

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

William B. Travis Building
1701 Congress Avenue
Room 1-111
Austin, Texas

July 27, 2017
9:00 a.m.

BOARD MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESÉNDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director

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ROLL CALL	
CERTIFICATION OF QUORUM	
CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	11
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a) Presentation, discussion, and possible action on Board meeting minutes summary for May 25, 2017	
HOUSING RESOURCE CENTER	
b) Presentation, discussion and possible action on the 2018 Regional Allocation Formula Methodology	
ASSET MANAGEMENT	
c) Presentation, discussion and possible action to approve a Material Amendment to the Housing Tax Credit ("HTC") Land Use Restriction Agreement ("LURA")	
01003 Villas at Willow Springs San Marcos	
01042 Fountains at Tidwell Houston	
02156 Town North Apartments Texarkana	
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e) Presentation, discussion, and possible action regarding the adoption of a hold order and possible sale from the Department's Real Estate Owned ("REO") portfolio	
BOND FINANCE	
f) Presentation, discussion, and possible action on Resolution No. 17-022	

authorizing the filing of one or more applications for reservation to the Texas Bond Review Board with respect to Qualified Mortgage Bonds and containing other provisions relating to the subject

- g) Presentation, discussion, and possible action regarding Resolution No. 17-023 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject
- h) Presentation, discussion, and possible action on Resolution No. 17-024 authorizing Publication of Public Notice for Mortgage Credit Certificate Program ("MCC") ("Program 88")

HOME AND HOMELESS PROGRAMS

- I) Presentation, discussion, and possible action on State Fiscal Year 2018 Homeless Housing and Services Program awards
- j) 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")

MULTIFAMILY FINANCE

- k) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer

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17419 Sphinx at Sierra Vista Senior Fort Worth

RULES

- l) Presentation, discussion, and possible action on an Order adopting the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an Order adopting new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing that these be published in the *Texas Register*
- m) Presentation, discussion, and possible 146 action on the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan

Program Rule, and directing their publication for public comment in the *Texas Register*

- n) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an Order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing its publication for public comment in the *Texas Register*
- o) Presentation, discussion, and possible action on the adoption of 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*

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 - d) Report on the Department's Swap Portfolio and recent activities with respect thereto
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 - f) Executive Report of Multifamily Program Amendments, Extensions and Ownership Transfers

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 17090 Alameda Palms El Paso
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17199 Santa Fe Place Temple
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17218 The Post Oak Edna
17221 Twin Oaks Mission
17225 Cascade Villas Wichita Falls
17229 Lumberton Village Lumberton
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17234 Residences at New Braunfels
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17235 Henrietta Pioneer Crossing Henrietta
17239 Abbingtion Ranch Boerne
17244 Kirby Commons San Angelo
17247 Western Springs Apartments
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17248 Stonebrook Senior Residences Houston
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17253 Samuel Place Apartments
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17272 Elysium Grand Austin
17273 The Residence at Lamar Wichita Falls
17275 Aria Grand Austin

17278 Westwind of Paris Paris
17281 The Residence at Arbor Grove
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17283 Avanti Manor Harker Heights
17285 Oak Trails San Angelo
17287 Jackson Place Edinburg
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P R O C E E D I N G S

1
2 MR. GOODWIN: I call to order the July 27
3 meeting of the Texas Department of Housing and Community
4 Affairs, and we will begin with the roll call.

5 Mr. Braden?

6 MR. BRADEN: Here.

7 MR. GOODWIN: Ms. Reséndiz?

8 MS. RESÉNDIZ: Present.

9 MR. GOODWIN: Ms. Thomason?

10 MS. THOMASON: Here.

11 MR. GOODWIN: Mr. Vasquez?

12 MR. VASQUEZ: Here.

13 MR. GOODWIN: And I'm here, and we have a
14 quorum.

15 Tim will lead us in the pledge. Please rise.

16 (The Pledge of Allegiance and the Texas
17 Allegiance were recited.)

18 MR. GOODWIN: There are a few people here today
19 that I would like to recognize. One is the former
20 executive director of TDHCA, Edwina Carrington. Edwina,
21 would you wave?

22 The next is a former chairman of this Board,
23 Mr. Don Bethel. Don.

24 And the next is State Representative James
25 White.

1 We have the consent agenda and a request to
2 pull item 1(m), so the consent agenda we will pull item
3 1(m), and we're not going to go in order today, because of
4 some staff requirements, we're going to take this a little
5 out of order today, but the first thing we'd like to do is
6 approve the consent agenda with item 1(m) pulled. Do I
7 hear a motion?

8 MS. THOMASON: So moved.

9 MR. GOODWIN: Second?

10 MR. VASQUEZ: Second.

11 MR. GOODWIN: It's been moved and seconded.

12 All in favor say aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Any opposed?

15 (No response.)

16 MR. GOODWIN: So the consent agenda is
17 approved.

18 We'll come back to 1(m) at a later time. We're
19 going to jump into the appeals, and we're going to start
20 with the eligibility issue, item 5(b).

21 MS. HOLLOWAY: Chairman Goodwin, members of the
22 Board, my name is Marni Holloway, I am the director of the
23 Multifamily Finance Division.

24 Item 5(b) is: Presentation, discussion and
25 possible action regarding an eligibility determination

1 under 10 TAC 10.101(a)(2)(B), (F) and/or (K). We are
2 discussion application number 17322, this is Provision at
3 Wilcrest.

4 The applicable rule relates to undesirable site
5 features. Development sites within the described distance
6 of any of the undesirable features identified may be
7 considered ineligible as determined by the Board, unless
8 the applicant provides sufficient mitigation. This
9 particular site is within 500 feet of a municipal solid
10 waste processing plant which also operates as a concrete
11 crushing plant.

12 At the July 13 meeting, the Board voted to
13 table this item and directed staff to work with the
14 applicant to attempt to resolve outstanding questions
15 regarding the Southern Crushed Concrete site across the
16 street. Since that time, staff has spoken with members of
17 the air permitting staff at the Texas Commission on
18 Environmental Quality, conducted further research
19 regarding the site and concrete crushing plants, conducted
20 a limited site inspection, and met with the applicant.
21 Staff's concerns regarding the eligibility of this site
22 have not been relieved.

23 According to a TCEQ regulated entity
24 information query, as reflected in your Board materials,
25 the plant is a registered municipal solid waste processing

1 facility and operates a concrete crushing plant under
2 multiple air new sourced permits and a special conditions
3 permit for the crusher itself. The applicant did not
4 disclose the plant in their application. Staff was made
5 aware of it through a third party request for
6 administrative deficiency. The RFAD questioned whether
7 the site was ineligible under Subsection (F) of the
8 undesirable site rule. The request included a material
9 safety data sheet for the facility, which is in your Board
10 materials, which identifies hazards associated with
11 crushed concrete, including skin, eye and respiratory
12 irritation, along with multiple pictures.

13 When reviewing the site, staff found the
14 municipal solid waste processing facility registration,
15 along with evidence of the concrete crushing plant, and
16 determined that the site fell under Subsection (B) of the
17 undesirable site rule. During discussion at the last
18 Board meeting, a question arose regarding Subsection (K)
19 of the rules which includes sites with exposure to an
20 environmental factor which may adversely affect the health
21 and safety of the residents and which cannot be adequately
22 mitigated.

23 So starting from the top with (B), going
24 alphabetically, that section states that sites are
25 ineligible if they are located within 300 feet of a solid

1 waste or sanitary landfill. The applicant has taken the
2 position that because the Wilcrest property is registered
3 a municipal solid waste processing facility rather than a
4 landfill, this subsection does not apply to the proposed
5 development.

6 TCEQ definitions and rules are included in your
7 Board materials. Staff finds that really the only
8 difference between a processing facility and a landfill is
9 the permanence of the storage of waste materials. In this
10 instance, concrete from demolition is trucked to the site
11 where it is processed and stored temporarily until it is
12 transported to its new use. In contrast, if this were a
13 landfill, the concrete would be delivered and presumably
14 piled up or buried without any further action.

15 The value of recycling concrete is important to
16 consumers so it doesn't wind up filling precious landfill
17 sites. The process of recycling concrete is accomplished
18 by a crushing plant. This is the taking big rocks and
19 turning them into small rocks, described by the applicant
20 at the last meeting.

21 Review of the environmental site assessment
22 submitted with the application indicates that the
23 applicant was aware of the presence of the m municipal
24 solid waste registration. Indeed, review of the aerial
25 photographs included in the ESA indicates that the

1 Southern Crushed Concrete site has been under some kind of
2 industrial use since 1966.

3 Moving on to (F), this is the question that was
4 raised by the RFAD. This section states that sites are
5 ineligible if they are located within 500 feet of heavy
6 industrial (i.e., facilities that required extensive
7 capital investment in land and machinery, are not easily
8 relocated and produce high levels of external noise, such
9 as manufacturing plants, fuel storage facilities,
10 excluding gas stations, et cetera).

11 The Harris County Appraisal District records
12 indicate that the property is more than 12 acres and
13 carries a taxable value \$4.5 million. While the concrete
14 crusher is operating under a permit that would allow the
15 machinery to be moved, TCEQ regulations that restrict new
16 concrete crusher sites limits the utility of this type of
17 permit and the likelihood that the plant will be moved
18 frequently. It isn't possible for staff to estimate the
19 value of the permits or the ability to operate at the
20 present site, nor the value of the equipment itself.

21 If the crusher plant is located at the Wilcrest
22 site and operating at maximum capacity under the permit
23 for that crusher, staff estimates a maximum of 191 average
24 size dump trucks would travel on Wilcrest to deliver
25 concrete and haul away finished products from the site

1 daily. The applicant performed noise monitoring over a
2 three-day period in June. Because of the portable nature
3 of the plant and what appears to be a variable operation,
4 based on pictures, we cannot be sure that the plant was
5 actually operating during this period.

6 So under (K), this section of the rules states
7 that sites are ineligible if they include, without
8 limitation, those with exposure to an environmental factor
9 that may adversely affect the health and safety of the
10 residents and which cannot be adequately mitigated.

11 Southern Crushed Concrete pulled a permit for a portable
12 concrete crusher that may be moved to multiple site
13 including the Wilcrest property. A search of the TCEQ
14 website for the 3901 Wilcrest address returns multiple
15 permits for a location of the portable crusher at that
16 location.

17 Concrete crusher plants are governed by the
18 Texas Clean Air Act and their locations for new permits
19 are limited by Texas Health and Safety Code Section
20 382.065 which includes: The Commission by rule shall
21 prohibit the operation of a concrete crushing facility
22 within 440 yards of a building in use as a single or
23 multifamily residence, school or place of worship. The
24 acceptable separation between a new concrete crushing
25 plant and existing residential uses is set in statute in

1 order to protect the health, safety and welfare of Texas
2 residents. TCEQ is not able to regulate the use of
3 property around the plant subsequent to initial licensing.

4 TCEQ calculates the predicted emission rates
5 for particulates for the plant itself and the stockpiles
6 on site. Those calculations do not include emissions
7 created by dump trucks bringing raw materials to the plant
8 or those hauling the finished product away. They also do
9 not include fugitive emissions from the materials in the
10 trucks entering the site.

11 The City of Houston Code add childcare
12 facilities, hospitals, nursing homes, public parks and
13 other crushing sites to the limitations found in statute
14 for separation. The Occupational Safety and Health
15 Administration, OSHA, governs worker safety at the federal
16 level for crushing machines. They require that a
17 ventilated booth be provided to workers operating the
18 machine in order to protect them from the potentially
19 harmful components of concrete dust, such as crystalline
20 silica which is a known carcinogen.

21 The establishment of an acceptable separation
22 at initial licensing of concrete crushing plants by
23 multiple governing bodies implies that future surrounding
24 land uses within that separation will be aware of and will
25 to accept the inherent risks of closer proximity.

1 Documented risks for worker safety on site cannot be
2 reasonably prevented for tenants living across the street
3 from the plant. Due to the limited amount of affordable
4 housing to serve increasing demand, it's not reasonable to
5 believe that future residents of Provision of Wilcrest
6 would be able to make a clearheaded decision regarding the
7 risks of living at such a close location.

8 By any or all of the undesirable site features
9 set out in 10 TAC 10.101(a)(2)(B), (F) and (K), staff
10 recommends this site be found ineligible. I'll be happy
11 to take any questions.

12 MR. GOODWIN: Thank you, Marni.

13 Do I hear a motion to hear comments?

14 MR. BRADEN: So moved.

15 MR. GOODWIN: So moved. Second?

16 MS. RESÉNDIZ: Second.

17 MR. GOODWIN: All in favor say aye.

18 (A chorus of ayes.)

19 MR. GOODWIN: Okay. Now we'll hear comments.

20 And those of you that want to speak know to sit up in the
21 first row and sign in, please.

22 MS. ANDERSON: Good morning. My name is Sarah
23 Anderson and I'm here representing the developer.

24 And if the information that had been presented
25 to you were correct, I would agree that this development

1 should not be done, but I'm afraid to say that most of the
2 information that's been presented is either not correct,
3 vaguely inaccurate, or just not even relevant to this
4 site. What's ironic here is that we're dealing with what
5 is essentially a NIMBY issue related to this facility,
6 that rather than us talking about bringing crime and
7 ruining schools and bringing down property values, we have
8 fear of something that we don't know because none of us
9 are the experts, and at the end of the day, we believe
10 that only an expert in this particular facility should be
11 the people that should be opining on this. Rather than
12 doing Google searches on things that may or may not
13 tangentially, and certainly are rather inflammatory,
14 related to this.

15 The developer will give you information that we
16 have spoken to the person who does the permitting at TCEQ
17 who has confirmed yet again to us that there are no health
18 and safety issues with this development, and that the
19 information that staff continues to put forward regarding
20 the permit for this site is not relevant to this site and
21 could never -- the information that they're talking about
22 moving to the site could never happen.

23 But what we had hoped to be discussing today
24 was health and safety issues because that was where we
25 left off last time. We felt like we had gone through all

1 of the information and explained how this wasn't per the
2 existing rules an issue. We thought that but obviously
3 that's not the case, because as they've laid out, we're
4 back where we started. So I will go back and readdress
5 those issues and the developer and the attorney will cover
6 some of the other issues as we go forward.

7 We did look at this site relative to the rules.
8 We scrutinized the rules, and specifically with regard to
9 heavy industrial. The TDHCA rule says that the facilities
10 must have extensive capital investment in the land and
11 machinery, anything that's there cannot be easily
12 relocated, and it must not produce excess noise on the
13 site. This recycling center has none of those. There
14 are no permanent buildings, there is no major capital
15 investment in the site, it cannot be relocated, and we
16 have shown that there is no noise issue. We do not
17 believe that heavy industrial is an issue.

18 Again, when we talked about whether or not this
19 met the definition of located within 300 feet of a solid
20 waste or sanitary landfill, this has always been
21 interpreted as solid waste landfill or a sanitary
22 landfill. This is neither. Now, staff wants to look at
23 this because they think it's a solid waste processing
24 plant, then that should be put in the QAP, but it
25 currently is not. We again have confirmed with TCEQ this

1 is a recycling center. The permit is the same permit that
2 a Goodwill recycling center gets or that a nursery gets to
3 recycle Christmas trees.

4 We have tried to cover with staff the health
5 and safety issues. We have had an environmental expert
6 weigh in on this, who again has said there is no health
7 and safety issue on this site. The Houston code that has
8 been cited doesn't exist. That was overturned in 2014 by
9 the Texas Supreme Court. The city does not have any
10 permitting authority and has nothing out there, so that is
11 not relevant. An OSHA argument for somebody working in
12 the middle of something, again is not relevant to this
13 argument.

14 What we have is staff throwing every single
15 thing they can that they can find on Google rather than
16 just talking to TCEQ and getting the correct information.
17 Our understanding is that all discussions with TCEQ to
18 date have been about a permit that is for a site that is
19 in another part of Houston. It is not relevant to our
20 site. We have confirmation that it will never be relevant
21 to our site. So I feel like we need to get to what we're
22 really talking about here is health and safety issues.

23 We believe that we have confirmation that it's
24 not a problem, but we also want to get to the point where
25 we all agree that it's not, and we have put forward to

1 staff that this has happened before where there's been a
2 question that a provisional award was given with a
3 condition that a third party, who is a expert in this
4 discussion, would answer the questions that you would have
5 regarding health and safety. We believe TCEQ has already
6 done that, but if we want a third party, then I think that
7 rather than throwing out one of the only family deals in
8 Houston, we believe the experts, not staff and not us,
9 should be the people who bring that information to you.

10 Thank you.

11 MR. GOODWIN: Thank you.

12 MR. HARRIS: Good morning. My name is Jervon
13 Harris. I'm with the developer. I would like to first
14 reiterate some of the comments that Sarah made and then
15 make some additional comments.

16 I'd like to confirm that we've done extensive
17 due diligence, we've done what was required based on the
18 rules set out in the QAP, and we've taken that a step
19 further based on concerns that have been raised by staff
20 and we've had environmental consultants, professionals and
21 third parties that we've engaged, researched do additional
22 research, opine and re-opine to the point where they've
23 just indicated to us there's no more data that we can
24 research. Everything that we've searched, everything that
25 we've looked at, all of the databases that they've

1 reviewed indicate that there are no safety concerns at
2 this site, and our environmental consultants have said
3 that with clarity.

4 This argument has taken several iterations.
5 Initially the discussion was about heavy industrial. It's
6 been our interpretation that this site does not meet
7 TDHCA's interpretation/definition of heavy industrial.
8 Furthermore, with conversations with our environmental
9 consultant, this type of permit covers industrial uses,
10 light commercial uses on a broad scale, and this use is
11 clearly on the most innocuous end of that scale. We
12 specifically included statements in our application and
13 the development owner's certification that said the
14 applicant does not believe surrounding uses meet
15 undesirable rules based on our research.

16 In response to the RFAD, we've provided
17 supplemental documentation, we've provided a noise study,
18 we supplemented that by putting a noise reading meter on
19 the site. That indicated that there was no excessive
20 noise. We've provided letters from our engineer
21 indicating that there was not excessive noise, that the
22 facility could be easily relocated, and again,
23 supplemental letters from the ESA provider indicating that
24 there were no health or safety hazards that would affect
25 the development of the site.

1 Recently, we've contacted Don Leland at the air
2 quality permitting division, and I've got email
3 correspondence with Don that indicates that clearly, very
4 emphatically that this site does not pose any health or
5 safety issues. Furthermore, the 440 yard distance that
6 came up at the last meeting that we've been discussing,
7 it's been indicated to us that that came about not because
8 of health and safety concerns but that was more of a
9 NIMBYism issue and that it was put in place because a
10 legislator did not want a facility in close proximity to
11 his home.

12 Don Leland offered to speak with staff, offered
13 to make those same statements to staff that he's made to
14 us, but that offer to have a conference call was denied.
15 That same distance that has been referenced, there is a
16 country club, The Royal Oaks Subdivision that's well
17 within 440 yards, there's another single family
18 development within 440 yards, and there's a market rate
19 apartment community within 440 yards. So we have single
20 family homes that range from \$700,000 up to multimillions
21 and market rate apartments that are within that distance
22 that are operating safely and no one has indicated
23 otherwise that there are any safety issues for those
24 residences or that there would be any safety issues for
25 our residences.

1 And what we're asking is that we be given the
2 opportunity to do research, to do additional study, if
3 that means putting an air testing facility on our site to
4 get the answers, allow us the time to get the answers,
5 because right now we're getting new arguments, new
6 allegations, things that we're having to respond to in
7 short periods of time, and a lot of it seems to be based
8 on the perception of the site because of how it looks
9 physically. I would love to be across from Herman Park or
10 another jewel of the Houston parks and rec system. This
11 site, it is not the prettiest site, but the question is is
12 it a health and safety concern, and we have found nothing
13 and staff has presented nothing that evidences that this
14 site creates a health and safety issue.

15 MR. GOODWIN: Thank you. Would you sign in,
16 Mr. Harris?

17 MS. JACKSON: Good morning, Board members.
18 Toni Jackson from Jones Walker.

19 As has been stated by Ms. Anderson and Mr.
20 Harris, we, when we were here two weeks ago before you,
21 believe that we had provided you information as requested
22 by the staff and you asked us while standing here at this
23 podium to look at one other additional provision of the
24 QAP, which we did do as was asked. That raised the issue
25 about health and safety, and we reached out to the

1 Department, and unfortunately, was not able to get
2 anything from them before last Thursday, but we got over
3 here on last Friday and met with them.

4 During that meeting, we learned that they had
5 actually been looking at permits that were not related to
6 this site, and we were prepared to respond to everything,
7 we did respond to everything that they put before us on
8 Thursday, however, what they had been looking at was not a
9 permit related to the site. Even still, we responded to
10 everything that they provided us, and before the end of
11 the day we got additional information from them asking
12 additional questions.

13 What our concern is here is that we refuted
14 over and over again the issues that have been raised not
15 only by the RFAD but by the staff regarding the site. We
16 have what we are supposed to do as it relates to the
17 requirements based on the rules and the QAP. A developer
18 has to be able to at some point know that they have
19 responded, that they have followed the rules of this
20 process and a decision gets made.

21 As has been stated, there have been issues that
22 have been raised simply based on Googling, and although we
23 all know that we can find a lot of information by
24 Googling, that is not an authoritative, definitive
25 response when we have already had third parties, an

1 environmental specialist as well as a noise specialist,
2 provide us with information indicating that there are not
3 health and safety issues related to this site.

4 We have to be able, as the development
5 community, to know that when we have responded, when we
6 have followed the rules and the guidelines set out in the
7 QAP, that again at someplace this process ends. We cannot
8 have or be able to provide you with good information when
9 every time we provide, and more importantly, refute the
10 information that has been raised by staff, staff comes
11 back and gives us additional information, as was the case
12 on Monday evening after our meeting on Friday.

13 We have indicated to the staff that this
14 developer is a responsible developer. They have no
15 intention of putting tenants in harm's way. Even though
16 we have environmental studies and a noise study that
17 indicates that there is not a problem with this site, we
18 are willing and asking to have an award conditioned upon
19 one additional study, as requested by staff, however, it
20 is important that this Board knows that we have provided
21 everything asked of us, and more importantly, refuted
22 every issue that has been raised by staff.

23 Thank you.

24 MR. GOODWIN: Thank you.

25 Anyone else speaking on this issue?

1 MR. KILDAY: Chairman, Board, my name is Les
2 Kilday. I'm with Kilday operating out of Houston. We
3 have been tax credit developers in the Houston area for
4 over 20 years and have been involved in Texas and the
5 Houston area for 20-plus years on tax credit developments,
6 and I rarely come and speak to this Board on any subject,
7 but in this case, this site, for a site that's in a higher
8 income census tract, this is one of the worst sites I have
9 ever seen come before this Board.

10 Besides the solid waste designation for this
11 rock crusher, the heavy industrial -- I was the one that
12 submitted the original request for administrative
13 deficiency on the heavy industrial designation. As
14 mentioned, it's a three-prong for heavy industrial
15 definition on the QAP. One is extensive capital
16 investment in land and machinery. This land right now on
17 the tax rolls is valued \$4-1/2 million, and there is not
18 only the rock crusher there, there is a large several
19 hundred yard conveyor belt system on the site, and
20 multiple other structures that have been on that site for
21 20-plus years since the permitting began.

22 The second prong is not easily relocated.
23 Well, again, it's been there, actually the site started
24 the rock crushing since 1966, but the permitting they've
25 had 20-plus years. That site has been there forever, and

1 the 440 yard designation by TCEQ is not a NIMBYism
2 designation. This designation has to do, and it says in
3 their TCEQ rules for rock crushers specifically, this is
4 not only a nuisance but it's environmental and safety
5 concerns. So with that 440 yard designation, it becomes
6 obviously even harder to relocate that site. And it
7 produces high levels of external noise.

