

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

VIA TELEPHONE AND WEB LINK

June 25, 2020
9:00 a.m.

MEMBERS:

LESLIE BINGHAM, Vice Chair
PAUL A. BRADEN, Member
SUSAN THOMASON, Member
LEO VASQUEZ, Member

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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P R O C E E D I N G S

1
2 MS. BINGHAM: Good morning. Welcome to the
3 June 25 meeting of the Texas Department of Housing and
4 Community Affairs Governing Board.

5 We will start with calling the meeting to order
6 and roll call.

7 Mr. Braden?

8 MR. BRADEN: Here.

9 MS. BINGHAM: Good morning.

10 Ms. Thomason?

11 MS. THOMASON: Present.

12 MS. BINGHAM: Mr. Vasquez?

13 MR. VASQUEZ: Here.

14 MS. BINGHAM: Good morning.

15 I'm Leslie Bingham, I'm the vice chair, and
16 I'll be chairing the meeting today. We do have a quorum.

17 And Bobby, would you like to lead us in the
18 pledges?

19 MR. WILKINSON: Certainly.

20 (The Pledge of Allegiance and the Texas
21 Allegiance were recited.)

22 MS. BINGHAM: Thank you very much.

23 So just a couple of notes. Renee, thank you
24 for going over the guidelines for the web meeting.

25 I would like to ask we will stay on time today.

1 I will work hard to manage an efficient and effective
2 meeting. If you do plan to speak, please try to log on to
3 the web meeting. The three-minute timer is actually
4 provided visually when you're logged on to the web
5 meeting.

6 If you are unable to log in and are on the
7 phone and can at least look at the web meeting, that would
8 be great. If you don't have access and can't look at the
9 web meeting and are on the phone, I strongly suggest that
10 you set your own three-minute timer. And speakers will
11 stop at the three minutes.

12 So if there are no other comments at this time,
13 we'll start with approval of the consent agenda. Are
14 there any items on the consent agenda which we need to
15 remove and put on the action items or table?

16 MR. VASQUEZ: Madam Chair, I'd like to take
17 item 1(g) off the consent concerning the LIHEAP plan, just
18 to get some background from the staff.

19 MS. BINGHAM: Very good. Mr. Vasquez is
20 recommending that we move item 1(g) that's presentation,
21 discussion and possible action of the LIHEAP plan to the
22 action agenda.

23 Anything else?

24 MR. WILKINSON: Moderators, are there any
25 requests in the chat box to move anything from the consent

1 agenda?

2 MS. NORRED: No, sir.

3 MS. BINGHAM: Hearing no other recommendations,
4 we'll entertain a motion for approval of the consent
5 agenda.

6 MS. THOMASON: So moved, with the exception of
7 item 1(g).

8 MS. BINGHAM: Very good. Ms. Thomason moves
9 approval of the consent agenda with the exception of item
10 1(g) that will be moved to the action items.

11 Is there a second?

12 MR. BRADEN: Second.

13 MS. BINGHAM: Mr. Braden seconds.

14 If there's no further discussion, all those in
15 favor aye.

16 (A chorus of ayes.)

17 MS. BINGHAM: Opposed?

18 (No response.)

19 MS. BINGHAM: Motion carries. Thank you.

20 Would we like to go ahead and take item 1(g)
21 then? I see Michael there. Hi, Michael. We'll go to
22 item 1(g).

23 MR. WILKINSON: Michael, you are on mute.

24 MS. NORRED: We are finding him, we are going
25 to unmute him.

1 Michael, you're unmuted. Can you hear us?

2 MR. DE YOUNG: Yes, I can. Can y'all hear me?

3 MS. NORRED: Yes.

4 MR. DE YOUNG: Item 1(g) is the 2021 Low Income
5 Home Energy Assistance Program, also called LIHEAP. It's
6 associated with the 2021 award. The LIHEAP plan came to
7 you in April at the April 23 meeting, and we went out for
8 public comment. The public comment this year was a little
9 bit different because we had to do it virtually. We were
10 able to hold the public comment sessions, we received
11 comment.

12 We made some technical changes to the plan, and
13 what is before you is the final version of the plan, and
14 this also includes the awards for the 37 agencies, and
15 this would be for the 2021 awards which would start on
16 January 1, 2021 and run through December 31, 2021.

17 And staff is recommending approval of the plan
18 to be submitted to HHS. We do that electronically and the
19 requirement is that it's submitted before September 1 of
20 2020. I'd be happy to answer any questions.

21 MS. BINGHAM: Thank you.

22 MR. VASQUEZ: Sure.

23 Michael, thanks for putting this together and
24 it looks like we did have some good community input to
25 give us other ideas that we considered and tweaked the

1 program here and there -- or the plan here and there.

2 I have one question. So does our monitoring of
3 these agencies, the subrecipients, that doesn't really go
4 in this submission but we are still continuing to monitor
5 the performance of the recipients now, are we not?

6 MR. DE YOUNG: Yes, correct. Each of the
7 federal programs in the Community Affairs Division has a
8 requirement for monitoring. For anything associated with
9 weatherization, which includes LIHEAP funds many years, is
10 we go every year and we do an actual monitoring. CSBG and
11 CEAP, depending on the risk profile that we run for that
12 agency, they could be monitored every year.

13 Some agencies are literally monitored every
14 year either because of the high volume of dollars that
15 they receive or that they have a bad monitoring the
16 previous year and they have a bad audit report, we could
17 go out immediately the next year.

18 We do a risk-based monitoring and so it
19 naturally flows that if you either get a lot of money or
20 you had a lot of issues in the past, you're probably going
21 to be monitored every year until we get that corrected,
22 and then it goes probably more to a biannual monitoring.
23 In some instances some agencies are monitored every three
24 years. That's the minimum requirement.

25 MR. VASQUEZ: Okay. Well, again, I guess I'm

1 not as concerned about the top performers but more about
2 the lowest performers and making sure that we remain on
3 top of them, just going above and beyond making sure that
4 they are keeping up with their obligations.

5 MR. DE YOUNG: Yes, and we'll do some periodic
6 desk monitoring just to look at it. And we're in
7 coordination, internally in the agency we do have a
8 meeting just about every quarter about those agencies that
9 we feel are struggling and what we should be doing, and
10 this includes monitoring, desk monitoring, technical
11 assistance, what is our training team doing to make sure
12 that we are addressing the issues that we've identified.

13 We also take a look at their single audit and
14 see any of the issues that come up in a single audit, have
15 we done training based on that, and if not, we try and
16 have our training team in the Community Affairs Division
17 reach out to them to provide them additional training or
18 technical assistance from other agencies that have been
19 successful so that we're addressing all those concerns.

20 Oftentimes the solution is different for every
21 agency because the issues you find in agencies differ.
22 Some agencies have capacity issues, other agencies just
23 hit a rough spot, you know, a program director left and
24 they've lost 20 years of experience, and we have to get in
25 there and train the new person on what all the old person

1 did.

2 So I would say there's a pretty comprehensive
3 team approach to how we address those agencies that are
4 really struggling. Some really take to it and quickly get
5 back on track, and others takes us some time to get them
6 back to a level of performance that we're satisfied with
7 and that serves the clients well in that service area.
8 And ultimately, that's the result is trying to get
9 services to 254 counties in the State of Texas in a timely
10 fashion at the right time of the year with the right
11 amount of money.

