

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on timely filed scoring appeals under 10 TAC §11.902 of the 2020 Qualified Allocation Plan

Marni Holloway
Director of Multifamily Finance

20184 The Heritage at Abilene Abilene
20309 Casitas Los Ebanos Bishop

- b) Presentation, discussion, and possible action on timely filed appeals of application termination under 10 TAC §11.902 of the 2020 Qualified Allocation Plan

20116 Dian Street Villas Houston

- c) Report of Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2020 Qualified Allocation Plan for 20177 Avanti Legacy Valor Heights, McAllen

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

Leslie Bingham
Vice Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

4b

PULLED FROM THE AGENDA

On July 9, 2020, The Executive Director granted the timely filed appeal by Applicant on Application 20116 – Dian Street Villas, and reinstated the Application. As the Applicant has not appealed this determination to the Board, this Item (4b) is withdrawn from the agenda.

The Executive Director's response to the appeal (and the primary attachment) is being posted for informational purposes. All documents submitted regarding this appeal can be viewed, through the TDHCA website, toward the end of the imaged application file for this Application at: <https://www.tdhca.state.tx.us/multifamily/docs/imaged/2020-9-challenges/20116.pdf>

Those who wish to offer public comment regarding this Application at this meeting may do so following the conclusion of Board action on items remaining on the agenda.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
Leslie Bingham, *Vice Chair*
Paul A. Braden, Member
Sharon Thomason, Member
Leo Vasquez, Member

July 9, 2020

Writer's direct dial: (512) 475-3296
Email: bobby.wilkinson@tdhca.state.tx.us

Jervon Harris
CSH Dian Street Villas, Ltd.
3701 Kirby Drive, Ste. 860
Houston, Texas 77098

RE: STATUS OF APPLICATION - 2020 COMPETITIVE HOUSING TAX CREDIT APPLICATION 20116 DIAN STREET VILLAS, HOUSTON

Dear Mr. Harris:

The Texas Department of Housing and Community Affairs ("the Department") received your appeal dated June 30, 2020, for the application indicated above. Staff had determined that the Development Site is potentially located within the boundaries of the Shady Acres Civic Club (SACC) based on a 2011 map of neighborhoods in the Greater Heights Super Neighborhood Council 15 (SNC) provided by SACC. Review showed that SACC was on record with the Secretary of State as of the beginning of the Application Acceptance Period and is a qualified Neighborhood Organization. Because the Applicant had not notified the organization as required by statute, the Application was terminated, pending your ability to appeal. For the reasons discussed in this letter, I am reversing the Staff determination and reinstating this Application.

The appeal provides documentation that illustrates different boundaries for SACC than the 2011 SNC map, and that would find the Development Site located outside the boundaries of the SACC. In particular, the issue between the 2011 SNC map and more recent maps is the southern boundary: in the 2011 SNC map it is 14th Street; but in documentation provided on appeal¹ (namely the current SACC Facebook groups page boundary map (<https://www.facebook.com/groups/shadypeople/>) and

¹ The Applicant received a termination notice after information from a representative of SACC (including the 2011 SNC map) was presented to the Department. Given that the Application does not require documentation of the absence of a need to provide notification to an organization, I consider the notice of termination to also be a request by the department to clarify information in the application.



screenshots of the current delineation of boundaries for SACC with the City of Houston Department of Neighborhoods regarding civic clubs, the boundary of SACC is further north, at 15th Street. It is not disputed that SACC is registered with the Secretary of State. It is also not disputed that the documents on file with the Secretary of State do not include SACC's boundaries. Finally, per the Harris County website at <https://csd.harriscountytexas.gov/Pages/HTC.aspx>, Harris County does not maintain a list of Neighborhood Organizations, so for purposes of the statute and rule, I will only be addressing Neighborhood Organizations on record with the state.

