

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

The University of Texas at Austin
Thompson Conference Center
Room 3.102
2405 Robert Dedman Drive
Austin, Texas

May 25, 2017
9:02 a.m.

BOARD MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
TOM H. GANN, Member
ASUSENA RESÉNDIZ Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director

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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	
EXECUTIVE	
a) Presentation, discussion, and possible action on Board meeting minutes summary for February 23, 2017	
LEGAL	
b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Angelica Homes (HOME 539109 / CMTS 2605)	
c) Presentation, discussion, and possible action on Agreed Final Order of Debarment for Avalon Apartments, L.L.C., Xheladin Jasari, and Plaza Jasaroski for a period of ten years	
HOME AND HOMELESS PROGRAMS	
d) Presentation, discussion, and possible action to amend the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA"), and the notification of the posting of the NOFA amendment to the Department's website, and directing its publication for public comment in the <i>Texas Register</i>	
e) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA")	

COMMUNITY AFFAIRS

f) Presentation, discussion, and possible action on the selection of an Eligible Entity to administer the Community Services Block Grant ("CSBG") to provide services in Dimmit and La Salle counties

g) Presentation, discussion, and possible action on awards for Federal Fiscal Year ("FFY") 2017 Community Services Block Grant ("CSBG") Discretionary Funds for education and employment services to Native American and Migrant Seasonal Farm Worker populations 14

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h) Presentation, discussion, and possible action on the Draft 2018 Regional Allocation Formula Methodology

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I) Presentation, discussion and possible action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")

01165 McMullen Square Apartments
San Antonio

02036 Gateway East Apartments El Paso
060629 Villas at Henderson Place Cleburne

j) Presentation, discussion and possible action regarding an Ownership Transfer prior to IRS Form 8609 Issuance or Construction Completion
16164 Saralita Senior Village Kerrville
16370 The Providence Lubbock

k) Presentation, discussion and possible action regarding Material Amendments to the Housing Tax Credit Application
16172 Lumberton Senior Village Lumberton

MULTIFAMILY FINANCE

l) Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer
17406 Heights on Parmer Phase II Austin
17410 Lakecrest Village Houston
17418 Alton Park Fort Worth
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- m) Presentation, discussion, and possible action regarding an amendment to the Construction Loan Agreement for Chicory Court Lake Dallas, LP

BOND FINANCE

- n) Presentation, discussion, and possible action on Resolution 17-019 authorizing request to Texas Bond Review Board for annual waiver of Single-Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject
- o) Presentation, discussion, and possible action on Resolution 17-020 authorizing down payment assistance funding sources for Program 79; authorizing the execution of documents and instruments relating to the foregoing; and containing other provisions relating to the subject

RULES

- p) Presentation, discussion, and possible action on orders proposing actions to 10 TAC Chapter 7, Homelessness Programs to amend §7.1002, Distribution of Funds and Formula, and directing its publication for public comment in the *Texas Register*
- q) Presentation, discussion, and possible action on proposed new 10 TAC, Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.3 concerning Sick Leave Pool, and directing its publication in the *Texas Register*
- r) Presentation, discussion, and possible action on an order proposing the new 10 TAC Chapter 1 Subchapter E, §1.501 Housing Finance Corporation Reporting Requirements and directing that they be published for public comment in the *Texas Register*
- s) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC Chapter 6 Community Affairs Programs, including the 1) amendments in Subchapter A, General Provisions, of §6.2 Definitions, §6.4 Income Determination, and §6.5 Documentation

and Frequency of Determining Customer Eligibility; and 2) amendments in Subchapter C, Comprehensive Energy Assistance Program ("CEAP"), of §6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component; and directing that they be published for adoption in the *Texas Register*

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, May-June 2017
- b) Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
- c) Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures
- d) Report on Request for Proposal ("RFP") for Program Administrator for the Texas First Time Homebuyer Program, the My First Texas Home Program, and the Texas Mortgage Credit Certificate ("MCC") Program
- e) Report on 2018 Qualified Allocation Plan ("QAP") Project

ACTION ITEMS

ITEM 3: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on an Amendment to the 2017-1 Multifamily Direct Loan Notice of Funding Availability 166
- b) Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of a Direct Loan Funds 170
17402 Harris Ridge Apartments Austin
- c) Presentation, discussion and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(3) related to Applicant Disclosure of Undesirable Neighborhood Characteristics
17008 East Meadows Phase II San Antonio
17013 Rio Lofts San Antonio
17028 The Vineyard on Lancaster Fort Worth
17186 Oasis on Ella Houston

17273 The Residence at Lamar Wichita Falls
17336 Westwind of Lamesa Lamesa

- d) Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.901 et seq. of the Department's Multifamily Program Rules (Subchapter G) related to Fee Schedule, Appeals and other Provisions
 - 17151 Albany Village Albany
 - 17036 Merritt McGowan Manor McKinney
 - 17134 Vista Park West Fort Worth
 - 17253 Samuel Place Apartments Corpus Christi
 - 17275 Aria Grand Austin
 - 17331 Westwind of Killeen Killeen
 - 17363 Residences of Long Branch Rowlett
 - 17708 Cedar Ridge Apartments Dayton
 - 17724 Liv Senior at Johnson Ranch Bulverde
 - 17736 Providence at Ted Trout Drive Hudson

- e) Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability
 - 17503 The Reserve at Dry Creek Hewitt
 - 17504 Merritt Heritage Georgetown
 - 17505 Merritt Monument Midland

- f) Presentation, discussion, and possible action regarding a waiver of 10 TAC §13.11(b) of the Multifamily Direct Loan Rule

- g) Presentation, discussion and possible action regarding a request for waiver, appeals under 10 TAC §10.901 et seq. of the Department's Multifamily Program Rules, and disclosures under 10 TAC §10.101(a)(3) related to Applicant Disclosure of Undesirable Neighborhood Characteristics for Blue Flame, HTC #17330

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS 212

EXECUTIVE SESSION 14

OPEN SESSION 14

ADJOURN 234

P R O C E E D I N G S

1
2 MR. GOODWIN: I want to call to order the
3 meeting of the Texas Department of Housing and Community
4 Affairs for May 25, 2017, and ask that we begin with Tim
5 leading us in the Pledge of Allegiance.

6 (The Pledge of Allegiance and the Texas
7 Allegiance were recited.)

8 MR. GOODWIN: We will begin with calling the
9 roll.

10 Ms. Bingham?

11 (No response.)

12 MR. GOODWIN: Mr. Braden?

13 MR. BRADEN: Here.

14 MR. GOODWIN: Mr. Gann?

15 MR. GANN: Here.

16 MR. GOODWIN: Mr. Vasquez?

17 MR. VASQUEZ: Here.

18 MR. GOODWIN: Ms. Reséndiz?

19 MS. RESÉNDIZ: Present.

20 MR. GOODWIN: Now we'll move into the consent
21 agenda, but before we do that -- ah, Ms. Bingham is
22 present.

23 MS. BINGHAM ESCAREÑO: Tardy but present.

24 MR. GOODWIN: Tardy but present. Glad to have
25 you.

1 MR. IRVINE: I would just like to begin with a
2 couple of introductions. As everyone has noticed, there
3 is a new person in the center of the room. J.B. Goodwin
4 has been named by the governor as the presiding officer of
5 this Governing Board, and we are thrilled to have him.

6 MR. GOODWIN: Thank you.

7 (Applause.)

8 MR. IRVINE: I would also like to note that we
9 have several new Board Members. We have Paul Braden from
10 Dallas, we have Asusena Reséndiz from San Antonio, also
11 hailing from the Cap Rock, and we have Leo Vasquez from my
12 second hometown, Houston. So these members have all been
13 appointed, been confirmed by the Senate, gone through
14 their statutorily required training, and completed and
15 filed their statutory oath of office.

16 I believe we also have Sharon Thomason
17 somewhere in the room. Yes, there's Sharon. She has been
18 through all of the steps except for the statutory oath of
19 office which she is holding off on because she is unable
20 to stay for the entire meeting today.

21 One of the things about transition is these are
22 important people with busy schedules and sometimes they
23 get booked a little farther out than some of us. So
24 anyway, she's here to observe but not participate. I know
25 that everybody in this room, certainly the staff, but also

1 the development community and the community affairs
2 community will give her your unwavering support but also
3 honor assiduously our ex parte communication.

4 So welcome aboard.

5 (Applause.)

6 MR. GOODWIN: Thank you, Tim.

7 Getting into the consent agenda, are there any
8 items that staff or members of the public or Board members
9 would like to pull from the consent agenda?

10 Would you please identify yourself?

11 MS. BOSTON: Yes. Brooke Boston with the Texas
12 Department of Housing and Community Affairs.

13 Item 1(g) which is the section about the
14 Migrant Seasonal Farm worker awards, the Native American
15 awards, we request to pull into non-consent. There's
16 folks here who would like to speak. And then item 1(s) we
17 would like to pull, some community affairs rules, and
18 we're pulling those so we can continue to work with the
19 public on it a little bit more before we bring it back to
20 you.

21 MR. GOODWIN: Thank you, Brooke.

22 Any Board members have any items?

23 Yes, ma'am. Identify yourself, please, for the
24 record.

25 MS. YOUNG: I'm Angela Young. I'm the CEO of

1 the Urban Intertribal Center of Texas. We're located in
2 Dallas, Texas, and I'm here to discuss 1(g).

3 MR. GOODWIN: 1(g) has already been pulled and
4 we'll be taking it up at a later time. So unless you have
5 another item that you'd like to pull from the consent
6 agenda, leave your remarks until we get to that item.

7 MS. YOUNG: I do have some remarks that I would
8 like to add, so I'll just bring those up at the end?

9 MR. GOODWIN: Yes. When we get into the
10 discussion of 1(g).

11 Any other items? Tom, did you have another
12 item you want to pull?

13 MR. GOURIS: 1(r) is also pulled, just for the
14 record.

15 MR. GOODWIN: 1(r) has been pulled. Is it
16 pulled for discussion, Tom?

17 MR. GOURIS: I'm sorry. It's postponed till
18 next month.

19 MR. GOODWIN: Okay. So 1(r) is removed from
20 the agenda.

21 Any other items? Do I hear a motion to approve
22 the consent agenda?

23 MS. BINGHAM ESCAREÑO: Move to approve with the
24 exception of items (g), (r), which have already been
25 pulled, and (s).

1 MR. GANN: Second.

2 MR. GOODWIN: Motion made by Ms. Bingham,
3 seconded by Mr. Gann. All in favor?

4 (A chorus of ayes.)

5 MR. GOODWIN: All opposed?

6 (No response.)

7 MR. GOODWIN: Motion passes.

8 MR. GOODWIN: Michael.

9 MR. LYTTLE: We have a resolution in honor of
10 June being Homeownership Month in Texas.

11 "Whereas, June 2017 is Homeownership Month in
12 Texas;

13 "Whereas, the goal of the Texas Department of
14 Housing and Community Affairs("Department") that all
15 Texans have access to safe and decent affordable housing;
16 Whereas, it is the policy of the Department to support
17 equal housing opportunities in the administration of its
18 homebuyer and homeownership programs and services;

19 "Whereas, this year, the Department is
20 celebrating 36 years of offering affordable first time
21 homebuyer assistance to eligible buyers throughout the
22 State of Texas;

23 "Whereas, since 1981, the Department has served
24 as the State's housing finance agency, providing a choice
25 of mortgage products and services to accommodate market

1 opportunities and buyer needs as appropriate;

2 "Whereas, the Department offers a free online
3 homebuyer education tool, Texas Homebuyer U, and
4 administers funds to support the Texas Statewide Homebuyer
5 Education Program to inform and prepare buyers for
6 successful homeownership;

7 "Whereas, the Department applauds all those who
8 work to achieve and maintain affordable, responsible
9 homeownership and recognizes those who provide services
10 and resources to all home buyers regardless of race,
11 color, national origin, religion, sex, disability, or
12 familial status; and

13 "Whereas, the Department encourages Texans to
14 explore the numerous resources available during
15 Homeownership Month and throughout the year;

16 "Now, therefore, it is hereby resolved, that in
17 the pursuit of the goal of affordable homeownership
18 opportunities for all, the Governing Board of the Texas
19 Department of Housing and Community Affairs, does hereby
20 celebrate June 2017 as Homeownership Month in Texas and
21 encourages all Texas individuals and organizations, public
22 and private, to join and work together in this observance
23 of Homeownership
24 Month.

25 "Signed this Twenty-Fifth Day of May 2017."

1 MR. GOODWIN: Do I hear a motion to accept the
2 resolution?

3 MS. BINGHAM ESCAREÑO: Move to so resolve.

4 MR. GOODWIN: Second?

5 MR. GANN: Second.

6 MR. GOODWIN: Moved by Ms. Bingham, seconded by
7 Mr. Gann. All those in favor say aye.

8 (A chorus of ayes.)

9 MR. GOODWIN: Opposed?

10 (No response.)

11 MR. GOODWIN: Hearing none, it passes.

12 We have so many new Board members, we are going
13 to move into executive session, and I need to read this to
14 you so the Board can properly move into that session.

15 The Government Board of the Texas Department of
16 Housing and Community Affairs will go into a closed
17 executive session at this time. The Board may go into
18 executive session pursuant to Texas Government Code
19 551.074 for the purposes of discussing personnel matters,
20 pursuant to Texas Government Code 551.071 to seek and
21 receive legal advice of its attorney, pursuant to Texas
22 Government Code 551.072 to deliberate the possible
23 purchase, sale, exchange or lease of real estate, and/or
24 pursuant to Texas Government code 23.06.039(c) to discuss
25 issues related to fraud, waste or abuse with the

1 Department's internal auditor, fraud prevention
2 coordinator or ethics advisor.

3 The closed session will be held within this
4 building in the Thompson Conference Center on this the
5 third floor, this date is May 25, 2017, and the time is
6 9:14 a.m.

7 We will be in closed executive session for 15
8 minutes so we will be back in in approximately 15 minutes.

9 We will adjourn at this time.

10 (Whereupon, at 9:14 a.m., the meeting was
11 recessed, to reconvene this same day, Thursday, May 25,
12 2017, following conclusion of the executive session.)

13 MR. GOODWIN: The Board is now reconvened in
14 open session at 9:45 a.m.

15 During the executive session the Board did not
16 adopt any policy, position, resolution or any regulation
17 or take any formal action or vote on any item.

18 Next on our agenda is item 1(g), which we
19 pulled from the consent agenda. Brooke, do you want to
20 talk about that?

21 MS. BOSTON: Yes. Brooke Boston with the
22 Department.

23 Item 1(g) is relating to the awards of Federal
24 Fiscal Year Community Services Block Grant funds. The
25 Community Services Block Grant program is funded by the

1 U.S. Department of Health and Human Services, and about 5
2 percent of those funds each year are set aside for
3 discretionary purposes. We come to the Board at a point
4 earlier in the year to get permission from you guys on how
5 you'd like to see us spend that money, and then we proceed
6 with programming it into different activities under that
7 direction.

8 The activity up for discussion today was
9 \$300,000 of the funds were set aside for Native American
10 and Migrant Seasonal Farmworker education and employment
11 initiatives. We released a notice of funding availability
12 for that purpose. We had three applications and all were
13 reviewed. All three were found to be eligible
14 applications; however, one of them was not approved by the
15 Executive Award Review Advisory Committee, which is called
16 EARAC, and that's a committee that has to review and
17 recommend any awards to the Board.

18 The EARAC recommendation for that one was
19 denied based on extensive simple findings that that
20 organization has. They were notified and given an
21 opportunity to appeal and they are in that appeal process
22 right now. So the recommendation today for the item is
23 for the two remaining applicants which was the Family
24 Services Association of San Antonio for \$100,000 and the
25 Opportunity Center for the Homeless for \$100,000.

1 MR. IRVINE: And the funds available for the
2 applicant going through the appeal process, we were
3 negative on depending the outcome of that appeal.

4 MS. BOSTON: Correct.

5 MR. GOODWIN: Any questions from Board members?

6 MS. BINGHAM ESCAREÑO: So Brooke and Tim, that
7 award isn't pulled from the other two awards.

8 MR. IRVINE: Right. There's enough money to do
9 all three awards. We're going ahead with two but
10 reserving the money that would be available to them
11 depending the outcome of their appeal which would be next
12 month, I guess.

13 MS. BINGHAM ESCAREÑO: Okay.

14 MR. GOODWIN: Any other questions?

15 MR. GOODWIN: Do I hear a motion to approve
16 staff recommendation?

17 MR. GANN: I so move on the awarding of the two
18 that were approved.

19 MS. BINGHAM ESCAREÑO: I'll second.

20 MR. GOODWIN: So a motion is made by Mr. Gann,
21 seconded by Ms. Bingham. But any other discussion, any
22 other additional questions, we have people that want to
23 speak.

24 MS. YOUNG: I'm Angela Young. I'm the CEO of
25 the Urban Inter-Tribal Center of Texas, and we are that

1 program, that was at the recent meeting. I understand I
2 have three minutes to discuss what I would like for you to
3 know about our program.

4 I've been with the organization for 15 years.
5 Most recently, about a year ago, I was appointed the CEO
6 of the organization after our longtime CEO suddenly passed
7 away of a heart attack. Right before he passed away, it
8 was discovered our accounting director was mismanaging the
9 program.

10 During that same period, our 20-year veteran
11 that managed our Community Services Block Program
12 announced that she was moving, got a job offer at the
13 Department of Labor. Well, when Dr. Scott passed away, it
14 left me to take care of the problem with an accounting
15 director that didn't manage our program appropriately, I
16 had a department that didn't have a leader to manage our
17 Community Services Block Grant funding.

18 So on May 17 we met with the Executive Review
19 Advisory Committee concerning their recommendation not to
20 fund our American Indian Services Program. We are the
21 only program in Dallas County currently that has Community
22 Services Block Grant funding, and we've had this funding
23 for over 20 years.

24 The State of Texas ranks fourth with the
25 largest Native American population. We have 25,000 Native

1 Americans just in Dallas County alone. We are the only
2 organization in the State of Texas of this kind to take
3 care of our Indian people.

4 We've had a 20-year history with TDHCA; we have
5 appreciated your support. Back in 2016 you made a
6 decision to stand by us. We appeared before you and
7 explained our situation and you stood behind us to support
8 us, and I really appreciate that. I'm here today again
9 asking for your support.

10 I have three bullet points to bring to your
11 attention. One, our organization experienced a sudden
12 unexpected death of our longtime CEO just over a year ago.

13 We discovered our director of accounting had fallen
14 behind on most of her duties, including required reporting
15 and audits. We took immediate steps to take care of this
16 issue but it has taken some time to resolve the problems
17 as to findings of our independent audit.

18 Number two, our calculation of indirect cost
19 rate was criticized by a most recent submitted audit. We
20 wish to point out that there was an approval of a rate of
21 an appropriate authority after making full disclosure of
22 the method used in our calculation. No facts were hidden
23 and no attempt was to mislead your program or any other
24 funding agency that funds our program.

25 Three, our method for allocating payroll costs

1 was criticized for not using time studies, rather we used
2 time sheets. In our Indian clinic that we have, the
3 medical facility, we have many grants that several of our
4 medical providers are paid from all different sources, so
5 the recommendation is that we do a time study to make sure
6 that the monies are being allocated appropriately.

7 However, under our Community Services Block
8 Grant funding we have two employees that administer those
9 funds and the majority of the funding that we do receive
10 goes to direct services. So we see that when the audit
11 was conducted, the recommended method of using time
12 studies, we are going to go towards that immediately.
13 Matter of fact, last night I had a conversation with our
14 CFO and he has taken measures, we are going to start
15 implementing next week this new time study.

16 We understand EARAC has a responsibility to
17 protect the Department and make recommendations to deny
18 funding when programs have unfavorable audits; however,
19 our audit was completed by a young man, very thorough. I
20 asked him to do a deep cleaning down to the bottom audit
21 for the organization since I'm the new CEO, and as you
22 know, anyone of you in this room, when you take over a new
23 program, you want to make sure that you understand what
24 you're leading. I got what I asked for.

25 Thank you.

1 MR. GOODWIN: First, I want to thank you for
2 the job that you do in your organization and the work that
3 you do and I appreciate what you've done, and we have
4 stood behind you in the past. I'm a little lost, is the
5 appeal being heard today? So the appeal will come back to
6 the Board once a determination by EARAC has been made if
7 it's not made already?

8 MS. YOUNG: Yes. Thank you again for your
9 time.

10 MR. GOODWIN: Thank you.

11 Any questions from Board members?

12 (No response.)

13 MR. GOODWIN: Thank you very much.

14 Did you want to speak also?

15 MS. TAYLOR: Good morning. My name is Kendria
16 Taylor. I'm a member of the Choctaw Nation of Oklahoma.
17 I also serve as the board secretary for the Urban Inter-
18 Tribal Center.

19 Part of why I'm here today is just to simply
20 tell you that part of our audit was maybe board members
21 and lack thereof or the streamlining of processes for
22 board meeting minutes. Gentlemen, I'm going to leave you
23 out for a minute. Ladies, if you've ever been part of a
24 Junior League in any way, you know that we are very
25 adamant about what our meeting minutes look like, so parts

1 of my job as the board secretary is to streamline those
2 processes, make sure that everyone on the board, from
3 committee reports to our board meetings, are perfectly
4 done in every way.

5 So it's a great program. I'm not from here,
6 I'm originally from Kansas. Part of my joining the board
7 was years ago I used the services of the Urban Inter-
8 Tribal Center. So it's a great program, and thank you so
9 much for your support.

10 And a really fun fact, one of our board members
11 that could not make it here today, Peggy Roddy, was a very
12 instrumental person in getting House Bill 174 passed for
13 American Indian Heritage Day.

14 So thank you so much for listening.

15 MR. GOODWIN: Thank you.

16 Any other speakers, comments? Brooke, anything
17 that you want to add?

18 (No response.)

19 MR. GOODWIN: Okay. We have a motion and a
20 second. Any other discussion by Board members? If not,
21 all in favor say aye.

22 (A chorus of ayes.)

23 MR. GOODWIN: Any opposed?

24 (No response.)

25 MR. GOODWIN: So the motion carries.

1 So next we are moving into our appeals. Marni.
2 We're going to do Blue Flame first. We're go a little
3 out of order, folks, so we're going to take item -- which
4 one is Blue Flame?

5 MS. HOLLOWAY: 6(g) -- I'm sorry -- 3(g).

6 MS. HOLLOWAY: Chairman Goodwin, members of the
7 Board. My name is Marni Holloway. I'm the Director of
8 the Multifamily Finance Division.

9 This item is presentation, discussion and
10 possible action regarding a request for waiver appeals
11 under 10 TAC 10.901 of the Department's Multifamily
12 Program Rules and disclosures under 10 TAC 10.101(a)(3)
13 related to applicant disclosure of undesirable
14 neighborhood characteristics. This is for Blue Flame,
15 application number 17330.

16 This item was tabled last month and the Board
17 asked staff to complete our review of the application
18 which had been held for resolution of the waiver question.

19 Staff completed the scoring review of the application and
20 had initially issued a notice that took away seven points
21 because it appeared that the site was not within the
22 boundaries of the concerted revitalization plan.

23 As we were doing more work and looking at
24 exactly what the historic incentive district meant --
25 which is where the site is -- we actually found an

1 amendment to the TIRZ plan, the Tax Increment Reinvestment
2 Zone Plan, that brought that historic incentive district
3 into the financing for the CIP. So with that, I don't
4 know if I'm putting words in Tim's mouth, but with that,
5 he granted the appeal after we found that information. So
6 the application currently has all of the points requested
7 and we're not dealing with an appeal on scoring.

8 Staff also completed review of the application
9 for undesirable neighborhood characteristics. The
10 applicant had disclosed that according to Neighborhood
11 Scout, which is our measurement, the violent crime rate
12 for the area, including the development site, is 22.19 per
13 1,000 residents. Our threshold is 18, and if it's more
14 than 18, it just means that the applicant needs to do more
15 work to prove up that the site should be eligible.

16 The development is in the attendance zone of
17 Bowie High School which does not have a Met Standard
18 rating. It also reported that it was within 1,000 feet of
19 blight.

20 In looking at the information that was provided
21 to us regarding the blight, yes, there are vacant
22 buildings nearby, they do not appear to be blighted. They
23 are boarded, they are vacant but up for lease, that kind
24 of thing, so we did not consider that to be blight.

25 In contrast, and this was brought up last

1 month, the crime rate at Blue Flame is more than double
2 the rate in the area of the existing Pooley Apartments,
3 which are the units that are being relocated to Blue
4 Flame. Also, the schools for the Pooley site have all Met
5 Standard ratings and several of them with distinctions.

6 Staff has reviewed the undesirable neighborhood
7 characteristics report and has found that the applicant
8 has demonstrated actions being taken that would lead a
9 reader to conclude that there is a high probability and
10 reasonable expectation that the undesirable
11 characteristics will be sufficiently mitigated or
12 significant improved within a reasonable time.

13 The differences between the two sites, Blue
14 Flame and Pooley, is not required to be taken into
15 consideration for this action. For that reason, staff
16 finds that the applicant has provided the necessary
17 recommendation and we're recommending that the Board find
18 that site eligible.

19 So that leaves us with the waiver which was the
20 request that we were talking about last month. The
21 application for the Blue Flame development was submitted
22 under the at-risk set-aside due to the relocation of
23 Rental Assistance Demonstration Program units. Along with
24 the application, the applicant timely filed a request for
25 waiver of the requirement that in order for a development

1 that includes demolition of existing units -- so those
2 would be the Pooley units, so those would be the public
3 housing Pooley units -- to relocate, the relocation site
4 must qualify for points under the opportunity index under
5 11.9(c)(4) of the QAP.

6 There is information in your Board book that
7 the applicant provided after the last meeting that list
8 what would be considered high opportunity amenities. That
9 information was not included in the original application,
10 and that would be a supplement to the application and was
11 not considered during our review.

12 In their request, the applicant asserts that
13 the requirement that the site to which the RAD units are
14 relocated must be a location that meets the criteria of
15 the opportunity index, that this is an inadvertent remnant
16 of the former QAP. They also state that there has been
17 redirection toward urban core historic preservation and
18 concerted revitalization, all of which are rarely found in
19 high opportunity areas, and the fact that the relocation
20 of RAD units is still limited to high opportunity areas is
21 inconsistent with the updated approach to evaluating
22 location for affordable housing.

23 There was no comment on this rule item as were
24 working through the 2017 QAP. There was no request to
25 change this or modify it, and this year, because we have

1 the new urban core points, we actually are seeing
2 applications that are urban core and high opportunity, so
3 these are not mutually exclusive items.

4 Our rules regarding waivers require that the
5 request must establish how the waiver is necessary to
6 address circumstances beyond the applicant's control and
7 how, if the waiver is not granted, the Department will not
8 fulfill some specific requirement of law. The request
9 asserts that the waiver is necessary because the location
10 of the development is beyond the control of the applicant.

11 The applicant further asserts that locating the
12 development at the Blue Flame building will enable the
13 Department to meet goals established under our code,
14 including adaptive reuse of a certified historic building.

15 Staff does not find that the request has
16 established that the waiver is necessary to address
17 circumstances beyond the applicant's control because they
18 could relocate those units to another location or they
19 could reconstruct on the site that they have now in a
20 higher opportunity area with lower crime and better
21 schools. And we do not believe that the Department would
22 fail to fulfill any requirements by not granting the
23 waiver. Accordingly, staff recommends that the request
24 for waiver of 10 TAC 11.5(3)(c)(iii) be denied.

25 MR. GOODWIN: Before we can hear comments or

1 questions we have to have a motion, and in the past we've
2 asked for motions that have supported staff or rejected
3 staff's recommendation, and I'm going to change that a
4 little bit and ask from a Board member, if there's a
5 motion to accept public comment and possibly further
6 questions to staff, and then after that takes place, we'll
7 ask for another motion to either accept staff's position
8 or to reject. So do I hear a motion?

9 MS. BINGHAM ESCAREÑO: I'll so move to hear
10 public comment.

11 MR. GANN: And I'll second.

12 MR. GOODWIN: Motion made by Ms. Bingham,
13 seconded by Mr. Gann. I suspect we have some people that
14 would like to speak about this, and as we all have done in
15 the past, those that want to speak should be located up
16 here on the first row.

17 We're going to read a letter into the record.
18 My apologies, Barry.

19 MR. LYTTLE: Mr. Chairman and Board, we have
20 three letters submitted from elected officials on this
21 issue I'm reading into the record.

22 The first comes from State Senator José
23 Rodriguez. It reads as follows:

24 "To the Board: I'd like to start out and
25 respectfully restate my request that the TDHCA Governing

1 Board grant a waiver of Section 11.5(e)(c)(iii) of the
2 Qualified Allocation Plan which requires satisfaction of
3 the opportunity index scoring criteria contained in
4 Section 11.9(c)(4) of the QAP with respect to the Blue
5 Flame Apartments, Application 17330. I also would like to
6 ask that the Governing Board consider a request to move
7 the waiver application up to the front of the meeting."
8 Already did that.

9 (General laughter.)

10 MR. LYTTLE: "First and foremost, I'm of the
11 opinion that the Blue Flame project is located in a high
12 opportunity area based on a current assessment of the
13 downtown area of El Paso where it is located. I
14 understand that the Blue Flame site may not score as being
15 located in a high opportunity area based on the data with
16 which that determination is made. However, the sole
17 reason that the Blue Flame's site does not qualify as
18 within a high opportunity area is that the 2010 census
19 data used for this determination is not aligned with the
20 influx of new housing and other investment in the
21 immediate vicinity of the proposed Blue Flame site.

22 "Specifically, not reflected in the 2010 census
23 data is the fact that there has been significant
24 investment in downtown El Paso, both in terms of new
25 housing and business development. The private and public

1 investment in downtown El Paso has been significant and
2 includes construction of the Art Space Lofts, the Mountain
3 Lofts, as well as pending construction of the Ballpark
4 Lofts, the Savoy Lofts, and other apartment complexes
5 planned for construction downtown. Another is a 14-unit
6 complex by the ballpark stadium and the conversion of the
7 historic popular department store building into loft
8 apartments.

9 "The private and public investment in
10 commercial and civil projects has also been substantial.
11 Since the 2010 census data collection, the city has
12 partnered with others to develop Southwest University Park
13 Baseball Stadium, a \$97 million streetcar project that
14 will connect downtown to nearby neighborhoods, the pending
15 construction of a \$180 million multipurpose arena
16 downtown, and several new or renovated downtown hotels,
17 including a \$7 million renovation of the Camino Real
18 Hotel, the newly construction 100-room Aloft Hotel, and
19 new Courtyard Marriott across the street from the baseball
20 stadium, and the recently completed Indigo Hotel.