12 MR. VASQUEZ: Great. Confident y'all will be
13 on top of it. Thanks.

14 MR. DE YOUNG: Absolutely. Thank you.

15 MS. BINGHAM: Thanks, Michael. Thanks, Mr.
16 Vasquez.

17 So we'll entertain a motion for the approval of
18 the 2021 Low Income Home Energy Assistance Program state
19 plan. I will entertain a motion.

20 MR. VASQUEZ: Madam Chair, I'd like to move to
21 approve the 2021 plan as presented.

22 MS. BINGHAM: I have a motion from Mr. Vasquez.
23 Is there a second?

24 MS. THOMASON: Second.

25 MS. BINGHAM: Ms. Thomason seconds.

1 If there is no further discussion, all those in
2 favor aye.

3 (A chorus of ayes.)

4 MS. BINGHAM: Opposed?

5 (No response.)

6 MS. BINGHAM: Thank you. Motion carries.

7 MR. DE YOUNG: Thank y'all.

8 MS. BINGHAM: I'd like to move on to our first
9 action item, which is item 3(a) which is actually a report
10 from the Audit and Finance Committee. Ms. Thomason.

11 MS. THOMASON: Thank you.

12 Yes, the Audit and Finance Committee met this
13 morning at 8:00 a.m. We had three report items and two
14 action items. The three report items were from the
15 director of Internal Audit, Mr. Mark Scott. He discussed
16 the internal audit of the Purchasing function at the TDHCA
17 and also the internal audit of the Section 811 Program.
18 He also discussed with us recent internal and external
19 audit activities.

20 There were also two action items from the
21 Financial Administration area. Mr. Joe Guevara presented
22 the fiscal year 2021 operating budget, as well as the
23 fiscal year 2021 Housing Finance Division budget. The
24 committee voted to recommend approval of both of those
25 budget items to the full board, and I believe Mr. Guevara

1 should be here to answer any questions that you may have.

2 MS. BINGHAM: Thanks, Ms. Thomason.

3 Do any of the Board members have any questions
4 about the committee report?

5 (No response.)

6 MS. BINGHAM: So if there's no questions, we'll
7 entertain a motion. Or this is just a report, no need for
8 action on this, report stands?

9 MS. THOMASON: Actually, there's two more
10 action items that need the Board's approval.

11 MS. BINGHAM: Very good. We'll entertain a
12 motion.

13 MS. THOMASON: Yes. I'll make a motion to
14 approve the fiscal year 2021 operating budget and the 2021
15 Housing Finance Division budget.

16 MS. BINGHAM: Okay. And you know what, Ms.
17 Thomason, let's take them individually just so that we
18 have it for the record. So would you make your motion to
19 approve the 2021 operating budget first?

20 MS. THOMASON: Yes. I will make a motion to
21 approve the fiscal year 2021 operating budget.

22 MS. BINGHAM: Thank you very much.

23 Is there a second?

24 MR. BRADEN: I'll second. And just for
25 clarity, this is actually item 4(a). Correct?

1 MS. BINGHAM: This is action item 4(a). It
2 looks like the way the agenda has it, the Internal Audit,
3 just the report on the committee was item 3(a), the
4 approval of the 2021 operating budget is item 4(a). Thank
5 you for the clarification.

6 Is there any further discussion regarding the
7 approval of the 2021 operating budget?

8 MR. VASQUEZ: Actually, Madam Chair, I would
9 just like to highlight a couple of things that we talked
10 about during the committee meeting, and really just to pat
11 the staff on the back.

12 The budget, while it technically has a 4
13 percent increase from the prior year, virtually all of
14 that is attributable to CARES Act funding, so other than
15 that, we've actually kept the budget almost completely
16 flat, and as everyone knows, we've been doing a lot more
17 than we had been in past years, so we've definitely
18 improved efficiency while keeping the budget flat, and
19 that's just a great shout-out to the staff.

20 MR. WILKINSON: Thank you. They did a great
21 job.

22 MS. BINGHAM: Great job.

23 So I have a motion by Ms. Thomason a second by
24 Mr. Braden for the approval of the 2021 operating budget.
25 All those in favor aye.

1 (A chorus of ayes.)

2 MS. BINGHAM: Opposed?

3 (No response.)

4 MS. BINGHAM: Great. Motion carries. Thank
5 you. Nice job, staff.

6 So Ms. Thomason, then we'll move to action on
7 the approval of the 2021 Housing Finance Division budget.

8 Bobby, did Mr. Guevara want to present
9 anything, or he's available for questions?

10 MR. WILKINSON: He's available for questions.

11 MS. BINGHAM: Very good.

12 Are there any questions? If not, we'll
13 entertain a motion.

14 MS. THOMASON: I will make a motion to approve
15 the fiscal year 2021 Housing Finance Division budget as
16 presented this morning.

17 MS. BINGHAM: Thank you. I have a motion. Is
18 there a second?

19 MR. VASQUEZ: Second.

20 MS. BINGHAM: Thank you, Mr. Vasquez. Mr.
21 Vasquez seconds.

22 If there's no further discussion on the Housing
23 Finance Division budget for fiscal year 2021, all those in
24 favor aye.

25 (A chorus of ayes.)

1 MS. BINGHAM: Opposed?

2 (No response.)

3 MS. BINGHAM: That motion carries also. Thank
4 you.

5 We're moving on to item 5(a). This is
6 presentation, discussion and possible action on a dispute
7 of the Compliance Division's assessment of the applicant's
8 compliance history to be reported at the EARAC regarding
9 three properties: 20316 Virginia Flats, 20288 Providence
10 at Buna, 20138 The Ella. And this is an item for Patricia
11 Murphy.

12 MR. WILKINSON: Patricia.

13 MS. MURPHY: Good morning. Can you hear me?

14 MR. WILKINSON: Yes.

15 MS. MURPHY: Okay. Wonderful. Is my webcam
16 working? I don't need my webcam. Am I muted?

17 MR. WILKINSON: We can hear you and see you
18 now.

19 MS. MURPHY: You can hear and see me? Okay.
20 Wonderful. Sorry about that.

21 Good morning. Patricia Murphy, director of the
22 Compliance Division, and Madam Chair just explained what
23 the agenda item is. These are all 9 percent housing tax
24 credit applications and they're all sponsored by ITEX.

25 As detailed in your Board write-up, ITEX has a

1 long history of noncompliance, going back to at least
2 2014, and has multiple times agreed to conditions that
3 have been implemented. These conditions include requiring
4 staff to obtain professional designation, having a third
5 party review their files, and attending numerous trainings
6 on an annual basis.

7 With this type of robust action, one would
8 expect ITEX to be a premier operator, and unfortunately,
9 this is not the case at all. ITEX has a great deal of
10 difficulty complying with the program.

11 One of their 13 events of noncompliance, staff
12 is still not able to determine if it's been corrected or
13 not. We might have actually sorted through it yesterday
14 and finally figured it out about the matters related to
15 damage caused in 2017 by Hurricane Harvey.