Statute and Rule

Tex. Gov't Code §2306.6704(b-1) requires:

(b-1) The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application:

- (1) Any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

Tex. Gov't Code §2306.6705(9) requires the same for applications:

(9) evidence that the applicant has notified the following entities with respect to the filing of the application:

- (A) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

10 TAC §11.203 requires:

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

Opposition Evidence Presented

SACC has submitted four arguments regarding this matter, and their submissions are attached to this letter. Generally, they are:

1. SACC's defined boundaries include the Development Site;
2. Harris County Appraisal District ("HCAD") lists the Development Site as being included in the Shady Acres *neighborhood*;
3. A "reasonable search" does not fulfill the Applicant's statutory duty to notify a Neighborhood Organization whose boundaries include the Development Site;
4. SACC had no statutory requirement to publicly post its defined boundaries.

I will address these arguments in order:

1. **Map Boundaries:** First, the 2011 SNC map relied upon by SACC, presents its own issues. I find that Greater Heights Super Neighborhood Council 15, itself, was not "on record with the state" at the time of the Application, as it is not contested that its entity status in Texas, per the Secretary of State's Office, was forfeited when the entity became inactive in 2012. Accordingly, a map from a forfeited and inactive entity, in and of itself, does not establish the boundaries of one of its former component organizations.

However, SACC further submitted what it purports to be SACC minutes from a July 2011 meeting of its General Board, and a newsletter that followed in October of 2011, that claim to have adopted the boundaries in the 2011 SNC map. I have no ability to verify or validate these documents as they do not appear to be publicly available or on file with any governmental entity. Furthermore, even if I were to accept the validity of these documents, *arguendo*, I have no way to determine whether the boundaries have shifted again since 2011. Accordingly, I am reserving this matter for discussion later in this opinion.

2. **HCAD Neighborhood Code:** The Houston County Appraisal District apparently has a code that correlates the physical address of the Development Site to the neighborhood "Shady Acres." I find that this is not germane to the issue before me. The relevant statute and rule discuss whether the development site is located within the boundaries of a "neighborhood organization on record with the state or county," (emphasis added) and not within what an entity considers to be a particular neighborhood. Any number of real estate and business websites will define what they consider to be the Shady Acres neighborhood; for instance, Google Maps defines Shady Acres as ending at 15th Street. They are equally irrelevant to this analysis.

3. **"Reasonable Search" Not Statutory:** Indeed, the "reasonable search" requirement is not statutory – but it is contained in the certification requirement in 10 TAC §11.203(1)(B) and is, therefore,

a part of the QAP regulatory framework. A review of the evidence submitted by the Applicant/Appellant makes clear that they have engaged in extensive efforts to identify potential applicable entities. Whether the search was “reasonable” in this instance will largely depend on the ultimate determination of whether the Applicant acted within the statute and rules when they did not notify SACC.

4. **No Statutory Duty To Post Boundaries:** I agree with SACC’s proposition that there is no general statutory duty for a civic club or neighborhood organization to publically post its boundaries, or to file such boundaries with the Secretary of State. And continuing from the last point, if an applicant failed to find and notify a neighborhood organization that was on record with the Secretary of State, and the boundaries of that organization included the proposed development site, the fact that the applicant made a “reasonable search” would not save the application under the relevant statutory provision.

But the central issue of this appeal is identifying the neighborhood organizations that the law requires to be provided notice. Clearly, only those neighborhood organizations on record with the state or county need to be notified. But how is an applicant to determine whether the development site is within the boundaries of a recorded neighborhood organization if those boundaries are not readily discernable from the documents that are “on record with the state or county?”

Analysis

In 2018, the Board addressed a similar question on Application 18020 – St. Elizabeth Place: a neighborhood organization came forward that had not been provided notice by the applicant, and claimed that it was a neighborhood organization on record with the state whose boundaries included the development site. The application was terminated on appeal to the Board for failure of the applicant to adhere to the statutory and rule-required notice provisions.

But there was a critical distinction between 18020 and this application. The “Purpose” in the articles of incorporation of the neighborhood organization in 18020, on record with the Secretary of State, read as follows:

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 5 - Purpose |
| The corporation is organized for the following purpose or purposes: The purpose of the organization shall be to promote the public interest of the residents in the area of the Fifth Ward of Houston, Texas with the following borders: Liberty road on the North, I-10 Highway on the South, Sakowitz street |

There was no question before the Board as to whether the proposed development of St. Elizabeth Place fell within the boundaries of the neighborhood organization, because those boundaries were on record with the state. The statute and the rule require “evidence that the applicant has notified . . . any neighborhood organizations on record with the state . . . whose boundaries contain the proposed development site.” The focus of the inquiry was solely on whether there was evidence of notification.