21 "Second, I am concerned that if the Blue Flame
22 project cannot be rehabilitated at this time it will have
23 a lasting negative impact on affordable housing in El Paso
24 and the city's downtown redevelopment. Put simply, there
25 is a small window of opportunity to redevelop the historic

1 Blue Flame high rise building.

2 "The requested waiver for the Blue Flame
3 project will ensure that more affordable housing is
4 constructed in El Paso in a centralized downtown location.
5 Without a vote from the TDHCA Governing Board for the Blue
6 Flame, this present opportunity to place affordable and
7 market rate downtown will be missed before redevelopment
8 of the area surges, thereby making it too expensive to
9 locate affordable housing in downtown El Paso in the
10 future. Furthermore, without the requested waiver the
11 Blue Flame building will likely spend years as a vacant,
12 unused historic building in the heart of downtown El Paso
13 because there are no other options for its use. Such an
14 outcome will negatively impact the development of downtown
15 El Paso.

16 "Thank you in advance for your consideration of
17 my request and for your service to the State of Texas.
18 Should you have any questions or need additional
19 information, please contact my chief of staff, Sushma
20 Smith. Sincerely, José Rodriguez."

21 Now, I have two other letters, one from El Paso
22 County Judge Veronica Escobar in support of the waiver
23 request, and from Mayor Oscar Leeser, if I'm pronouncing
24 that correctly, the mayor of El Paso. We don't always
25 read local official letters into the record, and so I was

1 going to ask if you want me to read those or just notate
2 that they've been received?

3 MR. GOODWIN: I'd prefer you notate they've
4 been received.

5 MR. LYTTLE: Got it. Very good.

6 MR. GOODWIN: Unless people speaking in favor
7 would like to have them read, then we'll have you come
8 back up and read the letter.

9 MS. BINGHAM ESCAREÑO: Mr. Chair, while Barry
10 is coming up, I have a question in clarification. So
11 Senator Rodriguez's letter just now, did I understand is
12 he still asking for consideration of the waiver or was he
13 saying that he does think that development meets the
14 qualification for points under opportunity index.

15 MR. IRVINE: He's in support of the waiver. He
16 believes that if you look at more current information --
17 that's what he stated -- that the area would meet the
18 definition of a high opportunity area, but he acknowledges
19 that under the rule construct as it currently exists and
20 the data that we currently use, it would not meet those
21 criteria.

22 Is that accurate, Marni?

23 MS. HOLLOWAY: If I may? We actually use the
24 most current census data available, so it would be the
25 2015 is what we're using for our site demographic

1 reporting. So yes, 2010 was the last time the census was
2 performed, but those numbers are updated based on census
3 data.

4 MR. IRVINE: And is it basically the poverty
5 data that's driving?

6 MS. HOLLOWAY: Right. So as I understand it,
7 the Blue Flame site is not able to meet threshold for
8 opportunity index in order to score those points. They
9 would be able to score under the menu of items but they're
10 not able to get through the threshold items to those menu
11 items.

12 MS. BINGHAM ESCAREÑO: Okay. Thank you.

13 MR. GOODWIN: So the discussion is going to be
14 about the waiver.

15 MR. PALMER: Yes.

16 MR. GOODWIN: You realize those of us -- I know
17 some of us, not all of us, but I know one who would like
18 to see this project move forward is wrestling with how do
19 you qualify with those two requirements for a waiver.

20 MR. PALMER: Right. My name is Barry Palmer
21 with the Coats Rose Law Firm, and I'm representing the
22 Housing Authority of the City of El Paso. We presented
23 substantial testimony at the Board meeting last month on
24 the importance of this project and how important it is to
25 the City of El Paso.

1 Some of you will recall, there had been a
2 motion made to support staff's recommendation. That
3 motion was withdrawn and it appeared that the Board was
4 moving towards a motion to approve but was tabled and sent
5 back to staff to give staff time to review the full
6 application, and also, Dr. Muñoz had asked that we submit
7 information about the high opportunity nature of the
8 project, and that's when we submitted the information
9 showing that the project meets ten of the 13 high
10 opportunity characteristics in the menu of high
11 opportunity areas.

12 On the waiver, as we talked about at the last
13 meeting, it's a two-part test: is this something that's
14 beyond the applicant's control, and then secondly, is it
15 something that's necessary to further the statutory
16 mission of the Department. And we talked about the
17 ability to further the statutory mission of the Department
18 to renovate historic buildings, to do adaptive reuse of
19 this building as a historic structure and how rare that is
20 that you have the opportunity in a major downtown city to
21 do a historic renovation using tax credits to provide
22 affordable housing. It's been done a couple of times but
23 very rarely. So I think I sensed that there was some
24 consensus that this furthers the statutory mission of the
25 Department.

1 The issue of beyond our control, there are a
2 number of things that are beyond our control. Certainly
3 the location of the building is beyond our control, but I
4 think more importantly, you heard all the testimony of all
5 that's going on in downtown El Paso, and we have other
6 speakers from El Paso to talk about that, but what we have
7 is a high opportunity area where the numbers just haven't
8 caught up with it being technically a high opportunity
9 area for purposes of the Department's definition. And
10 that's beyond our control that the census data hasn't
11 caught up with what's actually on the ground.

12 And I think in the writeup for this in the
13 Board writeup, the staff mentioned that you could find by
14 a totality of the evidence that's been presented, the
15 totality of the circumstances that it's beyond our control
16 for several reasons. The fact that it is a historic
17 building, it's going to be in a downtown area, that's the
18 only place you're going to find a historic building, so we
19 think that the record supports the finding that it's
20 beyond our control.

21 MR. GOODWIN: Any questions for Barry?

22 MS. BINGHAM ESCAREÑO: Barry, did you say that
23 you felt like in the writeup that staff possibly gave a
24 bit of a nod to factors beyond the applicant's control?
25 Did I hear you say that?

1 MR. PALMER: That you could consider a totality
2 of the circumstances. That was what I read in the writeup
3 for today's meeting was that the Board could look at the
4 totality of the circumstances. And as far as I'm
5 concerned, you don't have to all come to the conclusion
6 it's beyond our control for the same reason. I mean, some
7 of you may think it's beyond our control because it's a
8 historic building downtown and that's the only place
9 you're going to find them. Others may feel that it's
10 beyond our control because it is in a high opportunity
11 area, it's just that the census data hasn't caught up with
12 it yet. But if you take the totality of the record, you
13 can certainly find that this is something that's beyond
14 our control.

15 MS. BINGHAM ESCAREÑO: Thank you.

16 MR. GANN: I've got a general statement. Can I
17 make it?

18 MR. GOODWIN: Sure.

19 MR. GANN: My history is history so I like the
20 building and renovations downtown. My past history is
21 development. It's obvious to me that this is a high
22 opportunity operation -- I also am a low-income housing
23 builder -- so if this is an opportunity spot, we're going
24 to have to prove it and it's got to be proved by data
25 that's come after what our staff has come up with it, and

1 I'm sure it's out there.

2 But to me, with the ballpark that's going in,
3 these are the people that we could give the jobs to in the
4 ballpark through this kind of thing, or just working
5 downtown in the department store that's there or in the
6 hotels that are going up downtown. This is the kind of
7 information we need and be on record with that's not
8 showing up over here since 2015. That stuff is current
9 and we need to hear about the new stuff that's going in
10 there so we can make a better judgment of what's going on.

11 MR. PALMER: Right. And we have speakers from
12 the city who can speak to that. But one thing that you
13 bring to mind in saying that is in order to do affordable
14 housing in an area that is redeveloping quickly and in
15 effect gentrifying, you've got to get in early. If you
16 wait too long, it gets too expensive to go in there.
17 We've seen that in downtown Houston, we've seen that in
18 downtown Austin. If you wait until all the numbers are
19 great and everybody knows it's a great area, then it's too
20 expensive to go there.

21 MR. GANN: That's my point.

22 MS. BINGHAM ESCAREÑO: So it becomes
23 financially not feasible at that point.

24 MR. PALMER: Right.

25 MS. BINGHAM ESCAREÑO: Like if you waited for

1 the numbers to catch up, if you waited for what you can
2 see with your eyes is happening, but if you waited for it
3 to manifest in some kind of long-term data, you'd miss the
4 opportunity for the financial viability of the
5 development.

6 MR. PALMER: Right.

7 MS. BINGHAM ESCAREÑO: That furthers the
8 statutory mission.

9 MR. GOODWIN: Or beyond your control. I
10 thought you were going to add that at the end.

11 MS. HERRERA: Hi, everyone. Good morning. My
12 name is Jessica Herrera, speaking on behalf of the Housing
13 Authority. I'm the city's Economic Development Department
14 Director, and I am thanking you for the opportunity to
15 come out and speak to your Board today related to item
16 3(g) regarding the request for waiver of rules for our
17 Blue Flame project located in the heart of downtown El
18 Paso.

19 El Paso is one of the largest international
20 border metropolitan areas with more than 2-1/2 million
21 people that really stem from the border of the State of
22 New Mexico and the state of Chihuahua, Mexico as well. Our
23 location allows for the daily commute of individuals
24 coming into El Paso, and specifically, when you're looking
25 at downtown, to work, shop, visit family, attend school.

1 Our downtown has a port of entry that has an average of
2 more than 550,000 northbound pedestrians and vehicles
3 coming into El Paso per month.

4 In 2012, the city overwhelmingly supported our
5 Quality of Life Fund of more than \$475 million for
6 projects citywide, and specifically in downtown El Paso,
7 \$205 million were approved for signature projects in
8 downtown which were our Children's Museum, our
9 multipurpose center or the arena, the Hispanic Cultural
10 Center as well. And in April of 2014, we opened the doors
11 to our downtown Triple-A baseball team which is now home
12 to the El Paso Chihuahuas, and that has been a huge home
13 run for the city, huge home run, and the fact that in 2019
14 we're going to be holding our All Star Triple-A ball team
15 as well.

16 Within the last four years we have seen
17 additional and very, very significant public and private
18 investment all throughout downtown of more than close to
19 \$400 million. To give you a snapshot of the private
20 investment underway, we have actively participated in more
21 than 18 economic development incentive agreements that are
22 now adding 300 new residential units, more than 760 hotel
23 rooms, and more than 394,000 square feet of new commercial
24 and office space. Some of these projects have already
25 been completed and several others are under construction,

1 and this has just happened within the last two years.

2 The Blue Flame development is a 62-year-old
3 building that occupies an important part of our downtown
4 revitalization efforts currently underway. It's been
5 vacant for more than a decade, and it's an opportunity,
6 really an opportunity to breathe new life into this
7 building and this is going to be a game-changer for the
8 area.

9 It is located within walking distance of
10 several of these projects that are already underway and
11 some have already opened, and just to give you an example,
12 literally right across the street from this project is a
13 historic building that's currently under construction,
14 expected to open in the fall of next year, and it's going
15 to be the Aloft Hotel, adding more than 100 rooms with
16 ground floor retail space and restaurant space as well.
17 There are at least three mixed use residential projects
18 within walking distance, and really it's been adding more
19 than 160 residential units just within the last two years.

20 The project's location provides ample access to
21 transportation, employment, government, educational and
22 healthcare services for future residents, which equates to
23 expanded growth opportunities for all. As an example, and
24 really what's driving this too, is the \$97 million
25 streetcar system that's operational and it's going to be

1 up and running by 2018. And it's connecting our downtown
2 to the University of Texas at El Paso, and within that
3 connection there's a number of healthcare services that
4 are available, hospitals and such that have experienced
5 some significant expansion as well, not to mention our El
6 Paso Community College campuses that are also located
7 within that route.

8 Our public transit system also feeds into
9 downtown, and three of these four corridors are feeding
10 into downtown, one of which is open and one of which is
11 currently underway that's connecting the Medical Center of
12 the Americas, which is a huge healthcare complex in El
13 Paso as well. These are all critical efforts for the
14 continued redevelopment and ease of access for these
15 opportunities as we continue to move forward.

16 These opportunities and improvements have and
17 will undoubtedly continue to enrich the quality and
18 livability of El Paso's downtown area. We are excited at
19 the prospect of affordable housing being available in this
20 part of town and believe that it fits in very well with
21 the revitalization efforts currently underway.

22 Thank you all very much for this opportunity.

23 MR. GOODWIN: Thank you, Jessica.

24 MR. VASQUEZ: Chair, I have a question.

25 MR. GOODWIN: Okay.

1 MR. VASQUEZ: Jessica, it may be buried in the
2 materials here you gave me, but what is the City of El
3 Paso doing, if anything, contributing funds, or how are
4 they financially helping the project?

5 MS. HERRERA: Well, in terms of looking at the
6 project, just scope, I know that just related to the fact
7 that it's affordable housing, there will be a small number
8 of units that will be market rate, is my understanding as
9 well. There are potential for site improvement grants,
10 but because the building is historic, we still have to
11 look at what the city would be able to contribute, whether
12 it's a portion of our property tax as well as a portion of
13 our sales tax rebate as well.

14 We have an incentive policy currently underway
15 in El Paso in that in downtown specifically for historic
16 buildings we can provide a rebate of up to 15 years for
17 historic buildings, but we would have to factor in the
18 project's investment and then take a look at how it's
19 going to be structured when they're leveraging tax credits
20 and other sources of revenue and then see what the city
21 could feasibly do.

22 MR. VASQUEZ: So for the City of El Paso,
23 nothing?

24 MS. HERRERA: Nothing has been approved yet,
25 no, sir.

1 MR. GOODWIN: Any other questions?

2 (No response.)

3 MR. GOODWIN: Thank you.

4 MR. CICHON: Good morning, everybody. Gerry
5 Cichon with the Housing Authority for the City of El Paso.

6 And just as quick background, the Housing
7 Authority of El Paso is doing the largest RAD conversion
8 in the United States. It's the relocation of 40,000
9 people and the construction of 6,400 units. Blue Flame is
10 part of that, and as we look at the infrastructure and
11 look at our needs, we've determined that Blue Flame fits
12 directly into that.

13 Now, what I'd like to do is talk directly about
14 the issues that are beyond our control because obviously
15 that is a critical and key component in making your
16 decision. So as you know, the tax credit equity has
17 decreased with the announcement of the president's tax
18 plan, so we went from \$1.06 in equity down to about 88
19 cents which creates gap in a lot of the construction that
20 we're doing. So as we started looking at opportunities
21 for this next year, we saw that historic tax credits were
22 an opportunity to reduce that.

23 Now, we found that historic buildings were
24 unfortunately in the areas that didn't have high
25 opportunity index as determined by the staff here at

1 TDHCA. So that was beyond our control to actually find
2 the buildings that gave us opportunity to address the
3 funding issues that we find ourselves in.

4 Additionally, the issues regarding support of
5 our residents to climb out of what they find themselves
6 in, which is economic challenges, necessitates being
7 around infrastructure. The infrastructure is found right
8 now in downtown. That's the transportation of the trolley
9 that's being put in, that's access to the government
10 buildings, that's to the other transportation around the
11 city to the hospitals and everything else. So again, the
12 opportunities that were being provided to our tenants was
13 much higher in the center of the city where all the
14 infrastructure and investment is actually going in, again,
15 beyond our control.

16 The city also has determined that to give us
17 support, they were looking to keep us in the at-risk set-
18 aside. So finding ourselves in that one side of this
19 which is the at-risk, which you find yourself in the
20 opportunity index issue which you wouldn't have had in the
21 regional side was also beyond our control, so that also
22 necessitated us being over here in this side.

23 The support from the city also came with their
24 strategic plan which is infill development. As they
25 looked at infill, it was defined also as we walked forward

1 into the support for the downtown area. Again, that was
2 beyond our control.

3 The opportunity also for not just the
4 infrastructure for the supportive services but also the
5 jobs. The jobs right now as a massive growth area is
6 downtown. As you know, the ballpark with the \$400 million
7 in investment has created a large opportunity for new
8 jobs.

9 There's new investment going in, there's new
10 businesses, new bars going in every single day. Again,
11 the opportunity for the jobs in that area for people that
12 don't have cars, which is very, very walkable, is beyond
13 our control, and that's the area of town that you find it.

14 So the definition of beyond our control is
15 really yours, and that opportunity to make that call is
16 yours. And so like Barry had mentioned, you have the
17 opportunity to take some of the evidence that you have,
18 all of it, a combination therein, in order to make that
19 call. If you guys make that decision, and the decision is
20 that whether it's outside of our control and that failure
21 to grant the waiver would not fulfill a necessary
22 requirement under the law, then that would be sufficient
23 for us to go forward with this and this investment in
24 downtown El Paso.

25 MR. GOODWIN: Any questions for Gerry?

1 (No response.)

2 MR. GOODWIN: Thank you, Gerry.

3 MR. BLUMENFELD: Good morning. My name is
4 Robert Blumenfeld. I'm from El Paso, I'm a lawyer, I
5 represent the Housing Authority of the city of El Paso.

6 Other than living in Austin when I was in law
7 school, I'm basically from El Paso. El Paso is unique,
8 it's different than the rest of the state, and I want to
9 focus in on the two factors that you all need to determine
10 as part of what you're doing here today on our request for
11 a wavier.

12 But before I do that, I just want to say there
13 was a meeting about a month ago, there's 40 pages of
14 testimony. I don't want to rehash that or even go into
15 it, but I do want to state for the record that I believe
16 even the new Board members can take into account what
17 we've summarized today and the 40 pages of testimony that
18 was provided to you at the last meeting.

19 In addition, I don't want to read letters, but
20 I want to point out for the record that at the last
21 meeting we had something that's unique for El Paso,
22 basically our entire delegation of elected officials
23 support this project, including Congressman Beto O'Rourke,
24 who wrote a letter in support of it, State Representative
25 Joe Moody, and then today we also provided you with

1 letters from Mayor Oscar Leeser, the mayor of the City of
2 el Paso, and from our County Judge Veronica Escobar, all
3 asking the Board to -- all informing the Board to support
4 the waiver and encouraging you to exercise your discretion
5 appropriately in support of this project.

6 I want to focus on two points which are really
7 the focal points of your decision today. One is
8 circumstances beyond our control. As Mr. Cichon, as Gerry
9 just referred to, we didn't draw the lines of what zones
10 are judged for high opportunity, we didn't draw the
11 boundaries. This boundary cuts across a very complex area
12 that's very diverse.

13 The center of downtown El Paso where this is
14 located is incredibly safe, it's becoming incredibly nice,
15 it's by no means a low income or high crime zone, but it's
16 nearby other areas of El Paso that are more challenged.
17 The testimony from the last hearing, they explained about
18 six blocks away there's a homeless shelter that might add
19 to the crime, or about three or four blocks in the other
20 direction as you get near the border, you're in a much
21 lower income area, and so it's beyond our control as the
22 housing authority that the zones that you're judging
23 things on are a certain way yet the actual neighborhood
24 where this is a very nice and getting a lot of investment
25 and becoming a very nice neighborhood.

1 The other thing that's beyond our control is
2 that at the local level, before we submit our application
3 to TDHCA, we have to go through a local screening process,
4 and the City of El Paso has adopted a strategic plan that
5 is encouraging governmental entities, like the housing
6 authority, to provide infill. The City of El Paso is
7 growing away from itself, it's growing to its fringes, and
8 the rule in the QAP when applied to El Paso encourages
9 growth at the fringes of the city, which is contrary to
10 our city plan and it's beyond our control.

11 The city adopts its strategic plan, they want
12 walkable, livable neighborhoods. We've got to comply with
13 the local screening process in selecting the site, and we
14 did that here, and we think that would also qualify as a
15 circumstance beyond our control why we need this waiver.

16 Finally, I think Mr. Palmer, Barry, provided
17 you with some information that I don't want it to be
18 buried in the record -- apologize -- that your agency,
19 your governing body is here to assist local governments,
20 like the housing authority, providing services for
21 residents, and these are beyond the second prong of the
22 test why the statutory mandate would be supported by a
23 grant of a waiver. Fulfilling the policy of the
24 government at all levels should be assisting people at all
25 income levels, participating in the development and

1 diversification of the economy and supporting the adaptive
2 re-use of historic properties.

3 We think the record, both when you take into
4 consideration the last hearing and today, is very rich in
5 reasons and justifications that will support you granting
6 our waiver. Thank you.

7 MR. GOODWIN: Thank you, Robert.

8 Questions for Robert?

9 MR. ECCLES: I have a legal clarification
10 point. The second part of the waiver rule reads: how, if
11 the waiver is not granted, the Department will not fulfill
12 some specific requirement of law. It continues: in this
13 regard, the policies and purposes articulated in Texas
14 Government Code, Sections 2306.001, .002, .359, and .6701
15 are general in nature and apply to the role of the
16 Department and its programs, including the Housing Tax
17 Credit Program.

18 I heard both you and Mr. Palmer talk about
19 furthering the purposes of the Department and policies of
20 the Department as being synonymous with this second prong.

21 Is that your legal position?

22 MR. BLUMENFELD: And I'll defer to Mr. Palmer,
23 and as introductory statement before he comes up and
24 speaks, I will say that not granting this waiver would be
25 tantamount to not performing these functions that are in

1 Mr. Palmer's materials that he's provided to you all where
2 there is an affirmative obligation to work with the
3 housing authority to do the things that we're here today
4 to try to do.

5 MR. PALMER: And I think we would focus on the
6 statutory direction to support that reuse of historic
7 structures, and that without this waiver, that's not going
8 to happen, not going to happen in this cycle. Next year,
9 who knows if this building will be available but even if
10 it is and we still have the same rule, we've got the same
11 result, that you're not going to be funding historic
12 buildings if they have to be in a high opportunity
13 neighborhood.

14 MR. GOODWIN: Any additional questions?

15 MR. GANN: One comment I'd like to make.

16 MR. GOODWIN: Sure.

17 MR. GANN: Marni, you and your group -- who I
18 think is fantastic, you know that.

19 MS. HOLLOWAY: Thank you.

20 MR. GANN: But your decision is based on the
21 rules, that you have to come up with criteria according to
22 what the information is you have.

23 MS. HOLLOWAY: Exactly.

24 MR. GANN: And I think that's where you are and
25 I think that's where we are. I think this might be one of

1 those cases where there's no way you could have come up
2 with this new information that we see is not already there
3 yet, but the trend is so strong going that direction and
4 this is really one of those projects we really would want
5 to be doing if we possibly could figure out a way to do
6 it. And I just want to make a statement that I know that
7 where you came down is where you had to come down, but I
8 think this is such new information that we have to really
9 consider it carefully and see where we will go with it.

10 MS. HOLLOWAY: Well, and that's exactly why
11 waiver requests are all brought to the Board.

12 MR. GANN: Thank you so much.

13 MR. GOODWIN: Any other comments or discussion?

14 (No response.)

15 MR. GOODWIN: Hearing none, is there a motion
16 on how the Board should proceed?

17 MS. BINGHAM ESCAREÑO: Mr. Chair, I'd like to
18 make a motion to grant the waiver for Blue Flame on the
19 ground that granting the waiver is necessary to address
20 circumstances that are beyond the applicant's control, and
21 that if we didn't grant the waiver, that we would not be
22 able to fulfill specific requirements of law for our
23 Department.

24 MR. GOODWIN: Do I hear a second?

25 MR. VASQUEZ: Second.

1 MR. GOODWIN: So the motion is made by Ms.
2 Bingham and seconded by Mr. Vasquez. Any questions or
3 discussion?

4 (No response.)

5 MR. GOODWIN: All those in favor say aye.

6 (A chorus of ayes.)

7 MR. GOODWIN: All opposed?

8 (No response.)

9 MR. GOODWIN: The waiver is granted.

10 Moving on the agenda, Marni, do you want to
11 take 3(d), those appeals we discussed?

12 So that everybody will be aware, I've kind of
13 given Marni the latitude to read these appeals and talk
14 about them in an order that made sense where some of the
15 same issues were in some of the different bundles. So
16 Marni, if you will, just for everybody's information, kind
17 of give us the numbers that you're going to do first.

18 MS. HOLLOWAY: So for item 3(d), actually three
19 of the appeals that are listed on the agenda have been
20 pulled. 17151 Albany Village, was posted on the agenda
21 before the executive director granted the appeal, so we're
22 not going to be discussing that one today. Vista Park
23 West which is 17134, the applicant withdrew their appeal
24 after the agenda was posted. And then 17253 Samuel Place
25 Apartments, the applicants withdraw their appeal after the

1 Board book was published. So we're taking those three
2 off.

3 MR. GOODWIN: Those three will be removed.

4 MS. HOLLOWAY: Right. I have a couple of
5 requests for reorder, one, so that you're considering
6 items that are similar together, and then another, Mr.
7 Shackelford has three items that he's going to be
8 presenting on that he wanted to have reordered, so if
9 you'd like, I can just go down through the list.

10 MR. GOODWIN: Okay.

11 MS. HOLLOWAY: The first one will be 17036
12 Merritt McGowan, the first one is the first one. 17275
13 Aria Grand will be number 6. 17331 West Wind of Killeen
14 will be number 5. 17363 Residences of Long Branch will be
15 number 4. 17708 Cedar Ridge Apartments will be 2. 17724
16 Liv Senior at Johnson Ranch will be number 7. And 17736
17 Providence at Ted Trout will be number 3.

18 All right. So this is presentation, discussion
19 and possible action on timely filed scoring appeals under
20 10 TAC 10.901 of the Department's Multifamily Program
21 Rules. This is Subchapter G related to fee schedules,
22 appeals and other provisions.

23 Some background on this item from staff so the
24 Board will understand how we have arrived at some of the
25 appeals you'll hear today. Staff has taken a stricter

1 approach to what falls under the definition of
2 administrative deficiency this cycle. We also have not
3 granted points that were not requested in the application.

4 We have taken this approach out of an abundance of
5 caution and are requesting Board direction today regarding
6 these questions that are going to be presented.

7 For the first time last year, the online
8 applications were updated daily throughout our review
9 process, so all the competitors could see exactly what we
10 were doing with everyone else's application in real time.

11 So also new last year was the third party request for
12 administrative deficiency, or the RFAD. Last year one
13 applicant used the RFAD process to question decisions that
14 we had made about administrative deficiencies for a
15 competitor's application. So they weren't presenting new
16 information, they were questioning our decision.

17 During the current legislative session, two
18 bills were filed that linked directly back to that RFAD.
19 If House Bills 1834 and 2261, filed by Representative
20 Dutton had passed, they would have reached into our
21 application review process on the same two questions
22 raised by the competitor's RFAD last year.

23 Staff is left with a very clear message that
24 however we handle deficiencies, somebody is likely to take
25 offense and we will wind up exactly where we are today,

1 either with the applicant if we are strict, or with the
2 competitor if we are lenient. We also run the risk for
3 future legislative action.

4 Similarly, in the past staff has granted points
5 that weren't requested for certain scoring items. These
6 are graduated items. So if you don't prove up your score
7 on one level, you may be able to score on the next one
8 down. This action falls in line with the situation you
9 find yourselves in regarding administrative deficiencies.

10 There is no provision in rule that says staff can do that
11 that we could find.

12 Applicants are accustomed to staff making these
13 adjustments rather than taking a stricter approach that
14 you only get the points you've requested and proven. If
15 we grant the next score down, we create a situation where
16 a competitor can submit an RFAD regarding that decision.

17 At the meeting last month, I did not fully
18 develop staff's position, and unfortunately, my comment
19 regarding language in the RFAD rule for 2017 was
20 misunderstood, and that's my fault. The RFAD rule for
21 2018 will include reference to 2306.6715(b) which
22 prohibits an applicant from appealing a decision on
23 another application. We will find an avenue for
24 applicants to point out mistakes made by staff through our
25 ongoing QAP-planning process that does not involve that

1 RFAD rule. So yes, there absolutely has to be an avenue
2 to say staff made a mistake under this rule, but that's
3 different from I'm challenging that decision regarding
4 that administrative deficiency.

5 So starting with that first one, do we want to
6 just work right through them?

7 MR. IRVINE: Actually, before you jump in, I'd
8 just like to make a statement to sort of reinforce what
9 you're saying and reinforce to the development community
10 that we really aren't trying to pick on anybody, we're
11 trying to create a level workable playing field, and it's
12 challenging.

13 At issue in several of these appeals is the
14 question of authority. It's long been the practice of
15 staff and the applicant community that when you claim a
16 scoring item, you need to provide support for the claimed
17 score. 10 TAC 11.1(b) states, in part, that it remains
18 the sole responsibility of the applicant to perform
19 independently the necessary due diligence to research,
20 confirm and verify any data, opinions, interpretations or
21 other information on which an applicant bases an
22 application or includes in any submittal in connection
23 with an application.

24 I concede that neither this provision nor any
25 other specific provision of the rule states unambiguously

1 that when an applicant claims points under a scoring item
2 they must also include materials to substantiate the claim
3 of points. However, the long-standing practice has been
4 to include such support and the application form is
5 constructed to direct applicants to provide certain
6 corroborating data.

7 In considering the appeal to me, I felt
8 constrained to place this matter before the Board because
9 although I can readily construct, as the applicants'
10 counsels have done, the legal argument to support one
11 outcome, it seemed a better course, in light of historic
12 treatment of these matters, to have the Board publicly
13 consider the issues and provide staff and the public
14 clarity on how the Board reads and administers its rules.

15 For staff to have used discretion to allow applicants to
16 provide additional materials presented the risk of
17 tripping third party requests for administrative
18 deficiencies, and that's a process that's previously taken
19 as long as several months to play out. We need to have
20 closure on these matters quickly as the tax credit round
21 is quickly approaching its midsummer deadline.

22 So don't take my denial letter as an absolute
23 rejection of the various arguments on both sides, but as a
24 vehicle to place the question before you for your
25 interpretation and direction. Let me assure you that all

1 of your staff, including me, are trying to administer --
2 including Marni, I strongly underscore that -- are trying
3 to administer a very complex program in the most
4 transparent possible manner, and I anticipate that there
5 will be proposed rule changes for your consideration as we
6 develop the 2018 rules but we're not there yet, we've got
7 to deal with what we have. So on with the show.

8 MS. BINGHAM ESCAREÑO: Mr. Chair, I have a
9 couple of observations too. I know that Marni mentioned
10 that no matter what decision is made, somebody is not
11 going to be happy. We had a wonderful Board chair for
12 years that reminded us of that at every single Board
13 meeting, so we're aware of that. And I see your staff as
14 having very thick skin and that this isn't about this is
15 getting turf to the Board because you guys get your
16 feelings hurt or somebody gets mad or whatever.

17 But I would say is everybody is on tight
18 timelines when it comes to these applications, and what we
19 noticed was it is time consuming to have it go through
20 that third party request regarding administrative
21 deficiencies and then to have it come to the Board. I
22 mean, my oversimplification of this is we're just cutting
23 to the chase.

24 It isn't by any means, I think, now you've got
25 the Board. But what I would say is this -- since I see

1 lots of happy faces that want to talk to us -- we
2 understand the way that staff used to do it, so we'll save
3 some time today if you don't have to remind us that the
4 way staff used to do it was they used to go ahead and
5 default to the next score if your application, you tried
6 to get it to score some points, so we completely
7 understand that that was the way that staff did it.

8 I'll just speak for myself and say I see it as
9 even though I think every year everybody in here does a
10 collaboratively heroic job trying to simplify the QAP, and
11 we're still trying, but I do believe and I really
12 appreciate staff's efforts because where you've been kind
13 enough to acknowledge some miscommunication or some
14 shortfalls in your testimony last time, the fact that we
15 are obviously very open to want to see what we can do to
16 address is it in the QAP. And would it be presumptuous to
17 think that there would be roundtables over that?