8 The applicant used the HUD model as their
9 designation for whether something is unacceptable or not.

10 The HUD model is 65 decibels. Their own study that was
11 submitted shows a decibel level of 67.5, and we did an
12 independent study, Phase Engineering out of Houston that
13 specializes in environmental issues in Houston, they did a
14 noise study, they put two different monitors at the site,
15 the north end and the south end of the site, both of
16 those -- and that's been submitted to the staff -- both of
17 those show decibel levels over 80, so it's clearly a high
18 level of external noise. So for those three definitions,
19 it clearly is a heavy industrial site.

20 On top of the solid waste designation, on top
21 of the non-disclosure of this site, on top of the heavy
22 industrial, and on top of the 440 yard regulation that
23 TCEQ has, this site is also entirely within the 100-year
24 flood plain, the whole site is. And also, the main north-
25 south corridor is Wilcrest, Wilcrest in that area is

1 totally in the 100-year flood plain. The major east-west
2 corridor just to the north, Westpark Drive, for 700 yards
3 to the west and the east is totally within the 100-year
4 flood plain. And on top of that, within 20 yards of this
5 site is a very large utility transfer structure that goes
6 up and down the west side of the property.

7 So this is clearly an issue, it's not a NIMBY
8 issue, it's an issue with health and safety, and I would
9 ask this Board to find this site ineligible.

10 I would say also the developer mentioned now a
11 couple of times that this is the only other family deal
12 and that if this deal becomes ineligible, the next deal
13 would be a seniors deal and that they were concerned about
14 senior deals in that Houston region. Well, I find that
15 somewhat disingenuous because this developer also has two
16 other deals on the list today to be given credits in the
17 Houston region, the same region, and both those deals are
18 senior deals.

19 Thank you.

20 MS. ANDERSON: I'd like an opportunity to
21 comment to that if I could. Sarah Anderson.

22 First of all, those are deals are not this
23 developer. There is a father-son, they're separate,
24 they're developed separately, so that is not correct.

25 The fact that this piece of land is worth a lot

1 of money is because it is in a high opportunity area, a
2 large tract in Houston, and on a highway corridor. There
3 has not been a huge investment put in this land, because
4 it's been the same thing for the last 40-50 years. The
5 value of the land isn't because of anything that anyone
6 has done to it, it's just a function of the market.

7 Again, we keep hearing this 440 permit issue.
8 It simply is not relevant to this site. There is a permit
9 that is held by the owner of the site, it was for another
10 site that everybody keeps saying, oh, but you can move
11 that permit. It has been confirmed with us from TCEQ, we
12 have the emails, we've tried to get this information to
13 staff, they don't want to talk to TCEQ, but they have made
14 it clear that that permit cannot be moved to this site.

15 MR. GOODWIN: Thank you.

16 MR. ECCLES: Are you saying that they're not
17 crushing concrete at this site?

18 MS. ANDERSON: I'm saying that the permit that
19 you are discussing that is a particular concrete crushing
20 permit cannot be moved to this site. It is for another
21 location. It is a portable permit but we have confirmed
22 with TCEQ that that particular permit can never be moved
23 to this particular site. So all discussion for this 440
24 and all of this concrete crushing for this site just isn't
25 relevant.

1 MS. JACKSON: Toni Jackson, Jones Walker.

2 To answer your question more specifically,
3 Beau, it has been explained to us, as I indicated in front
4 of this Board the last time, this is a recycling plant.
5 They do not consider -- and again, as I said to you guys
6 in the meeting on Friday, I don't know all of the
7 specifics because that is not my expertise, but it has
8 been explained to us that there is a distinction between a
9 concrete crushing plant and a recycling plant, and this
10 location is a recycling location, and so the process of
11 what they do is different from the actual concrete
12 crushing.

13 And if you go around the city of Houston and
14 see the other Southern Crushed Concrete sites, just
15 visually you can see that this is a site that is very
16 different from their other sites. Again, I don't know the
17 distinction because that is not my expertise, but we have
18 been told and explained that this is a recycling plant and
19 not a concrete crushing plant, so there is a distinction.

20 MR. ECCLES: But you don't know if they are
21 crushing concrete on the Wilcrest site?

22 MS. JACKSON: When I have asked that question
23 of Southern Crushed Concrete, that is the answer they have
24 given, that it is a recycling plant, not a crushing plant.
25 The crushing plant does something different, has more

1 mechanisms. I don't know the distinction other than that
2 answer. But again, you guys keep asking us questions at
3 the 25th hour. None of what you have raised asked us to
4 explain the distinctions of the operations, you have asked
5 us to let you know what type of permit they require and
6 what comes with that and whether or not, more importantly,
7 the site has any health and safety and air quality
8 concerns. We have refuted that, that is what we have
9 provided to you.

10 As it relates to, again, the specifics of how
11 the plant works, that is not my job and if that is what
12 the Department needs, that is what we have indicated we
13 will provide you with a conditional award, but you guys
14 can't have us respond to you based on what the QAP
15 requires and then you want us to get into the specifics of
16 the plant. If we have provided you the information that
17 the plant does not create any health and safety concerns,
18 that is what we are required to do and that's what we
19 believe our third parties have provided to you.

20 MR. GOODWIN: Thank you.

21 Barry.

22 MR. PALMER: So just to be clear on what the
23 procedure is here, are we going to allow people to get up
24 and testify numerous times in response to the previous
25 speaker's comments?

1 MR. GOODWIN: We'll run the meeting. Okay?

2 (General laughter.)

3 MR. PALMER: All right. So everything that
4 we've seen --

5 MR. GOODWIN: Who do you represent in this,
6 Barry?

7 MR. PALMER: I represent Mr. Kilday, who spoke
8 earlier. Barry Palmer with Coats Rose.

9 All the evidence that we've seen is this
10 Southern Crushed Concrete operates a concrete crushing
11 facility on this site. Big trucks come onto the site, 18-
12 wheelers -- the staff estimates that there's 191 a day, or
13 potentially up to -- bringing large blocks of concrete
14 onto the site. And you've seen the pictures in your Board
15 report of the site, and there's crushed concrete in big
16 piles on the site, so if they're not crushing concrete
17 there, I guess there's some magic at work. But it's
18 coming in in big blocks, it's ending up in a pile of dust.

19 A concrete crushing facility cannot get a
20 permit unless it's not within 440 yards of residential, so
21 if this housing were there now, they could not get a
22 permit for this facility, so why would we put housing
23 there when TCEQ has determined that that's the safe
24 distance for a concrete crushing facility to operate by
25 residential housing.

1 So for all of the reasons that staff has
2 outlined, this is heavy industrial -- I don't know how it
3 gets much heavier than this, this is an environmental
4 hazard, it's a solid waste facility. I know that the
5 applicant likes to call it a recycling facility, that's a
6 nice euphemism, and I guess there's some truth to that
7 because the purpose of this is to take big blocks of
8 concrete and recycle it into reusable concrete. But this
9 is not someplace that you go to drop off your cans and
10 your newspapers, this is not someplace that you go like a
11 Goodwill to drop off clothing, I mean, this is a whole
12 different kind of recycling that is a heavy industrial
13 use.

14 Thank you.

15 MR. GOODWIN: Thank you.

16 MR. GOODWIN: Does anybody have anything new
17 they want to add to this? We don't want to rehash over
18 and over and over the same points.

19 MR. IRVINE: I actually do. When we left the
20 Board meeting before, I went and contacted the executive
21 director of the Texas Commission on Environmental Quality,
22 and he put me in touch with the director of the division
23 that would provide permitting and also the division that
24 provides legal advice to them. And what we learned was we
25 identified the specific address and the specific site and

1 they said what is going on at that site, if operated in
2 accordance with applicable TCEQ permits, they have a
3 modeling process where they look at what's going on and
4 how it impacts the area around it, and they have
5 determined that under their modeling process there are no
6 safety issues beyond the perimeter of the property. That
7 assumes adherence to the permitting and it assumes the
8 sufficiency of the modeling.

9 They do not address other ancillary issues such
10 as particulates that might come off of ingress and egress
11 truck activity or things of that sort. They did say that
12 in their experience, typically plants like this do
13 generate a fair amount of nuisance complaints but they did
14 not have identified health and safety concerns per the
15 modeling process. There is no active monitoring that is
16 ongoing. They don't, for example, go in and put in air
17 quality monitoring or anything like that around it, they
18 just permit it and periodically renew the permit.

19 So assuming that it's operating in compliance
20 with those things, that's the TCEQ advice that we
21 received.

22 I would, however, point out that the full
23 language of Subsection (K) begins with: Any other site
24 deemed unacceptable, which would include without
25 limitation these health and safety issues. So I look at

1 section (K) as the sort of common sense, catchall
2 provision. You have developed an understanding of what's
3 going on there, you have been told about the beneficial
4 aspects, the development's location vis-à-vis other more
5 attractive opportunity issues, but you've also then
6 presented firsthand testimony about the site itself and
7 the way that it's perceived. So I view Section (K) as
8 finally really a common sense approach to this.

9 MR. GOODWIN: Marni, any other comments that
10 you'd like to make?

11 MS. HOLLOWAY: A couple of things. The
12 applicant has mentioned that we refused to have a
13 conversation with TCEQ. That request came in at 9:45
14 yesterday morning and had to happen by 1:30, so we
15 couldn't put it together, it wasn't going to happen.
16 After our meeting on Friday when the applicant was
17 discussing the concrete recycling question and the
18 question about the location of the permit for the plant, I
19 sent that question to Beryl Thatcher, who is the manager
20 of the mechanical and coating section for the air permits
21 division of TCEQ, this is the person who originally
22 provided me with the permit.

23 Her response was: The air quality permit that
24 was issued is for a portable concrete crusher, sometimes
25 referred to as concrete recycling. What that means is the

1 company can move it to different locations. The company
2 is authorized to operate at the Wilcrest location,
3 although it may not currently be at the site. Hope that
4 helps. Give me a call if you'd like to discuss further."

5 I provided that information back to the
6 applicant, along with screen shots of information that I
7 was finding on TCEQ's website regarding the multiple
8 permits for the 3901 Wilcrest site.

9 MR. GOODWIN: Thank you, Marni.
10 Anything new to say?

11 MR. HARRIS: Tim, you said it yourself, and the
12 feedback we got from TCEQ is exactly what you said: if
13 the site is operating within the rules, there are no
14 safety issues. That's it. You can't add all of this
15 extra stuff and the what-ifs. That's the same thing we
16 run into in our industry with the NIMBYism. You may not
17 like how the site looks, you may not understand it, but
18 you have not proved that it's a safety issue. And you've
19 been told by TCEQ, we've been told by TCEQ and the experts
20 that it's not a safety issue. Let's not go with a knee
21 jerk reaction because you don't like how the site looks,
22 you don't like how that facility looks.

23 MR. IRVINE: And I'd like to underscore that
24 I'm not taking a position one way or the other, I'm simply
25 saying that (K) is broader than simply safety issues.

1 MR. HARRIS: Thank you.

2 MR. GOODWIN: Thank you.

3 MS. ANDERSON: Sarah Anderson.

4 Just one last comment to Marni's comment. We
5 did then follow up after that and we talked to the person
6 who actually does the permitting, and he confirmed that
7 while technically, theoretically this permit could go
8 there, when he looked at it, he said it would not be
9 allowed.

10 MR. GOODWIN: Thank you.

11 Okay. I don't think we have any further
12 discussion. We'll entertain a motion. Currently we have
13 staff recommendation that this site be found ineligible.
14 Do I hear a motion?

15 MR. BRADEN: I make a motion to accept staff's
16 recommendation on this site.

17 MR. GOODWIN: Mr. Braden has made a motion. Do
18 I hear a second?

19 MS. THOMASON: Second.

20 MR. GOODWIN: Second by Ms. Thomason.

21 Any discussion, questions?

22 (No response.)

23 MR. GOODWIN: All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: All opposed?

1 (No response.)

2 MR. GOODWIN: Staff recommendation is upheld.

3 We're going to move now to the next item which
4 is 17297, Kountze Pioneer Crossing.

5 MS. HOLLOWAY: This is item 5(c):

6 Presentation, discussion and possible action on timely
7 filed appeals under 10 TAC 10.902 of the Department's
8 Multifamily Program Rules.

9 Just so that everyone in the room is aware,
10 there are a number of these appeals that have been pulled
11 after the agenda was posted. 17024 Dove Ranch, 17221 Twin
12 Oaks, 17251 Pine Terrace, 17255 Trinity Oaks, 17267
13 Industrial Lofts, 17278 Westwind of Paris, and 17290
14 Golden Trails have all been withdrawn.

15 MR. GOODWIN: Are you ready?

16 MS. HOLLOWAY: I'm ready. Application 17297,
17 this is Kountze Pioneer Village, staff determined that the
18 applicant failed to meet the requirements of 10 TAC
19 10.204(10) related to site control at application and
20 therefore terminated the application. The applicant
21 timely filed an appeal which the executive director has
22 denied.

23 This part of 204 states that the required
24 documentation application submission describes this
25 section as the purpose of this section is to identify the

1 documentation that is required at the time of application
2 submission. Item (10) related to site control outlines
3 the requirements for each application submitted for the
4 competitive application cycle at (A) says evidence that
5 the development owner has site control must be submitted.

6 An RFAD requested that the Department review
7 the application to determine whether it should be eligible
8 under that section. An administrative deficiency was
9 issued and the response raised additional questions that
10 led to a second deficiency notice. The first response
11 stated that the Kountze Economic Development Corporation
12 conveyed the land to the City of Kountze in 2001. This
13 land, the City of Kountze contracted to sell to our
14 applicant. This turned out not to be accurate and a
15 warranty deed dated May 24, 2017 was submitted which
16 conveyed the missing parcels to the city. The title
17 commitment that was submitted with the application
18 indicated that the City of Kountze held title to one
19 parcel and the Economic Development Corporation held title
20 to two other parcels, all of which compose the development
21 site.

22 In response to the second deficiency notice
23 requesting the Economic Development Corporation articles
24 of incorporation and resolutions from the EDC and the city
25 approving the sale. The response states that the Economic

1 Development Corporation approved the May 24, 2017 transfer
2 of the land and no resolution was necessary. The response
3 did not address the request for a resolution from the
4 city.

5 In response to the second deficiency notice,
6 the applicant maintains that the deed is unnecessary as
7 the city has control of the economic development
8 corporation. Review of the submitted articles of
9 incorporation for the Economic Development Corporation
10 does not appear to support that conclusion. Staff
11 determined that the City of Kountze did not have control
12 of the entire development site at the time they executed
13 the purchase agreement with the developer or as of the
14 March 1, 2017 application submission deadline.

15 The appeal asserts that when the application
16 was submitted the applicant believed that all of the
17 property associated with the development site was under
18 the control of the City of Kountze. Keep in mind that we
19 had a title commitment in the application that revealed
20 otherwise. Staff's determination that the city did not
21 have proper control of the site is based on the fact that
22 the conveyance of the land took place after the
23 application acceptance period.

24 Staff recommends denial of the appeal of
25 termination for application 17297 Kountze Pioneer

1 Crossing.

2 MR. GOODWIN: Thank you.

3 We need a motion to hear comments.

4 MR. VASQUEZ: So moved.

5 MR. GOODWIN: So moved. Second?

6 MR. BRADEN: Second.

7 MR. GOODWIN: All in favor say aye.

8 (A chorus of ayes.)

9 MR. GOODWIN: Representative White, I apologize
10 that you've had to wait so long. It's now your turn.

11 MR. WHITE: Not a problem. We've been waiting
12 a lot this special session.

13 (General laughter.)

14 MR. WHITE: Hey, look, thank you very much for
15 having me. We do have a calendar this morning and I will
16 use my old infantry officer briefing techniques, I'll be
17 brief, be bold, and I'll be gone.

18 But let me tell you, I want to thank you for
19 your work and your service to the State of Texas and to
20 your entire agency. I can remember a couple of summers
21 ago it was pretty hot in East Texas and I called your
22 agency about some support for some seniors in my district,
23 and they responded in a very, very effective way -- you
24 know what I mean by effective.

25 But on the issue here of Kountze, look, Kountze

1 is a great town, it's a great town in Hardin County, it's
2 a great town in East Texas, they have great folks. Their
3 economic development arm of their city is doing a great
4 job in helping them, the city is just doing a great job in
5 selling their city. They have a championship rodeo guy,
6 Cody Teel, so if you vote against this, you vote against
7 Cody Teel -- no, I'm just kidding.

8 (General laughter.)

9 MR. WHITE: They have a championship rodeo guy,
10 Cody Teel that hails from Kountze.

11 So we're not here in an antagonistic way with
12 your staff, we know they have to do a job, but I'm here
13 just to try to lend some clarity and help out here. I
14 think this is about the third year that Kountze has tried
15 this scenario. I've gotten calls from a lot of
16 stakeholders in that town, the school district, for
17 instance, that is supportive of this, and usually people
18 get a little antsy about these types of developments.

19 But here's the deal, because I talked with
20 Kountze, the City of Kountze, I know what it means when I
21 sit down in their city council chambers and I talk with I
22 guess they call their economic department, whatever they
23 call it. It is an arm of the city, it is funded by the
24 city. Yes, they have people that work with that, it is
25 funded by the city, so it is all one contained scenario.

1 So I would just ask you, as much as it is
2 appropriate, to understand the resource capabilities of
3 small East Texas towns. We don't tend to have teams of
4 lawyers like other folks to sit around and do a whole lot
5 of stuff, but I can rest assure you that when James White
6 is talking to the City of Kountze, when he's talking to
7 their Economic Development Corp, I'm talking to the City
8 of Kountze. When the Economic Development Corp says they
9 have a piece of land, I'm sitting down and I'm talking
10 with the city manager and I'm talking with the mayor.

11 But with that said, I would just like to
12 request of you to listen to the city manager, I know you
13 will, and whatever consideration that you can give on this
14 application or something in the near future, I just
15 implore you just to do that.

16 And that's all I have to say, and again, thank
17 you for your service, and I'm gone.

18 MR. GOODWIN: Thank you. Any questions for the
19 representative?

20 (No response.)

21 MS. PALMER: Claire Palmer. I'm representing
22 the developer.

23 First of all, I want you to notice that we have
24 with us the city manager of the City of Kountze, Roderick
25 Hutto, president of the Economic Development Corp, Barry

1 Mitchael, and their outside counsel is also here to answer
2 any questions about the relationships between the City of
3 Kountze and their Economic Development Corporation.

4 I want to start with the fact that initially
5 when we went to the City of Kountze to talk about buying
6 this land and doing this development, we wanted tract A,
7 and they asked if we would go ahead and take tracts B and
8 C and take the whole 9.56 area. We really only needed
9 tract A for the development, and that's the tract that we
10 did a lot of research on, but because the city wanted us
11 to take all three tracts, we ended up signing a contract
12 to do that and that's what the price was set on.

13 The contract was with the City of Kountze and
14 the developer and the city passed a resolution authorizing
15 the sale of that land in November of 2016. We ran the
16 title work and the title work came back showing that the
17 EDC owned tracts B and C. When we told the City of
18 Kountze that, they said, That is impossible, we bought
19 that land, we operate that land, there's something wrong
20 with this title work. And that's where we stood. They
21 were absolutely 100 percent good faith positive that they
22 owned the entire tract, and that's what we all believed.

23 And the first title commitment actually came
24 back showing that they did, the second title commitment at
25 application came back showing they didn't. We went to the

1 title company, and this was all the way into May at this
2 point -- we went to the title company before the RFAD was
3 filed and said, What is the deal here? The city is
4 positive they own the land but you're showing that the EDC
5 owns the land. We finally, finally run through the title
6 and it does come back that the Economic Development
7 Corporation owns tract B and C. That was the first time
8 we knew that.

9 The fact of the matter is that the mayor
10 appoints the EDC board, the EDC and the city operate
11 together. The mayor can sign on behalf of the EDC, the
12 mayor is the one who executed the contract between the
13 buyer and the seller, the mayor could sign on behalf of
14 the EDC. The fact that it doesn't say EDC at the top, in
15 our opinion, is just because they truly believe they own
16 the land. Last night, the city mayor, they've gone back
17 through all their minutes forever and he found, in fact,
18 the minutes from 2012, July 10, 2012, showing that the EDC
19 was conveying this whole tract of land to the city. They
20 did a warranty deed, he brought me the warranty deed, and
21 the warranty deed they found out later was wrong. But the
22 city has been operating this way, they operate trade days
23 on the land, and they have had complete control over it.

24 So we feel like we operated in good faith and
25 that we have done everything we could and should to try to

1 operate with the correct seller. We've corrected the
2 error now and the EDC immediately conveyed the land, and
3 it's all been a matter of really and truly good faith.
4 And the fact is the people who filed the RFAD had this
5 land under contract last year and this was never an issue,
6 they just didn't get an award.

7 And finally, we're not trying to take someone
8 else's award, we're trying to stay on the waiting list,
9 we're trying to stay alive in this deal. We're second in
10 this rural region as it stands right now, and all we want
11 is a chance to stay alive in hopes that we can get an
12 award for this city who's been trying for the last three
13 years and is dying to get a tax credit development.

14 If you have any questions, we have the whole
15 development team, the city officers and the city's
16 attorney.

17 MR. GOODWIN: Are there any questions by any
18 Board members?

19 (No response.)

20 MR. GOODWIN: I don't believe there are.

21 Marni, would you like to add anything at the
22 end?

23 MS. HOLLOWAY: Staff has nothing additional at
24 this point.

25 MR. GOODWIN: Do I hear a motion?

1 MS. RESÉNDIZ: So moved.

2 MR. GOODWIN: And that is to uphold staff's
3 recommendation that the appeal be denied?

4 Do I hear a second?

5 MR. VASQUEZ: Before we vote?

6 MR. GOODWIN: We'll get discussion before we
7 vote, but we've got a motion to uphold staff's
8 recommendation, we need a second.

9 (No response.)

10 MR. GOODWIN: Not hearing a second, it dies.

11 Do I hear another motion?

12 MR. VASQUEZ: Could I make a motion to accept
13 staff recommendation and give credit -- approve the
14 request of the applicant?

15 MR. GOODWIN: Grant approval.

16 MR. VASQUEZ: Of the appeal.

17 MR. GOODWIN: Of the appeal. Do I hear a
18 second to that motion?

19 MR. BRADEN: Second.

20 MR. GOODWIN: So we have a motion and a second.
21 Now do we have any discussion or questions?

22 MS. MYRICK: Good morning. I'm Lara Myrick and
23 I'm with Becker Consulting and I've been working with the
24 City of Kountze as well.

25 I think the one thing I would like to

1 emphasize, as you are thinking about all that you've heard
2 this morning, is that, yes, we have A, B and C, and yes,
3 it did come back that B and C did belong to the EDC, but
4 we are developing on tract A which from the beginning
5 tract A has had the title commitment and everything come
6 back that it is the City of Kountze. And even if we were
7 to move forward and to move forward to underwriting, I
8 have a feeling -- and I don't want to speak for Mr. Brent
9 because I think that he's here -- but I think that when it
10 comes time for underwriting they would have us re-plat
11 that where it is only tract A that they would be looking
12 at and that we would put under the LURA because we
13 wouldn't need that extra land and we don't want to do
14 amendments later.

15 So I think I would want to emphasize that tract
16 A which we're developing has always been under the control
17 of the City of Kountze.

18 Thank you very much.

19 MR. GOODWIN: Thank you.

20 Any other questions or discussion?

21 (No response.)

22 MR. GOODWIN: I hear a motion and a second.

23 All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: All opposed no.

1 (No response.)

2 MR. GOODWIN: Okay. Motion passes.

3 MS. HOLLOWAY: Next 17305. This application is
4 for Payton Senior development.

5 Staff has determined that the application does
6 not qualify for three tie breaker items requested under
7 the Opportunity Index because the application did not
8 include evidence that the development site is located less
9 than half a mile on an accessible route from a public park
10 with an accessible playground, evidence that the
11 development site is located less than half a mile on an
12 accessible route from public transportation, and evidence
13 that the development site is within two miles of a museum.