In contrast, according to SACC, the “Purpose” section of their articles of incorporation on record with the Secretary of State reads as follows:

The purpose or purposes for which the corporation is organized are to form an effective means of cooperation whereby the community spirited citizens of the area can most effectively promote anything which is for the betterment of the community and to promote civic and social welfare in the area.

Again, I do not find that there is a general statutory duty for a civic club or neighborhood organization to publically post its boundaries, or to file such boundaries with the Secretary of State. However, if a neighborhood organization were seeking to ensure that the statute and rules at issue would guarantee them notice of a Low Income Housing Tax Credit application, the statute clearly provides the notice requirement if the neighborhood organization puts itself and their boundaries "on record with the state or county."

The relevant statute and rule require the applicant to submit "evidence" of notifying parties that satisfy two criteria, and in this matter we have a dispute of evidence regarding one of them – the boundaries: whether SACC's southern boundary at the time of the Application was at 14th or 15th street. To this end, the Applicant has provided evidence that at the time of the Application, the SACC southern boundary was at 15th street. SACC has presented evidence that their southern boundary was at 14th street in 2011. In the respect of presenting evidence of satisfying the statute and rule, the Applicant has done so by showing that SACC has a currently-published map, and is on record with the City of Houston Department of Neighborhoods, as having its southern boundary at 15th Street. This places the boundary north of the development site, and relieves the applicant of the requirement to provide notification to the neighborhood organization. This is sufficient evidence for purposes of the statute and rule, even if we accept SACC's documents and arguments as true. Accordingly, I am reversing the Staff determination as to the violation of 10 TAC §11.203, and am reinstating this Application.

If you have any questions or require further information, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,



Bobby Wilkinson
Executive Director



Cassandra M. McGarvey
*Board Certified: Residential Real Estate Law and
Commercial Real Estate Law
Texas Board of Legal Specialization*

Direct: 713-242-1746
cmcgarvey@mcgarveypllc.com

July 7, 2020

Via Email: Marni.Holloway@tdhcastate.tx.us

Via Email: info@tdhca.state.tx.us

Texas Department of Housing and
Community Affairs
Attn: Marni Holloway
Director of Multifamily Finance
P.O. Box 13941
Austin, Texas 78711-3941

Via Email: Sharon.Gamble@tdhcastate.tx.us

Via Email: info@tdhca.state.tx.us

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
Administrator 9% Competitive Housing Tax Credit Program
P.O. Box 13941
Austin, Texas 78711-3941

Re: Appeal for Termination of Application Number 20116 (the
“Application”), Dian Street Villas, 1433 Dian St., Houston, Texas 77008
(the “Development Site”) with the Texas Department of Housing and
Community Affairs (“TDHCA”)(the “Appeal”)

Dear Ms. Holloway and Ms. Gamble,

This firm has been asked to assist in the preparation of a response to the
Appeal by DSV based on failing to notify Shady Acres Civic Club (“SACC”) of the
proposed development. The Application should not be reinstated because:

- SACC’s defined boundaries includes the Development Site;
- Harris County Appraisal District (“HCAD”) lists the Development Site as being included in the Shady Acres neighborhood;
- A “reasonable search” does not fulfill the Applicant’s statutory duty to notify a Neighborhood Organization whose boundaries include the Development Site;
- SACC had no statutory requirement to publicly post its defined boundaries.