18 MR. IRVINE: No. There absolutely will be.

19 MS. HOLLOWAY: I can't imagine that we would
20 not include this in our regular group therapy.

21 MS. BINGHAM ESCAREÑO: Yes. So I think the
22 Board came today having reviewed the packet and are very
23 interested in hearing each one of these today and we
24 understand that they have compelling issues. I just was
25 going to put my little two cents worth in to just say

1 we'll probably save 12 minutes or so if everybody doesn't
2 remind us that this is what staff used to do.

3 Thank you.

4 MR. GOODWIN: Thank you. Any other comments or
5 questions before Marni starts?

6 (No response.)

7 MS. HOLLOWAY: The first application, 17036
8 Merritt McGowan Manor, requested 12 points under 10 TAC
9 11.9(e)(2). This is cost of development per square foot
10 for which the application does not qualify and the point
11 reduction for this item is more than six points from the
12 self-score, rendering the application ineligible for the
13 six pre-application points.

14 Under this cost of development per square foot
15 item, an application may qualify as a high cost
16 development if the site qualifies for a minimum of five
17 points under 11.9(c)(4) related to opportunity index and
18 it's located in an urban area. This is similar to the
19 Blue Flame situation in that they have opportunity items
20 in the menu but they don't pass the threshold.

21 In their appeal, the applicant takes the
22 position that because the site qualifies for five points
23 under the menu section of the opportunity index, it should
24 qualify as a high cost development. The applicant cites
25 the concerted revitalization plan section which allows an

1 additional point if the site could score four points under
2 just the menu part of the opportunity index.

3 So the concerted revitalization extra point is
4 very specific to you can score four under the menu part,
5 it doesn't require passing the threshold part. That
6 distinction was added to the concerted revitalization plan
7 in direct response to stakeholder concerns about CRP site
8 having to meet threshold. That same concern was not
9 raised about the high cost development item.

10 The application does not meet the threshold
11 requirement because it is in a census tract with poverty
12 rate greater than 20 percent, and therefore, does not
13 qualify without this designation. As I mentioned, one of
14 the requirements for an application to qualify to receive
15 six points under pre-application is that the application
16 final score does not vary by more than six points from the
17 pre-application self score. Due to the loss of 12 points
18 on cost per square foot, the application is not eligible
19 to receive those pre-app points.

20 Staff is recommending denial of the appeal.
21 I'll answer any questions.

22 MR. GOODWIN: Is there a motion to accept
23 public comment and possible further questions to staff?

24 MS. BINGHAM ESCAREÑO: So moved.

25 MR. GOODWIN: Ms. Bingham. Second?

1 MR. BRADEN: Second.

2 MR. GOODWIN: Second by Mr. Braden. All in
3 favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Now we'll take questions.
6 Questions for Marni?

7 MR. JACKSON: My name is Frank Jackson. I'm
8 the executive director of the Texas Affiliation of
9 Affordable Housing Providers, which is a long name for our
10 little organization. I am not here to speak about a
11 particular application. If it pleases the Board, I'd like
12 to make general comments that apply to all six motions
13 that you're going to face, we're not speaking on a
14 particular application at all, we're speaking in general
15 about process.

16 MR. GOODWIN: Frank, I don't think that's
17 appropriate at this time.

18 MR. JACKSON: All right, sir. When would you
19 like it to be appropriate?

20 MR. GOODWIN: Our action right now is to take
21 questions and comments as it relates to this application,
22 so if you want to make questions and comments in general,
23 I think we'd have to wait till we get to a point in the
24 agenda where that would be appropriate.

25 MR. IRVINE: I would respectfully say that if

1 it applies to the way that you consider and treat each
2 appeal, so rather than repeating it at each appeal, it
3 might just be easier to hear it once.

4 MR. ECCLES: Do your comments relate to this
5 application and these appeals that have been posted?

6 MR. JACKSON: Yes.

7 MR. GOODWIN: So can you not just speak to
8 this, bring up your points as it relates to this case, and
9 we're all smart enough to remember them, I think, through
10 the next seven presentations.

11 MR. JACKSON: I'd hate to do that because this
12 is not about a particular case, this is not about the case
13 that you're about to hear or any other case, this is about
14 the process that you are using to make determinations on
15 all of the cases.

16 MR. ECCLES: That have been posted and are
17 being presented right now.

18 MR. JACKSON: Yes.

19 MR. ECCLES: Okay. That's fine.

20 MR. JACKSON: Thank you very much. I
21 appreciate it.

22 Again, Frank Jackson with TAAHP. I'm here
23 today to express our concern over how TDHCA staff has
24 administered the 9 percent competitive program this year
25 with regard to administrative deficiencies. It is a

1 departure from past practice.

2 In the past, applicants were allowed to submit
3 supplemental information in response to an administrative
4 deficiency. This year staff will only consider
5 information that was contained in the original
6 application. Moreover, in addition to precedent from
7 prior years, the rules as written give staff clear
8 direction as to how to conduct application reviews. That
9 clear direction is found in terms used in the sections of
10 the rule.

11 For example, the definition of administrative
12 deficiencies, that is information requested by department
13 staff that is required to clarify or correct one or more
14 inconsistencies or to provide non-material missing
15 information in the original application, or to assist
16 staff in evaluating the application that in the Department
17 staff's reasonable judgment -- I'm sorry. Excuse me.
18 Reasonable judgment. Excuse me. To assist staff in
19 evaluating the application, that in the Department staff's
20 reasonable judgment, may be cured by supplemental
21 information or explanation which will not necessitate a
22 substantial reassessment or reevaluation of the
23 application.

24 The administrative deficiency process, the
25 purpose of which is to allow the applicant to provide

1 clarification, correction and non-material missing
2 information to resolve inconsistencies in the original
3 application or to assist staff in evaluating the
4 application.

5 The general information regarding the
6 competitive housing tax credit selection criteria
7 acknowledges that because of the highly competitive nature
8 of all of these programs, applicants that elect points
9 where supporting documentation is required but fail to
10 provide any -- emphasis any -- documentation will not be
11 allowed to cure the issue through an administrative
12 deficiency. We believe the rule, as written, clearly
13 allows staff to request information from applicants. More
14 importantly, we believe that this is an essential part of
15 the application review process.

16 These applications, as you know, are lengthy
17 and technical and history shows us that it is virtually
18 impossible to assemble an application that is flawless.
19 It is our understanding that 100 percent of the
20 applications reviewed by the Department in the years since
21 this process has been place have received administrative
22 deficiencies 100 percent of the time.

23 We also think it's important to be consistent
24 in applying these rules through the review process and
25 that the consistency needs to exist among applicants and

1 within applications. If one applicant is allowed to
2 submit supplemental information and/or correct a form
3 under a particular section of the application, then
4 another applicant should also be allowed to submit
5 different supplemental information or correct another form
6 in another part of the application.

7 With respect to threshold items and scoring
8 items, two sections of the rules make no distinction
9 between the two, so we believe the rule applies to both
10 parts of the application.

11 One section does address scoring items, we
12 think, where it clearly defines a specific situation under
13 which an issue could not be cured via administrative
14 deficiency. That is where no documentation was submitted.

15 Supplemental documentation should be allowed where there
16 is a need for clarification or explanation.

17 Thank you very much for listening today. I
18 appreciate your time.

19 MR. GOODWIN: Any questions? Frank, you made
20 the comment, I think, that the rule allows staff to
21 request, but what I didn't hear was you stating that the
22 rule requires staff to request.

23 MR. JACKSON: I'm going to have to think about
24 that for a minute.

25 MR. GOODWIN: Okay. If you would, think about

1 it. Is this regarding 17036?

2 MS. MARTIN: This is similar to Frank's
3 comments, in that it applies to all of the appeals you are
4 going to hear. And I hope to be a little efficient in
5 speaking to you just once, rather than seven times.

6 MR. GOODWIN: Okay. And I would point out to
7 you, and the others as well that want to speak, that the
8 more times we hear the same thing, if you've got something
9 new to add, it's okay to stand up and say I agree with
10 Frank 100 percent.

11 MS. MARTIN: Absolutely.

12 MR. GOODWIN: And sit back down, if you'd like.

13 MS. MARTIN: I agree with Frank 100 percent.
14 My name is Audrey Martin. I'm with Purple Martin Real
15 Estate.

16 This morning I'm speaking on behalf of -- I'm
17 speaking as a former TDHCA staff member, and on behalf of
18 several other former TDHCA staff members who in recent
19 years worked in the Multifamily Division. That includes
20 Robbye Meyer, Jean Latsha and Valentine Deleon.

21 We felt compelled to speak to you all this
22 morning, again, about the administrative deficiency
23 process which leads to these appeals that you're hearing
24 this morning. You know, we've all been in staff's shoes.
25 We've reviewed countless applications, and truly have

1 respect for what they go through, and the way they have to
2 parse details and make these difficult decisions.

3 And you know, the way the process works is that
4 when staff isn't doing these tough reviews, they're
5 writing new rules. And then they're trying to implement
6 those new rule changes into a new revised application and
7 a new revised procedures manual.

8 And then they try to put presentation materials
9 together to applicants to help them understand the rule
10 changes every single year. And they have to go through
11 all of that in about two months. It's a lot of work and
12 it's exhausting.

13 At the same time, being in the private sector
14 side now, you know, we understand how much work similarly
15 goes into putting these applications together. Despite
16 the madness of real estate development in general, you
17 know, you have to -- again, in about two months' time --
18 put together these development proposals that involve
19 coordination between attorneys, engineers, architects, all
20 these different folks. You know, this two-month effort is
21 also very exhausting.

22 So what happens? Well, we all miss things.
23 This is a very technical program on both sides, the rules
24 change every year. You know, maybe the review sheet calls
25 for staff to check for items that came out of the rule.

1 Maybe an applicant missed an edit to the procedures
2 manual. And so how do we deal with these imperfections?
3 We deal with them through the administrative deficiency
4 process. We allow for human error in the administrative
5 deficiency process.

6 You know, we understand that staff took some
7 bullets last year in some certain challenges and appeals.
8 I get it. Again, I've been there.

9 But unfortunately, it comes with the territory
10 and staff has to still use the administrative deficiency
11 process in order to administer the program in a way that
12 advances the Department's policies. And so when staff
13 doesn't feel like they can do that and to allow
14 clarifications, what happens is, applicants are dinged for
15 whatever and they lose points.

16 And what happens then is the applications win
17 awards that don't adhere to policies of TDHCA as much as
18 the deals that had points docked. I think this is a bad
19 practice. You know, it prioritizes administrative
20 functions over policy.

21 And so we just ask that the Board consider this
22 when hearing these appeals. Human error exists on both
23 sides. We all do our best job to, on the staff side,
24 administer the rules and policies; on the applicant side,
25 to put together strong proposals that meet those policy

1 objectives.

2 And the administrative deficiency process has
3 always existed in order to allow us to correct human error
4 in non-material ways so that we can all work toward a
5 common goal of putting housing on the ground that advances
6 the Department's policies. So those are my comments. Any
7 questions?

8 MR. GOODWIN: Any questions?

9 (No response.)

10 MR. GOODWIN: Thank you.

11 MS. MARTIN: Thank you.

12 MS. ANDERSON: Good morning. My name is Sarah
13 Anderson, and I am your third and I believe final speaker
14 who would appreciate the privilege of speaking one time as
15 opposed to on every item, if that would be allowed.

16 I would like to start by saying I agree with
17 both previous speakers. And so you know, I very much
18 appreciate the Board outlining how you're looking at it.
19 And I appreciate Tim explaining staff's view on how we got
20 there, and what you're going to be looking at. So most of
21 my comments have been covered at this point. But I would
22 like to reiterate that what you're going to see with all
23 of the appeals that are coming forward to you are falling
24 into three basic categories.

25 The first has to do with the rules perhaps not

1 being as specific in outlining what staff wants and there
2 being disagreement as to what needs to be submitted and
3 what staff is now saying needs to be submitted. The
4 other, again, as I said, a perceived, not firmly
5 established, policies of the deficiency process is also
6 concerning. And then again, this issue of all or nothing
7 scoring which is new to us.

8 I think the hardest thing on our side is that
9 there were no real rule changes that would have
10 telegraphed this much of a change in the way items are
11 being reviewed. That's where a lot of heartburn is coming
12 from, so at least we feel better to know that this is
13 because we're looking for the Board to give a little bit
14 more direction.

15 I would just like to say on our side when we
16 are putting these together the only thing we have to look
17 at and to make sure that we're doing it right is we have
18 the rules, we have an application manual and we have an
19 application. And most of us follow those documents to the
20 letter. And when we find ourselves with a little bit of
21 gray area, I believe, and I think there's law out there
22 that says that tie goes to our side and the applicant.
23 And the least amount of harm should be done to the person
24 who is adhering to the language of the law.

25 And I would say outside of what we can read, we

1 also operate off of established procedures and precedent.

2 And so again, the concern that you're seeing from our
3 side is in that -- a rather large departure from that.
4 And we're very happy that we're going to be able to have
5 this discussion.

6 I did neglect to say that I'm here representing
7 the Texas Coalition of Affordable Developers. We are,
8 again, another organization made up of developers and
9 development consultants. They are the people in the first
10 three rows here. We just wanted -- they're not going to
11 speak, thank goodness.

12 MR. GOODWIN: Thank you.

13 MS. ANDERSON: But they are here. And we just
14 wanted you to know that we're representing a rather large
15 group who are very interested in what we're about to see
16 laid out. And we thank you very much for your time.

17 MR. GOODWIN: Thank you, Sarah.

18 MS. ANDERSON: Thank you.

19 MR. GOODWIN: Any additional questions for
20 Sarah? Comments?

21 (No response.)

22 MR. GOODWIN: Anyone else want to speak
23 regarding application 17036?

24 MS. LATSHA: Hi. I'm Jean Latsha. And I'll
25 again make some very brief comments that are related to

1 the process in general. For those Board members who don't
2 know, I've spoken with a lot of you several times over the
3 last several years, but I'm Marni's predecessor.

4 So I left just about two years ago. And so I
5 would say this process is near and dear to my heart. I
6 often joke that the only things that I think about are
7 housing tax credits and if my kids ate any vegetables that
8 day. And so it is disheartening, a little bit, to see the
9 policy objectives that are laid out in this program that
10 are well thought out by this Board and by staff be
11 potentially jeopardized by elevating this administrative
12 situation.

13 It is true that I never in my almost twelve
14 years now in this business have heard of an applicant not
15 getting a deficiency. I worked for a nonprofit developer
16 before I came to the Department. I know that all of those
17 applications had deficiencies.

18 When I was at the Department, and served as the
19 director and as the manager of the program, there was not
20 one application that did not have a deficiency. In fact,
21 I think we looked at the average one year, and it was 13.

22 Just to give you guys a sense of what goes on,
23 having an application deficiency is not an anomaly. It is
24 the norm, absolutely. And so to not be able to correct
25 those mistakes I think is difficult not just for the

1 development community but also for staff. In a very
2 practical sense, you're not going to get to July. You
3 won't find that perfect application. You'll review these,
4 deny the appeals, go on to the next one, and you'll be in
5 the same situation.

6 And worse, you know, we talked about how one
7 person is happy, and one person is unhappy, you know, at
8 the end of these decisions. So if that's going to be
9 true, then think to yourself which application really is
10 fulfilling those policy objectives? Well, it was the one
11 that really does deserve those additional points. And
12 even if they had to get there by making a small correction
13 or clarification, the fact is that application is closer
14 to fulfilling those policy objectives. And I think that's
15 a broader picture that really should be considered.

16 And of all people here, you know, I remember
17 having to have a cigarette, after ten years of not having
18 a cigarette, after dealing with one of these appeals as
19 the Director. Staff, not to be named, let me have that
20 cigarette.

21 (General laughter.)

22 MS. LATSHA: So I get it. And I really
23 appreciate y'all's consideration.

24 MR. GOODWIN: Any questions for Jean, comments?

25 (No response.)

1 MR. HENDERSON: Good afternoon. My name is
2 Will Henderson. And you'll be happy to know I actually am
3 the applicant for 17036.

4 (General talking and laughter.)

5 MR. GOODWIN: I'm sorry. Are you in the right
6 room?

7 MR. HENDERSON: I didn't know that the speaker
8 list would be so crowded. I had to sit in the back there.
9 But I would like to start off and say I do appreciate all
10 the time that Ms. Bingham and Mr. Irvine have obviously
11 put into their comments ahead of time.

12 But I do agree with what Frank and Audrey and
13 Sarah and Jean all said, so my comments will be a little
14 briefer than they were going to be because they said
15 substantially a lot of what we were going to say. But I
16 do have a couple of other things to add.

17 This project is the second step of the McKinney
18 Housing Authority's redevelopment through RAD, their
19 entire portfolio. Ms. Miller is their executive director.
20 She will speak here in just a moment, and talk a little
21 more about that.

22 What I wanted to center on, is this particular
23 case is under 10 TAC 11.9(e)(2) of the 2017 QAP regarding
24 cost of development per square foot. Applications can get
25 up to 12 points. The scoring for this item is based

1 partly on cost per foot, and partly on eligibility for
2 points in the high opportunity index, as was discussed
3 earlier.

4 Our application requested all of those 12
5 points. It was determined by staff that we were
6 ineligible for the twelve, and therefore, we received a
7 score of zero which also resulted in the loss of the pre-
8 application points, so you can imagine an 18-point swing
9 is not just something that hurts you a little bit. It is
10 a deal killer. It moved us to last in the region.

11 In the response that we received to our appeal
12 from Mr. Irvine, he noted that only one of the 12 points
13 was due to being in a location that would qualify for the
14 four points on the high opportunity index. Therefore, the
15 other eleven must be based solely on the cost per square
16 foot, since there are only two criteria in the scoring
17 item.

18 My point here today is not to argue that we're
19 eligible for the extra point in the high opportunity area,
20 although we disagree with staff's determination that it's
21 kind of a subjective thing. And that's not what I'm
22 trying to argue today.

23 My point here today is that we are eligible for
24 the remaining eleven points, and our score should have
25 been changed from twelve to eleven, not from twelve to

1 zero. And I ask that the Board reinstate those eleven
2 points, along with the six pre-application points.

3 While Mr. Irvine confirmed staff's
4 determination that we were not eligible for the one point,
5 at no time did staff or Mr. Irvine indicate that the costs
6 included in our application would disqualify this
7 application from receiving the eleven, or from achieving
8 eleven points based solely on our cost per square foot.

9 So what would be required to get the eleven
10 points? Two things. One, you have to ask for them. So I
11 would argue that if we asked for twelve, then one of those
12 was for high opportunity index, and eleven was for cost
13 per square foot. So we did in fact ask for those eleven
14 points. We asked for eleven, plus one.

15 Second, you have to document eligibility for
16 these points. We also did this in the application. If we
17 had not requested twelve and we requested eleven, there
18 would be no additional documentation required in the
19 application. Our documentation was clearly in the
20 application speaking to our eligibility for the eleven.
21 Therefore, we feel we met the qualifications for these
22 eleven points, and request that they be reinstated.

23 One thing I do want to touch on, kind of
24 related to some of the things that have been said. This
25 administrative deficiency process in the past would have

1 been handled simply, and would have accepted the eleven
2 points, and moved on and not been here before you.

3 It was noted that it is a stricter approach.
4 And we didn't see a rule change, or any kind of guideline
5 showing that this was going to be the new approach, so it
6 was kind of out of left field. So we would ask that those
7 eleven points be returned to us.

8 MR. GOODWIN: Any questions for Will?

9 MR. ECCLES: I actually have a quick question.
10 The 12 points that were requested were under a high cost
11 development? Are we talking about that one?

12 MR. HENDERSON: Yes, sir. To achieve the 12
13 points, we would have had to have been qualified as a high
14 cost by achieving the points on the opportunity index.

15 MR. ECCLES: And that was under 11.9(e)(2)(A)
16 but you would like for staff to have allowed you to
17 proceed under (e)(2)(C) which is eleven points.

18 MR. HENDERSON: Yes, sir. I don't have the
19 (e)(2)(C) citing in front of me. But the eleven points,
20 yes, is what we would -- we feel we qualify for.

21 MR. ECCLES: And that would require you change
22 your self score which is something that if staff had asked
23 you to do that you would be able to do?

24 MR. HENDERSON: Correct.

25 MR. ECCLES: Okay.

1 MR. GOODWIN: And by asking you to do it,
2 you're talking about through the administrative
3 deficiency?

4 MR. ECCLES: Yes.

5 MR. GOODWIN: Okay. Thank you. And you say
6 someone else wanted to --

7 MR. HENDERSON: Yes, sir.

8 MR. GOODWIN: Okay.

9 MS. MILLER: Good morning.

10 MR. GOODWIN: Good morning.

11 MS. MILLER: I am Roslyn Miller, McKinney
12 Housing Authority executive director. I want to take a
13 moment to thank all of you for your service to the State
14 of Texas. And to thank all of you all for your comments
15 as well.

16 The McKinney Housing Authority and our clients,
17 we all thank you for this opportunity to consider this
18 appeal. The City of McKinney, McKinney Housing Authority
19 was built over 50-plus years ago. And the Merritt Homes
20 property is an 86-unit property that has been serving this
21 community for that 50-plus years.

22 That 86 units haven't been upgraded or
23 redeveloped in that entire time. So you can imagine,
24 you've got the old public housing property with the
25 clotheslines outside, and so we're happy to do our laundry

1 and get that fresh air. However, they do need some
2 upgrades.

3 With that being said, our entire city has
4 joined us in this effort. Not only the mayor and city
5 council, the largest homeless shelter there, as well as
6 our church community, all of them are joining in this
7 effort to bring this project to redevelopment.

8 The East side community has come together to do
9 a community revitalization plan. And we are all looking
10 forward to revitalizing this property and bringing in
11 additional housing units to our community.

12 As you are well aware, the City of McKinney was
13 noted as the first and second best place to live in the
14 country for two times since 2010. And it has grown
15 tremendously. We don't have all of the infrastructure,
16 nor housing or transportation that we need, but our
17 officials in the area are certainly moving forward to do
18 just that.

19 Our State Senator Scott Sanford also sent a
20 letter approving this project in hopes that you all would
21 join us in revitalizing this area as well. I'll be happy
22 to take any questions if you have any.

23 MR. GOODWIN: Any questions?

24 (No response.)

25 MS. MILLER: Thank you all very much.

1 MR. GOODWIN: Thank you. Anyone else that
2 wants to speak to this application?

3 MR. PALMER: I will be the last speaker on this
4 application.

5 MR. GOODWIN: Good morning.

6 MR. PALMER: Barry Palmer with Coats Rose, and
7 we represent the developer on this.

8 This is one of the appeals -- and I believe
9 that there are three of them -- that fall into the all-or-
10 nothing category, where people signed up for points. In
11 our case it was twelve. We clearly qualified for eleven.

12 Or, we thought that we qualified for twelve, but the
13 interpretation of the language -- I give staff the --
14 certainly it could have gone either way. But staff
15 determined we only qualified for eleven, but we got zero.

16 Now, this to me is really the hardest of the
17 changes in policy, or scoring of the applications to take,
18 because this has really been a well documented precedent
19 of how the staff has handled this over the past ten years
20 and I think -- I know the other applications that's coming
21 up on this same issue, the Ted Trout application, Audrey
22 Martin has documented a number of cases.

23 I think it is seven or eight or whatever,
24 include some from last year where this exact same thing
25 happened on point items where you signed up for three, you

1 only qualified for two, they gave you two, they didn't
2 give you zero.

3 So I can understand that there might be policy
4 reasons for making this change. But I think that there
5 are policy considerations to not make the change. But
6 it's something that's so big a change, it's something that
7 should have gone through the discussion process.

8 I mean, to the Department's credit, they spend
9 an enormous amount of time and energy getting input on the
10 QAP itself. I mean, they've already been having workshops
11 for the last couple of months on next year's QAP, on every
12 scoring item, every word in the QAP. And to do all that,
13 but then to totally change your scoring process just
14 overnight without giving any notice to the development
15 community --

16 This item in particular, if it had been changed
17 in the rules and people were told this is the way we're
18 going to score, I think you would have found developers
19 taking a different approach on how they scored their
20 applications. If they thought that they definitely would
21 get eleven, twelve was a stretch, you can make a case for
22 it, but maybe not, then they probably would sign up for
23 eleven if that's going to be the rule.

24 But these applicants have all spent enormous
25 time and money. The average cost of one of these

1 applications is \$50,000 to \$75,000. This is something, if
2 you're going to change your entire scoring process, that
3 you need to let people know before the round starts. We
4 just found out last month, I believe, that this was the
5 new way of scoring applications.

6 So that's all I really have to say about it. I
7 would say that there are two other applications that have
8 pretty much the exact same issue on a different scoring
9 item. And that you might want to hear what they have to
10 say, before making a decision on all three. But that's
11 your decision.

12 MR. GOODWIN: Thank you, Mr. Last Speaker.

13 (General laughter.)

14 MR. GOODWIN: Any questions or comments for
15 Barry?

16 MR. GANN: No.

17 MS. BINGHAM ESCAREÑO: No.

18 MR. GOODWIN: Okay.

19 MS. LATSHA: If you don't mind, I just want to
20 make a quick clarification. And I think I said this at
21 the beginning of my earlier comments, that I was simply
22 making comment on the process, and not on any particular
23 appeal or application.

24 MR. GOODWIN: Correct.

25 MS. LATSHA: Thank you.

1 MS. BINGHAM ESCAREÑO: Mr. Chair, I'm prepared
2 to make a motion, if we're ready.

3 MR. GOODWIN: Okay.

4 MS. BINGHAM ESCAREÑO: I'd like to move to
5 approve the appeal for applicant 17036, Merritt McGowan
6 Manor.

7 MR. GOODWIN: Do I hear a second?

8 MR. BRADEN: Second.

9 MR. GOODWIN: Second, Mr. Braden.

10 MS. BINGHAM ESCAREÑO: Yes. I should have said
11 to approve the appeal for the eleven points under
12 10.11(e)(2)(C). And that my understanding is, that would
13 then reinstate the pre-app points, the six.

14 MS. HOLLOWAY: The pre-application points, yes.

15 MS. BINGHAM ESCAREÑO: Okay. So Mr. Applicant,
16 is that what your request was in the appeal?

17 MR. HENDERSON: Yes, ma'am.

18 MR. GOODWIN: Okay. Second okay, with that
19 addition?

20 MR. BRADEN: That was my understanding of that.

21 MR. GOODWIN: That was your understanding as
22 well.

23 Any other discussion?

24 (No response.)

25 MR. GOODWIN: All those in favor say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Any opposed?

3 (No response.)

4 MR. GOODWIN: So the appeal is granted.

5 MS. HOLLOWAY: So this is -- our second
6 application is 17708, Cedar Ridge Apartments. This
7 applicant does not qualify for three points related to
8 underserved area, because the census tract includes areas
9 that are not within the boundaries of an incorporated
10 area, and does not qualify for four points related to
11 input from community organizations, because the letter
12 submitted is not eligible for points under that item.

13 The Applicant did not appeal the loss of four
14 points related to input from community organizations. So
15 on 11.9(c)(6), Underserved Areas, in order to qualify for
16 those three points, the application must include evidence
17 that the development site is in the census tract that is
18 within the boundaries of an incorporated area.

19 Documents in the application indicated that
20 portions of the census tract are outside of the
21 incorporated area. The appeal asserts that the language
22 of the rule does not contain any indication that the
23 census tract must be entirely within the incorporated area
24 of the city.

25 The appeal also asserts that they should have

1 been allowed to change that scoring selection under this
2 item, via the administrative deficiency process. So that
3 would have taken them from three points to two.

4 The application requested three points under
5 this scoring item, indicating on the application form that
6 the development site is located in a census tract within
7 the boundaries of an incorporated area. But real, the
8 application showed that the census tract extends beyond
9 bad incorporated area, and therefore, the application does
10 not meet the requirements for that three point scoring
11 item.

12 Staff recommends that the Board deny the
13 appeal. Questions?

14 MR. GOODWIN: Any questions?

15 MS. BINGHAM ESCAREÑO: So the only points in
16 questions are those; the requested three that weren't
17 qualified for. And then the appeal is relative to
18 requesting the two.

19 MS. HOLLOWAY: Yes.

20 MR. GOODWIN: So again, I am going to ask for a
21 motion to accept public comment and possible further
22 questions for staff.

23 MS. BINGHAM ESCAREÑO: So moved.

24 MR. GOODWIN: Second?

25 MR. GANN: Second.

1 MR. GOODWIN: Moved and seconded by Ms. Bingham
2 and Mr. Gann. All in favor, say aye.

3 (A chorus of ayes.)

4 MR. GOODWIN: Okay. Questions? Comments. Oh,
5 I'm sorry. Michael has a letter to read into the record.
6 You just told me that three minutes ago.

7 MR. LYTTLE: Letter addressed to the Board from
8 State Representative Ernest Bales.

9 "I have the honor of representing the good
10 people from House District 18. There is an acute need for
11 quality affordable housing for the hardworking families I
12 serve, who live in small towns in rural areas. I greatly
13 appreciate the fact that the Texas Department of Housing
14 and Community Affairs has worked with the Texas
15 Legislature to find innovative ways to serve rural areas
16 and small towns.

17 "Texas Government Code Section 2306.6725
18 Subsection A requires that, 'in allocating low income
19 housing tax credits, the Department shall score each
20 application using the point system based on criteria
21 adopted by the Department that are consistent with the
22 Department's housing goals, including the addressing the
23 ability of the proposed project to serve traditionally
24 underserved areas.' Additionally, Texas Government Code
25 Section 2306.6725(b) requires that the Department shall

1 provide appropriate incentives, as determined through the
2 Qualified Allocation Plan to reward Applicants who agree
3 to locate the development in a census tract in which there
4 are no other existing developments supported by Housing
5 Tax Credits.

6 "The Texas Legislature's clear intent is
7 manifest in the above provisions. Support should be
8 provided to underserved areas and census tracts not
9 supported by tax credits.

10 "The above referenced application is for a
11 development proposed to be located in the City of Dayton,
12 within Liberty County, Texas. The proposed site is within
13 a census tract that has not received credits previously.
14 Therefore, it falls squarely within the statutory
15 provisions cited above.

16 "However, it has come to my attention that the
17 Department has denied points to this application because
18 the underserved census tract is not entirely within the
19 City of Dayton. The Department should endeavor to find
20 solutions for serving underserved areas, not look for
21 reasons to deny resources for areas such as District 18.

22 "If only census tracts that are entirely within
23 cities may be utilized as a vehicle to serve small towns
24 and rural areas, then every city in Liberty County would
25 be ineligible for the points and incentives the Texas

1 Government Code clearly intended to focus on these areas.

2

3 "It is my sincere hope that the TDHCA will work
4 to find ways to expand rather than limit housing
5 opportunities for families in rural areas. To that end, I
6 urge you to support the Cedar Ridge application.

7 Respectfully, Ernest J. Bales IV."

8 MR. GOODWIN: Thank you, Michael. I might
9 point out, before we hear them, but you want them to come
10 on up. I think it was kind of a direction in the first
11 vote that was given as it relates.