14 A scoring notice was issued to the applicant
15 identifying tie breakers that the applicant had elected
16 but did not qualify to receive. The applicant filed an
17 appeal which the executive director has denied.

18 So originally, staff issued an administrative
19 deficiency notice to the applicant requesting evidence to
20 support those tie breaker items. After reviewing the
21 response, the Department determined that not only is the
22 playground at Bacon Ranch Park not accessible as there is
23 no path that leads to the playground, Bacon Ranch Park is
24 not actually a public park but is, as an email from the
25 City of Killeen states, a privately owned park open to the

1 public.

2 The accessible route to public transportation
3 was not proven as the applicant cannot promise to complete
4 a route on land they do not own or control.

5 Finally, the Fort Hood November 5 Memorial does
6 not meet the standard of a museum because neither the City
7 of Killeen nor Killeen Volunteers has a primary purpose of
8 the acquisition, conservation, study, exhibition and
9 educational interpretation of objects having scientific,
10 historical or artistic value.

11 The applicant was issued a scoring notice on
12 June 1 which withheld those three tie breakers. The
13 applicant appealed the scoring determination on June 7,
14 and on June 12 the executive director granted the appeal
15 for two of the tie breakers, accepting the information
16 provided by the applicant, and denied the appeal for the
17 other one.

18 In the meantime, on June 1 of 2017, the
19 Department received three RFADs on this application which
20 included information that was not previously known by
21 staff and was not addressed in the first administrative
22 deficiency or the appeal. Once staff received the appeal
23 response from the applicant, it was determined that the
24 issues covered in the RFADs were not resolved and staff
25 issued a notice of administrative deficiency based on that

1 new information.

2 The deficiency requested that the applicant
3 provide evidence in the form of certification from the
4 city that Bacon Ranch Park is a public park. In response,
5 the applicant submitted an email from the Killeen city
6 manager stating that: Per our previous conversation,
7 Bacon Ranch Park is a privately owned park open to the
8 public. The notice requested that the applicant explain
9 how the route to the playground meets accessibility
10 standards when there appears to be no accessible path
11 leading to the playground. This question was asked again
12 because of a photograph submitted with one of the RFADs
13 showing no accessible path to that playground. That
14 photograph was in contrast to the photograph included in
15 the application which did not show the path at all.

16 The applicant claimed in their response that
17 the language of the QAP does not require an accessible
18 route to the playground itself, the QAP only states that
19 the site is less than half a mile on an accessible route
20 from a park with an accessible playground.

21 One of the RFADs pointed out that there was no
22 indication in the site plan that there would be access to
23 the park through a gate in the fence, however, a letter
24 from an accessibility specialist stated that he had
25 confirmed that the site fencing will include a pedestrian

1 gate to allow a sidewalk connection point. The response
2 did not provide sufficient evidence to staff that the
3 development site is less than half a mile on an accessible
4 route from a public park with an accessible playground.

5 One of the RFADs included photographs showing
6 that the existing bus stop consists of a pole in the
7 ground next to a grassy drainage ditch with no concrete
8 sidewalk. In their response, the applicant stated: The
9 scoring appeal for this application provided a letter from
10 a certified accessibility specialist, also attached here,
11 that states he reviewed the location of the development
12 site, the site plan and the route to the transit stop and
13 he confirmed that the route from the site to the bus stop
14 meets 2010 ADA accessibility standards. It appears that
15 the accessibility specialist reviewed the plan to extend
16 the sidewalk over the drainage well to the bus stop. That
17 plan was included in the application. Again, this is not
18 land that the applicant owns or controls. Staff
19 determined that the accessible route to public
20 transportation was not proven.

21 And then the applicant has asserted that there
22 was no change in circumstances between the time of the
23 first scoring notice and the RFAD determination. This is
24 not correct because the RFAD brought new material
25 information about the application to staff's attention.

1 (Phone ringing; general laughter.)

2 MR. GOODWIN: Can you hum a few bars of that
3 for me?

4 MS. HOLLOWAY: There are a lot of things I can
5 do but singing is not one of them.

6 Let me start over -- not all the way. The
7 applicant's assertion that there was no change in
8 circumstances between the time of the first scoring notice
9 and the RFAD determination is not correct because the
10 RFADs brought new material information about the
11 application to staff's attention that had not been
12 considered when the first scoring notice was issued.

13 Staff recommends denial of the scoring appeal
14 for application 17305 Payton Senior.

15 MR. GOODWIN: Thank you, Marni.

16 Do I hear a motion to hear comments regarding
17 staff's recommendation?

18 MR. VASQUEZ: So moved.

19 MR. GOODWIN: So moved. Second?

20 MS. THOMASON: Second.

21 MR. GOODWIN: Seconded. All in favor say aye.

22 (A chorus of ayes.)

23 MR. GOODWIN: So now we're going to hear from
24 those people in order.

25 MS. STEPHENS: I represent the developer.

1 MR. GOODWIN: And you're against staff's
2 recommendation?

3 MS. STEPHENS: I would be against staff's
4 recommendation.

5 MR. GOODWIN: Okay. That's what I kind of
6 figured.

7 MS. STEPHENS: Good morning. I'm Lisa
8 Stephens. I do represent the developer for Payton Senior.

9 And I just want to first say this has been a
10 long process and these tie breakers are new -- we've
11 talked about that at a lot of the Board meetings -- and we
12 all know next year what staff is looking for and how to
13 interpret it and we have a much better idea going into
14 next year where we're going to be with these tie breaker
15 items. But as we go back and we rewind the clock a little
16 bit and we look at where we were as an applicant in
17 February, what we had to rely on was the written words
18 that either were or were not in the QAP, and we had to
19 make determinations on our sites, not based on all the
20 consideration and discussion and decisions that have been
21 made over the course of the last three months, but what
22 was physically printed in the QAP.

23 So there are three items at question here: the
24 park, the bus and the museum. Rather than having three
25 individuals come up and speak on each of those one at a

1 time, I'm going to address all three of them. I am going
2 to try to be very timely, but I do have two other folks
3 who have donated a few minutes if necessary to cover the
4 three items, hopefully concisely.

5 And I'm going to back just a few more meetings.

6 Mr. Chairman, a couple of months ago you asked at a Board
7 meeting after hearing some appeals, and it was in
8 particular about a bus stop, and why an applicant would
9 submit an application with a bus stop that didn't have
10 Sunday service. And your question specifically was: If
11 our rule requires seven day a week service, why would
12 submit a bus stop that didn't have seven day a week
13 service.

14 The issue is what are the words in the
15 application -- in the QAP. The words in the QAP says you
16 must have a bus stop with weekend service, it does not say
17 you must have a bus stop with seven day a week service.
18 Those are two different things. And so as you consider
19 where we were as an applicant going into February, we have
20 to read what is printed. What was printed was weekend
21 service. So I just want to give you that as an example as
22 I go through these three points to keep in mind that
23 sometimes the intent or what we wanted might not have been
24 clear in what was printed, and all we had to go on was
25 what was actually printed.

1 Someone may say, well, there was an FAQ. FAQs
2 are not rule, they are not QAP, and they have been
3 overturned by the Board. So as an applicant, again, we
4 are focused on what does the QAP specifically say and what
5 does it not say. And with that, I'll address the three
6 items.

7 The first item I'm going to address is actually
8 the museum, and what the QAP says is that you must be
9 within two miles of a government sponsored or nonprofit
10 permanent institution open to the public, and it is not an
11 ancillary part of an organization whose primary purpose is
12 other than acquisition, conservation, study, exhibition
13 and educational interpretation, including objects of
14 scientific, historical or artistic value.

15 We have been told that our museum is not a
16 museum because the City of Killeen does not meet this
17 primary purpose, however, the QAP specifically says that
18 the museum needs to be government or municipal sponsored.

19 I know of no city that has a primary purpose that meets
20 this definition in the QAP. So we have a city sponsored
21 exhibit that provides information of historical and
22 educational value that is permanent, that is open to the
23 public, that is within two miles, and meets all of the
24 criteria that were written in the QAP at the time the QAP
25 was published. If I were to take my son there, he would

1 learn about the events that happened at Fort Hood. He can
2 read the plaques, he can see the sculptures, he can see
3 the artwork, he can learn something at that exhibit that
4 is free and open to the public and meets all of the
5 criteria.

6 There is a letter in our appeal in your Board
7 book from the City of Killeen that confirms each one of
8 these items and why we meet each of the items that were
9 printed in the QAP.

10 The second item is the bus stop, and the
11 application allowed for us to provide extensions and there
12 was language about it being within the developer's
13 control. We are talking about a right of way on a public
14 road that already has an existing sidewalk and ten feet
15 away across the drainage area there's a sign for the bus
16 stop. So the sidewalk ends here, you've got a drainage
17 area, and the bus stop sign is here. Our sidewalk does
18 not connect to the sign. So we approached the
19 transportation provider and said, Can we, do you want us
20 to, would you want us to extend the sidewalk? Yes,
21 absolutely, that would be great, we would love for you to
22 do that. Requires a permit, not unlike any other permit
23 we would have to pull for our development, but there is no
24 physical, legal way for us to have control of a right of
25 way, it's a right of way with a sidewalk already in it.

1 We provided information in our application, a
2 plan from our engineer, a cost analysis, a letter from our
3 accessibility consultant, not in our application, the
4 accessibility came after your ruling that you'd like to
5 see an accessibility consultant certification, but all the
6 materials but for control were provided within our
7 application. The issue about control is I can't control a
8 right of way, I can't get an easement, I can't own it, I
9 can't get a contract for it. I just need to extend a
10 sidewalk that's already existing and I need to pull a
11 permit to do that.

12 The last item is the park, and again, Marni
13 read the language from the QAP earlier, but it says the
14 site must be located within a certain distance on an
15 accessible route to the park with an accessible
16 playground. So accessible route to the park with an
17 accessible playground. It does not say -- again, this is
18 where words are important -- it does not say an accessible
19 route to the park with an accessible route to the
20 playground. So as the applicant, when you're reading this
21 in February and you look at what words are there, what
22 words are used and what words are not used, the
23 interpretation that we had is that we needed an accessible
24 route to the park. Check, done. We needed an accessible
25 playground. Check, done.

1 We provided not just one but two letters from
2 our accessibility consultant, including one that Marni
3 didn't mention but we provided one we received the final
4 staff scoring on this item that says under 2010, under
5 Texas accessibility standards in 2010 ADA that a surface
6 that is flat, compact and transversable, that you're able
7 to go across it with a wheelchair, meets the guidelines
8 for accessibility. There is not a requirement that you
9 have an accessible route with any specific material. That
10 letter is in your Board book. We had him actually go out
11 and make a physical visit to the site to look at it to
12 confirm that, yes, once again, we have an accessible route
13 to the park and we have an accessible playground.

14 So I believe we have met the language as it was
15 written in the QAP when we read it in February,
16 understanding we did not have the benefit of all of the
17 interpretations that have followed since that date. So
18 with that, I would ask that you would grant all three of
19 the tie breaker points.

20 MR. GOODWIN: Thank you for keeping it brief.

21 Is there anyone in favor of staff's
22 recommendation that wants to speak? Is there anyone that
23 wants to add anything new to what was already spoken?

24 MALE SPEAKER: Sorry, I misunderstood what you
25 said. I'm in favor of staff's recommendation.

1 MR. GOODWIN: You're in favor of staff's
2 recommendation.

3 MR. GARRETT: Yes, sir. I'm Kelly Garrett, the
4 other developer in Killeen that is recommended for award
5 today.

6 Excuse me, the sinuses are bothering me. I'm
7 from Northeast Texas and I come to Austin and I can hardly
8 talk. But I'm going to be brief also and I'm going to
9 give a little time.

10 First of all, the bus stop, we proposed another
11 development in Killeen, we claimed the ADA amenity and
12 transportation, that whole thing, and our denial of our
13 bus stop was the accessible route to the public
14 transportation remains unproven as the HOP Transportation
15 Service does not provide on Sundays, therefore, it does
16 not meet the requirement of Sundays being on weekends. So
17 that's what we were denied our bus for, not the
18 accessibility because we are accessible. And we had that
19 in our RFAD on this deal, and an RFAD's purpose is to
20 bring new information, that's the purpose of an RFAD, so
21 that's what's done in it.

22 The right of way she's speaking of belongs to
23 TxDOT, and they have no permit to build a bus stop and
24 that's who that would go through, it would not go through
25 the service provider of the bus line, it goes through

1 TxDOT, and that's a whole different process. So they have
2 no accessible bus stop. If we were granted the bus
3 service, then we would also get our bus service back, but
4 yet they still don't have a bus stop, our site has a bus
5 stop.

6 The other issue I would like to address is the
7 memorial, and it's the Fort Hood Memorial, and I'm going
8 to quote Mr. Irvine here in his denial of this. "The
9 memorial is not an institution as a history museum would
10 be. The City of Killeen did not build a museum to honor
11 those affected by the disaster at Fort Hood, rather, the
12 city built a memorial." And that's the name of it, it's
13 the Fort Hood Memorial, it's not the Fort Hood Museum. I
14 can quote the museum information out of the QAP, as Marni
15 said, but she's already read it, and so did Ms. Stephens,
16 she already read that to you, so I don't need to read it
17 to you again.

18 MR. GOODWIN: Thank you.

19 MR. GARRETT: When you read that, it's not a
20 museum. And as I say, the name of this is the Fort Hood
21 Memorial, it's not the Fort Hood Museum. It doesn't
22 change, it never will change. It is a great amenity but
23 it is not a museum. And I'm going to yield the rest of my
24 time to my cohort, Mr. Zach Krochtengel.

25 MR. KROCHTENGEL: Hello. My name is Zachary

1 Krochtengel and I'm a representative for the developer of
2 Westwind at Killeen. Kelly already spoke to the museum
3 and the bus stop, I would like to speak to the public
4 park.

5 I'd first like to touch on the ADA
6 accessibility of the playground. The applicant contends
7 that the QAP does not require there to be an accessible
8 path to the accessible playground, however, the applicant
9 submitted a report from an accessibility specialist which
10 states: Texas accessibility standards are used to comply
11 with 2010 ADA in Texas and require an accessible route to
12 a playing area. Even though the applicant misinterpreted
13 the QAP requirements, the QAP requires ADA accessibility,
14 and ADA requires the accessible path to the playground.

15 Their accessibility specialist also states:
16 The ground service from the sidewalk to the playground is
17 acceptable as an accessible path. However, in reading the
18 definition of a stable surface, it is a firm surface,
19 resists deformation by either indentation or particles
20 moving on its surface. I fail to see how grass and dirt
21 would resist deformation after rainfall or would remain
22 safe for passage when wet.

23 We believe this park is not ADA accessible, but
24 we also believe that the applicant materially and
25 intentionally misrepresented their amenity as a public

1 park and did so in a manner that reflects poorly on the
2 development community and the way we treat the cities who
3 welcome us to provide affordable housing.

4 I'm going to go over some of the information
5 that was submitted in our RFAD on June 1. It has been
6 included in previous Board materials. Mr. Eccles has some
7 copies for Board members if that's acceptable to you, Mr.
8 Goodwin.

9 MR. GOODWIN: It is.

10 MR. KROCHTENGEL: At Killeen City Council
11 workshop on February 21, the city declined to hear --

12 MR. ECCLES: Let me just say that it was
13 represented that this material was included in a previous
14 Board book, two Board books ago, and I'll look over to
15 Marni and ask if that's her understanding as well after
16 reviewing this material.

17 MS. HOLLOWAY: This does appear to be the RFAD
18 that was originally submitted to us and it was included
19 with the RFAD report item.

20 MR. GOODWIN: Thank you.

21 We won't dock you on time for that.

22 MR. KROCHTENGEL: At a Killeen City Council
23 workshop on February 21, the city declined to hear the
24 applicant's proposed donation of the site where the
25 playground is now located. Six days later, the applicant

1 purchased the vacant land through Saigebrook Land
2 Holdings, LLC, an entity owned by co-developer Lisa
3 Stephens. The following day, the land was donated to
4 Central Texas Youth Services, a nonprofit based in Belton,
5 Texas. At some point in that time frame, a playground was
6 built on the property, less than 48 hours before the
7 application deadline.

8 We learned about this park when the
9 applications were posed to the TDHCA site, and we
10 contacted the City for Killeen with questions. The city
11 was unaware that any playground equipment had been
12 installed on the site, no permits had been pulled on the
13 property and the city had never given permission for a
14 private park to be placed on that location on a
15 residential lot. Approximately three months after the
16 application deadline, the city has still not approved the
17 park.

18 I would like to read excerpts from an email
19 from Mr. McElwain, the city planner, on March 26 -- no --
20 May 26. "Bacon Ranch Park is not a public park, i.e., it
21 is not a City of Killeen park that is maintained by public
22 funds and operated by city employees. The park is private
23 and not allowed by right in the R-1 single family
24 residential district. No permits were pulled for this
25 property. Playground equipment does not require a permit,

1 however, a sign has been placed on the property which does
2 require a permit. If the city council allows the park to
3 remain on site, it will be necessary to have the sign
4 properly permitted. All code enforcement action has been
5 placed into a suspense category pending the outcome of the
6 city council decision on June 13. If the applicant is
7 unsuccessful they have been advised by staff the park will
8 no longer be allowed to exist at this location. The City
9 of Killeen has not given permission for a private park at
10 this location. The property owner is petitioning the city
11 council for approval of a conditional use permit to allow
12 the private park to continue to operate on the property."

13 I've provided in the handout R-1 zoning permitted uses as
14 well.

15 At the time of application, this park was not
16 permitted use and it was an illegal structure. The reason
17 we're so troubled by the lack of permitting and zoning is
18 we feel it is a violation of the guidelines each developer
19 agrees to follow throughout the application process.
20 These guidelines are there to ensure the development
21 community acts with a level of professionalism and helps
22 keep the industry as a whole respectable.

23 The Multifamily Rules specifically point to
24 developers making false or misleading representations to
25 the Department with regard to an application as a

1 punishable offense. Ms. Lash and Ms. Stephens are both
2 successful and sophisticated developers, and I believe
3 that the submission of a playground as a public park that
4 any experienced developer knew or should have known was
5 not zoned for that use is a misrepresentation and a last
6 ditch attempt to manufacture an amenity in a haphazard
7 manner that does not portray affordable housing in a
8 positive light.

9 A further concern we have with classifying the
10 park as an amenity is that the nonprofit that received the
11 donation of the playground was told by the developer it
12 had to operate the park for at least one year minimum. If
13 the nonprofit chooses to use the land for other purposes
14 after that year is up, there's a strong a likelihood that
15 residents of the proposed development would never use the
16 park.

17 This following email exchange I'd like to read
18 to you is from the executive director and it's also
19 included in the RFAD from June 1. I wrote to the
20 executive director after a phone call I had with her
21 discussing the origins of the park. I wrote: "Thank you
22 for speaking with me about Bacon Ranch Park. I wanted to
23 confirm that the representatives of the developer told you
24 the only requirement was to keep the land operating as a
25 park for a minimum of one year." The executive director

1 of the charity responded: "You are very welcome. We are
2 willing to openly communicate with anyone who has any
3 questions regarding Bacon Ranch Park. When I inquired
4 about the park remaining a park indefinitely or for a
5 required length of time, I was informed that the minimum
6 requirement would be for one year. After that, we could
7 allow it to remain a park or choose to use it for other
8 agency purposes."

9 This reeks of gamesmanship and we don't think
10 it's appropriate to award a point for a park that was
11 created out of thin air just before the application
12 deadline that violated city zoning and permitting
13 requirements and has no assurance of longevity.

14 I would like to close by saying that I know
15 that staff has a tremendous workload and responsibility.
16 It is an ever growing job for them to review the
17 applications and evaluate the legitimate application
18 materials submitted to them. When this park was submitted
19 by the applicant with photos to staff in the initial
20 application, staff accepted this amenity because they
21 cannot possibly investigate every claim made by every
22 developer. However, I believe these actions are an abuse
23 of the application process and should not be tolerated by
24 staff or this Board. To allow them to go unchecked would
25 send a signal to the rest of the development community

1 that it is acceptable to submit materials that knowingly
2 misrepresent facts because there are no consequences.

3 I ask the Board not only to support staff's
4 recommendation to deny the three amenities but also to
5 have staff evaluate the actions of the developer as it
6 relates to misrepresentation and the suitability of their
7 participation in this program through this cycle and going
8 forward. Thank you.

9 MR. GOODWIN: Any questions?

10 MR. BRADEN: I'm going to note that there were
11 a number of allegations made about applicant
12 ineligibility. That is not what is before this Board.
13 All that is before this Board is an appeal regarding
14 Payton Senior, so that is all that is coming before the
15 Board for determination.

16 MR. GOODWIN: Ms. Stephens.

17 MS. STEPHENS: If I may. I understand, Beau,
18 your point that the items before the Board are the park,
19 the bus stop and the museum. I would like just to address
20 a few of the points that were made, if I may.

21 MR. GOODWIN: I think that's out of order.
22 That's not up for debate in this discussion. So we're
23 going to address the appeal. Any of the allegations that
24 are made beyond the appeal are not going to be open for
25 discussion.

1 MS. STEPHENS: Any questions for me regarding
2 any of that?

3 MR. GOODWIN: That's what I just asked, does
4 anybody have any questions, and no one asked any
5 questions, so I don't think there are. Thank you.

6 MS. STEPHENS: Thank you.

7 MR. GOODWIN: Marni, anything that you'd like
8 to add?

9 MS. HOLLOWAY: Staff has nothing further if
10 there are no questions from the Board.

11 MR. GOODWIN: Okay. Do I hear a motion from
12 the Board?

13 MR. BRADEN: I'll make a motion that the
14 scoring appeal for application 17305 be denied.

15 MR. GOODWIN: I have a motion. Do I have a
16 second?

17 MS. THOMASON: I'll second.

18 MR. GOODWIN: Motion and second. Any
19 questions?

20 MR. VASQUEZ: Just to clarify.

21 MR. GOODWIN: This is to uphold staff's
22 recommendation to deny the appeal.

23 All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: All opposed?

1 (No response.)

2 MR. GOODWIN: Motion passes.

3 MS. HOLLOWAY: Our next appeal is application
4 number 17327, this is Legacy Trails of Lindale.

5 Staff determined that the application does not
6 qualify for two tie breaker items under the Opportunity
7 Index because the development spans two census tracts and
8 one of the census tracts does not have a percentage of
9 adults with an associate's degree that meets the threshold
10 and the library is a private nonprofit facility.

11 A scoring notice was provided to the applicant
12 who timely filed an appeal. Initially, the executive
13 director denied the appeal regarding the associate's
14 degree item, then later reversed his conclusion based upon
15 receipt of further information that bears on the
16 definition of development site. An RFAD requested that
17 staff review the application to determine whether it
18 qualified for that tie breaker on the associate's degree.

19 Staff had initially determined that the
20 development site, including the easement required for
21 access to the site, spans two census tracts and one of
22 those census tracts does not have the percentage of adults
23 with associate's degrees that meet the threshold for
24 scoring. While reviewing another application with a
25 proposed development site in Lindale, staff discovered

1 that according to their website, the Lillian Russell
2 Memorial Library is privately operated by a nonprofit
3 organization and is not a public library. A revised
4 scoring notice was issued to the applicant, including
5 those denied items, and the applicant again appealed
6 staff's decision.

7 In their appeal the applicant submitted
8 evidence that pursuant to a letter from the City of
9 Lindale, portions of the library funding did come from the
10 city so that met our requirements and that appeal was
11 granted.