16 The federal deadline to restore damage caused
17 by the hurricane was September 30, 2019. During the
18 restoration period, ITEX was contacted by phone and in
19 writing to remind them of the upcoming deadline, however,
20 they did not report restoration.

21 So on October 9, 2019, a notice of
22 noncompliance was sent with corrective action deadline of
23 January 7 of 2020. ITEX did not respond to that notice of
24 noncompliance so the matter was referred to our
25 Enforcement Committee, meaning more staff, the IRS, the

1 Legal Division needed to get involved. It's now June of
2 2020 and it took Mr. Akbari, the president and CEO of
3 ITEX, it took his personal involvement to help the ITEX
4 submit corrective action.

5 To be frank, ITEX is not sure which units were
6 actually damaged, which is somewhat alarming that they
7 don't have that information. Staff received five
8 different lists reporting damaged units.

9 In addition, as corrective action we received
10 work orders that were dated prior to the date of the
11 hurricane, and we received invoices from different
12 properties. A great deal of staff time was spent trying
13 to reconcile the lists and sort through the documentation
14 that they submitted to assist ITEX in resolving this
15 matter.

16 And I want you to know this is just one recent
17 example of what it's like to do business with ITEX. And I
18 know we're short on time, but if you want to hear any
19 other examples what it's like doing business with ITEX, I
20 can tell you.

21 But this type of disorganization and repeated
22 history of noncompliance cannot be solved with any type of
23 condition we could place on these awards. Staff is not
24 able to determine if ITEX cannot or will not comply with
25 the program, but what is clear is that ITEX has received

1 ample warning that they have a problem and they've been
2 given ample opportunity to solve it.

3 As we've discussed several times, the Board
4 does have the discretion to approve the dispute. This is
5 a 9 percent competitive award. There are other
6 applications that can serve this region of the state in a
7 compliant manner.

8 Staff strongly recommends that you deny this
9 request because the compliance history of ITEX is
10 unacceptable.

11 I know that there are several people that would
12 like to speak, but I'm available to answer any questions
13 that you might have.

14 MS. BINGHAM: Thank you, Patricia.

15 So I know the moderators will start teeing up
16 everybody to speak. Before we get started with speakers,
17 does the Board have any questions of Ms. Murphy?

18 (No response.)

19 MS. BINGHAM: Ms. Murphy, can you outline what
20 is the assessment? What was the assessment from the staff
21 to ITEX?

22 MS. MURPHY: The staff assessment for these
23 awards was the previous participation review. Is that
24 what you mean?

25 MS. BINGHAM: Yes. What is the outcome? What

1 specifically is ITEX disputing?

2 MS. MURPHY: So under the previous
3 participation rule, we are recommending denial of their
4 award based on their compliance history. So part of it is
5 your score in scoring in your underwriting and part of it
6 is your previous participation. And it is 2306.057 that
7 is the part of the Government Code that requires this
8 review, and it requires the Board to fully document and
9 disclose any instance in which they approve an application
10 despite noncompliance.

11 Staff strongly recommends that you deny this
12 and that ITEX get their business in order before they
13 proceed doing their deals with TDHCA. They've had plenty
14 of time to figure this out and they can't -- or they have
15 not, they have not figured this out yet.

16 MS. BINGHAM: Great. Thank you.

17 MS. MURPHY: I think you were on the Board in
18 2014 when we brought this up.

19 MS. BINGHAM: Okay. Great. Thank you.

20 In the chat box I can see that we have two
21 legislative letters to read into the record on this. Is
22 Michael available to do that?

23 MR. WILKINSON: Mr. Lyttle, can you read the
24 letters in, please?

25 MS. NORRED: We're finding him to unmute him.

1 MR. LYTTLE: Good morning, everybody. Can you
2 hear me?

3 MS. BINGHAM: Yes. Good morning.

4 MR. LYTTLE: All right. Yes, I have two
5 letters, Madam Chair and members, to read into the record
6 on 5(a). The first one is from State Representative Joe
7 Deshotel, and it regards Virginia Flats in Beaumont.
8 Addressed to the Board, it reads:

9 "Please accept this letter as my additional
10 statement of support for application 20316 for Virginia
11 Flats, and my request for the Governing Board of the Texas
12 Department of Housing and Community Affairs to find ITEX
13 Development, LLC and its affiliates to be considered
14 eligible for an award of 9 percent housing tax credits.
15 Virginia Flats is located within my District 22, and I
16 know its residents deserve to benefit from a
17 rehabilitation of this existing development.

18 "It is my understanding that TDHCA staff has
19 recommended Virginia Flats and two other ITEX applications
20 be found ineligible for awards of housing tax credits due
21 to the compliance history of the combined portfolios of
22 ITEX. I disagree with this conclusion and urge you to
23 approve the potential award of tax credits to the ITEX
24 applications.

25 "I understand the previous participation review

1 of ITEX resulted in a determination ITEX is considered a
2 Category 3 developer, primarily because of delays in
3 communicating with the TDHCA on six developments out of
4 its portfolio of 37 developments.

5 "Notwithstanding the delays in communicating
6 with the TDHCA, all of the noncompliance appears to have
7 been cured except for one project, Cypresswood Crossing,
8 where I understand Harvey damage repairs were completed in
9 2018, but ITEX has had problems meeting TDHCA staff's
10 requirements to prove up the curative work.

11 "Given the extent of the damage that ITEX had
12 to deal with post-Harvey, its record is not so alarming as
13 to require tax credit financing be withheld from otherwise
14 eligible applicants solely because of ITEX's involvement.

15 "Additionally, I am very concerned TDHCA would
16 take action to prevent the revitalization of Virginia
17 Flats, an existing and occupied housing development
18 consisting of 110 units, of which 44 units receive Section
19 8 rental assistance. The residents of this development
20 will benefit greatly from the proposed rehabilitation. On
21 that basis, I previously provided a letter of support for
22 the Virginia Flats application and I know that the City of
23 Beaumont passes Resolution Number 20-038 approving and
24 supporting the project.

25 "During my tenure as state representative, I

1 have worked with elected and neighborhood leaders to make
2 the redevelopment of neighborhoods in need of
3 revitalization a high priority. ITEX has been one of the
4 most active participants in efforts to recover from the
5 hurricanes and storms that historically plague East Texas.

6 "I ask for your reconsideration and your
7 support for the redevelopment of Virginia Flats by
8 determining awards of tax credits may be made available to
9 applicants where ITEX is in the organizational structure.

10 "Thank you for your time and consideration.

11 "Respectfully, Joe D. Deshotel, 22nd
12 Legislative District."

13 The second letter is about Providence at Buna,
14 directed to the Board. It is from State Representative
15 James White, and it reads as follows:

16 "This letter reflects my continued support of
17 the Providence at Buna project, the proposed 80-unit new
18 construction elderly development in the Buna CDP in Jasper
19 County. I previously provided a letter of support for
20 this project which is in House District 19.

21 "I request that the Governing Board of TDHCA
22 consider awarding the project an award of 9 percent tax
23 credits, notwithstanding the recommendation of TDHCA staff
24 that applications associated with ITEX Development, LLC
25 and its affiliates be disqualified on compliance issues.