12 And these are all kind of the -- the next two
13 are about the same thing, are they not, Marni? So you
14 know, sometimes you don't want to say things that might
15 hurt your case. Just a little tip.

16 MS. BAST: Thank you.

17 MR. GOODWIN: I was wrong.

18 MS. BAST: I am Cynthia Bast of Locke Lord.

19 And representing the Applicant on this appeal. I do want
20 to take the opportunity to thank and welcome our new Board
21 members for your amazing commitment to this agency.

22 Mr. Goodwin, you are absolutely right. This is
23 same song, second verse, and a continuation of our ongoing
24 struggle with regard to underserved areas. One day, we
25 are going to get it right.

1 In the past few years, I have had to talk to
2 you about interpretations about colonias, and on census
3 designated places. And now this year, I have the
4 juxtaposition of Paragraph (c) and Paragraph (d) and the
5 interpretation of those paragraphs.

6 Marni spoke about giving all or none of the
7 points and some perceived leniency for applicants. And I
8 just want to return us to the rules for just a brief
9 moment and to show us that I don't think that we are
10 granting leniency if we are squarely within our rules.
11 And there are three sections of this rule that I think
12 firmly establish the grounds for this appeal.

13 First, the rule says, an Applicant may qualify
14 for up to five points if the development site is located
15 in one of the following areas. So that says up to.

16 Then it says, and the application contains
17 evidence substantiating qualification for the points.
18 This application had evidence substantiating qualification
19 for two points, but not three points.

20 Finally, if you look at subparagraph (d)
21 offering two points for which we would propose to qualify.

22 It starts with the phrase, for the areas not scoring
23 points for (c) above.

24 So there you have it. The rule clearly
25 indicates that you have the ability to award two points

1 when they are substantiated in the application, if those
2 three points are not substantiated in the application.
3 Thus, I believe that two points should be awarded to this
4 application.

5 I will not hammer on the administrative
6 deficiency issue that you have heard so much about, but I
7 would say, this is an inconsistency, and both the
8 Government Code and our rules allow the correction of
9 inconsistencies. The Applicant requested three points,
10 but in other pages of the application provided
11 substantiation for two points. That is inconsistent,
12 clearly. So we request that you grant this appeal, and
13 appreciate your time. Thank you.

14 MR. GOODWIN: Thank you. Any questions?

15 (No response.)

16 MR. GOODWIN: Anyone else speaking to this
17 application?

18 (No response.)

19 MR. GOODWIN: If not, I would entertain a
20 motion from the Board, how the Board might proceed.

21 MS. BINGHAM ESCAREÑO: Mr. Chair, I will move
22 approval of the Applicant's appeals for 17708, Cedar Ridge
23 Apartments to provide two points.

24 MR. GOODWIN: I hear a motion. Do I have a
25 second?

1 MR. VASQUEZ: Second.

2 MR. GOODWIN: Second by Mr. Vasquez. Any other
3 discussion, questions?

4 (No response.)

5 MR. GOODWIN: All in favor, say aye.

6 (A chorus of ayes.)

7 MR. GOODWIN: Any opposed?

8 (No response.)

9 MR. GOODWIN: The appeal is granted.

10 MS. HOLLOWAY: Our next item is 17736,

11 Providence at Ted Trout Drive. This is that same three-
12 point item. In order to qualify for three points, the
13 application must include evidence that the development
14 site is in a census tract within the boundaries of an
15 incorporated area.

16 Documents in the application indicated that
17 portions of the census tract are outside of the
18 incorporated area. The Applicant has confirmed that the
19 application does not qualify for three points under this
20 item.

21 It states in their appeal that historic
22 precedent related to the use of the administrative
23 deficiency process and scoring adjustments. They asserted
24 the Applicant should have been allowed to change its
25 selection to two points.

1 The appeal also mentions the treatment of
2 another application, 17148 Shady Shores, regarding this
3 same scoring item. That application requested three
4 points, checked the box for two points and provided
5 evidence for two points. So it was a -- this is where we
6 get to this human error -- what is human error, and what
7 is truly a deficiency. On this one, we could see that the
8 intent really was to get those two points. So that is the
9 parsing out that we need your assistance with today.

10 MR. GOODWIN: Okay.

11 MS. HOLLOWAY: So the Applicant has requested
12 points for which he is not eligible and staff recommends
13 denial of the appeal.

14 MR. GOODWIN: Okay. Do I hear a motion?

15 MS. BINGHAM ESCAREÑO: Move to approve the
16 appeal for 17736, Providence at Ted Trout.

17 MR. GANN: Second.

18 MR. GOODWIN: Second. Motion made by Ms.
19 Bingham, seconded by Mr. Gann. Any discussion?

20 (No response.)

21 MR. GOODWIN: Comments?

22 MS. MYRICK: Hello. Let me do this, before I
23 forget.

24 MR. GOODWIN: Okay.

25 MS. MYRICK: The mind is not what it used to.

1 Congratulations on your appointment, Mr. Chair.

2 MR. GOODWIN: Thank you.

3 MS. MYRICK: We certainly look forward to
4 working with you. And we certainly welcome the new Board
5 members. It will also be a pleasure to work with you in
6 the future as well.

7 My name is Laura Myrick. And I am within
8 Beckett Consulting. And I am here to speak on Ted Trout.
9 Probably a little different position.

10 We also filed a third party administrative
11 deficiency request on this application in this very
12 application, in this scoring criteria. You probably have
13 it in your Board packet.

14 But what we thought to -- what we thought of
15 was, that in this category, the application did request
16 three points for underserved. They clearly did not meet
17 the requirement for the three points. They did meet the
18 requirement for the two points.

19 We certainly understand that. However, if you
20 look at their application, what they did, they took a step
21 further. They actually put "no" next to the box where the
22 points that they are eligible for -- they actually put no
23 there.

24 So what we looked at was, they didn't -- they
25 weren't eligible for the three points that they asked for,

1 where they put yes. But they further put "no" on the box
2 where the points that they were eligible for. So that is
3 what we wanted to bring up.

4 That is a very difference stance, is that what
5 we wanted to bring up -- that is a very different stance,
6 is that what we wanted to do is to point out that not only
7 did they not have the three points, but they actually put
8 next to the box where they did qualify for those two
9 points, the Applicant declined it.

10 We didn't do that. TDHCA didn't do that. The
11 Applicant put "no." So that is probably the distinction
12 that we want to make.

13 The other thing is that before the filing of
14 the application, there was some comment on this rule. But
15 there was an FAQ that was also issued before the
16 applications were filed, where an Applicant could have
17 seen that this side would not have qualified for the
18 three.

19 It would have qualified for the two. Again,
20 there was information out there. There was a way to look
21 at this. What we also looked at in the application was
22 that the Applicant declined the two points. And that is
23 the distinction that we wish to make.

24 MR. GOODWIN: Any questions?

25 (No response.)

1 MS. MYRICK: Okay.

2 MR. GOODWIN: Thank you.

3 MS. MARTIN: Hello again. My name is Audrey
4 Martin, with Purple Martin real estate. This time, I am
5 speaking on behalf of the Applicant for Providence at Ted
6 Trout Drive. So I just wanted to respond to a few of the
7 comments that Laura just made.

8 First off, this is exactly the same situation
9 as the appeal that you just granted. So kind of departing
10 with -- I am not really sure what would be the reason for
11 that. The distinction that Laura made is a categorization
12 that I don't agree with.

13 She is stating that we checked a "no" box on a
14 form. We checked a "no" box so that we didn't leave
15 blanks in an application. It is as simple as that.

16 We weren't declining points. There is a form
17 that says, choose one of the following. We chose one and
18 we didn't leave blanks on the others. We provided
19 documentation that the application qualified for two
20 points.

21 We didn't have to provide anything supplemental
22 to prove that up. The documentation that existed in that
23 application, the development's location that is
24 unquestionable, and existed on March 1st supports two
25 points. And we would just respectfully request that the

1 Board grant our appeal, and award two points to this
2 application.

3 MR. GOODWIN: Thank you.

4 MS. MARTIN: Thank you.

5 MR. GOODWIN: Any questions?

6 (No response.)

7 MR. GOODWIN: Any other speakers?

8 (No response.)

9 MR. GOODWIN: If not, we will take a vote on
10 the motion. All those in favor, say aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: Any opposed?

13 (No response.)

14 MR. GOODWIN: The appeal is granted.

15 MS. MARTIN: Thank you.

16 MR. GOODWIN: Thank you. The next group?

17 MS. HOLLOWAY: You ready? The next application
18 is 17363, for Residences of Long Branch. The application
19 does not qualify for three points under 10 TAC 11.9(c)(6),
20 related to underserved area. Because the site does not
21 include -- the application does not include evidence that
22 the development site is in a census tract within the
23 boundaries of an incorporated area.

24 And four points under 11.9(d)(6) related to
25 input from community organizations. Because the

1 application did not include evidence of the organizations
2 that provided letters to score points under this item are
3 tax-exempt organizations.

4 This one is a little bit different than the
5 ones that we talked about. Because we just don't have
6 evidence within the application. This is something that
7 potentially would have been curable in the past. I can't
8 tell you that for sure.

9 So this is one of those places that we need
10 your direction. For 11.9(c)(6), part of that rule says,
11 the application contains evidence substantiating
12 qualification for the points.

13 The appeal asserts that staff could use various
14 documents within the application to conclude that the site
15 qualifies for the points. The application did not include
16 documentation of the boundaries of the entire census
17 tract, or of the positioning of those boundaries relative
18 to the boundaries relative to the boundaries of the
19 incorporated area.

20 So there was a map somewhere else in the
21 application that we could go to, to verify that. On input
22 from community organizations, the development site must
23 now fall within the boundaries of any qualifying
24 neighborhood organization.

25 And the application must include support

1 letters from a tax-exempt community or civic organization
2 that serves the community in which the development site is
3 located. The Applicant included such letters and
4 screenshots from the organization's websites, but did not
5 include evidence that the organizations were tax-exempt.

6 The rule states in part that if the community
7 or civic organization must provide evidence of its tax-
8 exempt status. The letters and screenshots of the
9 organization's website self describing themselves as
10 nonprofit are not commonly accepted as reliable evidence
11 of a tax-exempt status.

12 The appeal states that they should be able to
13 correct these omissions through an administrative
14 deficiency. Staff is recommending that the Board deny the
15 appeal.

16 MR. GOODWIN: Any questions?

17 (No response.)

18 MR. GOODWIN: Since the circumstances are a
19 little different on this one, compared to the others, how
20 many would fall into this similar category?

21 MS. HOLLOWAY: Probably several.

22 MR. GOODWIN: Several?

23 MS. HOLLOWAY: Several.

24 MR. GOODWIN: Okay.

25 MS. HOLLOWAY: This one is not as -- we are

1 requesting two points instead of three points. It is, we
2 are requesting three points. And if you would have let us
3 provide additional information, we could prove it up.

4 MR. GOODWIN: Okay.

5 MS. HOLLOWAY: And the same with the community
6 organizations.

7 MR. GOODWIN: And was the additional
8 information, should it, or should it not have been
9 included in the original application?

10 MS. HOLLOWAY: It should have been included in
11 the original application. This is, again goes back to
12 that -- what is allowable under an administrative
13 deficiency. What can we fix. What can we not fix?

14 MR. GOODWIN: And the others, we had that
15 information within the application.

16 MS. HOLLOWAY: Right.

17 MR. GOODWIN: It is allows us to go from three
18 points to two points, or twelve to eleven.

19 MS. HOLLOWAY: Uh-huh.

20 MR. GOODWIN: But here, there is no information
21 in the application. It would have to be supplied as
22 supplemental information?

23 MS. HOLLOWAY: Yes.

24 MR. GOODWIN: Okay.

25 MS. HOLLOWAY: Absolutely.

1 MR. GOODWIN: So this time, I look for a motion
2 to accept public comment before we get into --

3 MS. BINGHAM ESCAREÑO: I will so move.

4 MR. GOODWIN: So moved?

5 MR. GANN: Seconded by Mr. Gann.

6 MR. GOODWIN: All in favor, say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Okay.

9 MS. BINGHAM ESCAREÑO: Mr. Chairman, can I ask
10 Marni a question real quickly.

11 MR. GOODWIN: Sure.

12 MS. BINGHAM ESCAREÑO: Because I may not have
13 heard you. Did you say just a minute ago that this one,
14 just this one right now that we are doing, that something
15 like this in the past was satisfied with an administrative
16 deficiency?

17 MS. HOLLOWAY: Potentially.

18 MS. BINGHAM ESCAREÑO: Okay. That is fine.
19 Yes. I didn't mean to pin you in. I just didn't know if
20 I heard "was" or "wasn't."

21 MS. HOLLOWAY: Yes.

22 MS. BINGHAM ESCAREÑO: Okay. I have got you.

23 MR. GOODWIN: Okay.

24 MR. LITNER: Good morning, Chairman. Members
25 of the Board. My name is Craig Litner with Pedcor

1 Investments. And I am representing the Applicant, of
2 Residence of Long Branch.

3 Pedcor has submitted several applications over
4 the past few years, and we are very familiar with the
5 review process. We do a good job, to the point that staff
6 used our 9 percent application from last year as an
7 example at this year's workshop.

8 That being said, like everyone else has said
9 today, it is impossible to submit a perfect application.
10 And when we received the mistakes or deficiencies, we own
11 the mistake. We correct those deficiencies in a timely
12 manner and we try not to make those mistakes again.

13 The difference here is that we are having
14 trouble owning mistakes that don't exist. First, the site
15 definitely qualifies for three underserved points. There
16 is no doubt that the site is within a census tract with no
17 other existing tax credit developments.

18 The application requires that we submit a
19 census tract map showing the location of the site, and
20 indicate that we are requesting three points, which we did
21 in Tabs 8 and 9. Tab 10 is a checklist of supporting
22 documentation, which is in your supplemental Board book on
23 page 188.

24 And it is important because unlike a colonia or
25 an economically distressed area, there is no requirement

1 to submit another census tract map. And this makes sense
2 because a census tract map is already submitted, which is
3 all you needed to determine eligibility for points.

4 As we pointed out in our appeal to the
5 Executive Director, we submitted the exact same thing last
6 year, and were awarded points. And neither the
7 application or scoring is changed in a material way. So
8 there was no lesson that we should have learned from a
9 previous application.

10 Still, when staff issued the deficiency this
11 year, we went ahead and sent in another map, zoomed out
12 slightly farther, to show the entire census tract.
13 Nowhere in the rural application, manual, anywhere, did
14 staff ask for a map that shows the entire boundary of the
15 census tract or the city boundaries, which is again, the
16 same as last year.

17 And this is where our frustration comes in,
18 where it is hard to take ownership of a mistake. We
19 submitted the map in the original application. When there
20 was a request for another map, we submitted that. But we
21 are still in a position where staff wants to dock points.

22
23 So we have done everything we have been asked
24 to do. And as you just heard from Marni earlier today,
25 relative to Blue Flame, staff actively went out and

1 researched that site to make sure that it was in a
2 community revitalization area.

3 But yet, the write-up for this item says, staff
4 does not engage in proving that an application qualifies
5 for points. So those two things contradict each other.

6 This application also qualifies for points for
7 input from community organizations. The fact is we
8 submitted two letters from two organizations that are tax-
9 exempt. As was suggested in the workshop this year, we
10 were to submit screenshots, which we did. Yet the
11 supplement of the Board book says that letters and the
12 screenshots of the organization's websites self-
13 describing them as being nonprofit are not commonly
14 accepted, even though this was suggested in the workshop.

15
16 So again, another contradiction. But again,
17 the real key here is that the application materials for
18 this item do not require specific documentation. There is
19 nothing specific that is required.

20 So when staff issued the deficiency, asking
21 about the status, we pointed to the information in the
22 letters themselves, which clearly state that they are
23 nonprofits. We also sent in more information, as well as
24 the determination letters from the IRS, and we did this in
25 a timely manner.

1 So once again, we are struggling to understand
2 when it was that we didn't do what was requested. And
3 again, we have done everything we were asked to do.

4 So I am here today to respectfully request that
5 you award our appeal, or grant our appeal and award the
6 points for both underserved areas and input from community
7 organizations. Thank you.

8 MR. GOODWIN: Thank you. Any questions?

9 (No response.)

10 MR. GOODWIN: Thank you.

11 MR. SHACKELFORD: Good morning. John
12 Shackelford, with Shackelford, Bowen, McKinley and Norton
13 in Dallas, and we represent the Applicant on this matter.

14
15 Good morning, Mr. Goodwin -- Chairman Goodwin,
16 the rest of the members of the Board and Mr. Irvine and
17 Mr. Eccles. To the new Board members, welcome to the
18 circus. We appreciate you giving of your time.

19 As Mr. Litner just described, you know our
20 first position is that we think that we did satisfy the
21 rules. The people that put together the applications, as
22 Mr. Litner mentioned to you, had done these in the past.
23 We have been a model for doing good applications.

24 We think we have satisfied the rules as
25 written. We try to be cognizant of what the new rules

1 are. Nothing really changed in this point-scoring item
2 from the previous year.

3 The things that Mr. Litner mentioned that we
4 had provided to staff was what was provided in previous
5 years. And so we think we complied.

6 Alternatively, just assume for a moment, if we
7 did not, in this view that staff is taking this year, let
8 me speak to that.

9 In addition to agreeing with what Mr. Jackson
10 said earlier, and Ms. Martin and Ms. Latsha and Ms.
11 Anderson, agree with all of what they had to say. And Ms.
12 Bingham, Commissioner, what you said at the outset, too.

13 Staff and Board members already recognize that
14 there has been a shift. What I would like to say to the
15 new Board members is, this is not just a small shift by
16 staff. This is a seismic shift by staff in how the
17 approach is to the administrative deficiency process.

18 And I appreciate what Marni said earlier today
19 as well, as just sort of clarifying her comments that she
20 made at the last month's Board meeting. I think that was
21 very generous on her part to do that. So we think, first
22 off, that we complied with the rule as it is.

23 But secondly, if we did not, we think this does
24 fall under the administrative deficiency process under the
25 10 TAC rules that Marni mentioned earlier, that was read

1 into the record by Mr. Jackson. We think this is just
2 supplementing material that could be supplemented.

3 The rules don't require that the census tract
4 map show that it is entirely within the boundaries. Staff
5 easily could have asked us, hey, can you supplement your
6 application with respect to this, and we would have done
7 so. Same for the community points as well.

8 In addition to the screenshots, the letters
9 from the nonprofit entities themselves saying that they
10 are nonprofits. If they had said, you know, can you
11 supplement that by providing us with the IRS determination
12 letters, we could have done that.

13 So we have been consistent with what we have
14 done in the past. And the other point I would like to
15 make before we get off this administrative deficiency
16 process is, I want to echo what Barry Palmer said as well,

17 In connection with the change in the point
18 system is, you know, if staff wanted to make a change in
19 policy on how they are going to interpret what complies
20 with the administrative deficiency process, I feel like
21 something that has changed this dramatically from a
22 historical perspective, fair notice should have been given
23 to the development community. And I feel like there was
24 an oversight, probably on staff, that that wasn't done,
25 starting last year, in the workshops, leading into this

1 year. But by the time the applications got put together,
2 and then we find out just last month that staff is taking
3 a different position. I think that is inequitable.

4 And as Mr. Palmer mentioned, these applicants,
5 they spend \$50,000 to he said, maybe \$75,000. I have seen
6 some use as much as \$100,000 on these applications. That
7 is no small amount of money to have at risk, and to have
8 their application be jeopardized.

9 And not being able to just provide some
10 supplemental information that we think we have already
11 complied with in the first place. So I respectfully
12 request that you grant the appeal of this Applicant.

13 MR. GOODWIN: Any questions?

14 MR. BRADEN: Mr. Chair?

15 MR. GOODWIN: Yes.

16 MR. BRADEN: When was the 501(c)(3)
17 determination letter provided?

18 MR. SHACKELFORD: Well, we got an
19 administrative deficiency notice. But it said please
20 explain our position on why we thought we were entitled to
21 the points. But we were not allowed to submit any
22 additional information and that sort of that approach that
23 has taken this year on the administrative deficiency
24 process.

25 Despite the statement, don't provide us

1 anything, we provided it anyway. Just to try to make --
2 play it safe. So we ended up providing to the Department
3 those IRS determination letters.

4 MR. BRADEN: It wasn't provided as part of the
5 original application?

6 MR. SHACKELFORD: No, because we didn't think
7 we needed to, under what is required in the application.
8 Our interpretation of what is required in the application
9 or in the procedures manual, or by what is required by the
10 rules.

11 MR. GOODWIN: Any other questions?

12 (No response.)

13 MR. GOODWIN: Thank you, John.

14 MR. SHACKELFORD: Thank you.

15 MS. BAST: Cynthia Bast again, from Locke Lord,
16 here to support the appeal for this Applicant. For our
17 new Board members, I will note that you will be seeing a
18 lot of the Shackelford firm, the Coats Rose firm, and the
19 Locke Lord firm, because we regularly represent these
20 applicants.

21 But what you don't normally see is all of us
22 getting up here and agreeing with one another, and being
23 on the same page. And today, we pretty much are, with
24 regard to seeking the Board's determination that we need
25 to continue with the long-standing practice.

1 While we are here arguing about administrative
2 deficiencies, and whether a map was zoomed out far enough,
3 or placed behind one tab or another, I would like to point
4 back to something that Ms. Martin brought up, which is the
5 policy objectives of this program, as given to us by the
6 Legislature in a very legislative QAP with certain
7 priorities.

8 This particular development meets so many of
9 the policy objectives, in the Government Code and the
10 rules. And the Applicant simply wants to point those out,
11 so that that concept doesn't get missed in the minutiae of
12 these arguments.

13 This is a site that is right on a bus route,
14 within a half mile of commuter rail. It is rich in
15 amenities, with a library, a park, grocery store, jobs,
16 good schools. Even the community organization which
17 provided a letter of support is within walking distance
18 with a thrift store and a food bank.

19 Now, everyone thinks that they have a good
20 deal. And for the most part, that is true. Everyone
21 does. And it is going to make a tremendous impact on
22 whatever community gets a tax credit deal, but that is
23 exactly why we have these point priorities.

24 And to take these points away for this level of
25 technicality does not meet the policy objectives set forth

1 in our governing statute, and our rules for this agency.
2 And so we ask you to consider that as you regard this
3 appeal. Thank you.

4 MR. GOODWIN: Any questions?

5 MR. ECCLES: I have a question for Marni,
6 actually.

7 MR. GOODWIN: Okay.

8 MS. HOLLOWAY: Yes.

9 MR. ECCLES: Now, on this appeal, we are
10 talking about two things; underserved areas under
11 11.9(c)(6).

12 MS. HOLLOWAY: Yes.

13 MR. ECCLES: Which includes the requirement
14 that the application contain evidence substantiating
15 qualification for the points.

16 MS. HOLLOWAY: Yes.

17 MR. ECCLES: And in this instance, a census
18 tract within the boundaries of an incorporated area where
19 the census -- an incorporated area that has not received a
20 competitive tax credit allocation, and it continues from
21 there.

22 MS. HOLLOWAY: That is correct.

23 MR. ECCLES: The staff's position was, such
24 evidence did not exist in the original application. But
25 it, upon request has provided now?

1 MS. HOLLOWAY: The administrative deficiency
2 that -- how we are approaching deficiencies this year is,
3 we found this issue on their application. Please explain
4 to us how you still meet this criteria without submitting
5 additional information.

6 Going back to, Applicants may not supplement
7 their application. That is kind of the crux of this one.

8 In many cases, they have been able to say, oh, there is
9 this other map for this other thing somewhere else in the
10 application. And we would say, okay, that works. In this
11 instance, we did not have that available to us.

12 MR. ECCLES: The same for the second part of
13 this appeal where 11.9(d)(6) includes the requirement that
14 quote community or civic organizations must provide
15 evidence of its tax-exempt status.

16 MS. HOLLOWAY: Correct.

17 MR. ECCLES: Such a proffer from the community
18 organization was not made initially, but subsequently upon
19 not you asking for it under an administrative deficiency,
20 but it was proffered anyway.

21 MS. HOLLOWAY: Correct.

22 MR. ECCLES: So really, the crux of this is
23 whether staff should have asked under an administrative
24 deficiency for these things that were not in the
25 application as stated by the rule and interpreted by

1 staff.

2 MS. HOLLOWAY: Yes. I would agree with that.

3 MR. ECCLES: And this is the question that is,
4 I think going to be most relevant to what the Board does
5 next. Had these materials now, whether you ask for them
6 or not, joined the record such that if the appeal were
7 granted, points would be available under the requested
8 sections.

9 MR. IRVINE: In other words, phrased another
10 way, if it is granted, will the record have substantiation
11 for the points that are conferred?

12 MS. HOLLOWAY: I would imagine that if the
13 deficiency response included those items and they are
14 posted to the application, in the deficiency response
15 section, of course, that becomes part of the application
16 document.

17 MR. ECCLES: However, here they were not asked
18 for in the administrative deficiency process.

19 MS. HOLLOWAY: Well, and I don't know that we
20 are sort of parsing out what we asked for and what we
21 didn't ask for. We are just putting it in there.

22 MR. IRVINE: Well, I also think that to the
23 extent that we are asking for more guidance on how to
24 administer the administrative deficiency, it is within
25 their larger authority to say yes. Treat this one as an

1 administrative deficiency and accept that as a response.

2 MR. ECCLES: Indeed. And that is what I am
3 trying to delineate where the record is, where the
4 application is at this moment, as it relates to the points
5 initially requested.

6 MS. HOLLOWAY: As it relates to the points,
7 they have received a scoring notice that takes away the
8 points for these two items. Because their response in
9 their administrative deficiency, while it provided this
10 information we didn't ask for, they did not tell us how
11 the application as submitted meets these requirements.

12 MR. ECCLES: But the matters that they have
13 submitted at this point, would they satisfy --

14 MS. HOLLOWAY: Had they been in the application
15 to begin with, there never would have been a deficiency.

16 MR. ECCLES: Yes. That is where I am going.

17 MR. GOODWIN: Okay.

18 MS. BINGHAM ESCAREÑO: But you have them in
19 your hand now. You have the two -- whatever documents
20 satisfied those two --

21 MS. HOLLOWAY: The Applicant went ahead and
22 sent more than we requested, and included the information
23 that should have been in the application to begin with.

24 MR. GOODWIN: Okay.

25 MR. BRADEN: So historically, with respect to

1 the evidence of tax-exempt status, have we asked for and
2 received 501(c)(3) letters?

3 MS. HOLLOWAY: Actually what I found out that I
4 thought was a little distressing was that in years past,
5 if that information wasn't there, that program staff,
6 reviewers were going and looking for it and doing that
7 research for the Applicants. And actually, I need to
8 speak to this -- the research comment about Blue Flame.

9 I was actually doing research to shore up my
10 position that that site was outside of the CRP when I
11 found that terms thing. So I mean, I was getting it all
12 together to come talk to you all and found out that in
13 fact, this was the true situation. And you can't unknow
14 what you know. So there is the distinction.

15 MR. GOODWIN: Great.

16 MR. BRADEN: But the factual matter, the
17 Applicant was a 501(c)(3) entity. This determination is
18 probably years old. It is not like they got a recent
19 determination?

20 MS. HOLLOWAY: I don't know the age of that
21 particular organization that was providing that support.
22 I am aware that yes, sometimes letters get stale. We do
23 not have a current requirement and rule for --

24 MR. BRADEN: No. What I am trying to determine
25 is, they didn't neglect to put it in the file, because

1 they were waiting for it to show up in the mail.

2 MS. HOLLOWAY: I don't believe so. I would
3 imagine, if that was the issue, we would have heard that.

4 MR. GOODWIN: But Paul, I want to make sure
5 that it is -- this is some entity supporting the
6 application, not the Applicant.

7 MR. BRADEN: Right. That is correct.

8 MS. HOLLOWAY: Right.

9 MR. GOODWIN: Okay. John, you wanted to make
10 another comment?

11 MR. SHACKELFORD: Just real quick, Mr. Eccles.
12 John Shackelford, here on behalf of the Applicant. We
13 did provide a map in the original application, just for
14 clarity's sake.

15 There was a map in there, showing the location
16 of the site, showing the census tract. The map that staff
17 is asking for, in hindsight, that is not required by the
18 rules. I would say it is almost as if we have to read
19 their minds for what they were looking for -- is a map
20 that shows, like it was mentioned, a wider view, that
21 shows that the entire boundaries of the census tract are
22 located in an incorporated area.

23 That is the map that was being sought. We
24 provided a map that showed again, the census tract and
25 where our site is. But it just wasn't a wide enough view

1 back that showed the entire boundary of the census tract
2 being located within an incorporated area.

3 And then I would say, on the IRS letters, you
4 know, you can get IRS determination letters for a
5 nonprofit last year, and it has already been revoked. And
6 so even providing IRS determination letters really isn't
7 full evidence that currently the nonprofit is a nonprofit,
8 tax-exempt entity.

9 MR. ECCLES: Well, and just to the point of
10 needing to read staff's mind on this one, the rule states
11 that the Applicant has to proffer evidence substantiating
12 qualification for the points. And the points are, a
13 census tract within the boundaries of an incorporated
14 area.

15 So whether it is one map or two maps that show
16 that, it is just to say that, if you included that
17 evidence, they would have seen it. Did you -- are you
18 saying that the application included maps or information
19 that would have enabled staff to determine that the
20 development was in a census tract within the boundaries of
21 an incorporated area?

22 MR. SHACKELFORD: Let me first say, I think the
23 discussion we are having proves why the administrative
24 deficiency process would be applicable. Because your
25 interpretation of what that says, I think is different

1 from my interpretation of what that says.

2 MR. ECCLES: I understand.

3 MR. SHACKELFORD: Because we are in the census
4 tract. That satisfies the requirements. We are in an
5 incorporated area, and inside it, is inside that census
6 tract. I think we just satisfied the reading that you
7 just gave.

8 And so therefore, I think if we have an issue
9 like this come up, that is then incumbent upon staff to
10 say, okay. This is where you put the administrative
11 deficiency process, Applicant. Can you come back with
12 another map that shows that 100 percent of the boundaries
13 of your census tract lie within the incorporated area?

14 MR. ECCLES: And I understand your position. I
15 was actually addressing something else that you had said.

16 MR. SHACKELFORD: I think Mr. Litner would like
17 to talk also.

18 MR. LITNER: Yes. I would just like to clarify
19 a couple of things. So just to make sure we are clear, we
20 did submit a map as required in a previous tab.

21 As I mentioned in my speech, Tab 10 lists what
22 is required to go behind it, if you are claiming those
23 points in the manner that we were. And there is nothing
24 that is listed that should have gone in the application.
25 Okay.

1 But we did submit a census tract map. We were
2 not requested to submit another one. But on our own, we
3 went ahead and submitted one. It is in the Board book,
4 and it is zoomed out slightly further. And it shows the
5 whole census tract.

6 Similar to the community input letters. We
7 submitted what we thought was asked for, both in the
8 application and manual workshops. Even though we weren't
9 asked to submit more information, we submitted more on our
10 own.