12 And according to the site design and
13 feasibility report for this application, the census tract
14 boundary runs along a straight line where the development
15 site ends and the ingress/egress easement begins. The
16 appeal asserts that the easement is not a part of the
17 development site, and therefore, the development site is
18 entirely within the census tract that qualifies for the
19 tie breaker. It separates ownership of the development
20 site from the easement that is required to access the
21 development site and states that the applicant is being
22 granted an easement by a third party across a section of
23 land that is not part of the development site.

24 Staff initially determined that because the
25 easement will be described in a LURA, it is part of the

1 development site. We have since learned that this
2 question had been previously addressed by the Department,
3 and while the easement may be identified in the LURA, the
4 easement itself is not subject to the restrictions in the
5 LURA that are applicable to the site. So our definition
6 of development site says: The area, or if a scattered
7 site, areas, on which the development is proposed and to
8 be encumbered by a LURA. So the easement would not be
9 actually encumbered by a LURA because of different
10 ownership. So although the easement may be described in
11 the LURA, the definition does not make the easement part
12 of the development site unless it is to be encumbered by
13 the LURA. Accordingly, the development site proposed is
14 entirely within the one census tract identified in the
15 application and pre-application.

16 A competitor has raised a question regarding
17 the census tract entered in the pre-application and the
18 full application contending that because the proposed
19 development site is part of a larger parcel, the pre-app
20 and full app should have included both census tracts, and
21 therefore, the application is ineligible to receive pre-
22 application points.

23 Staff has examined this question several times
24 and determined that the development site is located in the
25 census tract that is listed correctly in both the pre-

1 application and the full application, and consequently, no
2 further action is required regarding this question.

3 Staff recommends granting the scoring appeal
4 for application 17327, Legacy Trails of Lindale.

5 MR. GOODWIN: Thank you, Marni.

6 I need a motion to consider comments.

7 MR. IRVINE: Before you form that motion, I'd
8 like to just point out that I've already made my
9 determination, and when I screw up, I'm going to admit it
10 and own it, and just wanted, because there's so much at
11 stake, to be completely transparent and put this out for
12 the public and let the Board look at it and come to the
13 right decision.

14 MR. ECCLES: And when I screw up, I own up to
15 it too because I gave them the advice about development
16 site, and listing in the LURA is not the same as
17 encumbered by the LURA, and so that's the reason for the
18 bizarre posture of this before the Board right now.

19 MR. GOODWIN: Thank you.

20 Motion to consider comments?

21 MR. VASQUEZ: So moved.

22 MR. GOODWIN: So moved. Second?

23 MR. BRADEN: Second.

24 MR. GOODWIN: Second. All in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: So we have a staff recommendation
2 to grant the appeal. Do we have anyone that wants to
3 speak in favor of that or against it? Okay. We'll start
4 against and then we'll go to in favor.

5 MR. HORTON: Thank you. My name is Adam Horton
6 and I'm with Four Corners Development. We are a developer
7 that has applicants there in Rural Region 4, and today
8 bringing an issue that we feel somewhat of a black and
9 white issue, and the issue is whether their site as
10 submitted with their application would qualify for the
11 associate's degree point.

12 I brought an exhibit that was in the RFAD that
13 should have been in the Board book last time that outlines
14 their property, and this is taken from their real estate
15 contract, their survey they got, and you can see their
16 project site outlined in red, and then this is the census
17 tract here in blue that goes through the project. And
18 you've got one census tract here and one census tract
19 here, this one qualifies for the associate's degree point
20 and this one doesn't. And I think everybody agrees that
21 that's a good set of facts, you have nineteen acres,
22 census tract divides it, one part qualifies and one part
23 doesn't.

24 The issue we have is if you look at their pre-
25 application, if you look at their full application, if you

1 look at the title work submitted for their project, all
2 their site control indicates the full nineteen acres.
3 There is nothing in the application or the pre-application
4 that separates that purchase contract into five acres and
5 fourteen acres. So when you score a census tract in an
6 application, if it spans multiple census tracts, you have
7 to pick the lower scoring census tract, and so as a
8 result, we think this project did not qualify for the
9 associate's degree since they were in two census tracts.

10 We filed the RFAD, and as was mentioned, they
11 agreed with us initially, and then the developer appealed
12 and I think the developer in their appeal stated that they
13 intended to build their development on the west part in
14 the qualifying census tract and they were going to grant
15 themselves an easement over the census tract that doesn't
16 qualify. And I think we understand what they were trying
17 to do and I think that we can all probably agree had they
18 done that the proper way before application, that would
19 have been totally acceptable.

20 But the issue is they did not do that, there
21 was no mention at all in the application March 1 that they
22 had site control for anything less than nineteen acres.
23 There was no mention of any easement in their application
24 site control documents, and that's simply because if you
25 have site control for the entire nineteen acres, you can't

1 grant yourself an easement. And it was only six weeks
2 after, April 13 is when they purchased the five acres in
3 an entity, they purchased the fourteen in another entity,
4 and they granted an easement.

5 And so I appreciate the easement discussion
6 that we've had and I totally agree with the conclusion
7 that the easement is not subject to the LURA, and that's a
8 proper conclusion with that set of facts, but the issue is
9 that's not the set of facts that were submitted March 1
10 with the application. The facts with the application is
11 they had the full nineteen acres, they had those nineteen
12 acres at pre-application, and we relied on that
13 information when we went forward with our application.

14 So we would ask that you guys not allow that
15 tie breaker point since at March 1 at application date
16 they had nineteen acres and nothing until six weeks later
17 attempted to segregate that into five and fourteen and
18 grant easement.

19 MR. GOODWIN: Thank you. Did you sign in, sir?

20 Someone wanting to speak in favor of staff's
21 recommendation? Did you want to speak in favor of staff's
22 recommendation? Is there anyone to speak in favor of
23 staff's recommendation?

24 MS. BAST: Good morning. Cynthia Bast
25 representing the applicant here.

1 This has been a challenging round for both the
2 Department and the applicants when time deadlines collide
3 with our human capacity, and that's why we are so grateful
4 that we have Tim and Beau as leaders who will always
5 endeavor to get it right and to make a correction when an
6 error is known.

7 There is evidence in the application that, yes,
8 there was a nineteen acre tract under control but the
9 intended development site was that five acres wholly
10 within the census tract that is qualified for the points.

11 And of course, as has been said, this is a clear-cut
12 definition. The development site definition refers to land
13 that is encumbered by the LURA. When you have an access
14 easement that is across another census tract, an access
15 easement cannot and should not be encumbered by a LURA.
16 It is an estate that is used for a specific purpose and a
17 beneficiary of an easement cannot extend that use beyond
18 what it has been granted for. So putting rent and income
19 restrictions and all sorts of other restrictions on that
20 land owned by a separate legal entity would not be
21 appropriate.

22 There are a variety of examples where this has
23 existed in past application rounds and has been meaningful
24 where there has been an access easement that was in a
25 different census tract, and it has affected things like

1 notification, nearness to ineligible site features, and
2 also points. And so when this came up, that is what I
3 pointed out to the executive team, that this had been
4 considered in years past, that TDHCA staff and legal staff
5 had given guidance on this and had said that is correct,
6 an access easement is not encumbered by a LURA, should not
7 encumbered by a LURA, and therefore, is not included as
8 part of the development site.

9 So with the appeal now granted by the executive
10 director, procedurally I'm not sure that there's anything
11 even that this Board needs to do in that we don't
12 appeal -- the applicant does not appeal the executive
13 director's decision and a competitor cannot appeal another
14 application. So I think we're in a place where this has
15 been asked and answered, and I appreciate the time.

16 MR. GOODWIN: What's the answer to that?

17 MR. IRVINE: I think that the letter makes it
18 clear that this is back before the Board so that if the
19 Board deems it appropriate, you can take whatever action
20 you deem is warranted by the facts. If you've got legal
21 questions about that, then you can certainly consult with
22 counsel.

23 The map that Mr. Horton provided, I would
24 remind everyone when we bring materials for presentation
25 there are rules that govern that. They need to be

1 provided to everybody so that everybody can see them and
2 everybody has an opportunity to respond to them. And as I
3 understood your map to be presented, that the site at
4 application, not the easement but the actual development
5 site which would be encumbered by the LURA, spanned the
6 entirety of an area that crossed into both census tracts.

7 Is that accurate?

8 MR. HORTON: (Speaking from audience.)

9 Correct.

10 MR. IRVINE: Would you respond to that?

11 MS. BAST: I don't have the page of the
12 application in front of me, but the page of the
13 application where it had acreage indicated five acres out
14 of nineteen.

15 MR. GOODWIN: On page 367, we have a plat in
16 the Board book that shows what I think is being referred
17 to as five acres.

18 MR. IRVINE: It's the same as his map but it
19 doesn't indicate that the other portion falling into the
20 other census tract is part of the development site.

21 MR. PALMER: Barry Palmer. I represent the
22 Four Corners Development, and we are in favor of
23 overturning the staff recommendation at this point.

24 I know staff has looked at this and the first
25 two times looked at it and found the tie breaker point

1 shouldn't be granted and has since changed their position.

2 We think there's a couple of things. First, the pre-
3 application was for nineteen points in two census tracts.

4 MR. GOODWIN: You said nineteen points, but you
5 meant nineteen acres.

6 MR. PALMER: Right, in two census tracts, one
7 of which qualified for the tie breaker, one of which
8 didn't. In the pre-app they only listed one of those
9 census tracts. The application also submits a contract
10 for nineteen acres in just one census tract. You're not
11 allowed to change census tracts from pre-app to
12 application and still get the pre-application points. So
13 our position is that although they only listed one census
14 tract in the pre-app, the nineteen acres was in fact in
15 two census tracts and they should have listed two census
16 tracts, and then at application, if they're going to just
17 one census tract for the five acres, then they should not
18 get the pre-application points.

19 And also, in looking at the application, the
20 contract in the application is for the full nineteen
21 acres, so I take that to be that's what they're applying
22 for, and it was only after the RFAD that they came back
23 and clarified that they're only planning on developing on
24 five out of that nineteen acres and that they're going to
25 have an easement for access. They buy the whole nineteen

1 acres, the five acres in the applicant, the rest in a
2 related entity, and grant themselves easement, but that's
3 really the same as being part of the site.

4 So either they shouldn't get the pre-app points
5 because they went from two census tracts -- even though
6 they only showed one, they actually went from two census
7 tracts to one -- or they shouldn't get the tie breaker
8 point because the application submitted was for nineteen
9 acres which was in both census tracts. But I don't see
10 how you get both the pre-application points and the tie
11 breaker points.

12 MR. GOODWIN: Any questions?

13 MR. ECCLES: Just a quick clarifying point on
14 the rules. Would you agree that the rules contemplate
15 shrinking the site from pre-application to application so
16 long as it is a part of the original development site
17 listed in pre-app?

18 MR. PALMER: Absolutely. If they had done a
19 pre-app for nineteen acres and then at application time
20 they had gone in with an application for five acres and an
21 easement, that would have been fine, except that they
22 would have been going from two census tracts -- even
23 though they only showed one, the nineteen acres was in
24 two -- down to one census tract for the five acres, so
25 they should lose the pre-app points because of that.

1 MR. ECCLES: One other clarifying point.
2 Regardless of the verbiage that perhaps should or should
3 not be in the rule, the rule specifies that the
4 development site -- or the census tract number listed at
5 pre-application be the same as the application itself, so
6 it's just talking about the census tract that's listed at
7 pre-application and application needing to be the same,
8 and are they in this case?

9 MR. PALMER: Well, under that interpretation
10 you can purposely only list one census tract because you
11 get a point for that one. You know that you're in two
12 census tracts but we're not going to list that one because
13 it's not to our benefit and so we just list one even
14 though we're in two, and then we get an extra point. I
15 don't think that that's a good result.

16 MR. GOODWIN: Different being a good result.
17 Is that what the rule states can be done?

18 MR. ECCLES: The rule states, 11.9(e)(4)(F):
19 The development site at application is at least in part
20 the development site at pre-application, and the census
21 tract number listed at pre-application is the same at
22 application.

23 MR. HORTON: Adam Horton again. I would just
24 like to make one more point to kind of reiterate. I agree
25 with what they've said about the easement and I agree with

1 the ruling in Tim's appeal, but the issue is none of those
2 facts. Going to the five acres and having an easement,
3 none of those facts were included in the application, that
4 only happened six weeks after the application. And I
5 appreciate the fact that their site design, their
6 architect drawing that had the site plan referenced the
7 five acres, but again, you had a contract for nineteen
8 acres, you had title work for nineteen acres, you had no
9 way to know that that seller would even sell you only the
10 five acres out of nineteen and that's the issue.

11 So I think we all agree with all the facts.
12 The question is what site control did they have at
13 application, should that be the full nineteen or should
14 that be the five.

15 MR. GOODWIN: Thank you.

16 Any other comments?

17 MS. BAST: Thank you, Mr. Goodwin.

18 I did find the page in the application. Just
19 to clarify, at the time of pre-application, there were
20 nineteen acres under control. It was intended that five
21 of those acres be this development site and this census
22 tract be the development site, and that the other fourteen
23 acres be otherwise utilized and that there be an access
24 easement. There is a page in the application that
25 clarifies that.

1 The pre-application, you submit your site
2 control, there's not a lot of detail there, but as Mr.
3 Eccles said, you can reduce the site, the site was
4 reduced. In the application it was very clear it was five
5 acres out of nineteen. That's how the feasibility was
6 run, that's how the site plan was shown with the access
7 easement, it was always clear and I believe compliant with
8 the rules.

9 Thank you.

10 MS. RICKENBACKER: Good morning. Donna
11 Rickenbacker with Marque.

12 I just want to further clarify that at pre-
13 application there was nineteen acres but at no time, from
14 pre-app to full app, was the development site inside any
15 other than the census tract that we recognized at pre-app
16 and into full app. What happened between pre-app and full
17 app and what is identified in our feasibility report, in
18 our survey, and all that was submitted at the time of
19 application that the change that was made was identifying
20 where the access easement was going to be located across
21 the balance of the nineteen acres that wasn't otherwise
22 made part of the development site.

23 So please, I just want to make sure that
24 everybody understands the development site itself had
25 always been, from pre-app to full application, in one

1 census tract and contained within that five acres.

2 Thank you.

3 MR. GOODWIN: Thank you.

4 MR. GARRETT: My name is Chaz Garrett, and I'm
5 with LKC Development, I'm the developer of this site.

6 I would like to point out in the application --
7 the challenger has said several times that it was never
8 identified -- on page 94 of our application, which is site
9 information part 3, it says site control, and it lists the
10 nineteen acres, site plan 5.3. And it says: Please
11 provide an explanation of any discrepancies in the site
12 acreage below. We wrote: Development site is 5.33 acres
13 out of a 19.215 acre tract. Our site plan also reflects
14 that. And I just wanted to clarify that. They keep
15 saying it was never stated in the application and it
16 actually is right there on that page.

17 Thank you very much.

18 MR. GOODWIN: Thank you.

19 Any other comments?

20 MR. PALMER: Barry Palmer again. I guess this
21 is a new one on me, this concept of having an application
22 for nineteen acres but our development site being five
23 acres. I mean, I've always thought that you applied for
24 what your development site was, not that you submit an
25 application showing nineteen acres but call your

1 development site five. If the development site was five,
2 they should have submitted a contract for five. Granted,
3 you can change it from the pre-app from nineteen, but once
4 you get to the application, you're supposed to be applying
5 on your development site.

6 MR. GOODWIN: Thank you.

7 Any other comments?

8 MS. HOLIDAY: My name is Kim Holiday and I am
9 also with the developer, Four Corners. And one additional
10 piece of information that has not been mentioned was that
11 the applicant, when they decided that they needed to go
12 from nineteen acres to the five acres, did a resubmission,
13 a density notification. So clearly that says to us, as a
14 developer who makes a decision based on pre-application as
15 to whether or not we want to move forward, that says that
16 they clearly had an intent to use the nineteen acres and
17 when they went to the five acres they even submitted a new
18 notification for a density change going from a larger
19 acreage to a smaller piece.

20 MR. GOODWIN: Thank you.

21 MR. GARRETT: Chaz Garrett, again.

22 I don't know what information she's speaking
23 of. We never requested any density change or anything
24 like that. When I identified this site when we were
25 looking for sites, I noted that the census tract bisected

1 that tract and it has been our intention since day one of
2 finding this site that we would put the development site
3 on one side and then allow the other part of the
4 development to be developed completely independent by a
5 completely different group of people.

6 Thank you very much.

7 MR. GOODWIN: Thank you.

8 Marni, did you have anything you wanted to add?

9 MS. HOLLOWAY: No.

10 MR. GOODWIN: No other comments. Do I hear a
11 motion?

12 MR. VASQUEZ: Mr. Chairman, I'd like to make a
13 motion to approve staff's recommendation.

14 MR. GOODWIN: Do I hear a second?

15 MS. THOMASON: Second.

16 MR. GOODWIN: I have a motion and a second.
17 Any discussion?

18 MR. ECCLES: Just as a clarification, is this a
19 motion to accept staff's most recent recommendation,
20 including the executive director's last letter on this
21 which would not reduce the two points?

22 MR. IRVINE: Blessing my resolution of this
23 matter as set forth in my letter.

24 MR. GOODWIN: Isn't that what you meant to say,
25 Leo?

1 MR. VASQUEZ: That's what I meant to say.

2 MS. THOMASON: I knew that.

3 (General laughter.)

4 MR. GOODWIN: Is that what you meant to second?

5 MS. THOMASON: Yes.

6 MR. GOODWIN: We have a motion and a second.

7 Any discussion on the clarified motion and second?

8 (No response.)

9 MR. GOODWIN: If not, all in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: All opposed?

12 (No response.)

13 MR. GOODWIN: Motion passes.

14 I'm going to take the privilege, Marni, of
15 allowing us a ten-minute restroom break, and we will
16 reconvene in ten minutes.

17 (Whereupon, at 10:55 a.m., a brief recess was
18 taken.)

19 MR. GOODWIN: I call the meeting back to order,
20 and we will move, Marni, to?

21 MS. HOLLOWAY: Continuing with the appeals, the
22 applicant for application number 17331, Westwind of
23 Killeen, wishes to withdraw their appeal.

24 MR. GOODWIN: Okay. So we're moving to 17388,
25 West Pecan Village?

1 MS. HOLLOWAY: Yes, and 17390. These two
2 applications were submitted by the same applicant and the
3 appeals are on largely identical grounds. With counsel's
4 agreement, I suggest that we consider them together.

5 For application 17388, West Pecan Village,
6 staff has determined that the application does not qualify
7 for four tie breaker selections under Opportunity Index,
8 as the applicant did not provide sufficient evidence of an
9 accessible route of less than half a mile to a public
10 park, an accessible route of less than half a mile to
11 public transportation, a crime rate that is specific to
12 the census tract and meets the requirements, and a museum.
13 A scoring notice was issued which the applicant appealed
14 and the executive director denied the appeal.

15 An RFAD requested that staff review the
16 application for the items mentioned above. The applicant
17 was issued an administrative deficiency notice requesting
18 they provide evidence to support their selections. In
19 their response, as in the appeal, the applicant asserts
20 that public transit must be less than half a mile as the
21 crow flies from the site. The response states that every
22 reference to the measurement of distance indicates
23 measuring boundary to boundary unless otherwise noted. In
24 this case the measurement is otherwise noted. The
25 distance from transit must be less than one-half mile on

1 an accessible route. This is consistent with the Board's
2 decision from the last meeting. The route to public
3 transportation indicated in the application is
4 approximately 1.8 miles long, more than three times the
5 allowed distance.

6 This same argument is applied to the playground
7 item where a measurement to the boundary of the park is
8 just under one-half mile but the playground approximately
9 a quarter mile further. The appeal to the executive
10 director regarding this item includes an observation that
11 staff was not questioning the length of the accessible
12 route prior to June 1, and this is largely true. By
13 necessity, our review process relies heavily on applicant
14 representations and certifications. If an applicant tells
15 us that the development site is located less than half a
16 mile on an accessible route from public transportation, we
17 will likely rely on their statement and the certification.

18 In fact, the owner certification in the
19 applicant's application states in part that they expressly
20 represent, warrant and certify that all information
21 contained in this certification and in the application,
22 including any and all supplements, additions,
23 clarifications or other materials or information submitted
24 to the Department, in connection therewith as required or
25 deemed necessary by the materials governing the

1 Multifamily funding programs, are true and correct and the
2 applicant has undergone sufficient investigation to affirm
3 the validity of the statements made.

4 We rely on that certification as we are
5 reviewing. We are not equipped to go through every single
6 application and check every single item. We rely on the
7 applicants, when they tell us something, we're likely
8 going to believe it.

9 When more than 40 RFADs were received on June
10 1, many of them included evidence that routes were either
11 not accessible or exceeded the half mile length. Those
12 RFADs resulted in many of the appeals that we're dealing
13 with today. So that's what happened at June 1.

14 Regarding property crime, the appeal of the
15 initial scoring notice provided an explanation of the
16 projected trend of the census tract included in the
17 application which is based on an assumption that as crime
18 decreases in the city of McAllen, it will decrease at the
19 same rate in the subject census tract. The later appeal
20 to the executive director includes entirely new data from
21 that submitted in the application. As such, it does not
22 provide clarification but is rather a change to the
23 application, and thus, staff has not considered it.

24 And then regarding the museum, the Department
25 has determined that it is a reasonable expectation that

1 since this is a college campus, amenities on campus would
2 be close to each other or even linked in some way.
3 However, review of the library web page yielded an FAQ
4 with the following question and answer: When is the
5 library art gallery open? The response was: The library
6 art gallery is open whenever the library is open. It is
7 clear from the letters included in the response that the
8 gallery is an asset to the community, however, the fact
9 that the art gallery can only be accessed if the library
10 is open indicates that the gallery is an ancillary part of
11 the library and not an independent institution.

12 Staff recommends denial of the scoring appeal
13 for application 17388 West Pecan Village.

14 MR. GOODWIN: We need a motion to hear comments
15 regarding this staff recommendation.

16 MR. VASQUEZ: So moved.

17 MR. GOODWIN: Moved. Second?

18 MS. RESÉNDIZ: Second.

19 MR. GOODWIN: Moved and seconded. All in
20 favor?

21 (A chorus of ayes.)

22 MR. GOODWIN: We will hear comments. And I
23 would point out to try to keep those comments brief and
24 let's not have people come up and say the same thing over
25 and over and over and over again.

1 And before comments, Michael has a letter he
2 wants to read from a state representative.

3 MR. LYTTLE: Thank you, Mr. Chairman. This is
4 addressed to the Board. It reads:

5 "I would like to express my concern about the
6 status of the application for West Pecan Village
7 referenced for the above location proposed in McAllen,
8 Texas. The McAllen Housing Authority application
9 possesses exemplary merit and I'm a proud supporter of
10 this development.

11 "West Pecan Village harbors exemplary schools
12 in Sharyland ISD. It is within one mile of South Texas
13 College library art gallery, which is a museum by
14 definition and is not ancillary to the college's library.
15 Its property crime rate is well below the 26 per 1,000, as
16 evidenced by the McAllen Police Department statistics.
17 McAllen's accessibility service is unmatched in the
18 Valley, offering paratransit services and ADA accessible
19 routes citywide.

20 "The 9 percent HTC program is of paramount
21 importance to my district and constituents in the Rio
22 Grande Valley to ensure that we have affordable housing
23 options in the region.

24 "I kindly request that as you hear presentation
25 for West Pecan Village that today you will take into

1 consideration the fact that it has been consistently at
2 the top of all new construction applications in Region 11
3 up until this appeal process. In my opinion, the high
4 opportunity areas of this site are unmatched in Region 11,
5 and to that end, this application is deserving of every
6 menu item they seek.

7 "If you have any questions regarding this
8 matter, please feel free to contact me at your
9 convenience.

10 "Respectfully, Representative R.D. Bobby
11 Guerra, House District 41."