1 TDHCA staff is recommending that the Providence at Buna
2 and two other ITEX applications be found ineligible for
3 awards of housing tax credits due to the compliance
4 history of the combined portfolio of ITEX.

5 "The previous participation review of ITEX
6 resulted in a Category 3 classification which appears to
7 be due to: A, Hurricane Harvey damage results, and B,
8 failure to timely communicate with TDHCA concerning curing
9 noncompliance on six developments out of its portfolio of
10 37 developments.

11 "We are advised by ITEX that all of the
12 noncompliance has been cured and that the one
13 noncompliance relating to Cypresswood Crossing, which is
14 reflected as uncorrected, was, in fact corrected in April
15 2018, but staff has not yet agreed that sufficient
16 evidence of correction has been provided to the TDHCA.
17 While this type of record may render a developer Category
18 3, it should prohibit a community in need of affordable
19 housing from getting funding for a worthy development.

20 "The project proposed by ITEX is needed in the
21 Buna community and I am aware of ITEX's reputation for
22 building quality affordable multifamily housing in East
23 Texas, especially in smaller communities that still
24 require housing even though they don't have the resources
25 to provide substantial financing to encourage such

1 development.

2 "I urge you to support the development of
3 Providence at Buna by finding that applications related to
4 ITEX are eligible for tax credit awards subject to their
5 competitive score.

6 "Thank you for the opportunity to express my
7 continuing support of Providence at Buna.

8 "For God and Texas, signed, James White, State
9 Representative, House District 19."

10 MS. BINGHAM: Great. Thank you. Thanks,
11 Michael, for reading those into the record.

12 So I've asked Renee to take a count of how many
13 folks are teed up to speak on this item, and while she's
14 doing that for me, I will seek a motion from the Board,
15 either a motion on the item or a motion to hear comments.

16 MR. VASQUEZ: Madam Chair, could I get a
17 clarification, looking at the way this is worded in our
18 Board book? It is saying that staff is asking us to
19 recommend denial of the award to EARAC. We're not
20 actually talking about any awards at this point, we're
21 denying the eligibility of the applicant. Is that
22 correct? Eligibility of the applicant for this year's
23 projects.

24 MS. BINGHAM: Patricia, can you speak to the
25 action that you're asking the Board to take?

1 MS. MURPHY: Yes. So we did a previous
2 participation review that we report to EARAC, so we told
3 this applicant we're going to recommend to EARAC that, you
4 know, you be denied based on your compliance history. You
5 have the opportunity to dispute that. So this is their
6 opportunity to dispute that.

7 So if you move staff's recommendation and
8 approve staff's recommendation, then their applications
9 will be terminated because their compliance history is not
10 acceptable.

11 MR. VASQUEZ: But essentially we're not denying
12 an award, we are making the applicant ineligible for this
13 year's rounds.

14 MS. MURPHY: Yes. And that recommendation will
15 go to EARAC, and at the award meeting it will be a denial
16 recommendation. And if Beau or Bobby wants to jump and
17 clarify that, they can make any statement about this.

18 MR. BRADEN: My read of this item is that we
19 would be affirming the Category 3 compliance assessment of
20 the staff, and since they are a Category 3 that we've
21 affirmed, the ramification of that would be that they
22 would be ineligible.

23 MS. MURPHY: Correct.

24 MR. BRADEN: But the Board action would only be
25 to confirm the Category 3 compliance assessment.

1 MS. MURPHY: Correct.

2 MR. ECCLES: This is Beau. That is all
3 correct.

4 MS. BINGHAM: Thank you, Beau.

5 Is there a motion from the Board?

6 MR. VASQUEZ: I guess I would go ahead and move
7 to approve what Paul just said.

8 MS. BINGHAM: Staff's recommendation.

9 MR. BRADEN: Affirm the Category 3 compliance
10 assessment.

11 MR. VASQUEZ: Why doesn't Paul make that motion
12 and I'll second that.

13 MR. BRADEN: I'll make a motion that the Board
14 affirm the Category 3 compliance assessment.

15 MS. BINGHAM: Okay. We have a motion from Mr.
16 Braden for staff's recommendation to affirm the compliance
17 assessment. Is there a second?

18 MR. VASQUEZ: Second.

19 MS. BINGHAM: And Mr. Vasquez seconds the
20 motion.

21 All right. Renee, how many folks do we have
22 that want to speak on the topic? I know I see Tamea Dula
23 wants to speak last, and I think I see Donna Rickenbacker.

24 MS. NORRED: Yes, ma'am. I have six people. I
25 have a few that are preregistered, and I have a total of

1 six people.

2 MS. BINGHAM: Very good.

3 MS. NORRED: I can read out the names. I'm
4 going to read them in order that they are going to speak
5 in.

6 MS. BINGHAM: Great.

7 MS. NORRED: The first one will be Chris
8 Akbari, second speaker will be Miranda Sprague, after that
9 we will have Donna Rickenbacker, and then Zachary
10 Krochtengel, and then there's a Barry Palmer and a Raynold
11 Richardson, and then Tamea at the very end.

12 MS. BINGHAM: Tell me again, Renee, who's after
13 Barry Palmer?

14 MS. NORRED: Barry Palmer, I have Raynold
15 Richardson.

16 MS. BINGHAM: Okay. And then you have Tamea
17 after that?

18 MS. NORRED: Yes, the very last one. Yes,
19 ma'am.

20 MS. BINGHAM: So that's one, two, three, four,
21 five, six, seven, I have seven.

22 MS. NORRED: Yes, ma'am.

23 MS. BINGHAM: Very good. Okay. We'll be ready
24 for Chris Akbari. And just a friendly reminder that we'll
25 have a three-minute timer and that you will conclude your

1 comments as to timer.

2 Good morning.

3 MS. NORRED: We have Chris Akbari.

4 MR. AKBARI: Good morning. I'm not sure if you
5 can see me. How are you guys, today?

6 MS. BINGHAM: Good, thank you.

7 MR. AKBARI: Chairman, Board members and staff,
8 I'm Chris Akbari, I'm the CEO of ITEX. I also serve on
9 the TAAHP Board as first vice president.

10 I'm here today about our portfolio. We have 37
11 properties that are overseen by TDHCA, and we pride
12 ourselves in providing housing to low income Texans,
13 specifically in Southeast Texas.

14 We have had some issues with our compliance
15 history, and I do take full personal responsibility for
16 these issues. In fact, in 2014 and 2015, we had issues of
17 compliance and the Board heard testimony from staff to
18 terminate our applications at that time. But since then
19 we have worked very hard with conditions and we have found
20 a lot of successes.

21 Our team has worked in the past five years with
22 great progress. The majority of our portfolio, though, is
23 in Southeast Texas. We had tropical events over the past
24 four years that damaged over 1,000 units in 15 properties,
25 and in Imelda we had 95 units in three properties that

1 were affected. This has led to increased inspections,
2 increased audits by both TDHCA and HUD, and because of
3 this increased number of audits and inspections, we have
4 had more opportunities for issues with our awards.