11 So everything is in there. And just to
12 clarify, if you were to review, those points would be
13 awarded. Not just based on my opinion; based on what was
14 submitted on our own without request.

15 MR. GOODWIN: Okay.

16 MR. LITNER: Thank you.

17 MR. GOODWIN: Any other comments?

18 MR. LACEY: My name is Gary Lacey, and I am
19 going to kind of give a different slant on this, from the
20 other side. I represent one of the developers that are
21 bunched, you know, up in Region 3.

22 The QAP states on the community support
23 letters -- and this is just my opinion -- basically it is
24 looking for two different things. It wants the letter
25 from the nonprofit, and then it wants proof, evidence of

1 its tax-exempt status.

2 Now, that's a little bit different than just
3 the letter from the IRS stating, you know, that you got
4 this back in 2007. The status is active, inactive, those
5 type of things.

6 So there is actually two material pieces to
7 this. You are getting the letter. And then you are
8 getting also the tax-exempt status. So that is two
9 material pieces of information that are coming in.

10 What happened with this application is, they
11 did not submit a material fact, which was the status of
12 the tax-exempt entities. And then they wanted to try to
13 add it at the end, which should not be allowed.

14 MR. GOODWIN: Thank you for the opinion.

15 MR. LACEY: Thank you.

16 MR. GOODWIN: Any other speakers?

17 (No response.)

18 MR. GOODWIN: Do I hear I a motion on how the
19 Board might proceed?

20 MS. BINGHAM ESCAREÑO: Mr. Chairman, I will
21 move approval the appeal submitted for application 17363,
22 Long Branch.

23 MR. GOODWIN: Do I hear a second?

24 MR. VASQUEZ: Second.

25 MR. GOODWIN: Second by Mr. Vasquez. Any other

1 discussion?

2 (No response.)

3 MR. GOODWIN: All in favor, say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: All opposed?

6 (No response.)

7 MR. GOODWIN: Why don't you cool off just a
8 moment. We are going to take a little short ten minute
9 modern convenience break.

10 VOICE: Thank you very much.

11 (Whereupon, a short recess was taken.)

12 MR. GOODWIN: Marni, are you ready?

13 MS. HOLLOWAY: Okay. All right. Our next
14 appeal is application 17331. This is Westwind of Killeen.
15 This application does not qualify for three points under
16 10 TAC 11.9(c)(5) of the 2017 QAP, which is related to
17 educational quality.

18 Because the application did not include
19 evidence of the Index 1 score for the educational service
20 center. To qualify for two of the three points under
21 educational quality, the application must include evidence
22 that the development site is within the attendance zone of
23 an elementary school, a middle school and a high school
24 with an Index 1 score at or above the lower of the score
25 for the educational service center or the state-wide

1 score.

2 So this was the change that we made last year
3 to try to regionalize the educational scoring item and
4 allowing the use of the educational service center scores.

5 Scoring under this item requires documentation of the
6 Index 1 score for the individual campuses of the schools,
7 as well as the documentation of the Index 1 scores for the
8 state or the ESC region.

9 The application did not include evidence of the
10 Index 1 score for the region. The Texas Education Agency
11 publishes all of the scores for the individual campuses
12 and the regions.

13 The appeal mentions that staff has previously
14 determined that Applicants are not required to provide the
15 statewide score as staff has provided that score during
16 the application workshop. It is 75. Everybody knows what
17 it is.

18 Staff did not, however, provide the scores for
19 each of the twelve educational service regions in the
20 state. That documentation must come from the Applicant as
21 was the determination that they will use that educational
22 service center score rather than the statewide score to
23 qualify.

24 The appeal asserts that neither the QAP nor the
25 application requires the Applicant to include evidence of

1 the ESC score in the application. And takes the position
2 that the Applicant should have been allowed to provide
3 additional or clarifying evidence regarding this issue
4 through administrative deficiency.

5 So this is very similar to the last one. Staff
6 recommends that the Board deny the appeal.

7 MR. GOODWIN: Okay. Motion?

8 MS. BINGHAM ESCAREÑO: Do you want just a
9 regular motion.

10 MR. GOODWIN: If you are ready. It is very
11 similar to the last one.

12 MS. BINGHAM ESCAREÑO: I will move to approve
13 the appeal request for 17331, Westwind at Killeen.

14 MR. GOODWIN: Hearing a motion. A second?

15 MR. BRADEN: Second.

16 MR. GOODWIN: A second by Mr. Braden. Now we
17 can have discussion. Anybody want to speak to the motion?

18 MS. RICKENBACKER: My name is Donna
19 Rickenbacker. Let me put this down here. My name is
20 Donna Rickenbacker and I am the consultant to Salem Park
21 Company, who is appealing the loss of educational quality
22 points.

23 As Marni pointed out this year, in the
24 application, they qualify for three points, based on the
25 performance of the low goal public schools and whether the

1 Index 1 rating of such school, as determined by the Texas
2 Education Agency meets or exceeds the lower of the
3 educational service center region score, or the statewide
4 score. Our claim Texas application qualified for all
5 three points claimed, in part because the high school
6 serving the project has a TEA Index 1 rating that is equal
7 to the educational service center region score of 73.

8 Staff denied the points, stating that staff
9 found no information in the application to support the
10 points requested. We disagree obviously with this
11 finding.

12 The Applicant did submit the supporting
13 document stated as required in our rules, which includes
14 the attendance zone maps for each of the local schools,
15 that comes from the school district on the location of the
16 project site within the attendance zone's boundaries. And
17 the 2016 accountability summaries from a TEA website for
18 each school, showing in part, the Index 1 score of the
19 school for purposes of qualifying for the points.

20 There is nothing in the rules or the procedure
21 manual that require the Applicant provide evidence of the
22 educational service center or statewide scores. The rules
23 do require that the Applicant evidence the TEA Index 1
24 rating of all grade levels serving the project site in
25 order to receive the applicable points.

1 Staff also found that had we provided the
2 educational service center score in the box provided,
3 there may have been an opportunity to clarify and
4 supplement the application through the administrative
5 deficiency process. This too, is not correct. We feel we
6 did provide the score of the educational service center in
7 the box provided on the application form that is
8 applicable to our specific site, and the schools that
9 serve our site.

10 As illustrated in the poster board that I have
11 got in front of you, and hopefully that was handed out to
12 you all, is Tab 9 of the application form. The procedures
13 manual, and the page of which I hope you all have been
14 provided as well, walks the Applicant through the
15 completion of this tab, and instructs the Applicant to
16 identify each school serving the project site, and the TEA
17 Index 1 rating of the school, in the column next to the
18 school's Index 1 score.

19 There is a drop-down box where the Applicant is
20 required to select one of two options that tells the
21 Department whether or not the school score shown is the
22 ESC score or the statewide score. As instructed in the
23 procedures manual, again, made a part of your handout, we
24 completed this box with respect to the high school.

25 Because it is the only school serving the

1 project site that has a TEA Index 1 rating, that is equal
2 to the educational service center rating of 73. We
3 therefore selected ESC from the menu.

4 Staff is suggesting that we should have shown
5 the ESC score in the box next to the line that I have
6 highlighted in orange on the poster board illustration.
7 This section of the application form is not applicable to
8 our specific site.

9 Our site is in Killeen, Texas. And it is in
10 Killeen Independent School District. A school district
11 with attendance zone-based public schools.

12 The section of the form that is highlighted in
13 orange is specific to sites that are not located in
14 attendance zone-based school districts, and that do not
15 have, potentially, TEA ratings. So that is a completely
16 different section that an Applicant is required to
17 complete if their site fits that particular scenario.

18 So in summary, we did provide the ESC score.
19 We did provide it in the correct box. And I feel like
20 this is an appeal of form over substance.

21 And staff's interpretation after the
22 application was submitted, and counter to the procedures
23 manual, as to where they wanted to see, in our instance,
24 that 73 score in a box that is a half inch below the box
25 where we did put it. And we do believe it was put in the

1 box that was applicable to our site and our school
2 district.

3 MR. GOODWIN: Okay. Any questions?

4 MR. RESÉNDIZ: Mr. Chairman, if I may?

5 MR. GOODWIN: Yes.

6 MR. RESÉNDIZ: This may be a bit elementary,
7 but I get that pass, because I am new.

8 MS. HOLLOWAY: Yes, ma'am.

9 MS. RESÉNDIZ: So as far as the training that
10 our developers participate in, how do you all feel, and it
11 truly is a feelings-based question, how do you all feel
12 that our staff is doing as far as providing the
13 information that could help us avoid these missteps.

14 And it is not a knock on our staff at all,
15 because I have been thoroughly impressed with what they
16 are able to do with the money and the amount of resources.

17 But I also feel that that is an opportunity to work with
18 our developers in making sure that we are providing you
19 all with that information. But along the same line,
20 holding our developers accountable in making sure that we
21 are armed and ready, because we are able to have that
22 application in hand at a minimum, ahead of time, and then
23 us navigating that process together.

24 MS. RICKENBACKER: So I am at the mic. So that
25 is a loaded question. And I can answer it to the best of

1 my ability. First and foremost, staff does a great job.
2 I sincerely mean that.

3 They have a very constrained amount of time to
4 take rules that are signed into force by the Governor in
5 December and create an application form that is
6 appropriate and applicable to all these various scoring
7 categories, all the threshold items. It is a lot of work.
8 And they are short staffed, as you know.

9 The Governor is not allowing any additional
10 staff to be provided to TDHCA. So but it is -- and it is
11 very unfortunate. But I think ultimately, we ended up
12 with an application form and a set of procedures that are
13 contained within our manual.

14 A manual, that by the way, I believe was
15 approved in November, Tim, December, which is before the
16 rules were even approved. So there wasn't a lot of
17 ability to kind of mesh the final rules with that manual
18 that had been approved.

19 So I just think that there needs to be some,
20 you know, more time spent on creating manuals that really
21 do set forth the guidance that you need that isn't
22 necessarily recognized in the QAP rules that control our
23 program again. I think they do a great job.

24 I am just hoping that this next cycle, we can
25 kind of take the time and create rules that apply to this

1 program for >18 early, so that we have got the opportunity
2 to create a set of manuals and workshop materials that
3 really do home in on exactly what that Applicant needs to
4 provide. And we create an application form that is -- you
5 know, hopefully, minimizes any potential kind of errors or
6 risk or discrepancies.

7 MR. GOODWIN: Any other questions?

8 (No response.)

9 MR. GOODWIN: Thank you.

10 MS. RICKENBACKER: Thank you.

11 MR. GOODWIN: Any one else want to speak to
12 this matter?

13 (No response.)

14 MR. GOODWIN: No. Okay. We have a motion --
15 oh, here.

16 MR. SHACKELFORD: [away from microphone]

17 MR. GOODWIN: I understand.

18 MR. SHACKELFORD: The good thing is less --

19 MR. GOODWIN: Good.

20 MR. SHACKELFORD: John Shackelford, with
21 Shackelford, Bowen, McKinley and Norton, and representing
22 the Applicant. As Ms. Rickenbacker has pointed out, we
23 think we have provided the information that was necessary
24 for staff to say we satisfied this point-scoring item.

25 And I guess, I was a little baffled when I got

1 the notification from staff that where it said that we
2 didn't provide anything. And then we did the appeal
3 letter, and the response back was that we didn't provide
4 anything at all.

5 But as you can see from what is in your package
6 and then what is on the application form that we have on
7 the poster down here before you -- I mean, it is quite
8 clear, we list on the three schools, the high school, the
9 Met Standards, the score there is 73, and we say that is
10 the ESC score.

11 So I was a little confused. Because usually, I
12 mean, I don't always agree with staff, but I usually
13 understand the basis from which they are coming from. But
14 this one was a little unusual, because to say that we
15 didn't provide anything, it looks like -- and then on the
16 sheet there, you can see, it is a half inch above.

17 What I am interpreting it as, we didn't provide
18 it in the specific box that they think we should have
19 provided it in, but that is not to say we didn't provide
20 it at all. We did. It is just not in this other box that
21 we think is inapplicable, as Ms. Rickenbacker stated.

22 So again, I don't want to belabor the point.
23 But I think this, again, shows where the administrative
24 deficiency process would be available to an Applicant if
25 you think -- the staff thinks that we should have provided

1 it in an additional box, in addition to the box that we
2 did provide that information, then that could have been
3 cured through the administrative deficiency process.

4 And it is not like adding any new information.

5 We would you just be giving you the information that we
6 have already provided, just in a different place. So with
7 that, respectfully request the Board to approve our
8 appeal.

9 MR. GOODWIN: Thank you. Any other comments?

10 (No response.)

11 MR. GOODWIN: Hearing none, and there be a
12 motion on the floor and a second. All in favor, say aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: The appeal is granted. Marni?

17 MS. HOLLOWAY: Application 17275 is for Aria
18 Grand. The application does not qualification for two
19 tiebreaker selections under 10 TAC 11.9(c)(4). This is
20 the opportunity index, because the application did not
21 include evidence of an accessible route between the
22 development site and the selected features.

23 The Board item includes a subtitle within it
24 that implies this is tied to 11.9(a)(1) financial
25 feasibility. In fact, it is 11.7(3), tiebreaker factors.

1 It is important to note that this item does not in any
2 way impact the competitive position of this application.

3 They don't lose anything at all. They are
4 still a quarter ahead, a full quart without tiebreakers of
5 the application behind them. And we are not taking away
6 points. This is just tiebreakers.

7 So each Applicant -- yes. For this particular
8 tiebreaker, Applicants select items that are part of the
9 opportunity index menu, that are above and beyond what
10 they are able to use to get their maximum opportunity
11 index score. So if they are already at seven, and they
12 still have other high opportunity features, they can use
13 those for a tiebreaker. All right.

14 The Applicant selected two items related to
15 amenities that are on an accessible route. One of them is
16 a development site located less than half a mile on an
17 accessible route from a public park with an accessible
18 playground, both of which meet 2010 ADA standards.

19 The area is, the development site is located
20 less than half a mile on an accessible route from public
21 transportation. The appeal asserts that evidence of the
22 accessible route is not required by the QAP or
23 application.

24 But of course, this goes back to the section
25 that we discussed earlier, about it being the

1 responsibility of the Applicant to perform and
2 independently verify any data that is provided in the
3 application. It is staff's position that the assertion
4 that the development site is located less than half a mile
5 on an accessible route, requires supporting documentation.

6 And in fact, the application did include a
7 statement from the local government regarding the
8 accessibility of the playground, which indicates they are
9 aware that evidence is required, rather than a statement
10 that it is accessible. Staff is recommending that the
11 Board deny the appeal.

12 MR. GOODWIN: Okay.

13 MR. VASQUEZ: Just a question, to clarify. So
14 regarding what was put in the application, in reality, are
15 these two areas accessible?

16 MS. HOLLOWAY: I can't tell you that.

17 MR. VASQUEZ: Okay. I will ask someone coming
18 up. John.

19 MS. HOLLOWAY: Okay.

20 MR. GOODWIN: Do I hear a motion to hear
21 further comment?

22 MS. BINGHAM ESCAREÑO: So moved.

23 MR. GOODWIN: A second?

24 MR. VASQUEZ: Second.

25 MR. GOODWIN: A second by Mr. Vasquez. All in

1 favor, say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Okay. We will now hear further
4 comment.

5 MR. SHACKELFORD: For the last time today, John
6 Shackelford; Shackelford, Bowen, McKinley and Norton, and
7 represent the Applicant in this appeal. And similarly to
8 the two prior arguments; this one is a little bit
9 different.

10 It is not a point-scoring item as Marni
11 mentioned, but it does affect tiebreakers, which can be
12 real important later on in the application process, as to
13 who gets an award or not. Again, as I have stated earlier
14 about the administrative deficiency process, I think that
15 this application again falls into that category.

16 The Applicant did provide a map showing the
17 location of the site, showing that it is within the half
18 mile of the public park. And it was on a -- it has public
19 transportation available to it within that half mile. So
20 we feel like the map that was provided satisfies it.

21 But again, if staff thinks that it didn't,
22 again, we think that that is what the administrative
23 deficiency process is to be available for. And allow an
24 applicant to be able to submit additional information as
25 far as its accessibility.

1 The Applicant is not here, the Applicant had to
2 leave. So I cannot answer your question specifically, but
3 I believe that it is accessible.

4 And so we would respectfully request that you
5 grant the appeal on the same basis as before. That we
6 think the information that was provided is sufficient.
7 But if there is a lack of information, that the
8 information be just supplemental to what was already
9 provided to give staff clarity that we do meet the
10 tiebreaker criteria.

11 MR. GOODWIN: Any other questions?

12 MS. BINGHAM ESCAREÑO: Yes, sir. And did you
13 say so also so the park -- do you have an idea -- is
14 there, do you have an idea of what document you would have
15 provided that would have met the requirement from the very
16 beginning? What does that look like?

17 So you are saying your client presented a map
18 that showed that there was a playground in close
19 proximity, and that your client are within the little half
20 mile. And that your client also submitted, or Marni said
21 your client submitted a letter from the City or some
22 municipality verifying that is bus -- that there is public
23 transportation?

24 MR. SHACKELFORD: Yes. I am going to let Ms.
25 Anderson address that question.

1 MS. BINGHAM ESCAREÑO: Okay. Great.

2 MS. ANDERSON: I'll respond to that. So Sarah
3 Anderson, S. Anderson Consulting. The Applicant did have
4 to leave, but I know enough about this that I believe that
5 I can represent the issue.

6 The reason -- we don't know exactly what would
7 meet this. And the reason is that, the QAP, the manual,
8 and the application itself are silent on this issue.
9 Everything to do with the tiebreakers, the majority of the
10 items say, you should submit this.

11 The only thing that it says for these items is,
12 submit a map showing where your park is, and where the bus
13 stop is. Other parts -- and it is pretty specific
14 throughout this section, when you are looking at the
15 manual or the actual application checklist will say, for
16 this item, submit this. For this item, submit this.

17 It is completely silent. And we struggled with
18 it. We struggled with -- well, the only, you know, they
19 are so specific about what they want for these items.
20 This one, the only thing that is said, is that you want a
21 map showing where it is.

22 And the only reason that we submitted the
23 additional documentation regarding the playground is that
24 it was specifically brought up at the application
25 workshop. So frankly, that wouldn't have necessarily

1 occurred to us, had we not gotten direction at the
2 application workshop.

3 And the issue -- I mean, I understand the
4 struggle with this. All of the tiebreaker items and the
5 high opportunity items, they were passed but we never
6 really -- because of the way the presses worked, we never
7 really had a discussion.

8 I think, internally, externally, about what
9 staff would have considered to be sufficient
10 documentation, and this is one of those things that you
11 know, we are very very literal. And we look at what is
12 written, and we responded exactly with what was requested
13 in the rules, the manual and the actual application.

14 MR. GOODWIN: Okay.

15 MS. ANDERSON: And maybe staff can say what
16 would we do. We have seen other applications who put in
17 street view maps, and just show a line to it. I don't
18 know if that meets it, either.

19 Because I don't think that has come before you.

20 A third party engineer, maybe that would. But I would
21 let staff say what would.

22 MS. BINGHAM ESCAREÑO: Thank you. Thank you
23 very much. And my main question was just so that as we
24 are looking at how we can further clarify it, it will be a
25 good thing to put.

1 But so my understanding, Marni, it is like on
2 the application, it is a checkbox, right? And so when you
3 have your tiebreaker points, I am looking at it.

4 It has the list of all the different additional
5 tiebreaker attributes. And then you just check the box
6 saying yes, it has got some of these.

7 MS. HOLLOWAY: And provide evidence that --

8 MS. BINGHAM ESCAREÑO: And then in a tab back,
9 you provide the evidence. Okay. I have got you. Do you
10 have any idea like, what that looks like, to meet the
11 say -- the half mile within a playground.

12 MS. HOLLOWAY: Had I received the question, I
13 would have said a letter from the local official regarding
14 the design of that public path --

15 MS. BINGHAM ESCAREÑO: I have got you.

16 MS. HOLLOWAY: -- or a report from a third
17 party accessibility expert.

18 MS. BINGHAM ESCAREÑO: I have got you. Great.

19 MR. GOODWIN: Okay. Any other questions?

20 (No response.)

21 MR. GOODWIN: More comment?

22 (No response.)

23 MS. ANDERSON: Good afternoon. Terri Anderson,
24 Anderson Development and Construction. I am not
25 affiliated with the Applicant, nor am I affiliated with S.

1 Anderson Consulting. But I did want to speak on the issue
2 as it relates to accessibility.

3 Typically, when we are doing the design on a
4 property, we have to have an accessible route. And those
5 types of things are actually determined by a surveyor and
6 or landscape designer. And similar to the or to the
7 extent, we already have a \$50,000 to \$100,000 burden to
8 put an application together.

9 I don't believe it would even be a reasonable
10 request if the Department were to truly anticipate that a
11 borrower or a potential applicant would submit, I guess, a
12 survey prepared by a third party that would extend across
13 public roadways and all different walkways in other areas
14 that are a half mile out. So I do believe if you take in
15 good faith that you are accessing a public park, and that
16 public park was probably designed in accordance with ADA
17 accessibility and compliance, that should meet the
18 criteria.

19 MR. GOODWIN: Thank you. Any questions?

20 (No response.)

21 MR. GOODWIN: Do I hear a motion on how the
22 Board should proceed?

23 MS. BINGHAM ESCAREÑO: Mr. Chairman, I make a
24 motion to approve the appeal for application 17275, Aria
25 Grand.

1 MR. GOODWIN: Do I hear a second?

2 MR. ECCLES: Just a clarification on that
3 motion. Is that to approve that they are -- that these
4 are valid tiebreaker points, or to instruct staff to
5 engage in the administrative deficiency process to seek
6 clarification.

7 MS. BINGHAM ESCAREÑO: The latter. So would
8 you like me to re-pose the motion. I will make a motion
9 to instruct staff to work with Applicant 17275 to provide
10 sufficient documentation to meet the criteria for
11 tiebreakers, the two tiebreakers listed in the appeal.

12 MR. ECCLES: Does that sound like a sufficient
13 instruction to staff? Okay.

14 MR. GOODWIN: Do I hear a second?

15 MR. BRADEN: Second.

16 MR. GOODWIN: Second by Mr. Braden. Any other
17 questions or comments?

18 (No response.)

19 MR. GOODWIN: All in favor, say aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Any opposed?

22 (No response.)

23 MR. GOODWIN: The appeal is granted.

24 MS. HOLLOWAY: Okay. Our last appeal, 17724,
25 for Liv Senior at Johnson Ranch. The application does not

1 qualify for points selected in three categories. Three
2 points under 11.9(c)(6) related to underserved area,
3 because the census tract includes areas that are not
4 within the boundaries of an incorporated area. Three
5 points under 11.9(b)(4), related to leveraging of private
6 state and federal resources, because more than 50 percent
7 of the developer fee is deferred. And four points under
8 11.9(d)(6), related to input from community organizations,
9 because the development site is within the boundaries of
10 the Johnson Ranch Master community association, and is
11 therefore ineligible for points under this item.

12 In addition, staff determined that the
13 application was not eligible to receive a tiebreaker
14 selection. The Executive Director has granted the appeal
15 as to the tiebreaker issue only. So for underserved area,
16 this is that same three-point item that we have been
17 discussing.

18 In this instance, the applicant disagrees that
19 the QAP requires the entire census tract to be within the
20 incorporated area and goes on to state that, because
21 Johnson Ranch is in the city's extraterritorial
22 jurisdiction, the City oversight of permitting means the
23 development is governed by the City of Bulverde and should
24 receive these points. Regarding leveraging of private,
25 state and federal resources, the appeal does not directly

1 address why the application should be awarded points under
2 this scoring item.

3 The appeal could have revised application
4 documents, so all financial documents that were not
5 requested by staff in our administrative deficiency.
6 Input from community organizations -- in order to qualify
7 here, the development site must not fall within the
8 boundaries of any qualifying neighborhood association or
9 neighborhood organizations.

10 The appeal asserts that Johnson Ranch Master
11 Communities, Inc., as that association is named, is not a
12 neighborhood association. Review of the articles of
13 incorporation reported with the Texas Secretary of State
14 shows that it is in fact, registered, and meets the Texas
15 Government Code definition of a neighborhood organization.

16 Further, the organization was identified as
17 such in the preapplication that was submitted to the
18 Department. Staff recommends that the Board deny this
19 appeal.

20 MR. GOODWIN: Do I hear a motion to hear
21 further public comment?

22 MS. BINGHAM ESCAREÑO: So moved.

23 MR. GOODWIN: Second?

24 MR. GANN: Second.

25 MR. GOODWIN: Made and seconded. All in favor,

1 say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Now we will hear comment.

4 MR. POLLACK: Good afternoon. My name is Joel
5 Pollack. I am with Two Ten Development Group, the
6 developer of the senior community. We received a denial
7 of our appeal and I come before you to ask for
8 reconsideration.

9 Similar to the other appeals that you have
10 granted points to, we fall under the same conditions that
11 those Applicants fell under, and they were granted. So I
12 am going to move on from that, because that is an issue
13 that we have already discussed numerous times. And I am
14 sure you don't want to go through that again.

15 With regards to what Marni had mentioned,
16 Johnson Ranch Master-planned Community was formed by the
17 developers for the developer specifically to enact and
18 have rules with respect to architectural control,
19 development in the ranch, and guidance for developers such
20 as ourselves coming in. For example, there is a brand new
21 school that was built in there.

22 There is a new fire station that we are going
23 to be building our community behind. So they mandate that
24 all approvals go through them. There isn't a homeowners
25 association. There aren't homeowners on the Board.

1 It is made up of the developers themselves, the
2 Hill family, and other participants from their
3 organization. So with that said, I am asking for
4 reconsideration regarding that.

5 Because we -- there is nowhere in the Code that
6 states that Johnson Ranch Master-planned Community
7 Association is registered with TDHCA or a registered
8 neighborhood association. It was registered with the
9 State of Texas, as it is a corporation. And as such,
10 corporations have to be filed with the state.

11 With respect to 11.9 -- excuse me. With
12 respect to the deferred developer fee being in excess of
13 50 percent, that is not allowed under the QAP, that was a
14 math error on our part.

15 So because at the time, you know, equity
16 letters, and investments and the syndicators, from what
17 has happened over the last, you know, six months have been
18 very fluid, it was simply a math error. Marni is correct.

19 We submitted forms, maybe not at their request, to make
20 that change, so we could fall, you know, within the 50
21 percent deferred developer fee rule.

22 Had we been given an administrative deficiency,
23 as in the past, we could have fixed that. And that is
24 what I am requesting, is that an administrative deficiency
25 be given to us, so that we can then fix it under proper

1 rules. And then we would at that point, be allowed to
2 receive those points back.

3 MR. GOODWIN: So I have got a question for you.
4 Did you change your developer fee, or did you just make a
5 math error?

6 MR. POLLACK: We made a math error.

7 MR. GOODWIN: With your development fee. So
8 the development fee, under your administrative deficiency
9 would be exactly what it was in the preapplication. You
10 just divided by the wrong number?

11 MR. POLLACK: It was. Correct.

12 MR. GOODWIN: That is what you are stating.

13 MR. POLLACK: It is an addition error. It was
14 \$4,777, which is 00.5 percent of the entire developer fee.

15 MR. GOODWIN: And the same question I have for
16 you is, a lot of these developments where the developer
17 stays in control during the development process, but at
18 the end that, the full intent, and frequently, in the
19 documents, that it is going to be turned over to an
20 homeowners association. Is there no such documentation
21 under Johnson Ranch that is going to happen --

22 MR. POLLACK: As of today, Johnson Ranch is
23 managed by Spectrum Management.

24 MR. GOODWIN: Yes. I am not talking about
25 today. I am talking about -- is the intent to developer

1 control it until you get to a certain percentage of
2 occupancy, homeowners, et cetera, and then it is to be
3 turned over to the homeowners association?

4 MR. POLLACK: Yes. Typically, in master-
5 planned communities such as Johnson Ranch, when an
6 Association reaches, you know, anywhere between 75 and 80
7 percent sold, then they make an election to turn it over
8 to an actual homeowners association, a property owners'
9 association, or the definition of a neighborhood
10 association.

11 MR. GOODWIN: So really, in my opinion that is
12 a currently -- it is a homeowners association, but it is
13 just completely controlled by the developer owner. And at
14 some point, they will give that control up when it is
15 within a reasonable period.

16 MR. POLLACK: Yes. But the rules states that
17 today, it doesn't fall under the rules of the neighborhood
18 association.

19 MR. GOODWIN: Okay.

20 MR. POLLACK: And therefore, I shouldn't have
21 been -- I shouldn't have had those points taken away from
22 me.

23 MR. GOODWIN: Okay. Other questions?

24 MR. ECCLES: A point of clarification on your
25 appeal. Under the underserved area points, we have

1 heard -- the Board has heard a number of appeals where
2 three points were applied for and requested.

3 But then on appeal, they say, in the
4 alternative, we would take two points, which we showed
5 qualification for. I don't see that in your appeal.

6 Is that something that you are requesting? Or
7 are you just arguing that the Board change its
8 interpretation of a census tract within the boundaries of
9 an incorporated area to include, as you argue in your
10 appeal, that those areas that lie outside of the
11 incorporated but are within the ETJ of the corporate
12 limits should be included in that?

13 MR. POLLACK: Well, based on testimony today,
14 or comments today, I should be treated the same way as all
15 the other applicants, and receive at a minimum, two
16 points.

17 MR. GOODWIN: Any questions?

18 (No response.)

19 MR. GOODWIN: Are there other speakers who want
20 to speak? Okay.

21 MR. KEENE: Good afternoon, Mr. Chairman,
22 members of the Board. My name is Breck Keene and I am
23 here to speak in favor of staff's recommendations to deny
24 this appeal.

25 Specifically, I want to emphasize the statute,

1 that is Section 2306.6708, related to application changes
2 or supplements. An Applicant cannot submit changes or
3 provide additional information unless requested.

4 Staff did not request information in support of
5 this application. It was provided as part of the appeal.

6 So number one, it was not requested, but it was
7 submitted. Which is not what the statute requires.

8 But secondly, not only is the information they
9 provided that was changed, it was not simple math error.
10 The number on the sources and uses page for deferred
11 developer fee was changed. The deferred developer fee
12 moved from 50.4 percent to 49.96 percent. The information
13 was changed to meet that requirement.

14 Regarding community support, I fully support
15 staff's analysis. It was identified as a neighborhood
16 organization at the preapplication. And it is clearly
17 identified in the maps that were provided in the
18 application, that the sites falls within their boundaries.

19 Johnson Ranch is a neighborhood organization.
20 And the letter that they provided does not meet the
21 requirements of letters of support from the neighborhood
22 organizations.

23 And the other four letters that were provided
24 are inapplicable. So I speak and ask that you deny this
25 appeal as requested by staff. Thank you.

1 MR. GOODWIN: Thank you. Any other comments?

2 MR. MCMURRAY: My name is Brad McMurray. I
3 don't want to complicate this issue by speaking. But
4 before you close out in (3)(d), if I might speak before
5 you close that item, on a related matter.