12 MR. GOODWIN: Thank you.

13 MR. CRUZ: Good morning. I'm Ronnie Cruz, the
14 chairman of the Housing Authority of McAllen, and I'd like
15 to read two letters in reference to some of the appeals.

16 This is addressed to Mr. Tim Irvine, Executive
17 Director from Ms. Shirley Reed, she's the president of
18 South Texas College, where the museum is.

19 "Dear Mr. Irvine,

20 "On behalf of South Texas College, I would like
21 to take this opportunity to share with you the
22 distinguishing characteristics of South Texas College
23 Library Art Gallery. The art gallery serves many
24 functions and features of a museum, in particular with the
25 South Texas College Library Art Gallery. One, owns,

1 maintains and curates a permanent collection of artwork;
2 two, is open to the public; three, exhibits artistic works
3 from both student and professional, local, regional,
4 national and international artists on a rotating basis;
5 four, exhibits objects and photograph of historical and
6 cultural significance and interest; five, provides
7 educational artist's lectures and events; six, provides
8 art demonstrations; seven, maintains membership in the
9 American Alliance of Museums and the Texas Association of
10 Museums.

11 "Although there has been some confusion
12 surrounding this issue, please accept this letter as a
13 means of clarifying the characterizations and functions of
14 the South Texas College Library Art Gallery. If there any
15 questions, please contact me."

16 Signed: Ms. Shirley Reed, President, South
17 Texas College.

18 The second letter is addressing the
19 accessibility of West Pecan Village to the site from our
20 site, addressed to Mr. Goodwin:

21 "Please be advised that the route from the
22 proposed apartment route to the Summer Breeze Park has
23 been examined and the route of travel along the west side
24 or North Bentsen Road, meets 2010 ADA accessibility
25 standards. The playground inside the park is also ADA

1 accessible.

2 "If you have any questions, please contact me."

3 Signed: Ms. Michelle Leftwich, Assistant City
4 Manager, City of McAllen.

5 Thank you.

6 MR. GOODWIN: Thank you.

7 MS. BAST: Good morning. Cynthia Bast,
8 representing the applicant in support of granting the
9 appeal.

10 I've said this at the podium before, one of the
11 things that I have appreciated working with Tim over the
12 years is that when things get really thorny, he reminds us
13 all to kind of take a step back, look at the statute, look
14 at the rules and use them as a roadmap for our analysis.
15 And when I do that and I look at the rules that are in
16 question with regard to this appeal, I can only conclude
17 that they are vague and that the roadmap is fuzzy.

18 Texas law says that a rule is vague when
19 persons of common intelligence must guess at what is
20 required, and that is what you heard from me at the last
21 Board meeting when we were talking about the accessible
22 routes issue. When those rules were drafted and presented
23 to the community, multiple people had questions about how
24 this was supposed to be interpreted, including is it as
25 the crow flies, is it measurement of the route. There was

1 a response about boundary to boundary, as the crow flies,
2 and then the questions continued even once the rule was
3 adopted, which resulted in an FAQ. So clearly there was
4 something that was not well understood in the community if
5 you are getting this many questions on this kind of issue.

6 And even two weeks ago at our meeting you heard
7 one person testify that it was thought that the rule meant
8 as the crow flies and another thought that the rule meant
9 that to be accessible the route had to be half a mile.
10 And these are people with more than common intelligence.

11 So when we have a rule that is vague, due
12 process is at risk unless every participant is reviewed
13 under the same level of scrutiny. I don't think anybody
14 wants to be in this position. We got here because the
15 competitors in Region 11 filed a series of RFADs against
16 one another. I've heard multiple say they didn't want to
17 file RFADs but as we got to June 1 and competitors
18 couldn't figure out where they were vis-à-vis the other
19 applications, they did that and started the process.

20 But what we have now is some applications in
21 Region 11 have been elevated to a higher level of scrutiny
22 under the RFADs, some have not, some that have not had
23 that level of scrutiny have jumped over others that are
24 being scrutinized, we have experts, hired consultants, all
25 disputing one another, and it all goes back to the fact

1 that this rule was vague.

2 So I'm going to allow the development team to
3 speak to each of the point items separately, with two
4 requests. One is that we would like the Board to think
5 about the fact that all of these applications in Region 11
6 that are relying on these items should really be reviewed
7 under the same lens and we want to make sure that there's
8 consistency. The other is as it relates to this specific
9 appeal, we ask that you consider each item separately.
10 You can choose to accept one or two or three or four, so
11 we hope that you will do that because each point does
12 matter and we hope that you'll consider them distinctly.

13 Thank you.

14 MR. PADILLA: Good morning. I'm the executive
15 director of the McAllen Housing Authority, and boy, were
16 we happy a little over a month ago when for three months
17 in a row we were ranked at the top of the list and
18 thoughts that we were going to get to the point of getting
19 an award, one that McAllen hasn't seen in over eight
20 years.

21 MR. IRVINE: Please state your name.

22 MR. PADILLA: Arnold Padilla. I apologize.
23 Executive director, McAllen Housing Authority.

24 As I said, we ranked for several months at the
25 top, and I think when you're at the top, everybody aims at

1 you and it seems like everybody did aim at us. In that
2 aiming, I know that Cynthia said experts and things, but
3 we also felt that there's been a lot of non-expert
4 presentations and I think that later on through our
5 presentation you'll see where we have been able to get
6 beyond some of these non-professional opinions that have
7 been brought against us.

8 But I'm going to bring up the museum first
9 because I thought that that was one that we felt very
10 comfortably at the very beginning that we had provided
11 sufficient information to staff to show that our museum
12 which is on the second floor is independent of the
13 library. And I think in your Board book you'll see on
14 page 520, Exhibit C-2 you'll see some pictorials of the
15 museum and you'll see how the museum has its own entrance,
16 you do not go through the library, you do not have to go
17 through the library. And not only that, we also have an
18 issue where it displays in our community intellectually.

19 We provided three letters to attest to our
20 original submission, one from the same individual was
21 requested to provide a letter of explanation of what the
22 museum was at the library. The dean of library presented
23 a representation from a librarian's perspective of what he
24 manages, and he says, well, the art gallery is within his
25 management, but that does not mean that it is a part or an

1 ancillary part of the operations of the library.
2 Obviously, the library functions independently, has its
3 own criteria for checking out a book, you have to have a
4 library card. The museum doesn't, the museum is open to
5 the public, has free access to everyone, has multiple
6 displays, has provided the museum artifacts at city
7 functions, we have the Border Fest and the Palm Fest which
8 are large functions in the spring in our community,
9 located separately and available to the entire public.

10 I know staff referred to they went to the
11 website and they saw that because the art gallery and the
12 museum can only be visited when the library is open,
13 that's because the art gallery is on the second floor and
14 the library is on the first floor. In my view, one of the
15 reasons you would associate that as far as the opening is
16 because the library is open 83 hours a week. On Monday
17 through Thursday is open 15 hours a day, frankly, probably
18 more than any other museum that is inside of a fixture
19 that would have access to the community. It has no
20 relevance with the operations of the library, none
21 whatsoever, it's just the idea that they mirrored the
22 hours of availability simply because it's on the second
23 floor. That's it, nothing having to do with the
24 operations.

25 Our state rep, when we discussed this, said,

1 Look, I've been to many of the functions at the art
2 gallery, tons, because they have a lot of social affairs,
3 a lot of representation, artifacts. Many times late in
4 the even they have social events that are specific to the
5 museum alone, having absolutely nothing to do with the
6 library. So where the word ancillary came into play with
7 the library is beyond us because Kody, who presented the
8 letter when the challenge was made, never referenced
9 anything as far as it being in the operations of the
10 library. He wrote it as the dean of library saying we've
11 got a beautiful establishment, but that doesn't
12 necessarily mean that it's a library part, it is a
13 function in its own clearly.

14 We had to go back to the dean, and
15 unfortunately, she's hard to reach she's hard to reach
16 because, of course, deans or presidents are hard to reach
17 sometimes, but when she finally was able to talk to us and
18 sit down, she said, Where's the confusion? Clearly there
19 shouldn't be any. We have a museum that functions
20 independently of the library, you can come and visit it at
21 any time. And she provided you a letter which our chair
22 read to you a minute ago. I have copies; I know that when
23 something is read, it's hard to grasp. But she clearly
24 outlined bullet point for bullet point for bullet point
25 all of the activities that are available out of the museum

1 that are independent of the library, has no function.

2 When you go to the financial statements of the
3 college, you see gifts and awards that are given directly
4 to the gallery, not having to go through the library. So
5 obviously the function and even the financial perspective
6 is irrelevant of the library.

7 So with that, I'll hold on to some of my
8 minutes because I'd love to come back on some of these
9 other things that we have, but please take that into
10 consideration. I think we've given you more than ample
11 evidence that the art museum at our college is not a part
12 of the library function, it runs independently and it has
13 always run independently. And I'm here to answer any
14 questions.

15 MR. GOODWIN: Any questions?

16 (No response.)

17 MR. GOODWIN: Thank you.

18 MR. BROWN: Good morning. My name is Jed
19 Brown, I'm with the Brownstone Group, I'm part of the
20 applicant team. I will be speaking to you this morning
21 about West Pecan Village's route to the public park.

22 For this particular item, distance is not an
23 issue. In the communications we've had with staff,
24 specifically the RFAD deficiency response, staff
25 acknowledged that it is within a half a mile. The issue

1 here has to do with accessibility. In that case, we have
2 repeatedly and completely provided reports that show that
3 the site is in fact accessible in compliance with 2010
4 standards. We've done it twice in written correspondence
5 by way of a registered accessibility specialist, today
6 you've gotten in your Board book a third letter from that
7 registered accessibility specialist, and then a letter was
8 read into the record from the City of McAllen's assistant
9 city manager that in fact the route is compliant with ADA
10 standards for accessibility from the site to the park to
11 the playground.

12 It's important to point out that we believe
13 we're the only application in Texas, and certainly within
14 Region 11, that provided registered accessibility
15 specialist letters with our full application on March 1.
16 When the scoring notices came out, as was noted earlier,
17 we had been awarded all menu items. During the Board
18 meeting on May 25, the Board made a motion for this
19 specific item to accept letters from qualified third party
20 registered accessibility experts and from local officials.

21 We have done both as of now, we've provided you both for
22 West Pecan Village.

23 In responding to the RFAD challenge, we
24 believe, based on the Board's motion, that we've met the
25 test when we provided the letter. We thought it was a

1 formality of putting that letter back in and that would be
2 enough, so with that we didn't agree. In our appeal to
3 the executive director, we re-engaged the registered
4 accessibility specialist so that he could reaffirm the
5 route, went back and visited his notes, visited the route,
6 we were shocked when we didn't get the route approved
7 during that appeal. At that point we realized that what
8 staff was looking for was a more specific report, better
9 documentation as to the specific items that had been
10 asserted against the route from somebody during the RFAD
11 process. We thought that greater weight would be placed
12 from that of a registered accessibility specialist than a
13 competing applicant's allegations.

14 Today in our appeal to the Board, again, for
15 the third time we've provided you all with a letter from a
16 registered accessibility specialist stating that the route
17 is in fact ADA compliant, and as was read in, as I
18 mentioned earlier, a fourth letter. In our mind, if you
19 look at the routes, they are entirely ADA accessible and
20 this particular one is entirely ADA accessible and we've
21 met the test. We provided RAS letters and the letter from
22 a city official, so we ask that you accept this.

23 MR. GOODWIN: Thank you.

24 MR. SCHMIDTBERGER: Good morning. My name is
25 Russ Michael Schmidtberger, I'm an attorney and I

1 represent the applicant.

2 I just wanted to take a brief minute real quick
3 and just discuss the property crime menu item, and this
4 applies to West Pecan Village, it also applies to Las
5 Palomas so you can kind of hear it together, it's going to
6 be exactly pretty much the same thing. But let me just
7 say this clearly for the record, these two applications,
8 they've had property crime rates below 26 per 1,000 for
9 this entire tax credit cycle. They were below 26 before
10 March 1 and they're below 26 as of today. Also, staff
11 confirmed that we received these points and awarded them
12 to us because we proved it to them in our full
13 application. So just take note of that.

14 Now, here's the other important note that I
15 want you to emphasize today. The property crime menu
16 item -- and this kind of dovetails from what Cynthia was
17 saying earlier -- it's another case of staff stating they
18 don't know what kind of evidence they want to see at full
19 application but then after they start receiving
20 applications and RFADs and evidence, their position begins
21 to take shape as to what they would have liked that to be.

22 So if you notice in the FAQ on page 632 -- or I'm
23 sorry -- in the Board book the FAQ states on page 632:
24 When staff was asked are you going to specify the data to
25 use for local data, staff answered we will not specify

1 which local data to use, though the subject data should
2 mirror as much as possible that of Neighborhood Scout.

3 So they've given us guidance. It's confusing,
4 but nonetheless, it's guidance to the rule. In fact,
5 staff never said specifically that they wanted to see
6 property crime specific to a census tract or specific to
7 anything, all they said was they wanted it to mirror
8 Neighborhood Scout, and that's exactly what we ended up
9 doing.

10 So now, we've heard this confusion theme
11 before, it's the same song, different verse, back in the
12 May Board meeting when applicants all came to the podium
13 regarding their confusion around what evidence staff was
14 looking for on proving their ADA routes. If you recall
15 that meeting, the Board unanimously agreed that all
16 developers in the state could supplement their evidence
17 after March 1 because staff had not clarified what they
18 were looking for to prove up the menu item. So precedent
19 was set in a lot of ways. So they were all given an
20 opportunity to supplement their evidence after March 1,
21 and we're simply requesting the same fairness and equity
22 be applied to us today if that's what's required.

23 So not like all of them, we provided evidence
24 at full application. In fact, a little different than
25 them, we provided a ton of evidence, plenty to prove up

1 our property crime scores, and to reiterate, we provided
2 enough clear and convincing evidence that, again, staff,
3 they awarded us the points in the review process. For
4 four months we got them.

5 Now, we provided property crime data specific
6 to our census tract which is on page 634, this is for the
7 full application, we provided population data specific to
8 our census tract, that's on page 640, and we used local
9 data sources which is on page 636, and most importantly --
10 and this is probably the key -- we followed exactly what
11 staff said to do when we mirrored Neighborhood Scout with
12 all our local data and it resulted in the most reasonable
13 and logical reflection of Neighborhood Scout in all of
14 Region 11.

15 So if you don't mind, just for one second --
16 this data is complicated -- just for one second if you
17 don't mind turning to page 633, you'll see this chart.
18 The chart is very indicative of what's going on in Region
19 11. So first, West Pecan Village and Las Palomas are at
20 the top of this chart. The reason they're at the top of
21 this chart is because they have the best Neighborhood
22 Scout scores in all of Region 11 as it pertains to new
23 construction. So what we did was we literally took the
24 Neighborhood Scout score and we used it to come up with
25 our local data score, and the differential on that was

1 literally within about three points.

2 So what you're seeing from full application to
3 now and what we gave you at full application was
4 indicative of what we have now by only about three points.

5 And what you're seeing at the bottom of that list, which
6 is interesting, the unreasonable mirroring of Neighborhood
7 Scout that a lot of the applicants in Region 11 have
8 done -- which they're going to get up here and talk -- you
9 can see some of the swings. Like look at Edinburg and
10 McAllen, they're swinging at 46 points, they came in at
11 60.8 at Neighborhood Scout and now they're coming in at
12 11.34 with their local data. The other one is 48.69 and
13 now they're claiming 1.24, that's a swing of 47.45. Now,
14 I don't know how that happens unless the National Guard
15 shows up.

16 But to be honest with you, if a reasonable
17 mirroring is what we're trying to do, Las Palomas and West
18 Pecan Village have been the most consistent and the most
19 accurate to date, and we supplied extra data after March 1
20 in the RFAD process, and again, what I'm saying is that I
21 hope that we can actually have done that.

22 So if I can just wrap up real quick, all this
23 stuff proves is that we've indicated that we've been well
24 below 26 and we've proved that staff's initial review of
25 our application was indeed correct when they awarded us

1 the points. It also proves that we submitted evidence on
2 March 1 without much guidance from staff, and like all
3 other developers and applicants that were granted the
4 opportunity to provide staff with more evidence when they
5 weren't given proper guidance, we should be allowed the
6 opportunity to supplement too after March 1, in the event
7 that we would need to.

8 So I kindly ask the Board, again, to award
9 these menu items points for property crime to both
10 applications at this time, follows staff's guidance that
11 we've followed the rules and we've been consistently
12 providing that are scores are below 26 in some of the best
13 and honest reflections of Neighborhood Scout and property
14 crime in all of Region 11. Thank you very much.

15 MR. GOODWIN: Thank you.

16 Is there anybody here that wants to speak in
17 favor of staff's recommendation?

18 MR. MEDRANO: Andres Medrano, with Gardere
19 Wynne Sewell. I'm here on behalf of M Group, a
20 competitor. And I'd like to talk to you first about
21 what's not vague and not subjective, which is distance and
22 the ADA requirements. These are very specific and these
23 are measurable, and we believe the RFAD process
24 demonstrated that the paths at issue in this application
25 to the playground and the public transportation stop meet

1 neither the distance nor the ADA accessibility.

2 The playground is accessible from the site by a
3 sidewalk coming from the north to the south. There were
4 three entrances to this playground and when we were
5 measuring it, the closest entrance was .54 miles from the
6 development site. That is essentially a driveway into the
7 parking lot and it failed to meet the ADA requirements.
8 The slopes were too great and it did not have handrails.
9 The applicant had not specified which entrance they were
10 using.

11 Now in their appeal to the Board they specify,
12 well, we're not using that entrance, we're using entrance
13 two which is farther down south on the sidewalk. And
14 there's two problems with that: first of all, it's
15 farther; second of all, you can't even get to that
16 entrance without crossing the slope at the first entrance
17 which is not ADA compliant. And there's no evidence
18 whatsoever was offered as to how our analysis of the first
19 entrance was incorrect. So you have to cross the
20 impermissible ramp to get to the second ramp.

21 And second, even if the slopes as they
22 represent now at the second entrance are acceptable there
23 is still no handrail and ADA 405.8 says any ramp must have
24 a handrail. The only response is to say, well, we could
25 build one later if we need one. That's not acceptable

1 because it's not property they own. There's no
2 handrail -- that entrance in and of itself is not ADA
3 compatible and you can't even get to it without crossing
4 the first entry to the park which is not ADA permissible
5 slopes.

6 Second, the public transportation stop, the
7 applicant does not contest that the path to the public
8 transportation stop is well more than half a mile, in
9 fact, it's 1.8 miles on the sidewalks to get from the site
10 to the bus stop. Their only response is, well, you should
11 use access to access to the public transportation should
12 be included into that calculation, and the Board at the
13 previous meeting declined to that, they didn't think that
14 was correct.

15 Even if the route itself was to be considered
16 at 1.8 miles, we pointed out a number of violations of
17 that ADA that that path is not including the passing
18 spaces, curbs, slopes, landings, et cetera, and no
19 evidence has been put back from the applicant.

20 One of the applicant's speakers said that they
21 had repeated provided reports to the Board. Really what
22 they provided was a letter, a two-sentence letter saying
23 that it complies. They have not provided any information
24 specifically rebutting or addressing the ADA issues very
25 specifically pointed out on these paths, and these are

1 subjective, these are measurements that were made and
2 there's simply no response. They don't meet the distance
3 on either the playground or the park.

4 Very briefly, on the crime rate what was failed
5 to be mentioned by the applicant was the methodology that
6 they used to get to the crime rate that they were relying
7 on. They took the Neighborhood Scout number which was
8 more than 26 per 1,000 and then reduced it by the overall
9 crime reduction in the city of McAllen as a whole over a
10 two-year period. That is not specific to the census
11 tract. That is how they got to the number that they're
12 relying on. The other data, the local data, which the
13 other applications in the region provided, was available
14 to them but they did not get it. They're trying to
15 present that now which is brand new information we do not
16 believe is permitted in the process.

17 And finally, I would say that we believe that
18 staff's analysis is correct, that the gallery that is
19 called the Library Gallery, it is only open when the
20 library is open, it is managed by the library, it is an
21 ancillary part of the library, and according to Section
22 11.9(c)(4)(B), the same amenity is not supposed to be
23 allowed to score separate points. If this gallery is not
24 ancillary to the library, it's difficult to see under what
25 circumstances the two facilities would be ancillary.

1 Thank you.

2 MR. GOODWIN: Thank you.

3 Anybody else in favor of staff's
4 recommendation?

5 MR. PALMER: Barry Palmer with Coats Rose,
6 representing Steve Wallace, one of the competing
7 developers in Region 11.

8 A couple of points I would like to make is
9 there has been some talk about staff guidance being vague
10 and in some cases maybe it was on this accessibility route
11 with the whole route had to be half a mile or whatever,
12 but that's not to say that the guidance is vague on
13 everything, and I think that some people are taking some
14 liberty with that and making it look like guidance has
15 been vague in all areas. I don't think that's the case.

16 On the area of crime, I thought that the
17 guidance was pretty specific: you could use either local
18 information or you could use Neighborhood Scout. The
19 applicant decided to use Neighborhood Scout. You get a
20 point if you've got a crime rate of less than 26. The
21 Neighborhood Scout for 2014 showed a crime rate of 26.66
22 which would not qualify for a point. The applicant then
23 extrapolated the reduction in crime citywide of 8 percent
24 and 5 percent and assumed that that would apply to their
25 census tract, and so with that procedure got under 26

1 crimes. But staff, rightly so, determined that that's an
2 incorrect calculation because the reduction in crime isn't
3 necessarily going to be the same in every census tract so
4 you can't use that method.

5 So when they lost the point on that, they came
6 back late in the process with a whole different method
7 which is to prove it up by local source information, which
8 if they had done on March 1 would have worked, but you
9 can't make that kind of a total change, and so staff
10 rightly didn't consider that information, that's not an
11 administrative deficiency to clarify the information you
12 provided, it's changing the way that you're going to try
13 to get the point. So I think staff has been correct in
14 their interpretation of that.

15 Again, on the accessibility, in the RFAD very
16 specific evidence was provided as to why the routes are
17 not accessible, I mean, substantial specific evidence
18 pointing out places that were not accessible, parts of the
19 ADA that were not complied with. There was no response to
20 any of that specific evidence other than a letter from an
21 accessibility expert saying that the route is accessible.

22 So it's certainly reasonable for staff to take the
23 preponderance of the evidence there in looking at two
24 competing views, and one specific, one just makes a
25 general conclusion.

1 MR. GOODWIN: Thank you.

2 Anybody else want to speak in favor of staff's
3 recommendation with new substance?

4 MS. RICKENBACKER: I hope so. Donna
5 Rickenbacker with Marque Consultants and I do work with
6 another applicant that's behind this one, and I really
7 wanted to focus primarily on the museum.

8 You all know the rule, you know what it
9 requires, I'll just go right into it. The applicant is
10 claiming that the South Texas College Library Art Gallery,
11 located on campus library, is a museum. This art gallery
12 is not a museum. As U.S. Supreme Court Justice Potter
13 Stewart once famously said, You know it when you see it.
14 Well, I've seen it. The art gallery is located in a room
15 on the second floor of the campus library, a room that is
16 specifically labeled Library Art Gallery. The library
17 displays artwork along the staircase leading from the
18 first floor main center of the library up to and along the
19 walls of the second floor and into the art gallery space.
20 The second floor of the library also has several tables
21 and chairs where students study and collaborate on school
22 related projects. I'm a big supporter of higher education
23 and was quite excited to see all these students sitting in
24 these chairs and working their intellectual magic.