5 TDHCA has approved conditions for us in the
6 past and they have worked. We are an extra-large
7 portfolio and it's extremely difficult for such a large
8 portfolio to have zero issues. In fact, today the Board
9 approved conditions approving two other developments that
10 had more issues than our portfolio. In fact, both of
11 those, one had issues with both events and noncompliance
12 and difficulties responding in the corrective action
13 period.

14 So in three years we've had 66 reviews, audits
15 and inspections, we've submitted over 120 USRs, and we
16 have 13 events of noncompliance. So we've invested
17 significantly in our compliance department, we've
18 developed training in-house, we've made our managers
19 become COS certified, we have HCCP certified regional, but
20 unfortunately, in 2019 as we were trying to bring all
21 these units back on line we had nearly our whole
22 compliance staff leave.

23 Once our director left, she brought her
24 auditors with her to go to one of our competitors.
25 Unfortunately, we had to rebuild the staff, and you know,

1 we have made a lot of effort to make sure that remain
2 compliant.

3 So what we're asking for today is that the
4 Board review and look into the fact that actually this set
5 of compliance rules did not become effective until May the
6 16th of 2020 after these applications had gone through.
7 It also puts a distinction on Category 3 that prevents us
8 from being approved with conditions. We believe that you
9 can overturn staff's recommendation and allow for the
10 following conditions to make us successful.

11 One, allow us to have a third-party management
12 company.

13 MS. BINGHAM: Thank you for your comments,
14 Chris. Thank you very much. Thanks, Chris.

15 Does anybody have any questions of Mr. Akbari?

16 (No response.)

17 MS. BINGHAM: Thank you very much for your
18 comments.

19 MR. AKBARI: Thank you. I appreciate your
20 time.

21 MS. NORRED: We are ready for Miranda. We are
22 about to unmute you.

23 MS. SPRAGUE: Are you also going to show my
24 screen, my video? If not, it's okay, but I'll allow it.
25 Can you hear me, though?

1 MS. BINGHAM: We can hear you.

2 MS. SPRAGUE: Good morning, Madam Chair, Board,
3 staff. I'm Miranda Sprague, senior vice president at
4 ITEX. I'd like to speak to you about item 5(a) in the
5 Board book.

6 Our annual reviews since 2015 have shown our
7 improvement. In 2017 our review was a Category 2 and we
8 received two 9 percent awards with no conditions. We
9 accomplished it by following the 2015 conditions and
10 building a six-person compliance department to oversee all
11 of our developments.

12 Prior to this year's review and six non-
13 responses within the corrective action period, we had not
14 had any non-responses during a CAP in five years since May
15 2014. The beginning of 2019 brought significant changes
16 and challenges to our compliance department.

17 Compliance staff turnover included one
18 demotion, two terminations and three resignations, while
19 compliance concurrently reviewed over 1,000 units being
20 put back online after damage by Harvey. The better part
21 of the year was spent rebuilding the department back to
22 its previous level of experience.

23 Our 2018 review was a Category 3 and included
24 four events that were uncorrected at the time of the time
25 of the review but were corrected within the CAP. The two

1 awards we received in 2018 did have conditions which were
2 followed and brought us back to a Category 2 in 2019.
3 This shows the conditions that were intended to improve
4 our compliance operations did in fact improve them, and
5 ITEX was willing and happy to comply with the Department's
6 rules.

7 As of this year, all physical inspections,
8 onsite reviews, desk reviews have been responded to within
9 the CAP. Only two Harvey-related items were addressed
10 late. We are now back on track with the rebuilt
11 compliance department which is being fine-tuned, and we
12 are confident we'll have no further issues and promptly
13 meet all requirements.

14 We propose that the Board overturn the staff's
15 recommendation and approve with the following conditions:
16 one, hire a TDHCA approved third-party management company
17 for the 2020 projects until we are a Category 2; two, hire
18 a third-party compliance auditor to review our existing
19 portfolio quarterly and provide reports and
20 recommendations to ITEX and TDHCA; and three, hire a head
21 of compliance at the corporate level to make sure that we
22 continue to resolve our compliance issues.

23 Furthermore, next month the U.S. inspection
24 group is providing our maintenance staff and construction
25 supervisors with a two-day UPCS training to reduce the

1 number of inspection findings. Currently twelve property
2 managers hold tax credit specialist certificates, and the
3 remaining managers will obtain these certificates once the
4 training resumes.

5 MS. BINGHAM: Thank you very much, Miranda.
6 Thank you.

7 MS. SPRAGUE: Thank you.

8 MS. BINGHAM: The Board may have questions of
9 you. I have just a couple of questions. So did you
10 mention that you've had no non-responses up until this
11 point, these issues, ITEX had had no non-responses since
12 2017?

13 MS. SPRAGUE: Since May 2014. So since May
14 2014 until 2019 when all of our challenges started, we had
15 not had any non-response issues during the corrective
16 action period.

17 MS. BINGHAM: Gotcha. Okay. Thank you. And
18 then just for clarification. So your suggested conditions
19 that you would recommend to the Board would be to ask you
20 to hire a third-party management company for these 2020
21 applications, to hire an auditor, and to hire a head of
22 compliance at the corporate level?

23 MS. SPRAGUE: That is correct.

24 MS. BINGHAM: Okay. Thank you.

25 Do the other Board members have any questions

1 of Miranda?

2 (No response.)

3 MS. BINGHAM: All right. Renee, we have Donna
4 next?

5 MS. NORRED: Yes, ma'am.

6 And also, just as a reminder, if you want to
7 speak on 5(a), please indicate in the questions box so
8 that we know that you're ready.

9 MS. RICKENBACKER: This is Donna Rickenbacker,
10 I'm ready. I support staff's recommendation to deny the
11 2020 awards for ITEX with their affiliates.

12 First I want to point out this is hard for me
13 because I very much respect Chris Akbari and all that he
14 and his team have done over the years in affordable
15 housing.

16 My reason for supporting staff is twofold.
17 First, ITEX's long history of noncompliance. I was at the
18 Board meeting in 2014 when ITEX first appealed their
19 noncompliance problems to the Board.

20 They've come back to the Board several more
21 times since 2014. Each time the Board has shown leniency
22 by allowing them to advance their deals and imposed
23 previous participation review, PPR, conditions, conditions
24 that her staff have not only not been met but have been
25 compounded by additional events of noncompliance in

1 subsequent years.

2 Staff has made significant PPR modifications
3 over the years that have benefitted owners, especially
4 owners with large portfolios, but one thing that hasn't
5 changed is the requirement to respond to staff in a timely
6 manner.

7 In most instances staff will work with an
8 owner, but the expectation is that the owner timely
9 communicate with staff. This is a reasonable request and
10 not one that ITEX has followed over the years in meeting
11 their PPR conditions or addressing additional compliance
12 points raised by staff.

13 In their latest appeal ITEX is claiming that
14 Hurricane Harvey caused damages, significant flood event
15 that happened in August of '17, more than three years ago.

16 They're also claiming that their failure to meet
17 compliance conditions was due to COVID-19, this horrible
18 virus that occurred in February and March of this year and
19 should not be grounds for failure to comply with multiple
20 events of noncompliance that took place long before the
21 outbreak.