6 MS. BINGHAM ESCAREÑO: Hey, Marni. Can I ask
7 you -- this isn't crystal ball kind of stuff. But just
8 because I am not sure I completely understand these. But
9 let's do the leveraging, the 11.9(e)(4).

10 MS. HOLLOWAY: Uh-huh.

11 MS. BINGHAM ESCAREÑO: The math error. If this
12 was an administrative deficiency process, where you were
13 interacting and trying to clarify, would what you have now
14 have satisfied that? Do you think that that is in
15 material compliance for --

16 MS. HOLLOWAY: I have not looked at it
17 personally, so I can't speak to that specific situation.
18 I can tell you that replacing the financial exhibits in
19 the application, we generally consider that to be
20 material.

21 Yes. If it is one number, you know, we can
22 work it through with underwriting or that kind of thing.
23 But if it something that is used for scoring, in
24 particular, out of the financial exhibits, that is
25 material.

1 MS. BINGHAM ESCAREÑO: Okay. And then with --
2 so the community support or the 11.9(d)(6). So what I
3 think I am hearing, is that the master community, they
4 didn't provide a letter of support from that entity.

5 That, even though on the preapp it was
6 acknowledged as being an entity, when it came to meeting
7 that scoring item, they did not provide --

8 MS. HOLLOWAY: They, in the preapplication,
9 they identified the Johnson Ranch Master whatever in the
10 world they are as the neighborhood organization. When we
11 got to full application, they said no, this is just a
12 community organization. It is not the neighborhood
13 organization.

14 So you know, in the preapp, they are saying it
15 is a neighborhood organization. In their appeal, they are
16 saying it is not.

17 MS. BINGHAM ESCAREÑO: And in the old kind of
18 way that we used to do administrative deficiencies, if you
19 had an Applicant and you contacted them, and said, hey.
20 It really, even on your preapp, it was termed as that.

21 If the Applicant had been willing to say, okay,
22 because they are obviously very close relatives, if not
23 one and the same. Right. Like the entity is in some way
24 related to what they are doing.

25 It is a master-planned community. And they had

1 provided it. Would that have satisfied an administrative
2 deficiency?

3 MS. HOLLOWAY: So here is the question in a
4 situation like that. If we issue an administrative
5 deficiency and by the end of the day, on day 5, we don't
6 have the information that is responsive to that
7 deficiency, then we start heading down that -- you lose
8 points because you haven't responded to the administrative
9 deficiency.

10 So in this particular situation, if this was
11 the information that we received back, and it wasn't
12 responsive, because it didn't answer the question, then we
13 would have headed down that, you did not respond to the
14 administrative deficiency path.

15 MS. BINGHAM ESCAREÑO: Yes.

16 MS. HOLLOWAY: Rather, we went down the scoring
17 notice path.

18 MS. BINGHAM ESCAREÑO: Yes. Okay. And then
19 basically, I think I understand Mr. Pollack's point on the
20 first point. I am not sure I agree with any of them on
21 this, just respectfully.

22 Like, the downgrading from the three to two on
23 the underserved. What I hear you doing is fighting for
24 the right that you don't think -- you think it should get
25 three points regardless of whether or not it was all

1 contained --

2 MS. HOLLOWAY: That was what was stated in the
3 appeal.

4 MS. BINGHAM ESCAREÑO: So and you can
5 definitely talk. I am just going to. And then on the
6 math error, that one, I am kind of up in the air on.

7 And then the community one, my thought would
8 have been to -- sure. Then we can do that, you know. But
9 what I hear you arguing is that you don't think it is a
10 neighborhood entity. And that you don't think you should
11 have to provide the documentation. Not that they asked
12 for it.

13 So those are the -- those are what I am trying
14 to kind of tease through, that make it to me, a little
15 different.

16 MS. HOLLOWAY: It is. This one is different
17 from the ones that we have discussed previously.

18 MS. BINGHAM ESCAREÑO: Thank you, Marni.

19 MR. POLLACK: I just want to make --

20 MS. BINGHAM ESCAREÑO: Yes. Sure.

21 MR. POLLACK: I am Joel Pollack again. In our
22 preapp, we didn't disclose or check off the box that it
23 was a neighborhood association, because we knew it wasn't.

24 And having points taken away from us on that
25 basis doesn't -- you know, it is conflicted with what we

1 had provided the -- provided staff in our application. So
2 on to your question, there was never any disclosure or --
3 disclosure is probably the wrong word.

4 But there wasn't any information per the
5 preapplication that identified Johnson Ranch as being a
6 neighborhood association. Because in our discussions with
7 the developers, they -- and we got a letter specifically
8 to that, that is in the application.

9 They specifically told us and stated, and we
10 did our diligence, that it was not a neighborhood
11 association controlled by the homeowners. And I think
12 that is the real definition here, and the crux of this
13 issue.

14 MR. GOODWIN: I am going to go back to a
15 question I asked you, because maybe I didn't make myself
16 clear, in light of what Mike said. On the preapplication,
17 you stipulated a dollar amount for the development fee.
18 And I am guessing there is a portion of that, that is
19 deferred.

20 MR. POLLACK: That is on the full app, sir.

21 MR. GOODWIN: On the full app. I'm sorry. The
22 full app. And my question was, had that number changed.
23 And what I understood Mike to say was, yes. That number
24 has changed.

25 Even though it was a small amount, but it has

1 changed. But what I understood you to say was that number
2 didn't change. You divided by the wrong number.

3 MR. POLLACK: The number that was submitted in
4 the application was less than 1 percent off, of 0.57
5 percent off.

6 MR. GOODWIN: That wasn't my question. My
7 question is, did it change?

8 MR. POLLACK: When we responded to the notice
9 that was given to us by the Department --

10 MR. GOODWIN: Right.

11 MR. POLLACK: It changed.

12 MR. GOODWIN: Okay.

13 MR. POLLACK: Yes, sir.

14 MR. GOODWIN: Thank you. Any other questions?

15

16 (No response.)

17 MR. GOODWIN: Do we have any comments?

18 MR. GONZALES: Mr. Chairman, thank you. My
19 name is Jose Gonzales. And I would like to speak to
20 11.9(d)(6), because I think that there needs to be a
21 little bit of a clarification, that hasn't been brought
22 forth. And might not have been stated correctly by Mr.
23 Pollock.

24 In the May 16 letter from Mr. Irvine, the
25 letter states that the Department has awarded the project

1 4 points under 11.9(d)(4)(C)(v). And to read the actual
2 verbiage, it says, the organization, meaning the property
3 owners association that was created by Johnson Ranch did
4 not meet the requirements of 11.9(d)(4), related to
5 quantifiable community participation, and was therefore
6 awarded four points under (C)(v) of that subsection.

7 (C)(v) states, it allows for four points for
8 areas with no neighborhood organization is in existence,
9 equating to neutrality or lack of objection, or where the
10 neighborhood organization did not meet the explicit
11 requirements of this section. The Department has granted
12 the points under a determination that there is no
13 neighborhood organization.

14 The QAP allows you to then move down to
15 11.9(d)(6), where you have several options to garner
16 support. I am a very bad public speaker. I apologize.
17 To show that the community is aware of your application,
18 and that they do indeed support you. And so under the
19 three subsections, A, B and/or C, the Applicant picked A,
20 and received the civics.

21 But then C clearly states that property owners
22 associations created for a master-planned community can
23 receive a letter of support from that entity created by
24 the master-planned community to show support for their
25 things. So it is -- the applicant checked (C)(v) in their

1 application. The Department acknowledged that they would
2 be given points under (C)(v) and subsequently, they are
3 entitled to move down to 11.9(d)(6).

4 I would request that you bifurcate, just as Mr.
5 Irvine did, in the response to his letter of May 16th,
6 where he granted the correction to the tiebreaker points,
7 that you look at these different categories, and in your
8 motion to deny or award points back, that you look at
9 those facts. Thank you.

10 MR. GOODWIN: Good job. Questions?

11 MR. VASQUEZ: A question just to clarify. And
12 to Mr. Gonzales. Actually, I might ask from the staff
13 here.

14 And again, help the new Board members out here.
15 Are developments allowed to be in an area subject to a
16 homeowners association? Is that an exclusion, or is
17 that --

18 MS. HOLLOWAY: No. Certainly, they are allowed
19 to be, and if they are in a neighborhood organization or a
20 homeowners association there are notification
21 requirements. And there is a different path to gaining
22 points for neighborhood, for community support. If you
23 don't have a neighborhood organization from which to gain
24 those support points, you can go to these other
25 organizations and gain your support points from them.

1 MR. VASQUEZ: So it appears in this case that
2 the existing neighborhood association, or the management
3 group clearly supports the development.

4 MS. HOLLOWAY: Yes.

5 MR. VASQUEZ: Even though someday, it will be
6 changed into a true homeowners association.

7 MS. HOLLOWAY: Into a homeowners association.

8 MR. VASQUEZ: Okay. So it is not excluded. It
9 is not an exclusion. Okay.

10 MR. GOODWIN: Any other questions?

11 (No response.)

12 MR. GOODWIN: Any other comments?

13 (No response.)

14 MR. GOODWIN: Do I hear a motion on how the
15 Board would like to proceed?

16 (No response.)

17 MR. GOODWIN: Are you here to comment?

18 MR. PALMER: Yes. I just think that you need
19 to differentiate this appeal from a lot of the previous
20 appeals that we are talking about administrative
21 deficiencies to shore up information.

22 Or that you show that you qualified for -- you
23 know, you asked for three, and you only qualified for two.

24 Which I think is the first part of their appeal. But the
25 second two, you really get into, are people going to be

1 allowed to change their application after the filing to
2 qualify for points, because they didn't qualify for them
3 in the beginning.

4 MR. GOODWIN: Right.

5 MR. PALMER: To let, you know, which I don't
6 know that we have ever done before. So it seems to me
7 that we are going down a whole different road with those
8 second two point items than we have done before.

9 MR. GOODWIN: I think that is why Marni
10 identified that this one is different than the other
11 applications we have heard this morning. Hearing no
12 motion from the Board, I am going to try to craft one.

13 And that would be that this application, I want
14 to think out loud here, Marni -- would receive the
15 administrative deficiency on the first item, but that we
16 would deny the appeal on Items 2 and 3. I don't have
17 those numbers, because I --

18 MS. HOLLOWAY: So an administrative deficiency
19 on 11.9(c)(6) for the underserved area.

20 MR. GOODWIN: For the underserved area.

21 MS. HOLLOWAY: Is that it?

22 MR. GOODWIN: Yes. Yes.

23 MS. HOLLOWAY: And deny the appeal on
24 11.9(e)(4), which is the leveraging piece.

25 MR. GOODWIN: Correct.

1 MS. HOLLOWAY: And 11.9(d)(6), which is the
2 input piece.

3 MR. GOODWIN: Correct. So if I hear such a
4 motion?

5 MR. BRADEN: So moved.

6 MR. GOODWIN: Paul moved. Do I hear a second?

7 MS. RESÉNDIZ: Second.

8 MR. GOODWIN: Ms. Reséndiz seconds. Now, do we
9 have any discussion? Questions?

10 MS. RESÉNDIZ: Before we second --

11 MR. GOODWIN: Discussion?

12 MR. VASQUEZ: And potentially asking for a
13 friendly amendment, can we bifurcate these and break up
14 the --

15 MR. GOODWIN: I don't see any problem with
16 that. Would you? Is that okay with you, Mr. Braden?
17 Okay.

18 MR. BRADEN: Sure.

19 MR. GOODWIN: So let's take one alone. The
20 first one, via a motion to allow administrative deficiency
21 on 11.9(6). Would that be okay?

22 MS. BINGHAM ESCAREÑO: The underserved area.

23 MR. GOODWIN: The underserved area -- (c)(6)?
24 Do we have that motion, Mr. Braden?

25 MR. BRADEN: So moved.

1 MR. GOODWIN: Seconded by Ms. Reséndiz?

2 MS. RESÉNDIZ: No. Negative. I apologize.
3 What I was wanting, I would like to recuse myself from
4 that.

5 MR. GOODWIN: You would like to recuse yourself
6 from this. Okay. I think when you recuse yourself, you
7 must leave the room. Go.

8 MS. RESÉNDIZ: I need more coffee.

9 MR. IRVINE: You are abstaining.

10 MR. GOODWIN: Yes. You are abstaining, after
11 previous discussion. Right. So we need a second for that
12 motion.

13 MR. VASQUEZ: Second.

14 MR. GOODWIN: Second. Okay. So we have a
15 motion made and seconded. All in favor, say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Any opposed?

18 (No response.)

19 MR. GOODWIN: Okay. So that one will be
20 handled the way the others. Now, we need a motion on the
21 other two items.

22 MS. BINGHAM: I move staff's recommendation to
23 deny the appeals for leveraging, which is 11.9(e)(4), and
24 then the community four-point item, 11.9(d)(6).

25 MR. GOODWIN: I'm sorry.

1 MR. VASQUEZ: I'm sorry. That wasn't separate
2 with the last one.

3 MR. GOODWIN: Okay.

4 MS. BINGHAM ESCAREÑO: Very good. Okay. I
5 will move staff's recommendation to deny the appeal on the
6 leveraging item, which is 11.9(e)(4). I make that motion.

7 MR. GOODWIN: Second?

8 MS. RESÉNDIZ: Abstain.

9 MR. GOODWIN: Okay. Abstain from that one as
10 well. A second?

11 MR. VASQUEZ: I will second.

12 MR. GOODWIN: Okay. Mr. Vasquez seconded. Any
13 other discussion?

14 (No response.)

15 MR. GOODWIN: All in favor, say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Any opposed?

18 (No response.)

19 MR. GOODWIN: Okay. That was passed. Now we
20 have the last one, which is 11.9(d)(6). Any one able to
21 make that motion, or do you want to have some discussion
22 about it? Let's have a motion first, and then we will
23 have some more discussion about it.

24 MR. VASQUEZ: Well, I would actually move to
25 approve the appeal on this last section, on 11.9(e)(6).

1 MR. GOODWIN: Okay. Do we have a second for
2 that?

3 MS. BINGHAM ESCAREÑO: I will second.

4 MR. GOODWIN: Second by Ms. Bingham. Any
5 discussion?

6 MR. BRADEN: And why would you push for it,
7 though -- because you think they just didn't go through
8 the right procedure?

9 MR. VASQUEZ: From what I heard, as long as it
10 is not excluded, if there is not an exclusion for
11 eventually becoming a neighborhood association.

12 MS. HOLLOWAY: Our rule does not address what
13 would happen in the future with the organization.

14 MR. VASQUEZ: From the sounds that I am hearing
15 from both staff side and the Applicant side, it sounds
16 like it is a little hazy on this type of legal entity.
17 But clearly, from what I have heard so far, the entity
18 obviously supports building this development.

19 It is in their own property. They control the
20 whole thing. So that to me, sounds like just de facto
21 support from the community, from the community
22 organization. And that is what I think it should be.

23 MR. GOODWIN: Point of clarification. Is your
24 motion to grant the appeal, or to grant staff the
25 authority to use administrative deficiency system if they

1 need more proof for the appeal?

2 MR. VASQUEZ: The appeal is for biting heads,
3 Marni. So to give the staff more --

4 MR. IRVINE: I would like direction to dig into
5 this in more depth and formulate a revised scoring notice
6 on that point.

7 MR. GOODWIN: So you are in favor of the
8 administrative deficiency use for staff?

9 MR. VASQUEZ: Yes.

10 MR. GOODWIN: Okay. All right. Sure. Okay.
11 So as I understand the motion, it is that we are
12 instructing staff for this issue, to use the
13 administrative deficiency process if they need additional
14 information for scoring for this.

15 But in general, we are in favor of their appeal
16 to grant this. Because it appears that the neighborhood
17 is in favor of it.

18 MR. VASQUEZ: Correct.

19 MR. GOODWIN: Okay. Is that a good summary for
20 you?

21 MR. IRVINE: Yes.

22 MR. VASQUEZ: On summary. Yes.

23 MR. GOODWIN: Any other discussion or
24 questions?

25 (No response.)

1 MR. GOODWIN: All in favor, say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Opposed?

4 MS. RESÉNDIZ: Abstain.

5 MR. GOODWIN: And one abstain. Okay. Are we
6 done with that? Or have I left something off?

7 MS. BINGHAM ESCAREÑO: We are done with that
8 one.

9 MR. GOODWIN: We are done with that one.

10 MS. BINGHAM ESCAREÑO: Would someone else talk?

11 MR. GOODWIN: Someone else wanted to speak
12 about (3)(b) in general.

13 MS. HOLLOWAY: Actually, we needed to. Yes.

14 MR. GOODWIN: What?

15 MS. HOLLOWAY: We needed to talk just a little
16 bit more about (3)(d).

17 MR. MCMURRAY: Again, my name is Brad McMurray.
18 I am with Prospera Housing community services, which is a
19 501(c)(3) housing provider and property management
20 company.

21 Based on our desire to not take up the Board's
22 time, and our understanding that the policy, the new
23 policy was all points or no points, we requested earlier
24 that 17253, Samuel Place Apartments that was part of the
25 agenda and appropriately advertised, be withdrawn.

1 However, based on recent happenings, we would like to be
2 considered, if that is within you all's agreement.

3 MR. GOODWIN: We actually are having a motion,
4 I think, that kind of addresses what you have just
5 requested.

6 MS. BINGHAM ESCAREÑO: May I ask Marni a
7 question, Mr. Chair?

8 MR. GOODWIN: Sure.

9 MS. HOLLOWAY: So Marni, this speaker just
10 mentioned that application 17253 was pulled just in light
11 of believing that it was kind of the all or nothing deal.

12 MS. HOLLOWAY: Right.

13 MS. BINGHAM ESCAREÑO: Do the other two that
14 were pulled, 17151 and 17134, are you aware that they may
15 fall in that same category?

16 MS. HOLLOWAY: So 17151, the Executive Director
17 actually granted that appeal after the agenda was posted.

18 MS. BINGHAM ESCAREÑO: Okay. I have got you.

19 MS. HOLLOWAY: On 134, I am not aware of the
20 specific circumstances around that one, right at this
21 point. It did not get into the book. So --

22 MS. BINGHAM ESCAREÑO: I have got you. Mr.
23 Chair and Counsel, I was -- yes, sir?

24 MR. IRVINE: I would say that staff would
25 certainly request the Board direct us to use the

1 administrative deficiency process to handle any of these
2 matters in a consistent fashion.

3 MR. ECCLES: That are posted on the agenda.

4 MR. IRVINE: Yes. If they are posted on the
5 agenda.

6 MR. GOODWIN: So 17253 and 17134 would fall in
7 that.

8 MS. BINGHAM ESCAREÑO: Very good. I would like
9 to --

10 MR. IRVINE: You can give us direction for
11 matters beyond the agenda.

12 MS. BINGHAM ESCAREÑO: So I am dense. But are
13 they on the agenda or not?

14 MR. GOODWIN: Yes. They are on the agenda.

15 MS. BINGHAM ESCAREÑO: Okay. Very good. Then
16 I would like to make a motion to instruct staff to deal
17 with Applicant 17134 and 17253 through the administrative
18 deficiency process in a manner that is consistent with how
19 the Board has dealt with those applications today.

20 MR. GOODWIN: Does that get what you wanted?

21 MR. MCMURRAY: Actually, if I am correct in my
22 assumption, that -- again, Brad McMurray, that all the
23 information is in the Board book, I am prepared to talk
24 about it right now.

25 MR. GOODWIN: I think our staff is not

1 prepared, Brad.

2 MR. MCMURRAY: I apologize.

3 MR. GOODWIN: Okay. We have that motion. And
4 do we have a second?

5 MR. VASQUEZ: Second.

6 MR. GOODWIN: Second by Mr. Vasquez. Any other
7 discussion?

8 (No response.)

9 MR. GOODWIN: All in favor, say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: The motion passes. Paul
14 abstained. Okay. Marni, who is going to be --

15 MS. HOLLOWAY: Mr. Goodwin.

16 MR. GOODWIN: Well, I have to go back in 3(a)
17 and 3(b). We have now covered, we have covered all 3(c)
18 and 3(d). Right?

19 MS. HOLLOWAY: Andrew is going to give 3(a).

20 MR. GOODWIN: Is he also doing (b) and (c)?

21 MR. SINNOTT: I will do 3(a) and 3(b).

22 VOICE: And Sharon is doing 3(c).

23 MR. GOODWIN: Sharon is going to do 3(c).

24 Okay. The way Andy is going to present it is, you get to
25 do the fun stuff that everybody is going to agree to.

1 MR. SINNOTT: Yes. Well, good afternoon. And
2 welcome to our new Board members. And congratulations to
3 Mr. Goodwin on becoming our Board Chair. My name is
4 Andrew Sinnott. I am the Multifamily Loan Programs
5 administrator.

6 Item 3(a) is presentation, discussion and
7 possible action on amending the 2017-1 multifamily direct
8 loan Notice of Funding Availability. In December of last
9 year, the Board approved the 2017-1 NOFA, which was
10 composed of HOME and TCAP repayment funds, totaling
11 approximately \$32.5 million.

12 Within the general set-aside, which is the set-
13 aside that will be affected by today's action,
14 approximately \$15.3 million in HOME funds, and \$8.5
15 million in TCAP repayment funds was made available. The
16 ability to use HOME funds in participating jurisdictions,
17 large cities and counties that receive their own
18 allocation of HOME funds is limited by statute.

19 Therefore, for this NOFA, no HOME funds are
20 anticipated to be able to be used in PJs, which leaves
21 TCAP repayment funds as the only fund source that can be
22 used for applications with development sites in places
23 like Austin, Dallas, San Antonio, Houston, some of the
24 larger cities in Texas.

25 Currently, within the general set-aside, there

1 are applications with development sites in participating
2 jurisdictions requesting over \$49 million in direct loan
3 funds. So we have started off with \$8.5 million available
4 to those applications, and over \$49 million was requested.

5 As a result of the severe oversubscription for
6 TCAP repayment funds within the general set-aside, staff
7 came back to the Board last month with the first amendment
8 to the NOFA, and approximately \$2.3 million in TCAP
9 repayment funds under the general set-aside, which was
10 anticipated to help fund one additional application with a
11 development site in a PJ. So we slightly improved the
12 situation to \$10.8 million available for over \$49 million
13 requested.

14 Today, staff is recommending adding \$7 million
15 of program income, essentially loan repayments on loans
16 that were originated over the past several years, received
17 on NSP-1 funds. That is the Neighborhood Stabilization
18 Program funds to the 2017 direct loan NOFA.

19 So this will further improve that set-aside
20 within the general set-aside, making \$17.8 million
21 available for over \$49 million requested. NSP-1 can be
22 used in participating jurisdictions.

23 So it will help alleviate that severe over-
24 subscription within the general set-aside, potentially
25 resulting in staff being able to award three additional

1 applications. It is anticipated that using these funds as
2 repayable loans for multifamily activities will result in
3 more programming funds to be used for housing activities
4 in the future.

5 And I just want to thank Homer Cabello and
6 Brooke Boston for allowing these funds to be used for
7 multifamily activities. They have kind of been overseeing
8 the NSP program in the past couple of years. And they
9 were kind enough to let us use these for multifamily
10 activities.

11 With this additional \$7 million in NSP-1
12 program income, the total amount available under the NOFA
13 will be approximately \$41.8 million. However, even with
14 this additional funding, staff does not anticipate being
15 able to satisfy any of the 2017 9 percent Housing Tax
16 Credit direct loan requests that were received after
17 several 4 percent Housing Tax Credit were layered, and
18 2016 9 percent Housing Tax Credit layer, direct loan
19 requests.

20 Staff notified the 2017 9 percent Housing Tax
21 Credit direct layer -- Housing Tax Credit layer direct
22 loan applicants with development sites in PJs last month,
23 that this was likely to be the case. And that they should
24 endeavor to resolve the lack of direct loan funds issue no
25 later than commitment and execution date in early

1 September.

2 Staff will continue to monitor the
3 oversubscription issue within the general set-aside, but
4 does not currently anticipate further amending this NOFA
5 with additional funding. With that, staff recommends
6 adding \$7 million in NSP-1 program income funding to the
7 2017-1 NOFA, specifically under the general set-aside. If
8 you have any questions?

9 MR. GOODWIN: A motion to approve?

10 MS. BINGHAM ESCAREÑO: So moved.

11 MR. GOODWIN: Second?

12 MR. BRADEN: Second.

13 MR. GOODWIN: Second by Mr. Braden. Any
14 questions?

15 (No response.)

16 MR. GOODWIN: All in favor, say aye.

17 (A chorus of ayes.)

18 MR. GOODWIN: Opposed?

19 (No response.)

20 MR. GOODWIN: Okay.

21 MR. SINNOTT: 3(b) is presentation, discussion
22 and possible action on a determination notice for Housing
23 Tax Credits with another issuer. And award of direct loan
24 funds for application 17402, Harris Ridge Apartments, here
25 in Austin.

1 So we are awarding 4 percent Housing Tax
2 Credits and what is anticipated to be TCAP repayment funds
3 from the 2017-1 NOFA under the general set-aside. Harris
4 Ridge Apartments involves new construction of 324 units
5 here in Austin, northeast Austin, and will serve the
6 general population between 30 percent and 60 percent of
7 the area median income. Staff recommends approval of 4
8 percent Housing Tax Credits in the amount of \$1,344,750.

9 And an award of direct loan funds in the form
10 of TCAP repayment funds for \$3 million with the closing
11 condition as noted in the write-up. So with that, do you
12 have any questions?

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: Do I hear a motion for approval?

16 MS. BINGHAM ESCAREÑO: Move staff's
17 recommendation.

18 MR. GOODWIN: A second?

19 MS. RESÉNDIZ: Second.

20 MR. GOODWIN: Second by Ms. Reséndiz. Any
21 questions?

22 (No response.)

23 MR. GOODWIN: All those in favor?

24 (A chorus of ayes.)

25 MR. GOODWIN: Any opposed?

1 (No response.)

2 MR. GOODWIN: The motion passes.

3 MR. SINNOTT: Thank you.

4 MR. GOODWIN: We have Sharon up next. Item
5 3(c).

6 MS. GAMBLE: Hello, Board. I am Sharon Gamble.
7 I am the administrator for the Competitive Housing Tax
8 Credit program. And I have learned not to stand between
9 people and food.

10 MS. BINGHAM ESCAREÑO: Do we look hungry?

11 MS. GAMBLE: I think we are getting a little
12 hungry. So item 3(c) is a presentation by staff of issues
13 regarding five applications that have to do with
14 undesirable neighborhood characteristics.

15 And those are characteristics of neighborhoods
16 that have been kind of described in the rules that sort of
17 set some standards for what we are looking for in
18 development sites. We have five applications that
19 disclosed issues in their development, their neighborhood
20 of development site having to do with poverty, having to
21 do with schools, and having to do with crime.

22 And as part of the rule requirements, they are
23 required to disclose those things to us. And staff is
24 then required to review those, review pretty much
25 everything having to do with the neighborhood.

1 And to determine if there is sufficient
2 evidence of mitigation included in the application, to
3 where we can make a determination that those issues in the
4 neighborhood have a great chance of being mitigated in the
5 future by the time the development comes online. And so
6 with these three applications, we have two in San Antonio.
7 One in Fort Worth. One in Houston. And one in Wichita
8 Falls.

9 And in each instance, we have reviewed the
10 information incoming. We have been able to come to a
11 determination that the applications, each of them did
12 include enough information for staff to determine that
13 there was sufficient activity, sufficient funding,
14 sufficient community involvement.

15 Different things, depending on each
16 application, that let us come to a reasonable conclusion
17 that there would be proper mitigation. If we want to
18 discuss any of these individually, we can do that. It is
19 up to you.

20 MR. GOODWIN: Sharon, I notice you left off the
21 last one, Westwind at Lamesa.

22 MS. GAMBLE: Yes, sir. That one was pulled
23 from the agenda.

24 MR. GOODWIN: Okay. So that is --

25 MS. GAMBLE: We got a little ahead of ourselves

1 on that one. We hadn't let the applicant know about it,
2 so we pulled it off. So sorry about that.

3 MR. GOODWIN: Okay. So here the recommendation
4 is that these meet the disclosure for undesirable
5 neighborhood characteristics?

6 MS. GAMBLE: Yes, sir. Our recommendation is
7 that the Board find the development sites eligible.

8 MR. GOODWIN: Find them as eligible. Okay.

9 MS. GAMBLE: Yes, sir.

10 MR. GOODWIN: I need a motion.

11 MS. BINGHAM ESCAREÑO: I will move.

12 MR. GOODWIN: So moved. Second?

13 MR. BRADEN: Second.

14 MR. GOODWIN: Second by Mr. Braden. All in
15 favor, say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Thank you, Sharon.

20 MS. GAMBLE: You are welcome, sir.

21 MR. GOODWIN: Okay. I think we move on to Item
22 3(e).

23 MR. IRVINE: She's back.

24 MR. GOODWIN: You are coming back? I thought
25 we wore you out.

1 MS. HOLLOWAY: You gave everybody else the easy
2 ones. Andrew has still got one more, but that is -- yes.

3 Let him do the happy stuff.

4 Although this isn't all unhappy. Item 3(e) is
5 presentation, discussion and possible action regarding
6 awards of direct loan funds from the 2017-1 multifamily
7 direct loan Notice of Funding Availability.

8 The first application we are going to discuss
9 is 17503. This is Reserve at Dry Creek. The Applicant
10 has requested \$1.6 million in direct loan funds for
11 Reserve at Dry Creek, which was awarded an allocation of 9
12 percent credits, and \$1 million of HOME funds in July of
13 2016.

14 So this is a >16 deal that is coming back in.
15 The multifamily rules require applications for
16 developments previously awarded Department funds under any
17 program to be found eligible by the Board. Staff has
18 found that the Applicant adequately documented
19 circumstances beyond their control, that could not have
20 been prevented by timely start of construction.

21 In addition, the Applicant is requesting waiver
22 of the required interest rate and amortization in the
23 direct loan rule at 13.8(a) in order to maintain
24 feasibility in accordance with the underwriting rules. So
25 briefly, the building costs for this development have

1 increased approximately 18 percent; \$1.5 million, while
2 the equity pricing has decreased from 97 cents to 93.5
3 cents since the 2016 application was underwritten.

4 These changes prompted the Applicant to request
5 \$1.6 million in direct loan funds under the current NOFA,
6 with requested terms of a zero percent interest rate, a
7 40-year amortization and an 18-year term while maintaining
8 the 3 percent interest rate and 30-year amortization on
9 last year's award. While staff has the ability to
10 recommend an interest rate lower than the 3.25 that is
11 currently in place, a waiver is required from the Board to
12 allow an amortization period longer than 30 years.

13 The Applicant has made a good faith effort to
14 make this transaction more feasible by reducing the
15 developer fee approximately 8 percent. We had previously
16 underwritten 1.8 million approximately down to 1.6
17 million. They are also reducing their loan requests from
18 the original 1.6 million to 1.450; \$1,450,000.

19 With these additional 2017 HOME funds there
20 will be twelve more HOME units in the development: three
21 of them at 50 percent, seven at 60 percent and two at 80
22 percent. And the total HOME units in the development to
23 30.