SACC presents the following items for the TDHCA's consideration:

Shady Acres Civic Club History

In the early 1920s, 100 acres were sold to the Shadyacres Investment Company from the Henry Reinermann land grant in Harris County. Below is the original 1920s deed for the Shady Acres Subdivision:

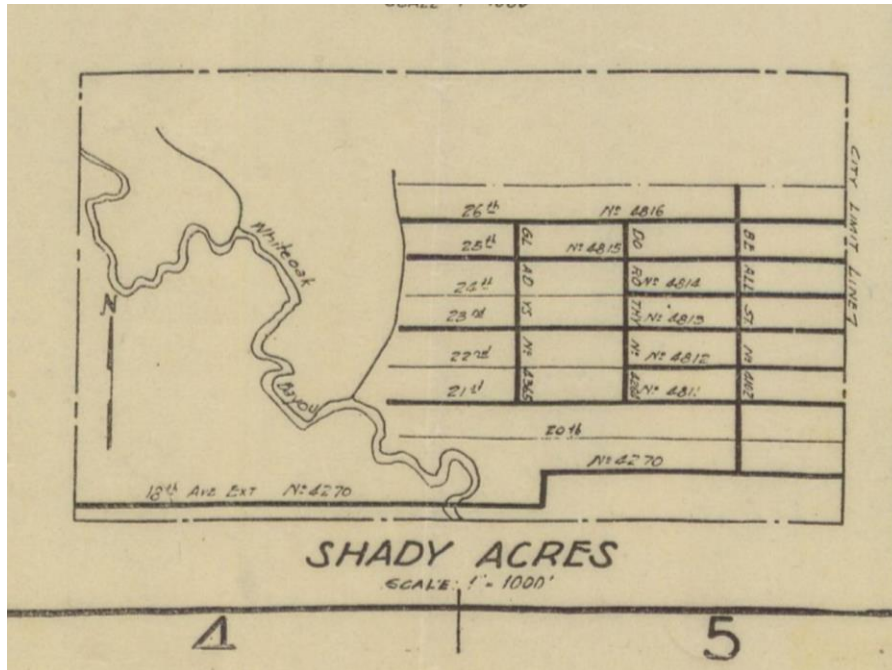
NO. 134210.

Emma Helberg. To. Shadyacres Investment Company

General Warranty Deed.

State of Texas. County of Harris: Know all men by these presents: That, I, Emma Helberg, widow, of Harris County, Texas, for and in consideration of the sum of Thirty Thousand One Hundred Thirty Two and 78/100 Dollars (\$30,132.78) to me in hand paid and secured to be paid by Shadyacres Investment Company, a private corporation under the Laws of the State of Texas, domiciled in Harris County, Texas, as hereinafter set forth and expressed, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said Shadyacres Investment Company all that certain land and premises situated and described as follows: Being a tract of land out of the Henry Reinermann Original Grant, on the North Side of Buffalo Bayou, in Harris County, Texas, containing 100.4426 acres and described by metes and bounds as follows: \int Beginning at a point on the West line of the John Austin Two League Grant, which point is on the West line of the Houston Heights and the North line of 22nd Street in the Houston Heights; Thence West along what would be a continuation of the North line of 22nd Street a distance of 2431 feet to stake for corner; Thence North, parallel with the West line of the John Austin Two League Grant a distance of 1822 feet to a stake for corner on the North line of the Henry Reinermann Grant; Thence East along the North Line of the Henry Reinermann Grant 631 feet to stake for corner; Thence South 30 feet to stake for corner; Thence East parallel with the North line of the Henry Reinermann Survey 1800 feet to a point on the West line of the John Austin Two League Grant, and which point is 30 feet South of the Northeast corner of the Henry Reinermann Grant and 12 feet North of the South line of 27th Street in the Houston Heights; Thence South along the East line of the Henry Reinermann Grant and the West line of the John Austin Two League Grant a distance of 1792 feet to the point of beginning.

The acreage was sold in lots of one acre or smaller. The John Beall Realty Company and the W. T. Helberg Realty Company were two of the realtors who advertised property. The advertisements offered oversized lots and "an acre for the same price as a city lot." They boasted that the land was "close in" and that a gas line was being laid. The original subdivision in 1928 consisted of the following area:



In 1935, the Shady Acres area was devastated by the 1935 Flood. In response, the Shady Acres Civic Club was founded in 1938. The group's main concerns at that time were getting bus service, dealing with oil drillers and requesting city postal services be extended to the neighborhood. Shady Acres was annexed into the City of Houston in 1949.