22 Patricia and her staff have a huge portfolio to
23 monitor. These are time-consuming compliance problems,
24 and all owners need to take them seriously and address
25 them in a timely manner. If they cannot, then they should

1 sit out a year, and that's what ITEX should be doing this
2 year.

3 Secondly, there's always a competitor without
4 compliance issues behind ITEX that does not get an award
5 of tax credits because the Board granted ITEX's request
6 for more time or showed tolerance for their history of
7 noncompliance.

8 The competitors have lost opportunities as a
9 result, and the state loses opportunities to award quality
10 affordable housing units to development teams that have a
11 history of compliance and quality management. Granting
12 their appeal will place more units under their control
13 while TDHCA and the tenants under their management have to
14 wait and see if they will be in compliance. Everyone
15 needs to follow the compliance rules.

16 I think the Board has given ITEX more than
17 enough opportunity to improve their compliance track
18 record and PPR conditions. I ask that the Board support
19 staff and that ITEX work with staff to solve their
20 noncompliance matters with TDHCA and come back next year.

21 MS. BINGHAM: Thank you, Donna.

22 MS. RICKENBACKER: Thank you.

23 MS. BINGHAM: Thank you very much. Thank you.

24 Does the Board have any questions of Donna?

25 (No response.)

1 MS. BINGHAM: Renee, is Zachary next?

2 MS. NORRED: Yes, ma'am, he is. We're unmuting
3 him now.

4 MR. KROCHTENGEL: Hello. This is Zachary
5 Krochtengel. Reading the staff's report, I wholeheartedly
6 agree with Compliance staff's position to deny more awards
7 to this developer.

8 (Loss of audio.)

9 MS. MURPHY: Zach, we cannot hear you.

10 MR. KROCHTENGEL: Yeah. I was muted by the
11 organizer.

12 MS. NORRED: Sorry about that.

13 MR. KROCHTENGEL: I'll start again if that's
14 okay.

15 Reading staff's report, I wholeheartedly agree
16 with Compliance staff's position to deny more awards to
17 this developer. Hearing ITEX testify on the issues that
18 have plagued their compliance record, the only thing that
19 I continue hearing is that all of these issues are in
20 their control.

21 Their staffing issues and weak compliance staff
22 is something that they need to take responsibility for.
23 It's not normal for a developer to ping-pong between
24 Category 2 and 3 in EARAC for years on end. I looked at
25 Board books from 2014, 2018 and now today and in all of

1 those instances, ITEX was a Category 3 under EARAC review.

2 ITEX is a large company with a tremendous
3 amount of resources. They have a 37 or 39 property
4 portfolio, depending on how we interpret some of their
5 control. They manage it themselves. The deals that were
6 submitted this year have ITEX as the proposed property
7 manager. They alone control their compliance, and the
8 buck cannot be passed.

9 At some point a development group should not be
10 rewarded for consistently falling below the standards of
11 TDHCA and failing to respond timely to issues that are
12 affecting not only their management but the quality of
13 life of their tenants.

14 ITEX has made a point of stating that they did
15 not have control over two of their problematic properties,
16 however, in their 2020 applications they filled out a
17 previous participation form that asked when control began
18 and when it ended.

19 Southwood Crossing is on that list, and there
20 is no date for when control ended. We believe that this
21 should still be counted in their EARAC and previous
22 participation review.

23 EARAC is extremely generous in working with
24 developers and imposing conditions when needed, and while
25 this can be a burden on developers, they are meant to hold

1 developers accountable and they are meant to help
2 developers improve their compliance. There's a specific
3 part of the EARAC rules that aims to ensure improvement
4 and to punish those that fail to improve.

5 By ITEX lawyer's own admission, even if the
6 Board were to accept some of their arguments regarding
7 hurricanes and COVID and remove those compliance issues,
8 they would still be a Category 3 under the following rule:

9 An application will be considered a Category 3 if despite
10 past conditions agreed upon by any persons subject to
11 previous participation review to improve their compliance
12 operations, three or more new events of noncompliance have
13 since been identified by the Department and have not been
14 resolved during the corrective action period.

15 Anecdotally, I went back and looked at the
16 awards for the 2014 EARAC application round to see the
17 EARAC conditions that were imposed upon the awarded
18 projects.

19 There were 65 awarded projects, of which nine
20 were subject to EARAC conditions. Every other project had
21 one or two conditions, and the ITEX project had 16
22 recommended conditions. This is an outlier today, and six
23 years later it still remains an outlier.

24 I ask the Board to support staff's
25 recommendation and deny the awards. Thank you.

1 MS. BINGHAM: Thank you, Zach.

2 Any questions from the Board?

3 (No response.)

4 MS. BINGHAM: Barry Palmer is next, I think.

5 MS. NORRED: Yes. We're finding him and
6 unmuting him.

7 MR. PALMER: Hi. This is Barry Palmer. I'm
8 with Coats Rose, I represent ITEX Development.

9 I just wanted to clarify something that was
10 said earlier that I think was incorrect. The fact that
11 you're a Category 3 developer does not make you ineligible
12 for an award in and of itself, so just being found a
13 Category 3 developer would not decide that you're
14 ineligible.

15 In fact, earlier today on the consent agenda
16 the Board approved seven projects as eligible for awards
17 that are to different developers who are Category 3. The
18 only developer who is a Category 3 who is not being
19 recommended for awards based on that status is ITEX.

20 I've worked with ITEX since 2003 when they
21 first got into the tax credit business. Since then
22 they've developed successfully 37 tax credit developments
23 totaling over 3,500 units, primarily in East Texas. They
24 have an outstanding reputation in the community and they
25 had a long history of successful compliance with the TDHCA

1 from 2003 until 2014.

2 During 2014 to '15, due to the illness and
3 death of Ike Akbari, the founder of the company who
4 oversaw compliance, they got into compliance trouble, and
5 it took them several years to work out of it. But by 2017
6 ITEX received a Category 2 compliance rating and again in
7 2019 they were rated a Category 2.

8 So the allegations that they haven't abided by
9 conditions is not correct because they would not have been
10 raised to a Category 2 developer if they hadn't satisfied
11 their conditions.

12 In 2017 Hurricane Harvey hit and it hit East
13 Texas particularly hard. ITEX had 15 properties with over
14 a thousand units that received substantial damage. The
15 damage to their portfolio was over \$38 million. It took
16 three years for them to recover from that and devote
17 substantial resources and staff time to get the properties
18 back in service.

19 Despite all this, ITEX currently only has one
20 outstanding compliance finding and that relates to
21 providing sufficient documentation to show the repair in
22 2018 of a property that received damage from Harvey.
23 Everything else has been corrected on a 37 property, 3,500
24 unit portfolio.

25 This is a company that employs 235 people that

1 would effectively be shut down by staff's recommendation.

2 ITEX has provided reasonable conditions, including third-
3 party management.

4 MS. BINGHAM: Thank you, Barry. Thank you for
5 your comments.

6 MR. PALMER: Thank you.

7 MS. BINGHAM: Do we have any questions for
8 Barry?

9 (No response.)

10 MS. BINGHAM: Patricia, I have a question just
11 while we're getting Raynold ready. So Mr. Palmer
12 mentioned that there's only one outstanding item on one
13 2018 property currently. Is that accurate?