24 The Applicant's previous participation review
25 is presented at EARAC. This is an extra large Category II

1 portfolio. EARAC has recommended approval without further
2 comment.

3 So the staff recommendation for this item has
4 multiple components. We are requesting that the site be
5 found eligible under 10 TAC 1.35(d)(2) of the multifamily
6 direct loan rule, as they have documented circumstances
7 beyond their control that led to the present request.

8 We are recommending waiver of the amortization
9 period required at 13.8(a) in order that the development
10 maintain feasibility in accordance with the underwriting
11 rules at 10.302. We are recommending a reduction in the
12 funds, from the 1.6 million to 1.450 and a reduction to
13 the developer fee, all of which is conditioned on
14 satisfaction of all conditions of underwriting.

15 And staff is recommending the closing on the
16 direct loan must occur no later than July 31, 2017. And
17 that execution of the Section 811 owner participation
18 agreement for Overlook at Plum Creek be a condition of
19 closing.

20 MR. GOODWIN: Okay.

21 MS. HOLLOWAY: Okay.

22 MR. GOODWIN: Do we want to take all those
23 together?

24 MS. HOLLOWAY: It is all one recommendation.

25 MR. GOODWIN: You want all one recommendation

1 with all those pieces.

2 MS. HOLLOWAY: They are one recommendation.
3 Understood, there are some moving parts and pieces. This
4 is the first time, the first 2016 deal that we are
5 bringing back in.

6 But it is -- I think it is important, because
7 it starts to set the tone for other 2016 deals that are
8 coming back. And I think it is also important to point
9 out that while the Applicant has requested a lower
10 interest rate and is seeking a waiver, they have also
11 worked with us, and given up some pieces, too.

12 MR. GOODWIN: Okay.

13 MS. HOLLOWAY: So it is all of us working
14 together.

15 MR. GOODWIN: Okay. Do I hear a motion for
16 staff recommendation?

17 MR. GANN: I so move.

18 MR. GOODWIN: So moved by Mr. Gann. Second?

19 MS. BINGHAM ESCAREÑO: I will second.

20 MR. GOODWIN: Second by Ms. Bingham. Any
21 discussion? Does anyone want to speak to it?

22 MS. SISAK: Very quickly. I am Jeanine Sisak,
23 with DMA Development Company. I am here to answer any
24 questions, but really, to thank staff for working with us
25 through many, many different scenarios. But we finally

1 found one that everybody can live with. So thanks to
2 staff.

3 MR. GOODWIN: Thank you for your comments. No
4 other comments?

5 (No response.)

6 MR. GOODWIN: All in favor, say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: It is approved.

11 MS. HOLLOWAY: Our next direct loan item is
12 application 17504. This is Merritt Heritage. This is a
13 request for \$1 million in direct loan funds.

14 The Applicant is also requesting waiver of the
15 amortization and repayment provisions at 10 TAC 13.8(a).
16 A change in the terms of the previously awarded \$2 million
17 in HOME funds and a waiver of the HOME loan disbursement
18 policy at 10 TAC 13.11(p).

19 This is a 2016 application that is coming back
20 for additional funds. The Applicant has experienced an
21 equity pricing decrease from \$1 to 86-1/2 cents. And a
22 building cost increase of approximately of \$5.9 million.
23 That is about 32 percent since the 2016 award was
24 underwritten.

25 They have also increased developer fee

1 approximately 1.3 million. That is 32.4 percent. All of
2 which has led them to request additional HOME funds under
3 the 2017-1 NOFA, while also requesting a change in terms
4 for the previously awarded HOME funds.

5 Specifically, the Applicant has requested that
6 the terms of this 2016 \$2 million award of HOME CHDO funds
7 be modified. That award was made at 3 percent interest
8 and 30-year amortization, which met underwriting
9 requirements at the time of the award.

10 They are now requesting that the terms be
11 modified to a zero interest 40-year term with all payments
12 deferred until year 40. They are requesting the same
13 terms for the present \$1 million request. Staff is not
14 aware of authority to waive the terms of the 2016-1 NOFAs.

15 That NOFA is now closed.

16 The Real Estate Analysis Division was able to
17 reach a feasibility conclusion without using the funds
18 requested in the current application, and holding the 2016
19 HOME award to its original terms.

20 REA was able to accomplish this by -- was able
21 to maintain the terms of the previously awarded 2 million
22 by reducing the management fee from 5 percent to 3
23 percent, holding developer fee constant with what was
24 previously approved in connection with the 2016 award.

25 Using the recently published 2017 revs, which

1 increased income and reducing an overstated cable
2 television expense, additionally, staff limited the amount
3 of first lien debt from what the Applicant has indicated.

4 As a result of making these adjustments, the
5 Applicant can move forward with the 2016 direct loan award
6 and continue to meet the feasibility requirements of 10
7 TAC Chapter 10 without any modifications.

8 The Applicant has also requested waiver of the
9 HOME loan disbursement requirement, so that the full
10 amount of HOME funds can be disbursed at loan closing. If
11 the Applicant receives all of the HOME fund at closing,
12 the Department will be at significant risk for completion
13 of all regulatory requirements, and therefore, at risk of
14 repayment to HUD.

15 EARAC has considered this application and
16 unanimously voted to recommend denial of the application
17 and to not make any changes to the previously awarded HOME
18 funds. Staff recommends that the requested \$1 million in
19 additional direct loan funds from the 2017-1 NOFA for
20 Merritt Heritage be denied.

21 We further recommend that no modifications be
22 made to the terms of the 2016 HOME award, except for
23 extending the term to 40 years, to match the now FHA
24 senior debt, which is allowed under our rules. We are
25 also requesting that the, recommending that the request

1 for waiver of the HOME disbursement rule also be denied.

2 MR. GOODWIN: Okay. Easy for you to say.

3 MS. HOLLOWAY: Yes.

4 MS. BINGHAM ESCAREÑO: Yes. I was going to
5 say, I may need you to go back over that. Okay, so which
6 part are you recommending denial?

7 MS. HOLLOWAY: We are recommending denial of
8 the current application.

9 MS. BINGHAM ESCAREÑO: Of the \$1 million?

10 MS. HOLLOWAY: We are recommending denial of
11 the request to modify the previous award, and we are
12 recommending denial of the request for waiver of the
13 disbursement rules.

14 MS. BINGHAM ESCAREÑO: So what you are
15 recommending is just changing the terms of the previous --

16 MS. HOLLOWAY: Of the previous award, which is
17 allowed under our rules: If they have an FHA first lien
18 debt, we can go to the 40 years to match the FHA rules.

19 MR. GOODWIN: Okay.

20 MS. BINGHAM ESCAREÑO: You guys got so
21 aggressive with the reworking it that you got all the way
22 to the cable bill?

23 MS. HOLLOWAY: So there are questions about the
24 underwriting. I'm going to make --

25 (General laughter.)

1 MS. BINGHAM ESCAREÑO: I don't have any more
2 questions.

3 MR. GOODWIN: Do I have a motion?

4 MS. BINGHAM ESCAREÑO: I am going to go ahead
5 and make a motion to approve staff's recommendation,
6 knowing that there are people to speak.

7 MR. GOODWIN: Okay. Do I hear a second?

8 MR. BRADEN: Second.

9 MR. GOODWIN: Okay. Discussion?

10 (No response.)

11 MR. GOODWIN: Comments?

12 MR. IRVINE: Could I make a comment before we
13 hear from Colby?

14 MR. GOODWIN: Sure.

15 MR. IRVINE: You know, under
16 HUD rules, we have to state in our plan how we are going
17 to make our funds available. And we make our funds
18 available in NOFAs.

19 And NOFAs have very specific terms. And while
20 we do have latitude to make certain concessions and
21 changes, we cannot go outside of the scope of what was
22 permitted in a NOFA.

23 MS. BINGHAM ESCAREÑO: I have got you.

24 MR. DENISON: Hi. My name is Colby Denison and
25 I am the Applicant. And welcome, new Board members. You

1 are getting quite an introduction today. I have been
2 doing this since 2003.

3 Gosh, this was a really interesting meeting,
4 because this was the first year in the history that I have
5 ever gotten an application terminated. And this year, I
6 got an application terminated for similar reasons that I
7 just heard you all overturn over and over again.

8 So I have noticed a really seismic shift in
9 kind of how this is -- how tax credit programs worked.
10 And I would say, I used to be scared during application
11 season, and now I am terrified. But anyway, it is a hard
12 program, very complicated.

13 But I wanted to say, I wanted to bridge that
14 conversation with this, in that, as soon as we heard that
15 Trump got elected, my good friend Dan calls me and says,
16 well, all that equity that we had promised you is gone,
17 and it has declined by 20 percent.

18 All of this -- I live in Austin, Texas. I
19 don't know if you all noticed any of the cranes. But at
20 the same time, Austin, Texas, is booming, and construction
21 costs are off, out of control. I have a ton of friends in
22 town, in development and construction.

23 I am finishing up a project that is \$2 million
24 over budget because none of the subs would hold on to
25 their subcontracts. So there is inflation here like

1 crazy. And so in one fell swoop, I get crushed by a 20
2 percent decline in equity and on the other side, I have
3 got construction costs going up.

4 And as my sisters like to say, I am not really
5 slow to action. So I immediately started trying to solve
6 the problem.

7 Last year, I had a similar problem in Midland
8 with the 2015 allocation where oil prices collapsed and
9 HUD blacklisted Midland. And that was the only way I
10 could do the deals, is to get FHA financing. That
11 whole -- nothing happened.

12 TDHCA, their staff didn't want me to redo the
13 deal and take away market rate units and do that. So we
14 went through a whole appeal process with you all and you
15 all granted me a reduction of units, to get rid of the
16 market rate units. So I kind of have a history of that.

17 So in this, I was like, well, the only way I
18 could make this deal work with the facts that I have given
19 you all, is to have better HOME terms. And to go from 3
20 percent to zero percent. And 30 percent AM to 40 percent
21 AM.

22 And just so you all know, I was in the business
23 honors program at the University of Texas. I tutored
24 calculus. I understand math and finance. I was an equity
25 research analyst. I know the numbers.

1 The other thing is, I turned my applications
2 for this and the next item on March 6th. It has been
3 almost three months. The first time I have really
4 collaborated with Brent Stewart was last Friday. He sent
5 me his number, saying this is what you do.

6 And so within ten minutes, I sent him a list of
7 seven items to say these are all the things that could --
8 that I have worked on in the last three months. And I
9 think this will all work. And you will get where you want
10 to be. And I will get with what you want to be.

11 But he said he couldn't use the information
12 because they didn't request it. And I would love to
13 collaborate with staff on this, but I will say, you are
14 going to hear from Dan Kearse that the recommendation that
15 is coming before you all, the equity is not going to show
16 up.

17 And the deal is almost completely permitted.
18 We are submitting to HUD tomorrow. Equity is in place.
19 The deal is in place. We need TDHCA to help out on the
20 HOME funds. That is the only way to make this deal work.

21
22 And it is a phenomenal mixed use deal with 50
23 percent market rate units. It is a mixed income deal. It
24 is in a booming economy with great things going on.

25 So anyway, I hope you all will understand that

1 I would love to work with you all and get this deal to
2 where it will close and get placed in service by the
3 placed in service dates. So thank you all so much.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MR. GOODWIN: There is somebody else wants to
7 speak to this? Okay.

8 MR. KEARSE: Hi. Good afternoon. I am Dan
9 Kearse with RBC Capital Markets. We are a large national
10 syndicator and very active here in Texas. So we are the
11 investor here for this particular deal.

12 And so I felt it important for me to be here
13 today. This is an important project. This is a great
14 community. We want to see this built.

15 In the market, we have currently seen equity
16 pricing dropping dramatically. Deals are falling apart,
17 left right and center. And there is very limited
18 resources that the state has to allocate to these deals.

19 And you know, I applaud staff, in doing
20 everything they can to try and help deals. But honestly,
21 there is not additional credits. There is not additional
22 soft funds that we can give to these deals.

23 In this particular case, you do have that
24 opportunity to make a change, and to help this deal along.
25 We have raised the equity in a very difficult market.

1 And we feel so strongly about this deal and about Colby,
2 that we are actually utilizing our own balance sheet to
3 tie up about \$5 million of our own money to bridge.

4 Because this is FHA financing, it requires a
5 lot of equity in up front, which investors hate. So we
6 are having to do that for them. But we have got this deal
7 ready to go. It is ready to go. And we can get this
8 thing done.

9 And so we do need this waiver. That helps us
10 finish the underwriting. It helps us make the deal pencil
11 out. But with the waiver request, this deal works, and we
12 can get it done. We have got the equity lined up and
13 ready to go. Thank you.

14 MR. GOODWIN: Any other questions?

15 MS. BAST: Thank you. And now, Good afternoon.
16 Cynthia Bast, representing the Applicant in this matter.

17
18 The bottom line here is that, this Applicant
19 would like to get to yes, just like we did with Reserve at
20 Dry Creek, the immediately preceding agenda item. That
21 agenda item shows that modifications can be made as
22 necessary to accommodate these unexpected events of
23 changes in credit pricing and changes in the construction
24 market.

25 Ms. Holloway has suggested that the Applicant

1 requested three things. One being an adjustment to the
2 terms of the 2016 loan that was already awarded. To the
3 award of the 2017 loan with some adjustments to those
4 terms. And three, being a waiver of the rule regarding
5 disbursement.

6 We can take the waiver of the rule regarding
7 disbursement off the table. And since waivers have a
8 higher standard of review, I believe that no waivers now
9 are required for this particular item.

10 We also understand that the uniformity of rules
11 place constraints on staff as to what they can and cannot
12 recommend. And while I certainly hear what Mr. Irvine is
13 saying with regard to a NOFA, I also look at Section 13.12
14 of your direct loan rules, adopted in January of 2017,
15 that say, the Executive Director or authorized designee
16 may approve amendments to loan terms.

17 And then it gives you a list. And on that list
18 are changes to the loan amortization or interest rate.
19 And so I believe this empowers the Executive Director to
20 allow for changes both to the 2016 loan and for how the
21 2017 loan is both underwritten and recommended.

22 With regard to underwriting, we also have rules
23 that constrain our staff. And in fact, Section 13.8(a) of
24 the direct loan rule says that multifamily direct loans
25 will be underwritten as fully repayable for one thing.

1 And then also, with certain interest rate and 30-year
2 amortization.

3 So beyond that, it says if the Department
4 determines that the development does not support this
5 structure, the Department may recommend an alternative
6 that makes the development feasible. So that is what we
7 are seeking to do, is to work within your rules, and the
8 discretion provided, to resolve a problem.

9 We think that is consistent with the opening
10 statement in your underwriting rules, that say, due to the
11 unique characteristics of each development, the
12 interpretation of the rules and guidelines described in
13 this subchapter is subject to the discretion of the
14 Department and final determination by the Board. So taken
15 all together, we believe that the rules do allow us to
16 find a solution for a deal that may not fit squarely
17 within the box.

18 And we request the Board to provide a
19 determination that will allow us to get to yes with your
20 staff. Thank you very much.

21 MR. ECCLES: A quick question. You cited 10
22 TAC 13.12 that went into effect in January of this year.

23 MS. BAST: Yes, sir. Yes.

24 MR. ECCLES: That rule was not in effect at the
25 time of the 2016 award. Correct?

1 MS. BAST: No. But it was in effect at the
2 time that the Applicant requested the amendment. And so
3 it says the Executive Director or authorized agents may
4 approve amendments to loan terms prior to closing.

5 MR. ECCLES: And that is in effect here? That
6 timing that is laid out in the rule?

7 MS. BAST: Well, we have not closed the 2016
8 loan.

9 MR. ECCLES: Okay.

10 MS. BAST: So yes. I believe it is, sir.

11 MR. ECCLES: Okay.

12 MS. BAST: Thank you.

13 MR. GOODWIN: Questions?

14 MR. ECCLES: Marni has a 15 degree head tilt.

15 MS. HOLLOWAY: I don't have the rule right in
16 front of me, but my guess would be that that flexibility
17 to change loan terms is about workout. And it is not
18 about awards.

19 And you know, we need to be able to get to work
20 out on these federally funded deals. And I think that
21 Brent can absolutely speak to the feasibility of this.

22 MR. GOODWIN: Brent, would you mind coming up
23 and --

24 MR. STEWART: Brent Stewart, Real Estate
25 Analysis. So this application came in with \$2 million,

1 2016 loan. And the \$1 million 2017 loan. Both without
2 interest rate or repayment provisions.

3 When you drop the repayment provisions into the
4 pro forma, the deal fell below the 115 DCR; infeasible
5 under the REA rules. We then worked to try to get a
6 solution which we then worked on the NOI of the property,
7 including using the 2017 rents. Including using a 3
8 percent management fee in the pro forma, 2 percent, up to
9 2 percent could be subordinate to the debt.

10 We found out through discussions with Colby
11 that there was an expense item, a \$58,000 expense item in
12 the operating statement related to cable expense.
13 Normally, the way the cable works, is there is a revenue
14 sharing with the cable company.

15 And so you would have, you would share income,
16 of those other income. And then you would share the
17 expense that you are paying down below. The other income
18 wasn't there. Right. So we went ahead and took the
19 expense out.

20 Once we did those things, with the debt service
21 on the \$2 million loan, we were able to get to that loan
22 at a 115 coverage. We did not get -- you could not put,
23 under the REA rules, you could not put any more debt on
24 the property, with any kind of repayment term, without the
25 DCR falling below 115. You know, costs went up.

1 Yes. Costs in Austin are up. We have had
2 other deals in Austin that costs have been up. This one
3 caught on a percentage basis, costs are up higher than
4 what we have seen on some other deals.

5 We, in our analysis, are using the HUD costs.
6 HUD or the lender, Dougherty, has had the HUD application
7 put together. They have had a third party reviewer of the
8 costs. That is the cost number we are using.

9 We had increased some of our market rent
10 assumptions to match kind of the higher of the market,
11 analysts or HUD. Our gross revenue, our gross potential
12 rent is actually higher than the Applicant's. I feel like
13 we have worked this transaction pretty good, to get back
14 to a loan that he had, that was approved.

15 The 115 DCR is not a rule waivable by the
16 Executive Director. It would be under the REA rule. I
17 guessing, waivable by the Board.

18 I don't know. I haven't ever had that
19 situation before. You know, part of the DCR problem is,
20 that the FHA loan is \$8-1/2 million higher than the loan
21 that we originally underwrote.

22 And we appreciate costs. We appreciate the
23 equity markets. We appreciate all of that. We are at 115
24 coverage. And I feel like we worked in way to get back to
25 the original loan.

1 MR. GOODWIN: Okay. So no future time of
2 working this. You just don't see an avenue of how to work
3 it out to do this in the future?

4 MR. STEWART: You know, the math is pretty
5 easy.

6 MR. GOODWIN: Okay.

7 MR. STEWART: You know, the big issue would be
8 those -- I sent results of our analysis on Friday
9 afternoon. As Colby indicated, he quickly fired some
10 comments back. That is when the cable issue came up.

11 The REA rules say that we use \$20 a unit;
12 that's what we have applied for years and years. It is a
13 box -- part of a box that we drive deals through, to make
14 sure that we are fair with everybody across the board.
15 HUD has their box; Dan has his; everybody has got a box.

16 And they are not -- they don't always line up.
17 We acknowledge that. But our box shows a \$20 in other
18 income. So the cable income didn't help. We had \$20 a
19 door.

20 So that was the only thing out of the -- there
21 are a couple of other items. But this is the only thing
22 of significance that if you count it as other income,
23 might make a difference in that \$1 million loan.

24 MR. GOODWIN: Other questions?

25 MR. VASQUEZ: Just to clarify something that

1 you said. The \$8.5 million, interest senior debt, that
2 was after the 2016 award was made?

3 MR. STEWART: That is right.

4 MR. VASQUEZ: So when the Board was making that
5 decision for that award, the \$8.5 million wasn't part of
6 the deal.

7 MR. STEWART: That is correct.

8 MR. VASQUEZ: Okay.

9 MR. GOODWIN: Any other questions?

10 (No response.)

11 MR. GOODWIN: I think that Colby wants to talk
12 again. Brent. Thank you, Brent.

13 MR. DENISON: Gosh, that sounds so bad.

14 MR. GOODWIN: It does.

15 MR. DENISON: This is really, really technical
16 stuff on the QAP. But the QAP has a cost per square foot
17 scoring mechanism, that we all as developers have to put
18 in. And it is grossly off at application from reality.

19 And that is just what it costs to build in
20 Austin, Texas, versus what cost of construction per square
21 foot is in the QAP, are just not aligned. I think is a
22 one size fit all thing. But the other thing I would like
23 to say is, I would love to collaborate with staff.

24 I sent seven opportunities that have changed in
25 three months for income and expenses, like the water,

1 sewer and trash number, that they are using to underwrite
2 is grossly exaggerated and high. He is -- the
3 underwriting staff is constrained by this \$20 per unit
4 cable income thing, which is about a \$60,000 to \$70,000
5 income change.

6 RBC and FHA, HUD, they have all approved this
7 deal as being feasible. And Dan, tell me, if this doesn't
8 go through, do you think the equity is going to be there
9 to do the deal?

10 MR. KEARSE: Thank you. Quite honestly, as
11 Brent said, you know, we all have our separate boxes. I
12 mean, ultimately, at the end of the day, this is the last
13 stop.

14 So if we don't have an investor that will agree
15 to do it, the deal dies. And so based on the underwriting
16 that we have with the additional loan amount and the terms
17 that were asked for in the waiver, the deal works, and we
18 can get it closed. If the waiver is denied, I mean,
19 pretty much the deal dies.

20 And I wanted to say that, because rent
21 increases have occurred, from 2016 to 2017. They have
22 been the biggest that we have seen in a really long time.

23 Revenues came up.

24 We had originally, when I turned it in three
25 months ago, the deal looked like it would not work unless

1 we had no payment to HOME. Now, according to our new
2 numbers, I think we could be in there, actually, I know we
3 can be in under 115, in your box, and have the repayment
4 terms at zero percent and 40 years, just like you all did
5 on that prior deal.

6 I just, you know, I think the collaboration
7 that we had with Brent happened like on Friday of last
8 week. And it is just a very complicated 40 million-some-
9 odd dollar project.

10 MR. GOODWIN: So it is another 30 days to
11 collaborate, kill the deal or --

12 MR. KEARSE: No, sir.

13 MR. GOODWIN: Do you see any benefit of another
14 30 days to collaborate, Brent? At this point?

15 MR. STEWART: The issue with this deal is DCR.
16 There is no way that income can move. We have got
17 maximum tax credit rents and we are using high market
18 rents that we under our rule can get to.

19 MR. GOODWIN: Yes. In our box, the rules for
20 that can't change.

21 MR. STEWART: It could be waived. You can't
22 waive the tax credit rents, but you can waive other
23 income, I guess. You can do some of those things. We
24 wholeheartedly disagree with some of the expense things
25 that Colby is talking about.

1 We have got a database of properties that
2 report what expenses are. We go in and look at specific
3 properties in that database. We don't use a big swath.
4 We did take a look at some of Colby's other transactions.

5
6 And while the numbers are smaller, they are
7 smaller projects. So the per unit numbers are not too far
8 off. We do underwrite to a \$600 a unit maintenance and
9 repair number. His number was around \$300. So there are
10 some issues between there.

11 The second loan based on that and a wide --
12 first off, let's be real clear on what we approved on the
13 other deal. One, we didn't approve any changes to the
14 2016 loan, except for the term. We didn't change the
15 amortization. We didn't change the interest rates. The
16 recommendation on Colby's deal does the same thing. It
17 extends that term to 40 years. Secondly, the secondary
18 loan on that transaction was underwritten within a 115.
19 We did reduce the loan because of that.

20 But we used a 35-year amortization. We used
21 some of the waiver ability that we had on that secondary
22 loan. We don't have it on the first lien, and there is no
23 second -- the 2016 award.

24 And because there is no room for any 2017
25 award, there was no need to modify the -- to make it

1 happen, there would need to be a waiver or something as it
2 relates to the \$20 per unit in other income, to get income
3 up so the DCR would come up to support additional debt.
4 It is pretty simple math.

5 MR. GOODWIN: Other questions?

6 MR. ECCLES: But under our adopted underwriting
7 rules, it doesn't get there with this deal?

8 MR. STEWART: That is correct.

9 MR. GOODWIN: So another 30 days just kicks it
10 down the road. We are back to having the same discussion
11 we just as well had today. In your opinion?

12 MR. STEWART: Other than the income side, I
13 don't know where we would go.

14 MR. GOODWIN: Right. Okay.

15 MR. VASQUEZ: Another question. If we had
16 another \$1 million in actual equity, rather than our
17 loans, make the deal work? Rather than us give free money
18 with no repayment for 40 years?

19 MR. STEWART: Yeah. I mean, any time there is
20 a better rate. This is not a sources-and-uses problem.
21 This is not GAAP; it's not that there is not an ability to
22 have -- you have got debt.

23 You have got our debt. You have got the
24 equity. And you have got the deferred developer fee. And
25 those are the sources of funds. And our analysis shows

1 that if you do all of that, without that \$1 million loan,
2 it works.

3 I can appreciate what Dan is saying. That he
4 has got a box. His own balance sheet or a fund, or
5 something that the deal is going into. And clearly, any
6 time you have got more subordinate debt on a transaction,
7 you know, the better it is for equity in the senior debt.

8

9 MR. GOODWIN: Okay. Any other questions?

10 MS. BAST: Thank you for your time. Cynthia
11 Bast. I think what we are going to hear is what is the
12 will of this Board as to helping the 2016 transactions
13 that find themselves in a ditch because of this change in
14 economics.

15 And as Brent said, there may be some waivers
16 that may be required. There may be some hard decisions
17 that are a little bit out of the box, that may be
18 required.

19 I would like to point out that because this
20 Applicant is using FHA financing, HUD requires that the
21 loan be repaid below the line from available cash flow.
22 From 75 percent of available cash flow. So that loan,
23 according to HUD, is only repaid to the extent there is
24 cash flow to repay it.

25 But yet, under 13.8(a), it is being

1 underwritten to a 115 debt service coverage, as if it is
2 fully repayable, not subject to cash flow. That is the
3 rule.

4 But as I quoted in my prior remarks, the rule
5 also says that if the development does not support this
6 structure, the Department may recommend an alternative
7 that makes the development feasible. So I think that is
8 the question.

9 Is on this kind of loan that is set to be
10 repayable out of cash flow? Anyway. Are we going to get
11 tripped up with underwriting rules that say you have to be
12 repaid above the line at a 115 debt service coverage.

13 It seems to me that if you could show that
14 there is sufficient cash flow produced to repay this loan
15 from 75 percent of cash flow, below the line, there may be
16 a different consideration.

17 MR. VASQUEZ: And excuse me. Did I just hear
18 you say that don't worry about this, we are not going to
19 pay the FHA back, anyway.

20 MS. BAST: No. That is not what I said. I
21 said --

22 MR. VASQUEZ: Basically, because --

23 MS. BAST: FHA is a first lien loan that is
24 being repaid.

25 MR. VASQUEZ: Yes. But if there is not enough

1 money to pay it back, oh, it is not going to be paid back,
2 don't count that against us.

3 MS. BAST: No. That is not what I am saying.
4 What I am saying is --

5 MR. VASQUEZ: It actually is.

6 MS. BAST: What I am saying is that a 115 debt
7 service coverage requires that all of your debt be repaid
8 at a greater than breakeven. And what I am saying is,
9 that if we can show we have sufficient cash flow to
10 support this loan, then should that be a consideration for
11 this Board. That is the question I presented.

12 MR. GOODWIN: Any other questions?

13 (No response.)

14 MR. GOODWIN: Do you have another statement you
15 want to make?

16 MR. DENISON: Just one thing about time. I
17 mean, I did submit within ten minutes of receiving Brent's
18 email. I sent seven items, that I said, these have
19 changed on the income and expense side. And they are
20 really considerable changes.

21 And his response was, we can't consider these
22 things, because we didn't request them. And I am like,
23 they are in three months of time had passed. We have
24 locked in construction financing.

25 We have locked into everything. All the

1 expenses. They have been underwritten by HUD. They have
2 been underwritten by RBC. And I don't think you all have
3 underwritten those numbers.

4 And I would love for 30 days to be able to say,
5 look at RBC's numbers. Look at Dougherty and HUD's
6 numbers, and at least get the exact right numbers. And I
7 think it will be above the 115 that you all have.

8 It is just that a lot of things have changed.
9 And the only time I have had to collaborate was Friday and
10 Monday, I believe.

11 MR. STEWART: As it relates to that comment
12 about sending information on Friday, the Board posting was
13 last Thursday. We have been working on this transaction
14 for a bit.

15 There were phone conversations prior to last
16 week, talking about this transaction. We had an
17 underwriting report to get published, in part, to get them
18 to be able to get to this Board and make the case to you
19 guys.

20 Otherwise, the underwriting report would not
21 have been published. There would have been nothing in
22 front of you today in terms of the underwriting report.
23 And it would have been punted for 30 days.

24 The second thing is, as it relates to the 115
25 coverage, 75 percent cash flow, how we underwrite these

1 loans. We very much underwrite these loans as if we were
2 underwriting a fully repayable loan.

3 Why? If it messes up and something happens, we
4 owe the money back to HUD. This is not simply oh my
5 goodness, we are just going to grant some of it. Right.
6 We owe the money back to HUD, and so we do underwrite it
7 at the 115.

8 As it relates to the 75 percent cash flow, that
9 is a relatively new thing that we have experienced,
10 because we had a deal cut with HUD, that that was not the
11 case. It is a bad deal for us. It is a problem for us,
12 that we haven't figured out a way around.

13 We absolutely underwrite them at a 115. If
14 this, if these funds were a grant, it would come out of
15 basis. That wouldn't hurt him, because he has got so much
16 extra cost, that his basis is there.

17 But at the same time, you know, that --
18 granting the money gets him away from the 115 coverage.
19 But yes, we underwrite loans to a 115 and not -- that is
20 important.

21 MR. GOODWIN: Okay. So we have a motion I
22 think, in front of us, that is to take staff's
23 recommendation and deny --

24 MS. HOLLOWAY: The staff recommendation is to
25 deny.

1 MR. GOODWIN: Is to deny. Any other
2 discussion?

3 MS. RESÉNDIZ: What type of impact would this
4 have on jobs in total? You all have secured projects
5 right now. You mentioned that you have -- your developer
6 is ready to build.

7 MR. DENISON: Yes. I mean, these deals are
8 like, permitted.

9 MS. RESÉNDIZ: Okay.

10 MR. DENISON: I mean, this deal is like
11 permitted and ready to go. And architects and engineers
12 need to get paid.

13 MS. RESÉNDIZ: So it is on hold?

14 MR. DENISON: Well, it is proceeding forward.
15 It is all proceeding. We just need the financing. I
16 mean, it is about a \$1 million of predevelopment funding
17 that we have already put into the deal.

18 It is in Austin, Texas. It is the safe -- and
19 by the way, I have 100 percent full senior deal in
20 Georgetown. My whole portfolio has thousands of people on
21 the waiting list. I can't see the risk associated with
22 this.