In 1977, the Shady Acres Civic Club (SACC) filed articles of incorporation with the Texas Secretary of State, in which Article 4 states the purpose of the organization: “The purpose or purposes for which the corporation is organized are to form an effective means of cooperation whereby the community spirited citizens of the area can most effectively promote anything which is for the betterment of the community and to promote civic and social welfare in the area.”

The SACC is not a mandatory homeowners association organized under the Texas Property Code. It does not have associated deed restrictions. And, as such, it would not appear on title commitments or as exceptions to title insurance policies (as noted by Applicant). SACC is purely a non-profit organization comprised of homeowners in a defined boundary who have decided to join SACC.

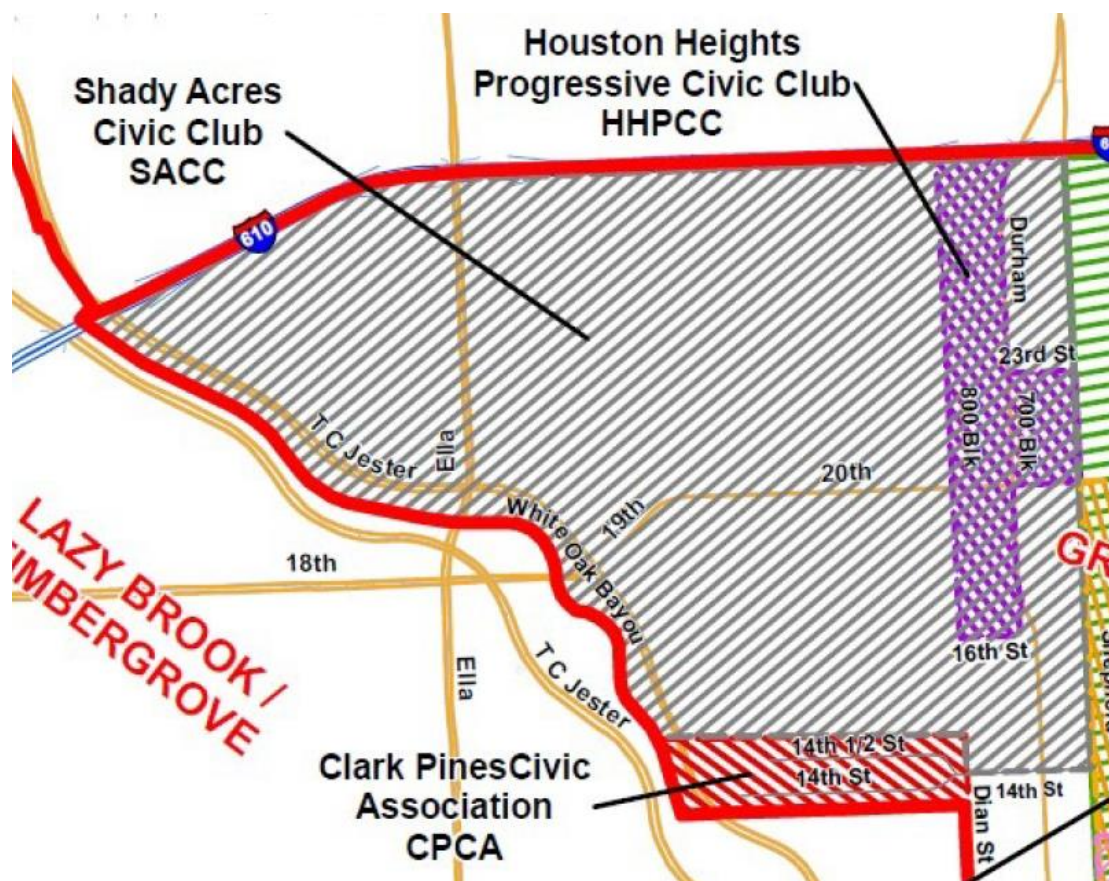
SACC's Defined Boundaries

The SACC has supported the growing community for 85 years, and as the community has grown, SACC's supported area has also grown. In 2000, SACC became a member organization of the Greater Heights Super Neighborhood Council 15 (“GHSNC”). In 2010-2011 there was a city-wide council redistricting effort, that

potentially would separate Shady Acres from the Greater Heights area. SACC wanted to remain part of the Greater Heights community. SACC was successful and remained part of GHSNC, and in 2011 the Greater Heights area changed from Council District H to Council District C.