25 We challenged the applicant, obviously, in

1 their claim that the art library is a museum and in
2 support of our position obtained a letter from Cody Gregg
3 that's been referenced to by the applicant. He's dean of
4 library and learning support services across all five
5 college campuses. In his letter Mr. Gregg states that
6 some of their campus libraries, including the Pecan
7 campus, include art galleries and that the art galleries
8 are an integral part of their library system and learning
9 experience at South Texas College, and I quote. He
10 concluded by saying that while they appreciate the
11 contribution that the library art galleries bring to the
12 school's academic environment, they do not consider them
13 museums.

14 In response to the challenge, the applicant
15 obtained a followup letter from Mr. Gregg. Mr. Gregg
16 again recognized that the art galleries are an integral
17 amenity to the learning experience at South Texas College
18 and its benefits to the students, the professors and the
19 community. But he did not refute his prior statement that
20 the art gallery is not a museum.

21 Finally, as recognized by the applicant and
22 their attorney, TDHCA staff stated in their response to
23 frequently asked questions that the museum has to be a
24 museum, and uses as an example that if a bakery has a room
25 where they display things, it does not make the bakery a

1 museum. There's no difference in this instance. The art
2 gallery displays things, important things that contribute
3 to the learning environment of South Texas College, but
4 that does not make the rooms where they display the
5 artwork a museum.

6 I respectfully request that you all accept
7 staff's recommendation. Thank you so much.

8 MR. GOODWIN: Thank you.

9 Any other comment in favor of staff's
10 recommendation? Any new comment -- new?

11 MR. PADILLA: Well, new in the essence of the
12 perspective of someone --

13 MR. GOODWIN: We'll hold you to three minutes.

14 MR. PADILLA: One says I've been to it and I
15 didn't see it reminds me of the old adage of you can't see
16 the forest because the trees are in the way. Sometimes
17 it's right before you and it is what it is. Museum is
18 defined in the dictionary as a building in which objects
19 of historical significance and artistic or cultural
20 interest are exhibited. Exactly the purpose of that art
21 gallery which is not just art itself. It clearly shows
22 you in the pictorials the types of items. The letters we
23 have provided clearly identify that it is not just for the
24 library's purpose, it is for the community's and public's
25 purpose in itself separate as an entity and has displayed

1 separately as an entity. We've provided all the
2 definitions thereof.

3 MR. GOODWIN: I think we heard that the first
4 time.

5 MR. PADILLA: The other thing -- well, we're
6 trying to reinforce the correct perspective is what we're
7 trying to do, enforce the correct perspective of what
8 we're talking about.

9 The other issue that we did not bring data on
10 the issue of ADA, please, if you're going to bring in
11 nonscientific data pictorials -- and I'll tell you, I was
12 a photographer for a local newspaper in my younger days,
13 and forced perception was one of the key issues that we
14 were always instructed to assure we didn't do. Don't take
15 the angle of the picture that distorts the picture's truth

16 If you look at the pictures -- and we provided you the
17 challenges that were there -- and you see someone sitting
18 on the floor giving you an angle of a measurement tape or
19 an angle or a ruler level and says it's this far off,
20 please, that's not scientific. And moreover, it's a
21 perception issue. If you stand at a certain angle you're
22 going to see an eight-inch separation, if you stand at a
23 different angle, you'll see a two-inch separation.

24 Obviously, we understand this process and we
25 understand the developers are challenging trying to earn

1 their credits, but don't discredit someone who submitted
2 something that was accurate and truthful by trying to
3 perceive it not to be, and that's the issue that we have
4 here. We didn't bring pictures that showed you otherwise,
5 one, because we thought those pictures were somewhat
6 ridiculous, we gave you expert's opinions, we brought back
7 letters from experts who were certified and trained by the
8 State of Texas to analyze these items and assure that they
9 are correct. Furthermore, we presented to you a letter
10 from the City of McAllen where they themselves went out
11 there and took a look at it and claimed as it is, ADA
12 accessible and an ADA route.

13 Thank you.

14 MR. GOODWIN: Thank you.

15 Do you want to speak again, sir, something new?

16 MR. BROWN: If you look at page 582, this is
17 when Arnold was talking about things being unscientific.
18 It seems to me rather unreasonable that we have to respond
19 to each claim of things of this nature. What we've
20 provided is equal to what's been accepted in other
21 locations, specifically with the gentleman that had the
22 RFAD issued against his own accessibility. We've provided
23 the identical letter as far as the one from the City of
24 Brownsville, in this case from our City of McAllen.
25 They're identical, and that was acceptable to staff, ours

1 should be acceptable to staff.

2 Thank you.

3 MR. GOODWIN: Thank you.

4 New? Really?

5 (General laughter.)

6 MR. SCHMIDT BERGER: It's new. I just want to
7 take one issue real quick with what Barry said, and
8 everybody seems to be quoting Supreme Court justices too.
9 I studied with Chief Justice John Roberts and I remember
10 what he said to me as a lawyer because he said, The law is
11 never really what it says, you've got to look at the
12 details. And to what Barry is saying is that underneath
13 the law there's details. Local data sources, we weren't
14 told at full app to basically take Neighborhood Scout or
15 our local data source, what we were told is we were to
16 either take Neighborhood Scout's score or take a local
17 data source that mirrors Neighborhood Scout's, that's the
18 deal and that's exactly what we did at full application.

19 Thank you.

20 MR. GOODWIN: Thank you.

21 Marni, anything you'd like to add? I'm
22 assuming we're out of new comments.

23 MS. HOLLOWAY: So a couple of things. As
24 described, the RFAD was very detailed. We received a
25 number of RFADs that had this level of detail regarding

1 accessibility, and we as staff send that on and say, okay,
2 what's your response to this, and just getting a letter
3 back that's two sentences that basically mirrors the
4 letter that was there before but doesn't address the
5 questions, we're not able to make a judgment other than
6 this is not responsive.

7 Also, regarding the crime rate issue, this is
8 something that we've discussed a number of times in
9 application workshops and in other places. What this item
10 says in the Opportunity Index is: The development site is
11 located in a census tract with a property crime rate of 26
12 per 1,000 persons or less, as defined by
13 NeighborhoodScout.com or local data sources. We have
14 always said in workshops, in questions, everywhere else,
15 we treat this the same way we do our undesirable
16 neighborhood characteristics. Neighborhood Scout is just
17 a trigger; if your local data source shows something
18 different, then give us that local data and that's what
19 we'll work with.

20 In this particular instance there was data and
21 then there was an extrapolation. What we need is data:
22 show us this is the number for the census tract based on
23 the police reports. That finally came at the third bite
24 at the apple. So because that was a change from what was
25 originally submitted in the application, staff has not

1 considered that.

2 MR. GOODWIN: Okay. Any other questions for
3 Marni?

4 MR. ECCLES: I have a couple of questions just
5 to clarify because we have two distance matters on this,
6 distance to park, distance to public transportation. I
7 believe the evidence submitted and the argument from the
8 applicant is that the distance to public transportation,
9 the actual route that is allegedly accessible would be
10 well over a half mile but within a half mile as the crow
11 flies.

12 MS. HOLLOWAY: Correct.

13 MR. ECCLES: But the distance on an accessible
14 route to a public park with an accessible playground, how
15 far is that distance on the allegedly accessible route?

16 MS. HOLLOWAY: On the allegedly accessible
17 route there is mapping from an engineer that shows that
18 that boundary to boundary measurement on the route that is
19 allegedly accessible is a half mile or just under a half
20 mile, and the playground is further then.

21 MR. GOODWIN: Any other questions?

22 (No response.)

23 MR. GOODWIN: So we have a recommendation from
24 staff to the Board that we deny the appeal of the
25 applicant. Do I hear a motion?

1 MR. VASQUEZ: Actually I do have a question
2 first.

3 MR. GOODWIN: Okay.

4 MR. VASQUEZ: So these are four separate issues
5 or can we take them as separate issues?

6 MR. ECCLES: You can mix and match.

7 MR. VASQUEZ: Because we have the distances,
8 the transportation and the park.

9 MS. HOLLOWAY: Yes.

10 MR. VASQUEZ: The crime stats.

11 MS. HOLLOWAY: The crime rate and the museum.

12 MR. VASQUEZ: And then the museum/library
13 issue.

14 MR. GOODWIN: Do you want to separate them or
15 keep them together?

16 MR. VASQUEZ: It would be my inclination to
17 separate them.

18 MR. GOODWIN: Everybody agree? We'll separate
19 them and we'll start with the crime rate. Can we get a
20 motion as it relates to that segment?

21 MS. HOLLOWAY: Staff's recommendation is to
22 deny the appeal regarding the crime rate.

23 MS. THOMASON: I make a motion to uphold
24 staff's recommendation related to the crime rate.

25 MR. GOODWIN: Okay. Have a motion to uphold

1 staff's recommendation on the crime rate. Do I have a
2 second?

3 MR. BRADEN: Second.

4 MR. GOODWIN: And it's seconded. Any
5 discussion?

6 (No response.)

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

8 (A chorus of ayes.)

9 MR. GOODWIN: All opposed?

10 (No response.)

11 MR. GOODWIN: Okay. Next one is on the museum.
12 Staff's recommendation?

13 MS. HOLLOWAY: Staff's recommendation is to
14 deny the appeal related to the museum.

15 MR. VASQUEZ: Chairman, I'd like to make a
16 motion to accept the appeal to get credit for that.

17 MR. GOODWIN: The museum? Okay.

18 MR. BRADEN: Second.

19 MR. GOODWIN: Second. Any discussion about
20 that?

21 (No response.)

22 MR. GOODWIN: All in favor?

23 (A chorus of ayes.)

24 MR. GOODWIN: All opposed?

25 (No response.)

1 MR. GOODWIN: It passes.

2 The next is on accessibility.

3 MR. ECCLES: There are two on that.

4 MS. HOLLOWAY: There are two on that. Staff
5 recommends denial of the appeal related to the half mile
6 on an accessible route to a public park with an accessible
7 playground.

8 MR. BRADEN: I'd like to make a motion to
9 accept staff's recommendation.

10 MR. GOODWIN: So we have a motion to accept
11 staff's recommendation on the public park to deny the
12 appeal. Is that right, Paul?

13 MR. BRADEN: Yes.

14 MR. GOODWIN: And do we have a second?

15 MS. RESÉNDIZ: Second.

16 MR. GOODWIN: Seconded. Any discussion?

17 (No response.)

18 MR. GOODWIN: All in favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: That passes.

21 MS. HOLLOWAY: The final tie breaker for this
22 application, staff recommends denial of the appeal
23 regarding the accessible route of less than half a mile to
24 public transportation.

25 MR. GOODWIN: Do I have a motion on that?

1 MR. BRADEN: I'll also make a motion to accept
2 staff's recommendation.

3 MR. GOODWIN: So we have a motion to accept
4 staff's recommendation on that issue. A second?

5 MR. VASQUEZ: Second.

6 MR. GOODWIN: And a second. Any discussion?

7 (No response.)

8 MR. GOODWIN: All in favor say aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: All opposed?

11 (No response.)

12 MR. GOODWIN: That passes.

13 We'll move to 17390.

14 MS. HOLLOWAY: Our final appeal today,
15 application 17390 Las Palomas. A third party request for
16 administrative deficiency requested that staff review the
17 application to determine whether it's qualified for tie
18 breakers related to an accessible route of less than half
19 a mile to a public park, an accessible route of less than
20 half a mile to public transportation, and a crime rate of
21 less than 26 per 1,000 persons specific to the census
22 tract.

23 Staff has determined that the application did
24 not qualify for these items. The applicant was issued an
25 administrative deficiency notice requesting that they

1 provide evidence to support the selections. In their
2 response, as in the appeal, the applicant asserts that the
3 public transit must be less than half a mile as the crow
4 flies from the site. The response states that every
5 reference to the measurement of distance indicates
6 measuring boundary to boundary unless otherwise noted. In
7 this case the measurement is otherwise noted. The
8 distance from transit must be less than half a mile on an
9 accessible route. The route to public transportation
10 indicated in the application is approximately 1.73 miles
11 long, a good deal longer than the allowed distance.

12 Regarding property crime, the appeal at the
13 initial scoring notice provides an explanation of the
14 projected trend for the census tract included in the
15 application which is based on an assumption that as crime
16 decreases in the city of McAllen, it will decrease at the
17 same rate in the subject census tract. The later appeal
18 to the executive director includes entirely new data from
19 that submitted in the application. As such, it does not
20 provide clarification but is rather a change to the
21 application and thus has not been considered by staff.

22 Staff recommends denial of the scoring appeal
23 for application 17390 Las Palomas.

24 MR. GOODWIN: Thank you.

25 Do I hear a motion to hear comments on this

1 recommendation.

2 MR. BRADEN: So moved.

3 MR. GOODWIN: So moved. Second?

4 MS. RESÉNDIZ: Second.

5 MR. GOODWIN: Moved and seconded. All in favor
6 say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: First comment we'll have is
9 Michael has a letter to read into the record.

10 MR. LYTTLE: A letter to the Board from State
11 Representative Guerra reads as follows:

12 "I would like to express my concern about the
13 status of the application for Las Palomas referenced for
14 the above location proposed in McAllen, Texas. Initially
15 I understand that TDHCA approved all thirteen opportunity
16 index items for Las Palomas in its original review
17 process. The McAllen Housing Authority application
18 possesses exemplary merit and I continue to be a proud
19 supporter of this development.

20 "The 9 percent HTC program is of paramount
21 importance to my district and constituents in the Rio
22 Grande Valley to ensure we have affordable housing options
23 in the region. I kindly request that as you hear the
24 presentation for Las Palomas today, you'll take into
25 consideration the fact that they have consistently been at

1 the top of all new construction applications in Region 11
2 up until the appeal process.

3 "As you know, the interpretation of the QAP and
4 rules has been a source of contention this year. In my
5 opinion, the high opportunity areas of these sites are
6 unmatched in Region 11, and to that end, this application
7 is deserving of every menu item they seek.

8 "If you have questions regarding this matter,
9 please feel free to contact me at your convenience.

10 "Respectfully, Representative R.D. Bobby
11 Guerra, House District 41."

12 MR. GOODWIN: Thank you, Michael.

13 Comments?

14 MR. CRUZ: Ronnie Cruz, chairman of the Housing
15 Authority, City of McAllen.

16 This is basically a mirror letter from the last
17 one. This is the ADA accessibility to public
18 transportation for the proposed Las Palomas Village,
19 Application 17390.

20 "Dear Mr. Goodwin: Please be advised that the
21 bus stop at 23rd street and attached sidewalks and ramps
22 along 23rd provide an ADA accessible route to the proposed
23 apartment project traveling south and then east on
24 Flamingo Avenue.

25 "If you have any questions, please feel free to

1 call me."

2 Signed: Michelle Leftwich, Assistant City
3 Manager, Cit of McAllen.

4 Thank you.

5 MR. GOODWIN: Thank you.

6 MR. BROWN: Jed Brown again, Brownstone, part
7 of the applicant team.

8 Please, if you'd go to page 801, 802 and 803 of
9 the Board book for this particular item. We only had one
10 issue here as to ADA accessibility. The route is .22 mile
11 so it's not even close to half a mile. The only issue was
12 that there was an allegation that cars are parking over a
13 sidewalk, therefore, there's not adequate access to the
14 bus stop. What's interesting to note is that the cars
15 that you see on 803 actually show up in RFAD challenges,
16 in other RFAD challenges, not even against ours. You used
17 the word yesterday, Tim, civility. It's a little bit
18 disingenuous when someone challenging you is parking a car
19 over a sidewalk to create an ADA violation, when in fact,
20 that's a Texas Transportation Code violation. You cannot
21 park on a sidewalk in Texas, it breaks the law.

22 So this one to me, we've submitted three RAS
23 letters, we've got a letter from the City of McAllen
24 saying that the route is compliant, and the only violation
25 here is not an ADA violation, it's a Texas Transportation

1 Code violation. So we'd sure like to walk away with the
2 one on this one.

3 Mr. Vasquez, I watched what was going on with
4 the last one. If you look at the table on property crime,
5 we have the property crime, there's no doubt that we're
6 under 26 per 1,000 under any measure. We're locked down
7 on that when you look at Region 11, and to think that we
8 somehow aren't going to get it and others are when they
9 have a 40-point swing from what Neighborhood Scout shows,
10 something is not right. Our numbers are right on. So I
11 would hope that you would reconsider what I was watching
12 in the last particular situation. It looked like you were
13 getting ready to make a motion for property crime and it
14 just didn't happen, and I think we've got it.

15 So in my opinion, we deserve two of the three
16 menu items with this application. I don't see how,
17 applying the rules, how we don't deserve it. Thank you
18 very much.

19 MR. GOODWIN: Thank you.

20 MR. VASQUEZ: Could I ask for a clarification
21 from someone? In this case, assuming it's an ADA
22 compliant route, what's the actual distance that we're
23 talking about? Is it within?

24 MS. HOLLOWAY: I believe.

25 MR. VASQUEZ: So this is different than the

1 last case where it was like 1.7 miles or something.

2 MS. HOLLOWAY: Right. So on both applications,
3 the route to public transportation is much longer than the
4 half mile.

5 MR. VASQUEZ: That's what I'm asking about.
6 Not the crow flies, the actual route.

7 MS. HOLLOWAY: Not the crow flies, the actual
8 route.

9 MR. VASQUEZ: That's what I'm asking for
10 clarification on.

11 MR. BROWN: This one is .22, it's option 2, .22
12 miles. I don't know the exact page in the Board book, but
13 this one is clearly less than half a mile.

14 MR. GOODWIN: Is that on page 695? It says
15 option 1? That's the playground.

16 MR. ECCLES: Page 701.

17 MR. BROWN: For Las Palomas I don't think that
18 we have page 701. It starts at page 768 and it goes
19 through -- it may have been in the appeal to the executive
20 director. I'll find that for you.

21 MR. GOODWIN: On 701 we show a map that shows
22 .22 as the crow flies.

23 MR. BROWN: That's it -- well, no, no, not as
24 the crow flies.

25 MR. GOODWIN: That's what I looks like to me.

1 MR. BROWN: But there's an actual route that
2 shows it.

3 MR. VASQUEZ: Which isn't much longer.

4 MR. BROWN: And again, for the record, we're
5 not after the park for this one, we're conceding the park
6 based on the right of travel, it's not within half a mile,
7 it's on the bus stop which was, I believe, .22 but it's
8 nowhere close to half a mile.

9 MR. VASQUEZ: 700 supports that.

10 MS. HOLLOWAY: I accept that clarification and
11 I understand that they are conceding on the one. We still
12 have to address the appeal on the park -- on the
13 transportation -- I'm sorry -- and on the crime rate.

14 MR. GOODWIN: So they're conceding that their
15 appeal on the park is beyond accessibility.

16 MS. HOLLOWAY: Yes.

17 MR. GOODWIN: So it's strictly on crime rate.

18 MS. HOLLOWAY: On crime rate and the
19 accessibility question.

20 MR. GOODWIN: Okay.

21 MR. SCHMIDTBERGER: Thank you again for your
22 time. Again, Russ Schmidtberger. I'm an attorney for the
23 applicant, I'm in-house counsel for them.

24 Mr. Vasquez, again, I noticed those eyes
25 shifting and I've got to believe that somewhere on that

1 chart that I showed you Las Palomas is leading the pack on
2 property crime. So I think we can get there, just like
3 Jed said, it's obvious, but what I wanted to say too about
4 that is that I think that's it's interesting that an
5 applicant sitting behind me who actually repaired routes
6 after June 1 -- and it's in the Board book, I think it's
7 on page 570 -- it's really interesting that he was able to
8 do a material deficiency long after March 1 and still get
9 an award, whereas, I'm trying to get property crime in
10 which is clear, convincing, and I can't even do that today
11 at least on the last application.

12 But what I did want to say specifically, we
13 haven't talked about this that much but there is a policy
14 about paratransit in here, and as far as it's concerned,
15 we started talking about public policy, Cynthia got up and
16 talked about policy, and since we were talking about that,
17 I think Tim said it really well the last Board meeting
18 when he said that the purpose of the rule for
19 accessibility, he said, If I'm a person with a wheelchair
20 and I'm seeking to get from my home to a park every day,
21 taking my kid, is it reasonable to expect that I would go
22 further than half a mile? And the answer to that is no,
23 it's not reasonable to expect that, it's certainly not
24 reasonable to want that, and it's not even reasonable to
25 build for that. So I guess what I'm saying is I couldn't

1 agree with that more. It's exactly the purpose of what
2 this menu item is actually created to achieve.

3 So my policy comment, just as an attorney and
4 just as an observer -- or rather, my rhetorical policy
5 comment for the Board is this: if one is in a wheelchair
6 or they're on crutches or they're utilizing a scooter and
7 they're seeking to get from their home to a park, to a
8 Walmart, to a library, to a museum, to their job, to their
9 college classes, to their parents' house, to their kid's
10 house, or even to a doctor, a restaurant or even to a
11 party, is it reasonable to expect that they would have to
12 go further than a half mile. I think the answer to that
13 question is yes, it would, and in some cases, as a
14 practical matter, they'd have to. So perhaps in most
15 cases they would be using a helpful form of transportation
16 that limits their distance of travel to those amenities.

17 While a paratransit service is not there to
18 take the place of accessible routes because it's indeed
19 accessible itself and it picks you up at the curb of the
20 development site and drops you off at the accessible
21 amenity itself, it's there to take the place of the
22 distance of all these routes and make the route on the
23 wheelchair only a couple of hundred feet as opposed to
24 less than half a mile.

25 So in short, I think this can apply to our menu

1 item in McAllen and at least it should be considered.
2 McAllen is the only city in Region 11 that has weekend
3 service. The applications that are actually getting an
4 allocation in Edinburg and Brownsville, they don't have
5 this paratransit services on the weekends. So McAllen has
6 actually carved out, they're spending money as a city to
7 get this transit system working and the paratransit system
8 working. And I guess what I'm saying is that by granting
9 this appeal, at least for Las Palomas -- it's our last
10 shot -- granting this appeal either in full or in part,
11 it's a vote for great public policy and also accessibility
12 with the transit system.

13 Thank you.

14 MR. GOODWIN: Thank you.

15 MR. PALMER: Barry Palmer with Coats Rose.

16 One thing that is really important in this
17 process to the development community is that we have
18 consistency in the application of rules and the QAP, and
19 that we apply the rules the same way to all applicants.
20 If you have a mater that's ambiguous, like whether the
21 accessible route had to be less than half a mile, once you
22 make a decision that, yes, the accessible route has to be
23 less than half a mile, then that's fine and we apply it to
24 everybody the same way.

25 Here the crime situation is exactly the same as

1 the last application. They turned in data at the
2 application from Neighborhood Scout and then extrapolated
3 in a way that the staff and the city's police department
4 said was not appropriate. Same thing here, same as the
5 last one, so it would make no sense, it seems to me, to
6 decide one one way and decide one the other way just
7 because it's their last application.

8 Same thing with the accessible route to the
9 transportation. They provided a letter of accessibility,
10 the RFAD provided specific evidence that it was not
11 accessible, and staff came to the conclusion in viewing
12 the specific evidence versus a letter with no backup that
13 it was not accessible.

14 So as you determined on the last application, I
15 would request that you back staff's recommendation on
16 these two remaining points.

17 MR. GOODWIN: Thank you.

18 MR. PADILLA: One last effort. A couple of
19 things were said in this last presentation about police
20 chief letter. We provided you a police chief letter, it's
21 in your packet today, where the chief says, I looked at
22 your data now and I agree with it as it was submitted.
23 And I'll tell you when I went to talk to him about the
24 letter that was submitted, a developer went to him, asked
25 him to sign a document, and he signed it and he said, I

1 made a mistake of signing the document. And if you look
2 at the document that he submitted in the RFAD, his first
3 words is: I reviewed your data. He clearly indicated to
4 me: I've never seen your data.

5 And there lays the problem with these types of
6 challenges when you have developers pushing people to sign
7 documents that in some cases they may not even understand.