23 MS. RESÉNDIZ: So just for my clarification,
24 have you participated, or has your company participated in
25 a loan of this magnitude?

1 MR. DENISON: Yes.

2 MS. RESÉNDIZ: Okay.

3 MR. DENISON: Yes. We have. We have. Every
4 single one. By the way, our company has a stellar
5 compliance record with you all. We have never defaulted
6 on a loan. We have had no problems, in fact.

7 Our portfolio in Austin and San Antonio has
8 just performed beautifully. And as far as the expenses
9 and income, I mean, our whole portfolio is here.

10 I mean, our -- the water and sewer numbers that
11 I was mentioning, the comparable is about two miles away
12 from this property, that we use the same water and sewer
13 from the City of Georgetown. But yes, this is a big deal.

14 MR. GOODWIN: Colby, you keep saying this
15 project is in Austin, but it is listed here as being in
16 Georgetown.

17 MR. DENISON: Sorry, Austin MSA. Our whole
18 portfolio is in the suburbs of the Austin --

19 MR. GOODWIN: So it's in Georgetown, Texas.

20 MR. DENISON: Yes, sir. Sorry.

21 MR. GOODWIN: Okay. Any other questions?

22 (No response.)

23 MR. GOODWIN: Okay. We have got a motion and
24 staff's recommendation is to deny.

25 MS. HOLLOWAY: Yes.

1 MR. GOODWIN: Okay.

2 MS. HOLLOWAY: Absolutely.

3 MR. GOODWIN: No other questions?

4 (No response.)

5 MR. GOODWIN: No other comments?

6 (No response.)

7 MR. GOODWIN: All in favor, say aye.

8 (A chorus of ayes.)

9 MR. GOODWIN: Those opposed?

10 (A chorus of ayes.)

11 MR. GOODWIN: I'm sorry. Those in favor, say
12 aye.

13 MR. VASQUEZ: Just to clarify something.

14 MR. GOODWIN: This is not going to happen if
15 you say aye.

16 MR. VASQUEZ: He's making the motion to deny.

17 MS. HOLLOWAY: Okay. And what that motion
18 accomplishes is denying the present application for the
19 2017 dollars.

20 MR. VASQUEZ: For the extra million dollars.

21 MS. HOLLOWAY: For the extra million dollars.
22 And no changes to the 2016 award. So the 2016 award is
23 still there. It is still available according to REA's
24 analysis. They can still close and move forward with that
25 transaction.

1 This is just about the 2017 award. We are also
2 not approving waiver of the disbursement requirements,
3 which Cynthia took off the table earlier.

4 MR. GOODWIN: Right.

5 MR. ECCLES: But it also increases the term,
6 doesn't it?

7 MS. HOLLOWAY: To 40 years, which is allowed
8 under our rules.

9 MR. GOODWIN: To the 40?

10 MR. ECCLES: Yes.

11 MR. GOODWIN: Yes. Okay. So once again, who
12 is in favor of staff's recommendation by saying aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Those opposed?

15 (No response.)

16 MR. GOODWIN: Okay. Staff's recommendation is
17 upheld.

18 MS. HOLLOWAY: Okay.

19 MR. GOODWIN: The next project, Marni?

20 MS. HOLLOWAY: Is 17505. Do you wish to move
21 forward with this one today?

22 MR. DENISON: Can we push that to next month?

23 MS. HOLLOWAY: If you would like us to pull it
24 from the agenda, we can do that.

25 MR. DENISON: Please.

1 MS. HOLLOWAY: Okay.

2 MR. GOODWIN: Okay. So let's move forward.

3 MR. DENISON: I believe you have the next --

4 MS. HOLLOWAY: I don't know. I can't tell you
5 standing right here that we will be here for the June
6 meetings, because we are right in the middle of 9 percent
7 housing, but yes, I think we need to work through the rest
8 of it with REA.

9 MR. GOODWIN: Okay.

10 MS. HOLLOWAY: All right.

11 MR. GOODWIN: Item 3(f) regarding waiver of the
12 multifamily direct loan rule.

13 MS. HOLLOWAY: Andrew gets to talk to talk
14 again.

15 MR. GOODWIN: Andrew has the easy one.

16 MR. SINNOTT: Good afternoon. Andrew Sinnott,
17 Multifamily Loan Programs Administrator. Item 3(f) is
18 presentation, discussion and possible action on a waiver
19 of 10 TAC 13.11(b) of the 2017 multifamily direct loan
20 rule. This item accompanies item 1(j) that was on the
21 consent agenda earlier, which was the ownership transfer
22 for Santa Rita Senior Village.

23 Santa Rita Senior Village received an award of
24 9 percent Housing Tax Credits and HOME funds in July of
25 2016. As you all know and as others have mentioned today,

1 over the past seven months or so, equity pricing has
2 deteriorated due to potential changes in the corporate tax
3 code.

4 As a result of this deterioration in equity
5 pricing, many syndicators have become more selective in
6 who they partner with, primarily relying on more
7 experienced well capitalized owners and developers.

8 To that end, the previous General Partner and
9 principals of Santa Rita Senior Village have exited the
10 transaction to make way for a new General Partner and
11 principals that are anticipated to be able to close the
12 transaction and complete the project. The new principals
13 have decided to forgo the HOME funds that were previously
14 awarded to this deal, making up that source of funds with
15 conventional debt, and reducing developer fee.

16 So as a result of the ownership transfer, the
17 HOME funds are being returned, while the 9 percent Housing
18 Tax Credits will remain in place. At this point, it is
19 worth considering the Board action that was taken in the
20 past few months to waive two things. Penalties associated
21 with 2016 9 percent awardees returning their credits.

22 And 2016 9 percent late and direct loan
23 awardees returning both their credits and direct loan
24 funds, if they can document a significant loss in equity
25 attributable to these lower syndication rates. The

1 deadline for folks to return the credits and direct loan
2 funds while waiving the penalties is June 30, 2017.

3 The penalty under 10 TAC 13.11(b) states, if a
4 direct loan award is returned after Board approval, or if
5 the Applicant or affiliates fail to meet federal
6 commitment or expenditure requirements, penalties may
7 apply under 10 TAC 11.9(f), or the Department may prohibit
8 the Applicant and all affiliates from applying for
9 multifamily direct loan funds for a period of two years,
10 if they return their funds, or have failed to take
11 necessary actions specified in one or more agreement with
12 the Department where the failure resulted in the
13 Department's failure to meet federal commitment and
14 expenditure requirements.

15 So this scenario, an ownership transfer
16 resulted in direct loan funds being returned. It was not
17 necessarily contemplated by those previous Board actions,
18 in that the Applicant has transferred ownership of the
19 transaction to another entity that does not wish to retain
20 the HOME funds that were previously awarded.

21 Another mitigating factor, should the Board
22 choose to waive the penalty under 10 TAC 13.11(b) for this
23 specific instance, is that staff has learned that the
24 federal 2017 appropriations act appears to suspend two-
25 year commitment deadline for a 2015 allocation of HOME

1 funds. Which would give staff additional flexibility to
2 commit these returned funds.

3 So this deal was likely going to get 2015 or
4 some earlier allocation year of HOME funds. But as a
5 result of the 2017 Appropriations Act, we wouldn't have to
6 hold by the two year commitment deadline associated with
7 those funds. With that, staff recommends waiving the
8 penalty under 10 TAC 13.11(b) for the Applicant and all
9 affiliates of Santa Rita Senior Village.

10 MR. GOODWIN: Thank you, Andrew. Do I hear a
11 motion?

12 MR. BRADEN: I move to approve staff's
13 recommendation to waive the penalty under 10 TAC 13.11(b).

14 MR. GOODWIN: A second?

15 MS. RESÉNDIZ: Second.

16 MR. GOODWIN: A second by Ms. Reséndiz. All
17 those in favor, say aye.

18 (A chorus of ayes.)

19 MR. GOODWIN: Okay.

20 MR. SINNOTT: Thank you.

21 MR. GOODWIN: 3(g).

22 MS. HOLLOWAY: I don't want to do that one.

23 MR. GOODWIN: I'm sorry about that. So we are
24 at the point in the agenda, where we take comments from
25 the public about --

1 MR. ECCLES: Actually, sir, if I could make a
2 quick point of clarification. The waiver of 13.11(b) is
3 for a specific project. It is not being generally waived.

4 MR. GOODWIN: Okay. Thank you for that
5 clarification. Do we have any general comments that you
6 would like to make? We can't have any discussion, but
7 this could lead to items being put on the agenda for
8 things in the future.

9 MS. RICKENBACKER: Hello. And I will go
10 quickly. I know everybody is hungry. I just really want
11 to say thank you to the Board members that have been
12 participating in the program that are coming off.

13 The only one that is here, that I have already
14 said this to, obviously is Mr. Gann. But Dr. Munoz is not
15 here, and neither is Mr. Chisum. So I really hope you all
16 will extend the same to both of them for all their hard
17 work with this Agency, on behalf of the development
18 community.

19 MR. GOODWIN: Thank you.

20 MS. RICKENBACKER: Thank you so much.

21 MR. GOODWIN: Thank you. Before we
22 entertain -- are there any other public comments?

23 MR. IRVINE: You have got a bunch of people
24 that just won the good citizenship endurance award.

25 VOICE: I think they are paying people.

1 MS. DAWSON: Good afternoon. My name is
2 Chelsea Dawson from San Antonio, Texas. I am presenting
3 today a petition of opposition for TDHCA application
4 17356, and 17376 out of San Antonio, Texas. Collecting
5 this petition and giving voice to thousands of residents
6 in northwest San Antonio has been a humbling and powerful
7 experience.

8 This is a passionate community that wishes to
9 be a full participant in any conversations about new
10 projects that will impact local resources, properties, and
11 the community as a whole. The overall lack of community
12 planning is alarming. We have over 3,000 signatures we
13 are presenting to you, to confirm that.

14 The City of San Antonio, specifically
15 Councilman Cris Medina, was given opportunities to inform
16 the community surrounding the projects known as the Acacia
17 and the Bristol, but failed to do so. It was December 12
18 that developers Versa and ABC Development first requested
19 applications through the City to apply for the TDHCA.

20 At that point, we then move to January, where
21 Cris Medina met with two HOAs that are here today and
22 failed to discuss anything about these projects with those
23 HOAs, did not inform us that these were going on. We live
24 in backing one of the properties, and we live less than a
25 mile of the other property.

1 The city attorney of San Antonio also suggested
2 to the developers that they needed to reach out to six
3 different HOAs to discuss this, two of which are here
4 today, and they did not reach out to any of those six
5 neighborhoods. February comes along, and Cris Medina
6 talks with the other councilmen about this. He also
7 actually brings up in meeting minutes that the ability to
8 communicate with neighbors, city council and developers
9 needs to be improved. There needs to be changes made.

10 Instead of working on those changes, he and the
11 other councilmen voted for the developers to move forward
12 with their application process. So come April, residents
13 of the surrounding area find out, doing our own research
14 that these projects are moving through in our area.

15 The biggest concern, what I am taking
16 signatures from all of our petition signees is that there
17 issues with flooding. These are both on floodplains.
18 School overcrowding and traffic issues.

19 Despite the fact that the city attorney advised
20 them to reach to us, and the developers also seek points
21 when they reach out to us, it still was not done. Even
22 after we have been going through the petition process.
23 The developers are aware of that.

24 We have been reaching out to the developers.
25 They still have not come forward. They chose not to, and

1 the end result basically, residents, constituents, and
2 taxpayers with no knowledge of the projects.

3 This has created doubt amongst residents in San
4 Antonio, along with concern what could happen to the
5 community if these projects are approved. Lack of
6 community involvement and communication has generated the
7 signatures I am holding.

8 And we as residents, constituents and taxpayers
9 are disappointed in our local State Representatives and
10 organizations. At this time, we are requesting that TDHCA
11 deny these applications for the properties listed, as
12 these developers and the City of San Antonio did not
13 properly inform the residents.

14 MR. GOODWIN: Thank you.

15 MS. DAWSON: Thank you.

16 MR. GOODWIN: Other public comments?

17 MR. DECKER: Hello. My name is Bruce Decker.
18 I live in San Antonio. I have been a resident there for
19 about ten years. I am here to talk a little bit about the
20 Bristol and the Acacia.

21 Hopefully, that is better. Now San Antonio is
22 one of the most flash flood-prone areas in all of North
23 America.

24 As a matter of fact, San Antonio and Bexar
25 County has spent about \$850 million on floodage and

1 drainage projects since 2007. Now, just in the past
2 election cycle, a couple of weeks ago, San Antonio has
3 approved another bond for another \$138 million to address
4 flooding and drainage problems, and to get people out of
5 the floodplain.

6 Mr. Chairman, fellow Board members, San Antonio
7 is trying to get people out of the flood plain. Now, much
8 to my surprise, much to my neighbors' surprise, we find
9 out that two of the affordable housing projects proposed
10 for San Antonio are being proposed in 100-year
11 floodplains.

12 Now, what happens when something like the
13 Acacia is built in the 100-year floodplain? Well, the
14 buildings act as an obstruction to the flow, to the
15 natural flood flows. The waters hit the buildings, they
16 begin to rise. The upstream waters begin to rise as well.

17 So what is going to happen to the people that
18 live along the floodplain? Who is going to pay for their
19 property damage?

20 Who is going to pay for their flood insurance?

21 Not only does building a development in a floodplain
22 affect the people who live upstream, it affects the
23 downstream residents as well.

24 When you build the Acacia or the Bristol in a
25 floodplain, you get rid of all the natural grasses. You

1 cut down the trees and the wooded area. You destroy the
2 water-carrying capability of the floodplain. This raises
3 the downstream levels of the flood as well.

4 So now what are we doing to do about the people
5 who live downstream of the Bristol? What are we doing to
6 do about the people who live downstream of the Acacia?

7 What happens to the people who live across the
8 street from the Acacia who, due to prior poor planning,
9 already find themselves in the 100-year floodplain? How
10 many more houses are we going to add to the 100-year
11 floodplain by building projects such as the Acacia or the
12 Bristol in the floodplain?

13 Now, not only does building in a floodplain
14 affect the residents that live around the floodplain, it
15 hurts the very people that we are putting in the
16 affordable housing that we are trying to help. If you
17 take a look at the Acacia, you are going to see that the
18 100-year floodplain surrounds it completely.

19 So not only is it being built in a 100-year
20 floodplain, it is completely surrounded by it. It is
21 almost like it is an island. The only road in and out of
22 the Acacia is also in the 100-year floodplain.

23 So in the event of a flash flood, the only way
24 to get out of the Acacia is for the people to traverse the
25 very flood waters that they are trying to avoid. Now, I

1 find this to be a safety concern. And I think it also
2 qualifies as a negative site attribute.

3 Having said that, given two choices, if you
4 want to build a project in a floodplain or locate one out
5 of a floodplain, shouldn't we always choose to build the
6 one out of the floodplain? Mr. Chairman, fellow Board
7 members, I ask you this.

8 Please deny awarding tax credits to the Acacia
9 or to the Bristol, or any project being built in a
10 floodplain in San Antonio. We in San Antonio are trying
11 to get people out of the floodplain and keep them out of
12 harm's way. Mr. Chairman.

13 MR. GOODWIN: Thank you.

14 MR. VASQUEZ: Can I ask him a silly question?
15 Completely unrelated. So are you actually part of this
16 group, or were you hired as a professional orator? One
17 condition --

18 (Simultaneous discussion.)

19 MR. DECKER: If you look at the top of the
20 Acacia --

21 MR. VASQUEZ: No. No.

22 (Simultaneous discussion.)

23 MR. GOODWIN: He is answering this question.

24 MR. VASQUEZ: That was a great presentation.

25 MR. DECKER: I actually live right behind the

1 Acacia project. So if you give points according to the
2 rules, like locating properties throughout the 100-year
3 floodplain those flood waters would naturally be deviated
4 onto my property, onto my neighbor's property.

5 MR. GOODWIN: My apologies. But we are not
6 allowed to engage in discussion at this segment. You have
7 to get on the agenda. It has to be properly posted for us
8 to have a discussion with you. So we listen, but we can't
9 get into a discussion with you.

10 And I might also add, if all of you have the
11 same thing to say, and it is opposed to these projects,
12 that you can stand up and say, us too. And let us know
13 who you are.

14 And we have some people here that are going to
15 be read into the record. But we can't at this part, get
16 into a discussion with you about these things.

17 MR. DECKER: Can you listen to us?

18 MR. GOODWIN: Yes. And we have listened to
19 you.

20 MS. DAWSON: Just two quick questions; yes or
21 no answers.

22 MR. GOODWIN: No. We can't. That is not
23 allowed in this segment of the agenda. For us to have a
24 discussion, items have to be posted with proper notice for
25 us to get into a discussion about that.

1 Do you have some things you want to read into
2 the record? Okay. We can't accept anything from you.
3 No. No material.

4 And if you collectively, if you are all part of
5 a group, and you want to have one person speak for
6 everybody, you can stand up and show us that you have got
7 that support. We try to acknowledge it that way as well.

8
9 MS. ROBLEDO: Different perspectives on all of
10 it. That is all.

11 MR. GOODWIN: Okay.

12 MS. ROBLEDO: My name is Michelle Robledo. I
13 am the President of Braun Station East homeowners
14 association. That is the property that directly abuts the
15 Acacia.

16 And what I am going to address is that the City
17 of San Antonio, they have adopted a structured plan for
18 growth. San Antonio Tomorrow has adopted a nine point
19 approach to the planning. And regarding these projects, I
20 only want to address four.

21 One is economic centers. In order to place
22 these projects into the -- they wanted to make sure that
23 they were near business centers and economic centers. And
24 these economic centers are nowhere near either of these
25 two properties.

1 Environment sustainability, there is obviously
2 non permeable ground cover that we really do need to,
3 excuse me, address. The homes in and around and
4 downstream of these sites, really for a greater chance of
5 that. And this is something that they are wanting to
6 avoid in the plan.

7 Transportation corridors. The transportation
8 corridors are done to carry people in and around the
9 communities. Those communities are not reached by those
10 transportation corridors, at all.

11 And fourth and final, there is transitional
12 housing. They are set up to have transitional housing
13 that goes between single family dwellings, one and two
14 story dwellings to multifamily multilevel dwellings, three
15 and four dwellings.

16 They are supposed to be transitional housing
17 such as duplexes, garden homes et cetera. This is not
18 being met either. So in San Antonio's long term plans,
19 none of this fits. And that is why I oppose it.

20 MR. GOODWIN: Thank you. Any other public
21 comment?

22 VOICE: I have some written statements here.
23 Can I submit these for the record?

24 MR. GOODWIN: No.

25 VOICE: Do they have to be spoken?

1 MR. IRVINE: No.

2 MR. GOODWIN: You can submit it over here.

3 VOICE: Here?

4 MR. GOODWIN: Yes.

5 VOICE: Okay. So I will just put my name here.

6 And then the next speaker will be Mark. That will save
7 us some time. Thanks for hearing our comments.

8 MR. GOODWIN: Thank you.

9 MR. HOWSON: I am sure you are tired, too. I
10 am Mark Howson. I live in San Antonio. I am speaking
11 specifically about the Acacia project, case number 17356.

12

13 Specifically, I have three concerns about this
14 project. First off, I would ask you to request the staff
15 to seriously look at the application and in particular
16 look at the points being applied for the application.

17 In looking at the application we found that in
18 their points for site characteristics they claim items
19 such as a museum within four miles. There is no museum
20 within four miles and it is not documented in the
21 application.

22 A credit for ADA compliant playground within a
23 half a mile, that has an ADA compliant route to it. And I
24 personally looked over that route for us. It is not an
25 ADA compliant route and the route is actually more than

1 half a mile.

2 And their claim that there is a health care
3 facility within four miles. And the facility documented
4 is actually nonexistent today. We also strongly want the
5 staff to look at the organizations that are supporting
6 this group.

7 We look at the applications and look at the
8 QAP, the organizations that support this must be
9 representing the whole community or a significant matter
10 within the community such as police, fire, mass transit,
11 flooding, those kinds of topics to qualify as an eligible
12 unit to be representing of the community. And of course,
13 that is required so that the commission knows that the
14 community has been engaged.

15 Well, if you look at the organizations on this
16 one, none of them meet that qualification. One
17 organization, it sponsors an annual Hispanic basketball
18 tournament in a gym that is almost ten miles away. That
19 is the sum total of its normal activities.

20 Another organization provides educational
21 services to immigrants who are working to become citizens.

22 These are good organizations but that does not raise to
23 the whole community.

24 Another organization specializes in helping
25 veterans -- and I am a veteran myself -- who have special

1 needs. Again, it is a small segment; not the whole
2 community.

3 And another organization supports, literally,
4 their job is to support Latino interests. Again, all good
5 organizations, yet they are very limited in their scope,
6 and don't represent the whole community. So these do not
7 raise to the level of the QAP.

8 The final concern that is really significant to
9 us, and you have heard this over and over again, is that
10 we were intentionally, actively not engaged in the
11 process. My housing division happens to back up to the
12 Acacia. Literally, you can look out the windows of our
13 houses at where they are going to build it.

14 And we didn't know anything about it. We know
15 our councilman knew about it. We have personally -- the
16 first time we found out about it, is when we looked at the
17 application on your site.

18 That is how we found out about it. And when
19 you look at that situation, we, myself and another one of
20 our citizens went to talk to the developer. We had that
21 conversation.

22 The developer has never come to talk to us. We
23 talked to their secretary and found out about the project
24 that way. And so that is what we are stuck with. So we
25 look at that.

1 The process of not having the community in the
2 process is really one of the things that is serious and
3 causes these kinds of projects to actually fail. And we
4 will have another speaker in a moment who will talk about
5 how a successful project can be done.

6 MR. GOODWIN: Thank you

7 MR. HOWSON: Thank you very much.

8 MS. MALDONADO: Thank you for the opportunity
9 to speak. My name is Bianca Maldonado. And I am also a
10 resident of District 7.

11 There are several of us that came up from San
12 Antonio today. And just as you spoke earlier, if you all
13 would stand, all of us that came today from San Antonio.
14 So you can represent. We are all in one city council
15 district.

16 We have a new councilwoman elect who is also
17 here, present today. And I am here because I have seen
18 the success of a tax credit property, Primrose at
19 Monticello Park. That is the community where I am a
20 neighborhood President.

21 And there are huge strides and improvements
22 that can be made to allow affordable housing for the most
23 vulnerable people, the seniors in our community, with the
24 success of Primrose at Monticello Park that we have had.
25 But that happened through significant amounts of

1 conversation.

2 It is a dialogue. So your QAP process, and
3 there are 25 points on the table, 25 points on the table
4 between the State Representative and a letter from the
5 City Council, saying that they have a resolution of
6 support for these projects.

7 And these are highly competitive projects. And
8 you have a community who is not engaged with conversations
9 regarding the 100-year floodplain, and also transportation
10 and traffic and congestion.

11 It raises the level of due diligence. And so
12 when you are looking at awarding points in a highly
13 competitive process, when you have people who are not
14 participating in good faith in that process, then they
15 should not be eligible for being awarded those projects.

16 Specifically, I am speaking about the Acacia,
17 project 17356, the Bristol, 17376. These are the ones
18 that are still in process. There were many more before
19 this that have now fallen off the list.

20 So you can imagine being a part of a community
21 to know that they have a target on them, because of the
22 points that are awarded, because of the census tract area,
23 the quality of their schools. And then how easily these
24 letters fell from their elected representatives with no
25 conversation.

1 There is a reason our current councilman lost
2 his election. There is a reason there is a councilwoman-
3 elect here to address you. So I will ask you, in the
4 spirit of good faith development in working with
5 communities this goes against everything that the TDHCA
6 stands for in building a proper development that involves
7 communication.

8 A lot of people say, well, I don't want that in
9 my backyard. That is not the case here. This case is
10 about life safety issues and transportation, and about a
11 conversation to be had. So 25 points at the end of the
12 day.

13 And you look at the numbers from the census
14 that was just released. San Antonio, fastest growing city
15 in population in the entire state, third in the nation.

16 This is a little bit away. And maybe this is
17 an opportunity to correct the QAP process for 2018. But
18 most importantly, thank you for your time today. Thank
19 you for your service.

20 MR. GOODWIN: Thank you.

21 MS. SANDOVAL: My name is Ana Sandoval, and I
22 am speaking on Applicant 1736 know as the Bristol and
23 number 17356 known as the Acacia. And I must congratulate
24 you for your endurance through this meeting, as well as my
25 team who came up today.

1 So I'm Councilwoman-elect Ana Sandoval for the
2 San Antonio City Council District 7, where these
3 developments are proposed. I will be taking my oath of
4 office next week. You all are invited to come, May 31st.

5
6 Also present today, I would like to recognize
7 that there are staff in the offices of State Senator Jose
8 Menendez, State Representative Justin Rodriguez and State
9 Representative Vela all from the San Antonio area. As
10 Bianca just mentioned, our is a very quickly growing city,
11 and we face many challenges because of that, including a
12 strong need for affordable housing options.

13 That is your work in helping us address this
14 challenge. It is greatly needed and it is greatly
15 appreciated. We also appreciate that you support and you
16 encourage local engagement on affordable housing
17 developments.

18 Per the TDHCA document titled, "Housing Options
19 for Texas Communities, A Guide for Local Engagement on
20 Affordable Housing," local government resolutions of
21 support are a significant scoring item in awarding these
22 tax credits; 25 points in total. And these letters are
23 intended to encourage local governments like ours to
24 engage with the developers as well as constituents to
25 ensure what is called a meaningful opportunity for input

1 and dialogue.

2 In the case of the Bristol and the Acacia,
3 there were no meaningful opportunities or any
4 opportunities for input and dialogue by constituents
5 before these letters were submitted with their
6 application.

7 This lack of dialogue has left our community
8 with the unanswered questions which our professional
9 orator brought forward, along with everybody else. With
10 the many unanswered questions and concerns that you have
11 heard today.

12 Once I am on Council it will be my job to
13 ensure that there are meaningful opportunities for input
14 and dialogue with constituents prior to awarding any
15 resolutions of support in my Council district. Thus, I am
16 here to express my lack of support for these two projects,
17 due to the absence of public engagement as well as the
18 other concerns brought forth by the previous speakers.

19 It is our understanding that the current QAP
20 does allow a city to retract its letter of support from
21 the application process, once it has been submitted. We
22 understand that. However, once I am in office, I do plan
23 to pursue a resolution that will rescind the City support
24 for these projects on the basis of lack of public
25 engagement.

1 Thank you very much for your time and
2 attention. And you are dismissed for lunch, I think.

3 MR. GOODWIN: Well, thank you very much. And
4 thank you to all of you who drove up here from San
5 Antonio.

6 Unfortunately, as I said in this part of our
7 agenda, we are restricted from participating in discussion
8 with you. So we can only listen. We have some things we
9 need to read into the record?

10 MS. HENDERSON: Peggy Henderson, TDHCA,
11 registering public opinion against projects 17356 and
12 17376. Would you like for me to read these individual
13 names, or would we just include these also in with the
14 others?

15 MR. GOODWIN: I think we can just include them
16 into the record if you would. Yes, please. It is good
17 things we do here, as a former Chairman of ours used to
18 say, and there is a gentleman that has been here for every
19 meeting that I have ever participated in, who, this is his
20 last meeting. And we would like to acknowledge him and
21 recognize him for the service that he has given to this
22 Agency and to the State of Texas. And bid him farewell,
23 but never say goodbye. Tom.

24 MR. GANZ: Yes.

25 MR. GOODWIN: Thank you for all that you have

1 done.

2 MR. GANZ: Thank you.

3 MR. GOODWIN: We appreciate you. We love you.

4 We are going to miss you. And we have a little --

5 (Applause.)

6 MR. IRVINE: Also, this certifies that the
7 State of Texas House of Representatives herewith present
8 to Tom H. Ganz by the Texas Department of Housing and
9 Community Affairs this flag that was flown over the
10 Capitol of the Sovereign State of Texas on May 12, 2017,
11 in appreciation of eight years of service to TDHCA's
12 Governing Board.

13 MR. GANZ: Thank you, Tim.

14 MR. IRVINE: And it has been more than just a
15 service. It has been just an immense comfort to know that
16 when we were faced with the threat of not having a quorum,
17 Tom said, I am doing whatever I have to do to rearrange my
18 schedule. I am driving down.

19 He probably put on 50,000 miles. You have been
20 all over all the details, but you have also been a real
21 source of strength and fortitude. And you know, a ruler
22 without sharp edges is just a guideline. You said it, and
23 you have lived it. So we thank you so much.

24 MR. GANZ: Tim, it has been great to work under
25 you. And miss all the fellows here, and the ladies.

1 Especially you out there who contribute so much time and
2 hard work to make our job a lot easier.

3 And you can tell just by this meeting today, it
4 gets pretty tough sometimes. I thank all of you all out
5 there. The TDHCA group, I love you all.

6 (Applause.)

7 MR. LYTTLE: I actually have 16 letters I have
8 to read into the record.

9 (Simultaneous discussion.)

10 MR. IRVINE: Do it outside.

11 MR. LYTTLE: Just kidding. One resolution.
12 One final resolution.

13 "Whereas, Tom Ganz, appointed on March 13, 2009
14 has been an invaluable contributor to the Governing Board
15 of the Texas Department of Housing and Community Affairs.

16 Whereas; Tom has logged roughly 50,000 miles, obviously
17 more, based on what he just said, during driving to
18 Department, Board and Committee meetings.

19 "Whereas, Tom has repeatedly brought to bear a
20 steady and unwavering devotion to the principal that any
21 rule without sharp edges is just a guideline. Whereas;
22 Tom has often summoned lessons learned as a real estate
23 professional and endowed the Board with the benefit of
24 those lessons.

25 "Whereas, Tom, especially during appeals heard

1 by the Board has repeatedly spoken up for the interests of
2 the low income persons, 'down the line,' whom we are here
3 to serve. Whereas; Tom has repeatedly advocated for the
4 importance of moving forward as quickly as possible and
5 during the timely use of precious resources for the
6 benefit of Texans.

7 "And whereas, as a realtor, Tom has been an
8 especially strong advocate for the benefits of the
9 Department's first time home buyer programs, and has
10 delighted in making motions to facilitate those programs,
11 and recognizing the accomplishments of the participating
12 lenders as well as the Texans served.

13 "Now therefore, it is the recommendation of the
14 staff of the Department and Tom's fellow Board members
15 that he be recognized by acclaim and deeply thanked for
16 his invaluable contributions, his commitment of time and
17 energy, his wisdom and insight in questioning and
18 deliberating in his selfless dedication to Texans."

19 (Applause.)

20 MR. GOODWIN: I will entertain a motion by Mr.
21 Ganz that we adjourn.

22 MR. GANZ: You have got it.

23 MR. GOODWIN: Adjourned.

24 (Whereupon, at 2:48 p.m., the meeting was
25 concluded.)

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MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: May 25, 2017

I do hereby certify that the foregoing pages, numbers 1 through 235, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

(Transcriber) 6/2/2017
(Date)

On the Record Reporting
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