SACC Expands in 2011 to include the Development Site location.

As part of this redistricting effort in 2011, the GHSNC wanted to ensure that all residents within its boundaries were represented by a neighborhood civic organization. The GHSNC map was amended to show each neighborhood's expanded area. (A copy of this map is attached hereto.) As a result of this expansion, SACC was SACC expanded its boundaries to include the area immediately adjacent to Clark Pines, including the property on the south side of 15th street at Dian (which includes the Development Site), as well as some property east of the Shady Acres subdivision plat reflected in Harris County records. The GHSNC map was published on May 24, 2011. The inclusion of the Development Site is shown on the May 2011 map.



The May 2011 map was officially adopted by the SACC during a club meeting on July 12, 2011. More particularly, meeting minutes confirm that SACC expanded its boundaries to match the May 2011 GHSNC map:

Shady Acres Civic Club Minutes for July 12, 2011

Sam Jow

Jul 15, 2011 2:40 PM

Posted in group: **Shady Acres Civic Club**

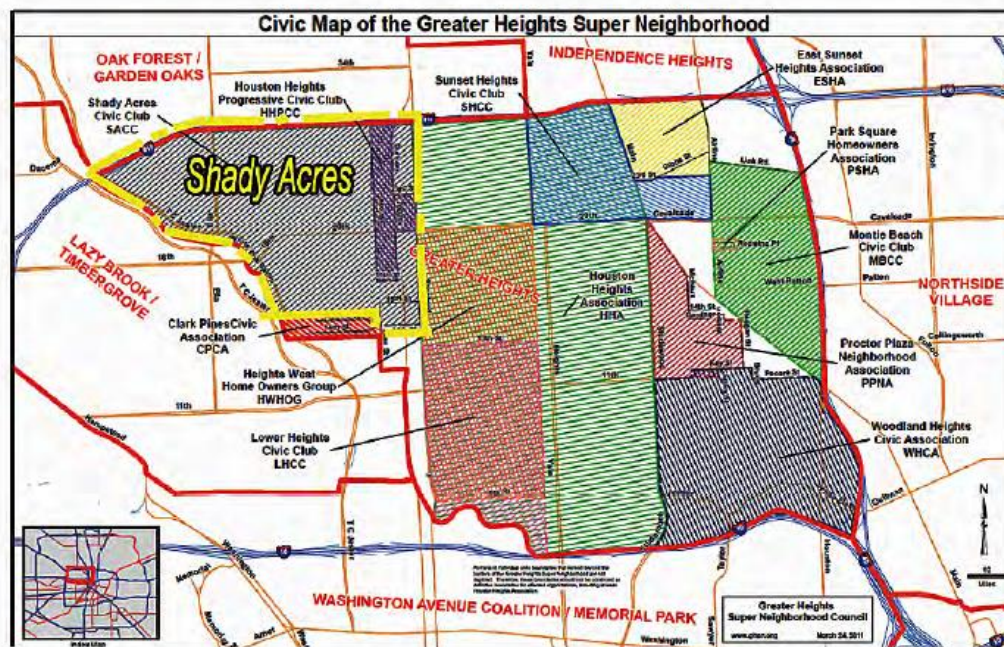
6) Old Business

a) Amendment to SACC Charter for Civic Club boundaries: Motion to reconfigure SACC boundaries based on the new Super Neighborhood Maps.

Approved

A full copy of the July 12, 2011 meeting minutes is attached hereto.

After the July 2011 SACC meeting, the October 2011 SACC newsletter publicized the new boundaries of SACC and the GHSNC. On page 9 of the newsletter, the following map appears, which also defines the boundaries of SACC:



A full copy of this newsletter is attached hereto.

As clearly noted on the GHSNC map, which was adopted by SACC in July 2011 and publicized to SACC members in October 2011, SACC's boundaries include the Development Site.