8 So I'll leave that from that perspective, because he gave
9 me one now where he has actually looked at our data,
10 reviewed it and found it to be accurate from the
11 submission of the initial data subsequently to our items
12 to refute the challenges.

13 Going back to this issue of perception,
14 pictures, Jed just brought it to your attention. You see
15 the type of manipulation that occurs when people are
16 trying to beat themselves out, and it should be a common
17 sense perspective. You see something like that,
18 obviously, first, we have no control of who parks over a
19 sidewalk but the police department does, and if someone
20 was in a wheelchair and got to that location where that
21 gray car was parked purposely, all they had to do is call
22 9-1-1, someone will come over and someone will be ticketed
23 and that vehicle will be probably towed away.

24 But it goes to show you some of the ridiculous
25 affairs that have occurred to get to this point, and all

1 we ask is take a common sense approach of the right things
2 of what has occurred to us today, where are we, the facts
3 that we've provided you clear, clear data from day through
4 today, that our applications have fulfilled the
5 requirements of the QAP, and that's all we can ask for.

6 MR. GOODWIN: Thank you.

7 MR. MEDRANO: Andres Medrano again for M Group.

8 I'm a little bit confused because I heard one
9 of the applicant's representatives state that they were
10 dropping the playground appeal and another assert it, so
11 I'm going to briefly address it.

12 MR. GOODWIN: I think they've dropped the
13 playground appeal. Have you not? Okay. So please don't
14 address it.

15 (General laughter.)

16 MR. MEDRANO: I will move on. It was unclear.

17 MR. GOODWIN: Now it's clear.

18 MR. MEDRANO: On the public transportation
19 stop, the only distance provided is as the crow flies
20 distance by the applicant which is .22 miles. The actual
21 route has not been measured, but we're not contesting the
22 distance, what we're contesting is accessibility. And
23 the evidence that we put forward in the RFAD is that the
24 sidewalk that leads directly to the bus directly abuts a
25 private parking lot where the parking strips are directly

1 adjacent to the sidewalk. The sidewalk is only 48 inches;
2 when cars park in the parking lot, they overhang two feet
3 which makes it less than 36 inches which is not ADA
4 compliant. And as the applicant's representative just
5 said, they have no control over who parks there, it's a
6 parking lot in use.

7 And this is demonstrated it is not cars that
8 were being parked by the challenger, there were four cars
9 that were overhanging the sidewalk by two feet. And in
10 fact, in the supplemental pictures the applicant provided
11 to the Board for their Board appeal, they still show a
12 truck overhanging the sidewalk with no relationship
13 whatsoever to any challenger. The fact is if that
14 sidewalk was to be ADA compliant and abut the private
15 parking lot that directly has the parking stop in the
16 sidewalk, it would need to be six feet wide so that the
17 two-foot car hangover would leave the 48 inches or at
18 least 36 inches to be ADA accessible. And we would urge
19 that no such evidence has been presented to the Board to
20 contradict the RFAD that they do not meet ADA
21 accessibility on that route to a bus stop.

22 On the crime data, just very briefly, it's
23 exactly the same argument that was in the previous
24 application.

25 Thank you.

1 MR. GOODWIN: Thank you.

2 Anything new? I'll be interested to hear that.

3 MS. BIRCH: Good afternoon. Sally Birch with
4 Structure Development.

5 I just wanted to point out that there are six
6 applications in McAllen and most of them are all within
7 where you could throw a baseball. They're all gathered in
8 the same corner and we did not meet -- I represent a
9 competitor, we didn't have a Neighborhood Scout score nor
10 were we able to get data from the police department, and
11 so we didn't take that point or try to take it. And we
12 would just ask that you're consistent, and the process is
13 complicated and we rely on the rules that you have
14 Neighborhood Scout or a local data source, and if you
15 would just stay within those guidelines that staff
16 presents, we would appreciate it.

17 MR. GOODWIN: Thank you.

18 MR. BROWN: this is new, I promise. The
19 attorney represented that cars parked -- if the sidewalk
20 is in the right of way, you can't park over it, if it's in
21 private property, you can. Once that sidewalk is entirely
22 in the city's right of way, you can't park over it.

23 MR. GOODWIN: Thank you.

24 MR. BROWN: Thank you. Yes, sir.

25 MR. GOODWIN: Any other comments?

1 Marni, do you want to wrap up?

2 MS. HOLLOWAY: There's nothing left to say.
3 Staff recommends denial of the appeal for both items, the
4 accessible route and the crime.

5 MR. BRADEN: Mr. Chairman, I have a question.

6 MR. GOODWIN: Yes.

7 MR. BRADEN: So for clarity, the reason the
8 crime rate has more to do with the fact that they didn't
9 present data correctly.

10 MS. HOLLOWAY: They started with data and then
11 extrapolated because the number was like .6 over what they
12 needed to score, and so they applied a citywide decrease
13 in crime rate to that higher number to say, well, in this
14 census tract it's going to be lower. The information that
15 was provided at that third bite, the appeal to the
16 executive director, if that had been in the application
17 right at the start, it would have been fine, but that's
18 not what was in the application. So because that was a
19 change to the information that was provided, staff has
20 determined that that is not responsive to the
21 administrative deficiency.

22 MR. BRADEN: And that was my understanding and
23 why I voted for it the first time.

24 MS. THOMASON: Mine as well.

25 MR. GOODWIN: Do we want to separate these two

1 items?

2 MR. VASQUEZ: I'd like to separate them. And
3 for clarity, we don't have to vote on the park.

4 MR. GOODWIN: Right.

5 So we'll take a motion on staff's
6 recommendation for accessibility first.

7 MS. HOLLOWAY: Staff recommends denial of the
8 appeal regarding the accessibility item to public
9 transportation.

10 MR. GOODWIN: To public transportation. Do I
11 hear a motion?

12 MR. VASQUEZ: Mr. Chairman, I would make a
13 motion to reject staff's denial based on access to
14 transportation and to grant credit for that one item on
15 transportation access.

16 MR. GOODWIN: Do I have a second?

17 MS. THOMASON: Second.

18 MR. GOODWIN: Second. Any discussion?

19 (No response.)

20 MR. GOODWIN: All in favor say aye.

21 (A chorus of ayes.)

22 MR. GOODWIN: All opposed?

23 (No response.)

24 MR. GOODWIN: The next was on crime.

25 MS. HOLLOWAY: Crime. Staff recommends denial

1 of the appeal on the tie breaker based on the crime rate.

2 MR. GOODWIN: Do I hear a motion?

3 MR. BRADEN: Mr. Chairman, I'd make a motion to
4 accept staff's recommendation.

5 MR. GOODWIN: And second?

6 MS. THOMASON: Second.

7 MR. GOODWIN: Been made and seconded. Any
8 discussion?

9 (No response.)

10 MR. GOODWIN: All in favor say aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: All opposed?

13 (No response.)

14 MS. HOLLOWAY: That's all of our appeals.

15 MR. ECCLES: And this also is acknowledging
16 that on 17390 that the distance of an accessible route to
17 a public park has been conceded by the applicant.

18 MS. HOLLOWAY: Has been conceded by the
19 applicant.

20 MR. GOODWIN: Marni, with these changes are you
21 going to need the time to recalculate?

22 MS. HOLLOWAY: Actually, we don't.

23 MR. GOODWIN: So all of our appeals are now
24 over?

25 MS. HOLLOWAY: Yes, they are.

1 MR. GOODWIN: We are going to take this
2 opportunity to move into executive session. I've got to
3 read this before we move into executive session, and we
4 will be gone for approximately 45 minutes, so we will
5 reconvene back here at -- let's say an hour, so we'll be
6 back here at 1:30.

7 MR. ECCLES: Hold on, guys.

8 MR. GOODWIN: Hold on just a moment. The
9 Governing Board of the Texas Department of Housing and
10 Community Affairs will go into closed or executive session
11 at this time. The Board may go into executive session
12 pursuant to Texas Government Code 551.071 to seek and
13 receive the legal advice of its attorney, pursuant to
14 Texas Government Code 551.072 to deliberate the possible
15 purchase, sale, exchange or lease of real estate. The
16 closed session will be held in a room on the first floor
17 of the Stephen F. Austin Building across the street. The
18 date is July 27, 2017, and the time is 12:35 p.m.

19 (Whereupon, at 12:35 p.m., the meeting was
20 recessed, to reconvene this same day, Thursday, July 27,
21 2017, following conclusion of the executive session.)

22 MR. GOODWIN: The Board is now reconvened in
23 open session at 1:40 p.m. During the executive session of
24 the Board, the Board did not adopt any policy, position,
25 resolution, rule, regulation or take any formal action or

1 vote on any item, except in executive session the Board
2 received advice from counsel. The only action taken was
3 to provide staff parameters for negotiating the sale of
4 real estate.

5 Marni, I think we're back to item 5(a), but
6 before we do that, we had one consent item o the agenda
7 that was pulled 1(m), and I understand the person that
8 wanted it pulled who was going to make comment about 1(m)
9 has left. Homero, are you going to make comment about it?
10 No? Okay.

11 So I need a motion from a Board member to
12 approve item 1(m) on the consent agenda.

13 I'm sorry. Peggy has something.

14 MS. HENDERSON: Peggy Henderson, TDHCA,
15 representing public opinion for Amy Ledbetter Parham on
16 item 1(m) supporting staff recommendation. She represents
17 Habitat for Humanity of Texas.

18 MR. GOODWIN: So I need a motion to approve
19 item 1(m).

20 MR. VASQUEZ: So moved.

21 MR. GOODWIN: So moved. Second?

22 MS. THOMASON: Second.

23 MR. GOODWIN: It's moved and seconded. Any
24 discussion?

25 (No response.)

1 MR. GOODWIN: All in favor say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: All opposed?

4 (No response.)

5 MR. GOODWIN: The proposal passes.

6 Now, Marni, I think we're ready for you on item
7 5(a). Keep your comments brief.

8 MR. VASQUEZ: Don't repeat yourself.

9 (General laughter.)

10 MS. HOLLOWAY: Item 5(a) is a report on the
11 2018 Qualified Allocation Plan project. The topic of our
12 June 28 meeting was 11.9(e) of the QAP. This is the
13 section that includes all of the financial feasibility
14 scoring items.

15 Brent started the discussion by describing the
16 requirements of IRS Section 42 and our rules meet those
17 requirements by making the cost of development a
18 competitive scoring item. For the 2017 Housing Tax Credit
19 cycle, the Department raised the cost per square foot
20 scoring threshold for both building and hard costs by 4
21 percent. This was the first increase in quite some time.

22 Staff reviewed a large sample of competitive applications
23 for the current round and determined that 85 percent of
24 applications cost per square foot were under those rule-
25 based point qualifying thresholds. 15 percent of

1 applications whose cost per square foot exceeded the
2 limitations chose to voluntarily limit their eligible
3 basis so that they could still secure points. That
4 limitation of eligible basis is something that was new for
5 2017.

6 Brent also explained in detail how REA staff
7 evaluate and confirm the costs submitted in applications.

8 The group discussed credit per unit measures along with
9 the impact of soft costs. Readiness to proceed as part of
10 financial feasibility was discussed and stakeholders
11 continue to be wary of such a measurement. Other
12 suggestions included a penalty for significant cost
13 changes between application and cost certification that
14 might indicate the application amounts were not accurate.

15 In that same vein, the idea of voluntary limitation or
16 freezing of the developer fee was also discussed.

17 We did not have meetings before of either of
18 the July Board meetings, and this fall we'll begin the
19 process of mapping out topics to be taken up next year.

20 On a related note, the QAP project resident
21 survey is now launched, with focus group schedules and the
22 survey itself going out. Staff is hopeful that this
23 winter, as we are starting to discuss the 2019 QAP,
24 results from tax credit residents can inform us.

25 MR. GOODWIN: And this is a report?

1 MS. HOLLOWAY: This is a report.

2 MR. GOODWIN: We will receive your report. I
3 don't think that takes a motion or action. Any questions
4 from Board members? Any comments from others?

5 (No response.)

6 MR. GOODWIN: Thank you, Marni.

7 So we're moving to 5(d). Andrew.

8 MR. SINNOTT: Good afternoon, Chairman Goodwin,
9 members of the Board. My name is Andrew Sinnott,
10 Multifamily Direct Loan administrator.

11 Item 5(d) is: Presentation, discussion and
12 possible action regarding awards of direct loan funds from
13 the 2017-1 Multifamily Direct Loan Notice of Funding
14 Availability to 9 percent housing tax credit layered
15 applications.

16 The Department received twenty 2017 9 percent
17 layered applications, two in the CHDO set-aside and 18 in
18 the general set-aside. Of those twenty, three were
19 terminated and one application was withdrawn. Of the
20 sixteen remaining, ten have development sites in
21 participating jurisdictions, meaning that they can only
22 access TCAP repayment funds or NSP-1 program income funds,
23 the bulk of which is anticipated to be awarded to 4
24 percent layered applications that were received before the
25 2017 9 percent applications. As a result, and because of

1 Board action taken at the April Board meeting, these
2 applicants have been able to delete their direct loan
3 requests and replace those anticipated fund with deferred
4 fee and additional debt.

5 So that leaves six. Of the six, five are being
6 recommended for awards of HOME funds today and one will
7 remain on the waiting list which could potentially be
8 awarded HOME funds at a later date. The five applications
9 being recommended for awards, totaling \$5,530,000 in HOME
10 funds are:

11 17107 The Residences at Wolfforth, new
12 construction development in Wolfforth, serving elderly
13 limitation population, that will be \$500,000 at 3.25
14 percent interest rate, 30-year am, subordinate to FHA
15 insured debt.

16 17372 Sunset Trails which is a new construction
17 development in Bullard, serving elderly limitation
18 population, that's \$740,000 at 3.25 percent interest rate,
19 30-year am, subordinate to FHA insured debt.

20 17208 Waverly Village, an acquisition rehab in
21 New Waverly, serving a general population, that will be
22 \$300,000 at 3.25 percent interest rate, 30-year am,
23 subordinate to conventional debt.

24 17204 Vista Bella, new construction in Lago
25 Vista, serving a general population, that's \$1.935 million

1 at 3.25 percent interest rate, 30-year am, subordinate to
2 conventional debt.

3 And 17290 Golden Trails, new construction
4 development in West, Texas, serving general population,
5 \$2,055,000 at 2 percent interest rate, 30-year am, and
6 that's first lien debt.

7 The direct loan requests for 17107, 17372 and
8 17208 were not adjusted by Real Estate Analysis staff,
9 while the direct loan requests for 17204 and 17290 were
10 cut by \$350,000 and \$145,000 respectively in order to
11 maintain financial feasibility. Application 17290
12 additionally had its interest rate increased from its
13 requested zero percent to 2 percent by REA staff. The 2
14 percent interest rate, while less than the recommended
15 3.25 percent interest rate in 10 TAC 13.8(a) is allowable
16 if the Department determines that the development does not
17 support the 3.25 percent interest rate, which is the case
18 in this instance.

19 It's worth noting that application 17107, while
20 being new construction, involves the acquisition of land
21 that has several occupied mobile homes on it. The
22 applicant and staff have discussed the applicability of
23 the Uniform Relocation Act in 104(d) and the applicant has
24 committed to fulfilling its obligations under those
25 requirements. The award for this application is

1 conditioned on the applicant demonstrating full compliance
2 with these requirements no later than the commitment
3 notice execution date in early September. I just want to
4 make clear that having to comply with these requirements
5 will continue after September and through construction
6 completion, but there's currently some missing
7 documentation that we need in order to confirm that
8 compliance with the Uniform Relocation Act in 104(d) is
9 being met, so it's that missing documentation that we'll
10 need in early September.

11 I also wanted to note that the HOME loans for
12 application 17107 and 17372, as a result of being
13 subordinate to FHA insured debt, will be structured as
14 surplus cash flow loans in accordance with 10 TAC
15 13.8(c)(2).

16 Should the five recommended awards be approved
17 today, approximately \$34 million will remain available
18 under the NOFA, with approximately \$7.7 million available
19 under the supportive housing soft repayment set-aside,
20 \$23.1 million available under the general set-aside, and
21 \$4.7 million available under the CHDO set-aside.

22 With that, staff recommends awards of HOME
23 funds totaling \$5,530,000 for applications 17107, 17372,
24 17208, 17204 and 17290.

25 MR. GOODWIN: Okay. Any questions?

1 (No response.)

2 MR. GOODWIN: Do I hear a motion to approve
3 staff's recommendation?

4 MR. BRADEN: So moved.

5 MR. GOODWIN: Motion. And a second?

6 MR. VASQUEZ: Second.

7 MR. GOODWIN: We have a motion and a second.
8 Any discussion or questions?

9 (No response.)

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

11 (A chorus of ayes.)

12 MR. GOODWIN: Opposed?

13 (No response.)

14 MR. GOODWIN: Motion passes. Thank you,
15 Andrew.

16 MS. HOLLOWAY: Item 5(e) is: Presentation,
17 discussion and possible action regarding Section 811
18 Project Rental Assistance participation with 9 percent
19 Housing Tax Credit applications, as required by 10 TAC
20 10.204(16). This section of the rule requires that all
21 Competitive Housing Tax Credit applicants participate in
22 the program and that applicants with existing developments
23 that meet Section 811 criteria provide units to meet the
24 threshold. Applicants without existing developments must
25 provide units in the development under application if it

1 meets Section 811 criteria.

2 The Section 811 PRA program provides project
3 based rental assistance to multifamily properties to serve
4 extremely low income persons with disabilities linked with
5 long-term services. In 2015 and 2016, 811 participation
6 was a scoring item. In order to increase the number of
7 available units in the program, participation was moved to
8 threshold for 2017, requiring applicants to first utilize
9 any existing properties that meet the 811 criteria.

10 Where more than one applicant has pledged the
11 same existing property and that existing property does not
12 have enough units available to meet Section 811
13 requirements, staff will continue to work with the
14 applicants to identify potential options. If there is a
15 question regarding control of an existing development that
16 the applicant has or has not pledged, staff continues to
17 working to resolve those issues. For applications with
18 unresolved issues, the award of 9 percent tax credits is
19 conditioned on the application meeting threshold Section
20 811 requirements at commitment.

21 Staff recommends approval of the list and
22 waiting list of 2017 Competitive Housing Tax Credit
23 applications that will provide Section 811 Project Rental
24 Assistance units, as published in your Board materials.
25 Staff further recommends approval of the Section 811 list

1 be conditioned on satisfaction of all conditions of
2 underwriting and of the 811 PRA Program, completion of all
3 reviews required to assure compliance with the applicable
4 rules and requirements, and award of Competitive Housing
5 Tax Credits.

6 MR. GOODWIN: Thank you, Marni.

7 Any questions?

8 (No response.)

9 MR. GOODWIN: Do I hear a motion?

10 MS. RESÉNDIZ: So moved.

11 MR. GOODWIN: It has been moved. Do I hear a
12 second?

13 MR. BRADEN: Second.

14 MR. GOODWIN: Been moved and seconded. All in
15 favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: All opposed?

18 (No response.)

19 MR. GOODWIN: Thank you, Marni.

20 Sharon.

21 MS. HOLLOWAY: I just need to say something
22 just for a second. So yesterday at TAAHP, Beau and I were
23 sitting there up on the dais with Tim, and Tim pointed out
24 that all of that stuff flows through us. I wanted to
25 point out that just as all the 4 percent an bond stuff

1 flows through Teresa and all the direct loan flows through
2 Andrew, everything 9 percent flows through Shay at the
3 speed of light. And once again, we've done it, and I'm so
4 proud.

5 MR. GOODWIN: Thank you.

6 (Applause.)

7 MS. GAMBLE: I am not an emotional person, I'm
8 not.

9 Good afternoon, Board, Mr. Chairman, Tim, Beau,
10 everybody. My name is Sharon Gamble, and I am the
11 administrator for the Competitive Housing Tax Credit
12 Program.

13 Item 5(f) is: Presentation, discussion and
14 possible action regarding awards from the 2017 State
15 Competitive Housing Credit ceiling and approval of the
16 waiting list for the 2017 Competitive Housing Tax Credit
17 application round.

18 Back on January 29, 2017, we received 380
19 eligible pre-applications, on March 1 we received 138 full
20 applications requesting more than \$137 million in credits,
21 and there are currently 117 applications eligible for
22 consideration that are collectively requesting credits
23 totaling more than \$120 million. Our credit ceiling for
24 2017 is just over \$67 million.

25 I'll now explain the awards process. This is

1 going to seem longwinded, but trust me, it's as brief as I
2 could I can possibly make it.

3 I'll start with the regional allocations.

4 Regional allocations are developed with a formula
5 described in Texas government Code, Section 2306.1115 and
6 are published prior to the start of an application cycle.

7 The cycle scoring is finalized through application review
8 and applications are sorted based on regional allocations,
9 set-aside requirements and scores. To make the award
10 recommendations, staff relies on the allocation
11 methodology as set out in 10 TAC Section 11.6 of the 2017
12 Qualified Allocation Plan.

13 We first ensure that we have enough
14 applications from qualified nonprofit organizations so
15 that at least 10 percent of the allocations can be made to
16 nonprofit applicants. We don't usually have a problem
17 with that and we didn't this year. We start with the at-
18 risk set-aside, ensuring that at least 5 percent of the
19 allocations are rural USDA. We then recommend more
20 applications until the allocations for the at-risk set-
21 aside meets the 15 percent of the credits.

22 Next, the high scoring applications within each
23 of the 26 sub-regions are selected as long as there are
24 sufficient funds within the sub-regions to fully award the
25 applications. There are statutory limits to these,

1 though. In regions containing a county with a population
2 that exceeds one million, the Board may not allocate more
3 than the maximum percentage of credits available for
4 eligible projects unless there are no other qualified
5 applications in the sub-region. Urban Regions 3, 6, 7 and
6 9 are affected by this requirement.

7 In regions containing a county with a
8 population that exceeds 1.7 million, the Board shall
9 allocate credits to the highest scoring development, if
10 any, that's part of a concerted revitalization plan that
11 meets the requirements of the QAP, and is located in an
12 urban sub-region that is within the boundaries of a
13 municipality with a population that exceeds 500,000.
14 Urban Regions 3, 6 and 9 are affected by this requirement.

15 If the Department determines that an allocation
16 recommendation would cause a violation of the \$3 million
17 credit limit per applicant, the Department will not
18 recommend such an allocation. This year one application,
19 17334 Medano Heights in the at-risk set-aside is not
20 recommended for this reason.

21 Once there are not enough funds left in the
22 sub-regions to fully fund the next application, the
23 remaining funds from the sub-regions are pooled into what
24 we call the collapse where all remaining funds are pooled
25 into what we call the collapse. We have a rural collapse

1 and a statewide collapse. We do the rural collapse first.

2 We find the most underserved rural sub-region as compared
3 to the sub-region's allocations to award the next
4 application in line in that sub-region. This rural
5 redistribution will continue through the rural sub-regions
6 until at least 20 percent of the fund available to the
7 state are allocated to applications in rural areas.

8 The statewide collapse takes all remaining
9 credits and, like the rural collapse, goes through the
10 urban sub-regions based on the most underserved. When
11 there are not enough credits left to award the next
12 application, the allocation ends. If the Department
13 secures enough credits from credit returns or the
14 national pool to award the next application, those awards
15 will be made from the waiting list with any determined
16 conditions applied.

17 The applications being recommended for award
18 are in Report 1, the list that says Recommended Awards
19 Log. These are all the recommended applications from the
20 at-risk, USDA and nonprofit set-asides and rural and urban
21 regional allocations. This report includes two
22 applications that are still being reviewed by Multifamily
23 Program staff, 17207 and 17360 in Region 11 Urban, and our
24 recommendation for those applications are conditioned upon
25 completion of that review and any subsequent real estate

1 analysis issues with these.