14 MS. MURPHY: Yes, and so that's the property
15 that I was telling you about that they've submitted work
16 orders from before the hurricane, five different lists,
17 and you know, so I do believe that these repairs were
18 probably made in April of 2018.

19 And we actually spoke with someone at ITEX on
20 May 31 of 2019 and gave them technical assistance about
21 here's the form that you fill out, this is what you need
22 to send in and upload.

23 They didn't do it then, they didn't do it by
24 the deadline, they didn't do it by the other deadline of
25 January 7, and so now we're all here talking about

1 something that should have been taken care of in April of
2 2018.

3 MS. BINGHAM: Gotcha. Thank you.

4 Any other questions?

5 (No response.)

6 MS. BINGHAM: Renee, do you have another
7 speaker?

8 MS. NORRED: Yes, ma'am. We have Raynold
9 Richardson, and we are unmuting him now.

10 MR. RICHARDSON: Good morning, Board.

11 MS. BINGHAM: Good morning.

12 MR. RICHARDSON: My name is Raynold Richardson,
13 and I am the vice president of J. Allen Management Company
14 out of Beaumont, Texas. I am a participant in two of
15 these deals.

16 Our management company manages 47 assets in
17 Texas and New Mexico. Twenty-two of those assets that we
18 manage in Texas are TDHCA, TSAHC and combination of HUD
19 Project-Based Section 8. If Patricia would check on our
20 background and our history, we've done a pretty good job
21 as far as meeting all of your requirements.

22 I am the former director of Asset Management
23 Division for HUD for Texas, New Mexico, Louisiana,
24 Oklahoma and Arkansas, and also, I'm the former director
25 of multifamily housing for the Houston Multifamily Housing

1 Program Center. I'm very familiar with the ITEX group. I
2 go back 30 years with the dad, K.T. Akbari, before he
3 passed, and I've worked with Chris through the years
4 before I retired from HUD in 2016.

5 I want to submit to the Board that you give
6 them another opportunity to move forward, especially in
7 light of the fact that we are a participant in two of
8 these deals.

9 We bring our experience from our management
10 company, I bring my experience from HUD to the table and
11 the compliance aspect of our company and what we've done
12 as far as meeting all the TDHCA requirements. I really
13 encourage the Board to allow us to come on line with Chris
14 and help and assist ITEX to move their deals forward.

15 We just received an \$18 million allocation out
16 of DR-2 money from the City of Houston The Ella, and it
17 would be a shame, you know, not to get this deal moved
18 forward, especially the 180 units for families in that
19 area, that area is needing housing. Because of the rent
20 structures for the last, what, two years have gone up 21
21 percent, it would be a shame not to allow the residents to
22 participate in the program.

23 So I'm requesting and urging you to take a look
24 at that. Go back and search the history on J. Allen
25 Management Company. I have been a partner on several

1 deals with Chris myself personally and I want to be a
2 partner on two of these deals, and I will bring our
3 expertise and our experience of our company overall and my
4 own personal experience to the table to ensure that the
5 assets are managed and maintained in accordance with the
6 guidelines of TDHCA.

7 So we're asking for -- you know, I won't say
8 leniency, I'm asking for an opportunity as a new player in
9 the game to bring our wealth of experience to the table to
10 assist with these assets.

11 Thank you very much.

12 MS. BINGHAM: Thank you very much, Raynold.

13 Are there any questions for the speaker?

14 (No response.)

15 MS. BINGHAM: We have one more speaker, Renee,
16 Tamea Dula?

17 MS. NORRED: Yes, we have Tamea Dula.

18 Also, if you are preregistered to speak for
19 this agenda item, please let us know that you're here.
20 Our last speaker that we have is Tamea Dula, and we are
21 unmuting her now.

22 MS. BINGHAM: Good morning.

23 MS. DULA: Tamea Dula with Coats Rose, speaking
24 on behalf of ITEX today. I would like to summarize a few
25 open issues in the previous speakers' comments.

1 With regard to the Hurricane Harvey damage and
2 inability to get it resolved by the deadline, the IRS
3 deadline, please know that I, on behalf of ITEX, contacted
4 the TDHCA several months in advance of the deadline, and
5 we advised TDHCA of the funding difficulties that ITEX was
6 having with FEMA and the difficulty with getting its loans
7 closed, and Patricia Murphy and the then executive
8 director were kind enough to apply to the IRS for a waiver
9 of that deadline. Of course, we have not had any response
10 from the IRS at this point, but there was communication
11 there.

12 There are eleven ways that you can become a
13 Category 3 developer. ITEX passed the test on ten of
14 those but failed on the eleventh; they are barely a
15 Category 3 developer. And I want you to understand that
16 it's very easy with a large portfolio, under the rules
17 prior to May 17 of 2020, to fall into that because anybody
18 with three or more instances of failing to respond in a
19 timely manner is going to be a Category 3.

20 Donna Rickenbacker said just let them sit out a
21 year, but that's not the way it works, as you know. These
22 instances of noncompliance have a three-year tail on them,
23 they fall off of your record after three years, so they're
24 going to be here next year too. Please do not hold this
25 against ITEX.

1 Additionally, a comment was made about ITEX
2 having 16 recommended conditions, and that was implied to
3 indicate that ITEX was totally a bad performer, but those
4 16 recommended conditions were self-imposed by ITEX; we
5 offered them.

6 We went through all the things that we thought
7 could be done in order to improve performance by the
8 compliance staff at ITEX. Educational webinars and
9 seminars and taking tests to become certified, all of
10 those were offered by ITEX and they were met by ITEX. So
11 I think we need to take that into consideration too,
12 please.

13 Thank you. Do you have any questions of me?

14 MS. BINGHAM: Thank you, Tamea.

15 Any questions for Tamea?

16 (No response.)

17 MS. BINGHAM: Any questions the Board has of
18 Ms. Murphy or any other staff comments?

19 MR. BRADEN: I have a couple of questions.

20 MS. BINGHAM: Mr. Braden.

21 MR. BRADEN: Patricia, first of all, in light
22 of all of the things we just heard, would you like to make
23 any additional comments or change any recommendations?

24 MS. MURPHY: Sure. And maybe you should put
25 the three-minute timer on me, because I could say quite a

1 bit.

2 First of all, Tamea Dula's reference to
3 reaching out to us ahead of time were related to two
4 different properties that they have since said that they
5 don't control -- that's what Zachary Krochtengel was
6 talking about -- so that's a totally different property
7 than the one that we've been discussing now.

8 The issue about them going from a Category 2 to
9 a Category 3 is just like Tamea said. The events fall off
10 after a three-year period and then what happens? We come
11 back and we monitor you. And remember, you are looking at
12 the tip of an iceberg, you are just looking at the things
13 that they were not able to fix during the corrective
14 action period.

15 So I communicated with Mr. Akbari in December
16 about the full compliance picture of what we're really
17 seeing when we go out there to say, hey, you've got a
18 serious problem here, what's up?