A “reasonable search” does not satisfy the notice requirements of section 2306.6704 of the Government Code.

The Applicant asserts in the Appeal that it conducted a “reasonable search” to determine if it was in the SACC. As an initial matter, the Government Code does not require that Applicant conduct a reasonable search. The Government Code is clear: notice is required to a neighborhood organization on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site. Here, there is no dispute that SACC was on record with the state or county. **The only issue is whether the defined boundary included the proposed development site.** As demonstrated above, the Development Area is included in SACC.

Assuming, *arguendo*, that a “reasonable search” would be sufficient, SACC submits the Applicant did not conduct a reasonable search. In discussing its search, Applicant failed to inform the TDHCA that the Harris County notes that the Development Site is in Neighborhood 5938.27, which is Shady Acres. Below are excerpts from the Harris County Appraisal District showing the Development Site being located in the Shady Acres neighborhood.

| | | | | | | |
|------------------------------------------------------------------------------------|------------------------|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|------------------------------------|--------------------|------------------|
| Tax Year: 2020 | | HARRIS COUNTY APPRAISAL DISTRICT REAL PROPERTY ACCOUNT INFORMATION 0440820000259 | | | Print E-mail | |
| File A Protest | | Similar Owner Name | Nearby Addresses | Same Street Name | Related Map 5259D | |
| Ownership History Fiduciary Information | | | | | | |
| Owner and Property Information | | | | | | |
| Owner Name & Mailing Address: DIAN PARK 1314 ROY ST HOUSTON TX 77007-3343 | | | Legal Description: TR 20E ABST 642 J REINERMAN Property Address: 1433 DIAN ST HOUSTON TX 77008 | | | |
| State Class Code F1 -- Real, Commercial | | Land Use Code 8001 -- Land Neighborhood Section 1 | | Building Class E | | Total Units 0 |
| Land Area 61,071 SF | Building Area 3,760 | Net Rentable Area 0 | Neighborhood 5938.27 | Market Area 4008 -- Brookhollow | Map Facet 5259D | Key Map® 452Y |
| Value Status Information | | | | | | |

Print

Neighborhood Information: 0440820000259

Residential valuation neighborhoods are groups of comparable properties whose boundaries were developed based on location and similarity of property data characteristics. Each neighborhood in a school district has a unique identifier known as a residential valuation number. These neighborhood boundaries are maintained via an on-going office and field review. As neighborhoods change, neighborhood lines are redrawn to reflect the changes, and maintain the homogeneity of the neighborhood.

| Neighborhood | Neighborhood Name |
|--------------|-------------------|
| 5938.27 | SHADY ACRES |

While ignoring the fact that Harris County placed the Development Site in the Shady Acres neighborhood, the Applicant discusses the various maps that it reviewed in connection with its “reasonable search”. These maps are contradictory and do not match the “defined boundaries” of the SACC as approved by the club’s meeting minutes. Furthermore, this line of argument assumes that SACC was required to publicly post its boundaries. This is not the case. Accompanying this response is a

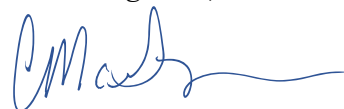
letter from Rosemary Jackson, a recognized expert in Texas property owners' association. Absent a statutory obligation to post its boundaries, SACC had no obligation to make the boundaries publicly available for search.

Applicant further argues that the SACC does not appear on its title commitment or as an exception to title insurance of the current owner. This argument is without merit. As noted above, SACC is a civic association for the betterment of the community; it does not have associated deed restrictions. As such, since there are no encumbrances on title to the properties, a reference to SACC would not appear on the title insurance policies.

As indicated by the 2011 map, SACC does include the Development Site. Harris County lists the Development Site as a part of the Shady Acres neighborhood. Applicant's best and most reasonable search would have and should have included contacting SACC to confirm the boundaries. This did not occur. Instead, Applicant took the path that avoided notice to any of the surrounding neighborhood organizations.

Accordingly, based on the lack of notice, SACC requests Applicant's Appeal be denied. Please contact me directly if you need anything further.

Kind regards,



Cassandra M. McGarvey