2 And here I have a correction to the awarded
3 list. In Region 11 Urban, we have one application 17010
4 Baxter Lofts that has a not recommended status and it's
5 still subject to appeal. Because it's still subject to
6 appeal, we have to reserve their credit request in case
7 they win their appeal. In my calculations in creating
8 this list, I did not consider setting aside those funds,
9 \$335,545 is the number actually, so when we reserve those
10 funds, there is not enough left in the sub-region to award
11 application 17360 Paseo Plaza, Phase II, and so that
12 application at this time will be removed from the
13 recommended awards list, it will remain on the waiting
14 list. 17010, the one that's coming up for appeal, if that
15 doesn't work, then likely Paseo Plaza will move back onto
16 the list, but that one change for right now.

17 MR. GOODWIN: I think there's a question,
18 Sharon.

19 MR. VASQUEZ: The Paseo Plaza still is eligible
20 for the collapse funds.

21 MS. GAMBLE: It's still on the waiting list so
22 it's still eligible for award. Correct.

23 MR. VASQUEZ: So regardless of Baxter Lofts,
24 they still might get an allocation.

25 MS. GAMBLE: They might. Correct. But not

1 today with these awards, that would happen after the
2 completion of any appeal that that applicant has.

3 Regarding staff review of the two applications
4 that are indicated as under review on the log, I can
5 assure you that those applications will be reviewed in
6 line with the direction that we've received from this
7 Board. They won't be given any gimmes, they'll have to
8 prove the same items that all the other applications that
9 have come before you are asked to prove. If those
10 applications are found to be deficient in any way, the
11 applicant will have the ability to provide clarification
12 or further information and will have the right to appeal
13 staff's decision.

14 The posted list includes 45 applications still
15 being underwritten, so since the list was published, that
16 number has been cut to 29. None of those that have been
17 completed since the publishing of the list will impact the
18 issuance of awards as indicated and mentioned with regard
19 to prioritization of applications or any set-aside or
20 collapse. All final underwriting decisions are also
21 subject to appeal. These issues will be resolved at or by
22 the next Board meeting.

23 Staff has applied the decisions made regarding
24 the appeals heard in item 5(c) and has determined that the
25 one change that I mentioned to the award list, the only

1 change and that is that 17010, we're reserving \$335,545
2 for the outcome of their appeal, which means that 17360
3 Paseo Plaza, Phase II is removed from the award list and
4 is included on the waiting list.

5 All eligible applications are reflected in
6 Report 2. These are all the active applications from the
7 at-risk, USDA and nonprofit set-asides and the rural and
8 urban regional allocations. This is a complete list of
9 all applications recommended for an award and the waiting
10 list of all active applications not recommended for an
11 award today. Those recommended for awards are reflected
12 in the recommendation column of this list.

13 Staff has applied the decisions made regarding
14 the appeals heard in item 5(c) and has amended the posted
15 award and waiting list the following ways: in Region 6
16 Urban, 17322 Provision at Wilcrest will be removed from
17 the waiting list, and in Region 11 Urban, 17360 Paseo
18 Plaza, Phase II being recommended next.

19 Report 3 is the summary of the award results
20 which includes the funding amounts for the rural and urban
21 regional allocations and for the at-risk, USDA and
22 nonprofit set-asides. It also shows the rural and
23 statewide collapse, as well as the amount of funds that
24 remain after all awards are made.

25 Report 4 is a summary of conditions recommended

1 by EARAC to be placed on awards as a result of previous
2 participation reviews. Not all applications have
3 conditions, this report includes most of the applications
4 that do. There was an EARAC decision on conditions for
5 applications 17324 Orange Grove Seniors, 17338
6 Pecanwood -- and I'm from Alabama so I say pe-can wood --
7 17341 Pecanwood II, and 17342 Pecanwood III. So those
8 were not published in your report and I will read the
9 conditions into the record so that we have a record of
10 those conditions.

11 The Executive Award Review Advisory Committee,
12 EARAC, met on July 24, 2017 to review compliance issues
13 associated with applications 17324 Orange Grove Seniors,
14 17338 Pecanwood I, 17341 Pecanwood II, and 17342 Pecanwood
15 III. Previous participation review identified the
16 applications of Category 4 and the applicant was given an
17 opportunity to provide additional information and/or
18 propose terms and conditions to correct the situation.
19 EARAC has reviewed the responses submitted and has
20 approved compliance with the following conditions.

21 As a condition to its 2016 tax credit award,
22 Mack RE, a developer, has entered into a contract with a
23 third party consultant to review all corrective action
24 materials prepared by Mack RE prior to distribution to the
25 Texas Department of Housing and Community Affairs. A copy

1 of the contract has been provided to TDHCA. Mack RE will
2 keep such contract in place until it determines that the
3 service is no longer needed and TDHCA's executive director
4 consents to the termination.

5 In addition, Mack RE agrees to the following:
6 will obtain TDHCA's consent for any change in the
7 consultant, upon review of any corrective action material
8 to be submitted to TDHCA, the consultant will sign such
9 material to confirm that he reviewed and approved those
10 conditions. The signature will be included with the
11 submission. Mac RE will restructure its property
12 management staff by July 24, 2017. The following
13 conditions will comprise the key personnel for the
14 compliance team: compliance supervisor to be responsible
15 for compliance matters, physical inspections and files;
16 assistant compliance supervisor to be responsible
17 primarily for file issues and support services; director
18 of tenant certification operations supervisor to oversee
19 on-site managers. The current compliance supervisor and
20 assistant compliance supervisor will be replaced by other
21 Mack RE employees by July 24, 2017.

22 Messrs. Calhoun and Rabalais, the developers,
23 will meet monthly with the consultant and key compliance
24 personnel to discuss compliance matters and ensure all
25 matters are receiving appropriate and timely attention.

1 Messrs. Calhoun and Rabalais, along with the consultant,
2 will review all corrective actions before submitting to
3 TDHCA. The compliance supervisor will be responsible for
4 tracking all response dates and ensuring timely response.

5 By July 25, 2017, Mack RE will establish a new
6 computerized location for all compliance matters to ensure
7 uniform access to information. Mack RE will install and
8 utilize a physical calendar in plain view of all personnel
9 as a backup for tracking compliance matters.

10 Mack RE will update its forms and systems
11 before December 31, 2017 as follows: Mr. Calhoun will
12 interact with TDHCA personnel to update Mack RE's tenant
13 selection plan to ensure compliance with TDHCA rules are
14 completed. Mr. Calhoun will cause the tenant selection to
15 be implemented with all properties. Mr. Calhoun will work
16 with key compliance personnel to update Mack RE's tenant
17 rights and resources guide and cause the revised guide to
18 be implemented at all properties. The compliance
19 supervisor and assistant compliance supervisor will update
20 the affirmative fair housing marketing plan for review and
21 approval by Mr. Calhoun and the consultant. Mr. Calhoun
22 will work with the consultant and key compliance personnel
23 to update the pre-audit checklist and employ and implement
24 it at all properties.

25 Mack RE will ensure ongoing compliance through

1 the following: require the consultant and each of the two
2 compliance personnel to attend TDHCA compliance training
3 annually, require the consultant and the compliance
4 supervisor to monitor TDHCA Board books and Listserv
5 regularly to be informed of any changes in TDHCA
6 compliance rules and procedures, require supervisors to
7 work with the key compliance personnel to properly
8 implement any changes in the TDHCA compliance rules and
9 procedures, require a representative of Mack RE to attend
10 TDHCA workshops and roundtables that relate to compliance
11 matters as appropriate, and promptly address any failure
12 of key compliance personnel to adhere Mach RE's policies
13 and procedures for compliance.

14 Report 5 includes real Estate Analysis Division
15 application summaries that were available when the Board
16 book was posted. Subsequent filings have been posted to
17 the Department's website. These are a handy two-pager that
18 give the gist of the full underwriting report.

19 Report 6 includes information regarding public
20 input received for each active application. Where
21 possible, all the comment received for an application is
22 included. In some instances, representations of past
23 comments have been provided along with a number of
24 individual comments.

25 This is a ton of information, I need not tell

1 you.

2 Our dedicated review staff has worked
3 tirelessly to complete the reviews and to gather
4 information so that we could put it in a nifty format to
5 present to you today. My fab five, Ben Sheppard,
6 Elizabeth Henderson, Liz Cline-Rew, Nicole Fisher, and
7 Shannon Roth, are still the hardest working, most
8 dedicated people I know. Jason Burr does an awesome job
9 of keeping our data straight and otherwise making us look
10 good. And our new addition, Patrick Russell, is our
11 millennial who is so motivated and competent that he is
12 ruining the that bad rap that millennials are supposed to
13 have.

14 Our Direct Loan staff, Andrew Sinnott, Cris
15 Simpkins and Marie Esparza have been there to assist us in
16 every way and I truly appreciate their support. Our
17 manager, Teresa Morales, is not to be messed with. And
18 Marni Holloway walks on water, as far as I'm concerned.
19 And Tom Gouris is still a vegetarian, and that's all I can
20 say about Tom this year.

21 (General laughter.)

22 MS. GAMBLE: And this is not just a Multifamily
23 undertaking. We literally could not do any of this
24 without staff services, financial services and information
25 services. It's a coordination with the Compliance

1 Division, the Real Estate Analysis Division, and of
2 courses, the Policy and Public Affairs Division, so ably
3 led by Michael "Captain Tweety" Lyttle -- there he is. He
4 yelled at me last year because I didn't mention him.

5 MR. LYTTLE: Way to go, Sharon.

6 (General laughter.)

7 MS. GAMBLE: Their help was indispensable, and
8 they helped us even as they had the added tasks associated
9 with the session.

10 I can't leave out our legal team, of course,
11 led by our General Counsel Beau Eccles, ably assisted by
12 Megan Sylvester. I said it last year and I'll say it
13 again: if you can't get Beau to see it, then it's just
14 not there and you need to dig deeper.

15 And last, but certainly not least, our
16 Executive Director Tim Irvine and this Board, thank you
17 for guiding us, thank you for helping us figure things
18 out, thank you for holding everyone accountable.

19 I am proud today to say that with this action
20 we're going to put over 4,800 more affordable units of
21 housing on the ground for working Texans.

22 (Applause.)

23 MS. GAMBLE: And to put that in terms that Beau
24 can smile at, that's 4,800 pretty little chickens.

25 With that, staff recommends approval of the

1 recommended awards and the waiting list, as amended, for
2 the 2017 Competitive Housing Tax Credit application round.

3 MR. GOODWIN: Could you repeat that one more
4 time?

5 MS. GAMBLE: Do I need those conditions again?
6 (General laughter.)

7 MR. GOODWIN: Any questions? If not, I'll
8 entertain a motion.

9 MR. BRADEN: I make a motion to accept staff's
10 recommendation.

11 MR. GOODWIN: Second?

12 MR. VASQUEZ: Second.

13 MR. GOODWIN: Made and seconded. Do we have
14 any discussion?

15 MR. PALMER: Barry Palmer with Coats Rose. I'm
16 representing the Housing Authority of the City of El Paso,
17 and we have just a small request which is to include 17334
18 Medano Heights on the waiting list. The Housing Authority
19 of El Paso has two projects that are being awarded today
20 that total \$3 million, so they understand that they can't
21 get another award, but at the same time, there is some
22 uncertainty on these projects, we haven't received our
23 underwriting report yet, we've got more due diligence to
24 do as we move towards development and so if something were
25 to happen where we were to lose the credits on one of the

1 first two, we would like to still be on the waiting list
2 so that our third deal would get funded. It wouldn't
3 affect anybody negatively because we would only get that
4 deal funded if one of our other two deals couldn't go
5 forward.

6 MR. GOODWIN: Sharon, do you want to address
7 that?

8 MS. GAMBLE: I'm going to, I guess, engage in
9 some conversation with the general counsel here. Again,
10 Sharon Gamble, administrator for the Tax Credit Program.

11 MR. ECCLES: Hang on, we have to wait for the
12 funk to subside. Okay, please continue.

13 (General laughter.)

14 MS. GAMBLE: So we talked about this a little
15 bit and the application that Barry is talking about was
16 not withdrawn or terminated and so it cannot be awarded
17 today because it would put them over the \$3 million mark,
18 but it was not terminated and it was not withdrawn. And I
19 believe that since that is the case, it can still be
20 included on the waiting list.

21 MR. ECCLES: Well, I'm reading from the book of
22 law, Texas Government Code 2306.6711(b) which states that
23 in any event we may not allocate to the applicant housing
24 tax credits in an amount greater than \$3 million in a
25 single application round. So as long as it's not

1 allocated, it can be on the waiting list, but obviously,
2 if we get down to the waiting list and there it is smiling
3 up at us, we can't allocate it unless other credits would
4 be, I guess, returned.

5 MS. GAMBLE: That's my understanding.

6 MR. GOODWIN: I see all of El Paso nodding
7 that's okay.

8 MS. GAMBLE: And so staff would offer to amend
9 the 2017 award and waiting list to include application
10 1734 Medano Heights.

11 MR. ECCLES: With that understanding that no
12 more than \$3 million can be allocated.

13 MS. GAMBLE: Correct.

14 MR. GOODWIN: Accept that amendment?

15 MR. BRADEN: I'll accept that modification.

16 MR. GOODWIN: And I don't remember who
17 seconded.

18 MR. VASQUEZ: I did.

19 MR. GOODWIN: Thank you.

20 Other comments?

21 MS. LATSHA: Good afternoon. I'm going to just
22 quickly read an email that I wrote.

23 MR. GOODWIN: Who are you? Some of us know who
24 you are but not everybody.

25 MS. LATSHA: I'm sorry. Jean Latsha with

1 Pedcor Investments.

2 I attended a city council meeting last week in
3 Rowlett and I heard some statements that caused me some
4 concern, and I believe it's important to bring them to
5 your attention. The statements were made by the applicant
6 for Pointe at Rowlett, a currently active 9 percent tax
7 credit application.

8 The application indicates that the
9 development --

10 MR. GOODWIN: Excuse me. Is it on the list as
11 having been approved or to be approved?

12 MS. LATSHA: I guess being approved. That's
13 correct.

14 The application indicates that the development
15 will serve the general population, but the applicant has
16 clearly indicated to the public and elected officials the
17 intent to at a minimum market exclusively to a senior
18 population. While I was not privy to prior meetings, the
19 applicant had with the city council or neighborhood
20 groups, some the comments made at that meeting also
21 implied that he has given the impression that this
22 development will actually exclusively serve a senior
23 population. There is video of the meeting and several
24 places where these comments were made.

25 I guess the most frustrating thing about this

1 is that the developer instead of facing resistance that we
2 all face all the time in dealing with elected officials
3 and neighborhood groups, instead of facing that opposition
4 with sound arguments, faced it with misrepresentation, and
5 this is the kind of behavior that, quite frankly, makes
6 neighborhood groups and elected officials and the public
7 in general mistrust the development community, mistrust
8 TDHCA, mistrust the program.

9 In a more practical sense, I think that staff
10 should be directed to take another look at this
11 application and the eligibility of the applicant with
12 respect to those actions. There are plenty of places in
13 the rules that would support the ineligibility of the
14 applicant because of what he did. There's specific
15 language in notifications about misrepresenting this very
16 thing, target population, and although that's with respect
17 to just public notifications, anybody can write a letter
18 that meets the rule but if they then meet with
19 neighborhoods and city council members and misrepresent
20 what they put in that formal letter, what good is that.
21 There are also other places in the rules that would
22 support being able to terminate this application.

23 And so that is my request, that staff take
24 another look. Thank you.

25 MR. GOODWIN: Thank you, Jean.

1 Any questions for Jean?

2 MR. VASQUEZ: Not necessarily for Jean, just on
3 the process. If after today that we approve something and
4 later something shows up that they violated a rule, they
5 can still be dropped.

6 MS. GAMBLE: I wanted to clarify that that
7 application is on the waiting list, it's not on the
8 recommended awards list, it's on the waiting list.
9 Absolutely if we find any application that you award today
10 or that's on the waiting list can still be terminated,
11 dropped, however you want to say it. That's what the
12 Board decides.

13 MR. GOODWIN: What is the normal procedure,
14 Sharon, for when something like this comes up that you're
15 been notified? What do we normally do internally when we
16 hear that?

17 MR. IRVINE: This isn't normal. I would
18 suggest that if the Board wishes to give staff direction
19 to examine this and report back at the next Board meeting,
20 we could certainly do that.

21 MR. ECCLES: But I'll add that an allegation
22 made at the award meeting just basic concepts of due
23 process, we can't remove rights without an opportunity to
24 respond to that or damage a property interest that is not
25 in here. So the most that could be done is to instruct

1 staff to take a look at it in a way that comports with our
2 rules and statutory authorization.

3 MR. GOODWIN: Any other questions or comments?

4 (No response.)

5 MR. GOODWIN: We have a motion and a second,
6 motion that's been amended and seconded. Hearing no other
7 questions, I'll call for a vote. All those in favor say
8 aye.

9 (A chorus of ayes.)

10 MR. GOODWIN: All opposed?

11 (No response.)

12 MR. GOODWIN: Thank you, Sharon. Thanks to all
13 of you for the great job that you do.

14 (Applause.)

15 MR. GOODWIN: We now move to item number 3,
16 Monica, finally.

17 MR. IRVINE: Everybody, this really is worth
18 waiting for.

19 MR. GOODWIN: You thought you were going to be
20 early.

21 (General laughter.)

22 MR. GOODWIN: Be as quiet as you can, please,
23 as you depart.

24 MS. GALUSKI: Good afternoon. I'm Monica
25 Galuski, the director of Bond Finance.

1 The good news is I'm not here to appeal
2 anything, I'm not here to talk about any issues other than
3 to give you a report regarding the successful closing of
4 the Department's 2017 Series A, B and C bonds. The bonds
5 priced June 7, we executed the bond purchase agreement on
6 June 8, and the issue closed June 22. I'm going to try to
7 keep this brief because I know you have had a long day, so
8 I'll just go real quickly through this.

9 The Series A and the Series C bonds were what
10 we call new money bonds. They were backed by mortgage-
11 backed securities that were created with newly originated
12 mortgage loans through the Department's to be announced,
13 or TBA program. While the TBA program typically delivers
14 the mortgage-backed securities to a third party or to
15 third party investors, in this case the mortgage-backed
16 securities were delivered to the trust estates to serve as
17 collateral for the bonds. Both issues were sold as
18 monthly pay pass-through bonds with a fixed monthly
19 interest rate and monthly redemptions equal to the
20 principal repayments and prepayments on the underlying
21 mortgage loans. The Series A bonds were tax-exempt and
22 the Series C bonds were taxable. So those were both new
23 money bonds, newly originated mortgage loans, pass-through
24 bond structure.

25 Then we also included \$29,610,000 of 2017

1 Series B refunding bonds which was an economic refunding
2 of the Department's 2007 Series B bond issue. Rates on
3 the Series 2007 B bonds were 4.70 to 5.30, the refunding
4 bonds, 2017 B, the coupon was 2.75 percent. It generated
5 a net present value economic benefit of over \$4 million.

6 What I wanted to bring to you today is that
7 there were a couple of firsts here to sort of point out.
8 We have two different active bond indentures, one is
9 called the Single Family indenture, one is called the
10 Residential Mortgage Revenue Bond indenture, or more
11 commonly known as RMRB. We recently amended the indenture
12 for the Single Family indenture through the issuance of a
13 62nd supplemental Single Family Mortgage Revenue Bond
14 trust indenture that was dated October 1 of 2016. The
15 amendment moved issue-related specifics, such as interest
16 payment frequency, maturity dates, redemption dates,
17 notice requirements, and the indenture amendment moved
18 that all out of our big master indenture and moved it so
19 that it would only be contained in the supplemental
20 indenture for each new series of bonds. So each new
21 series of bonds would have latitude to be structured
22 differently, and that would all be disclosed at the time
23 of the bond issuance.

24 What this really did for us was we've sold
25 past-through bonds before, and recently we sold some in

1 2015 and 2016, we did a couple of bond issues that were
2 pass-through bonds. Well, TDHCA's bonds, until this
3 issue, were not true pass-throughs in the market. We had
4 a semiannual pay requirement that made them sort of -- we
5 called them modified pass-throughs, the market just called
6 them odd, and we took a little bit of a pricing hit for
7 that. So I'm happy to say this was the first issue where
8 we were able to use the indenture amendments that were
9 rather painful to achieve, to our benefit. So that's one
10 first.

11 And the other first was it was our first
12 taxable new money bond series, so the Series C bonds, we
13 originate basically everything through our TBA program
14 now, and when we're doing a bond issue, we're pulling
15 mortgage loan activity, we're just reaching into that
16 pipeline and pulling those out and bonding them. Well,
17 the loans that we're originating, about 60 percent of them
18 are tax-exempt eligible, meaning they can be -- let me
19 rephrase that -- 60 percent are eligible for inclusion in
20 the tax-exempt bond issue, the other 40 percent, for the
21 most part, are not eligible because the borrower received
22 a mortgage credit certificate, so they've already received
23 an IRS approved benefit and the IRS precludes us from
24 putting that in a tax-exempt bond issue. So in the past
25 we've just sort of allowed those all to go through the TBA

1 program, and be sold out into the market. This time we
2 successfully did a little over \$42 million in tax-exempt
3 new money bonds, so that was another first for us.

4 I was going to go through and talk about the
5 legal team, which bond counsel was Bracewell, disclosure
6 counsel was McCall, Parkhurst, our financial advisors and
7 underwriters, and what a good job they did, but they're
8 all gone.

9 (General laughter.)

10 MS. GALUSKI: So I'm going to just close with
11 saying we included in attachment 3 to your item a pricing
12 book that as put together by the senior manager, Ramirez.

13 It has a lot of detailed pricing information for you to
14 go through at your leisure, and probably not today, and if
15 you want in the future more information, less information,
16 different information, please let us know. We're trying
17 to include a little bit more information so that we're
18 being responsive to keeping you fully informed and keeping
19 it really transparent.

20 Does anyone have any questions?

21 MR. GOODWIN: Any questions?

22 MR. IRVINE: Since you did put aside a few
23 minutes to brag on people and they aren't here to be
24 bragged upon, Monica really does run probably one of the
25 most sophisticated bond shops in the state, and she does

1 it with incredible attention to detail, an eye for
2 opportunity, and frankly, really good stewardship. She's
3 sensitive to risk management and she knows how to use her
4 professionals to their best advantage. We do have a great
5 team, Lori and Robin and the folks that ran book on this
6 one did a spectacular job. Our bond counsel is always
7 terrific. But Monica is the heart and soul of this
8 activity, and we thank you.

9 MS. GALUSKI: Thank you, Tim.

10 MR. GOODWIN: Thank you, Monica.

11 (Applause.)

12 MR. GOODWIN: That's a report item, so we've
13 received your report.

14 I think we've come to the end of the agenda and
15 we're now at that point where we accept public comment for
16 those items that are not on the agenda.

17 Tim, you have something you want to bring up?

18 MR. IRVINE: It's not an agenda item, it's just
19 a parting comment. I'm glad that the immediate past
20 president of TAAHP is here to hear this and Cynthia is
21 here to pass this on to the development community.

22 One of the great duties I get to do is sign
23 time sheets, and boy, have I been signing off on a lot of
24 hours. The people in this room have really, frankly, for
25 the better part of half a year given their life to the

1 affordable housing process, and we owe them a lot. So
2 thank you.

3 MR. GOODWIN: Thanks to all of you.

4 (Applause.)

5 MR. GOODWIN: Hearing no other comment, I'll
6 entertain a motion to adjourn.

7 MR. VASQUEZ: So moved.

8 MR. BRADEN: Second.

9 MR. GOODWIN: So moved and seconded. All in
10 favor, aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: We're adjourned. See you in
13 September.

14 (Whereupon, at 2:30 p.m., the meeting was
15 adjourned.)

C E R T I F I C A T E

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3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: July 27, 2017

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 184, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Housing and Community Affairs.
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16
17 7/31/2017
(Transcriber) (Date)

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