19 So the conditions that they've agreed to in the
20 past, for example, one of the conditions they've agreed to
21 was that they would have a third-party review their
22 resident files and they did that, and we had to update the
23 previous participation review to say you had a third-party
24 review your resident files and you follow the
25 recommendations of the reviewer, because when we went out

1 to review their files, sure enough, a third-party had
2 reviewed them and said, You need to verify the husband's
3 job and you need to have this form signed. And that was
4 in the file, they never followed through to correct the
5 issue.

6 So I mean, we have tried everything and
7 whatever their conditions that they are thinking would
8 help, I think they should follow through and do those
9 things and that until they have this all worked out, we
10 should not continue to do business with them because this
11 has just been going on too long.

12 MR. BRADEN: Okay. What about the comment that
13 Barry Palmer made that as part of the consent agenda we
14 approved a couple of Category 3 developers?

15 MS. MURPHY: Yes, we did. And for example, one
16 of them was the Housing Authority of the City of El Paso,
17 and last year I was recommending don't approve this
18 compliance history, they have a lot of problems, and the
19 Board did approve them and allow them to move forward.

20 And since that time they've had no new events
21 of noncompliance which tells us warning given, message
22 received. Right? If they have fixed their operations and
23 that now when we are monitoring them they're not having
24 these problems.

25 And so that's what we want. Right? You can

1 have a problem, we'll work with you with some conditions,
2 just get back into compliance. So those type of awards we
3 did recommend.

4 We do not have that case with ITEX. And those
5 six events of non-responsiveness are just since January of
6 2019, so since January of 2019 six different times they've
7 not responded to us.

8 MR. BRADEN: So just so I understand the
9 difference between those other Category 3s and this is the
10 Compliance Division was satisfied that they had come into
11 compliance, so that's why you were able to recommend them
12 while that's not the case with this developer ITEX.

13 MS. MURPHY: That's correct. We've been round
14 and round with ITEX about conditions and what they're
15 going to do to fix these problems and I don't know if they
16 cannot or will not, I just know they still have a very
17 serious problem.

18 MR. BRADEN: Thank you.

19 And then, Madam Chair, I did have one question
20 maybe of Bobby or Beau, if Beau is on the line.

21 I just want to make sure procedurally we are
22 doing the right thing, that if the Board takes action to
23 affirm a Category 3 compliance assessment on ITEX, the
24 resulting action is that these three projects are not
25 eligible this year but that just comes as a matter of a

1 lack of recommendation -- or I guess a recommendation of a
2 denial of award to EARAC, the internal process moves
3 forward with that act.

4 MR. ECCLES: This is Beau. That is correct,
5 Member Braden. Statute has two places where compliance
6 touches on recommendations of awards to the Board.

7 Patricia right now is reporting to the Board on
8 the compliance history of an applicant and is saying that
9 they do not have a sufficient level of compliance in order
10 to receive an award.

11 That said, compliance is in another place in
12 statute a key component of EARAC. EARAC makes award
13 recommendations to the Board on all awards. So within our
14 rules we talk about the recommendations on previous
15 participation made by compliance in the EARAC process,
16 both as a Compliance Division as well as a component of
17 EARAC.

18 Here what the Board is saying is they are not
19 accepting -- or they are accepting Compliance's
20 recommendation to the Board that these applications do not
21 have a sufficient compliance history. You will still see
22 this again at the end when EARAC is making a negative
23 recommendation on these awards and it will be on the basis
24 of compliance history but it effectively does terminate
25 these applications because of the recommendation.

1 That said, theoretically, I suppose it is
2 possible that the Board could deny EARAC's recommendation
3 at the far end of this process, but when you see this
4 again, it will be because EARAC has denied or is not going
5 to make a positive recommendation that is because, at
6 least, that Compliance is not going to have accepted its
7 compliance history as being appropriate or adequate.

8 MR. BRADEN: Okay. I just wanted to make sure
9 that the motion I stated was accurate in terms of what was
10 needed. And to some extent, the Board is taking action to
11 affirm the Category 3 -- if the Board does -- based on
12 what was presented.

13 And then internal process, I guess it's
14 theoretically possible that something could happen at the
15 staff level, but it's just going to go through the process
16 with staff, and then at the end, like you just said, Beau,
17 that EARAC will not make a recommendation to accept these
18 projects and so if that were to occur, then they would not
19 move forward.

20 I guess the only other thing I would say -- and
21 this is just a personal comment of mine -- I thought what
22 Donna said was well spoken. I do think, especially in
23 this time and age when we're doing so much virtually, it's
24 really important and I think the Board has to rely on
25 staff in terms of these compliance issues.

1 And you know, I understand people have large
2 portfolios and a lot of good things going on and they
3 sound like very good projects, but you still have to
4 follow the rules, and we as a Board have to depend on our
5 staff to say whether or not you're following the rules.

6 And so especially in this day and age where we
7 can't do physical inspections or double check, I mean, the
8 lack of responsiveness and the lack of being responsive to
9 staff is even more important. And so, I mean, I
10 personally feel like we do need to accept what the staff
11 recommendation is.

12 MS. BINGHAM: Thanks, Mr. Braden.

13 Any other comments from the Board?

14 MR. VASQUEZ: I just have one comment that I
15 think that the steps that ITEX seems to be taking, as
16 outlined by Miranda, and all the new hiring and everything
17 like that, are going to do the company very well and it
18 looks like next year at this time they're going to have
19 all their act together.

20 But they're not there yet, and again, I'm
21 leaning towards accepting the staff's recommendation as
22 well at this time.

23 MS. BINGHAM: Thank you.

24 So Beau, just while you're there, I have a
25 motion from Mr. Braden and a second from Mr. Vasquez to

1 confirm the Category 3 compliance assessment. Is that
2 sufficient to take action today? Is that the action that
3 we're looking for?

4 MR. ECCLES: The full reading of that -- and I
5 heard the discussion -- the resolution as it appears in
6 the Board book is that the Board is affirming the Category
7 3 compliance assessment and the Compliance Division's
8 recommendation of denial of the award to EARAC.

9 It's not a denial of the award, it's the denial
10 of the award to EARAC. Again, Compliance, as a component
11 of EARAC, is telling EARAC: We can't make a positive
12 recommendation on this award because of the compliance
13 history on these three particular applications.

14 MS. BINGHAM: Okay. So let me just see just to
15 make sure that we have it correct.

16 So, Mr. Braden, your motion, would you extend
17 your motion or amend your motion to include the rest of
18 the language that's on the resolution recommendation?

19 MR. BRADEN: Yes, I'll modify my motion to be
20 consistent with what Beau just described. I think it says
21 that the Board would affirm the Category 3 compliance
22 assessment and the Compliance Division's recommendation of
23 denial of the award to EARAC for the ITEX properties.
24 Yes.

25 MS. BINGHAM: Thank you.

1 Mr. Vasquez, are you comfortable seconding that
2 modified motion?

3 MR. VASQUEZ: Yes, seconded as amended.

4 MS. BINGHAM: Very good.

5 Is there any further discussion?

6 (No response.)

7 MS. BINGHAM: All those in favor aye.

8 (A chorus of ayes.)

9 MS. BINGHAM: Opposed?

10 (No response.)

11 MS. BINGHAM: Motion carries for staff's
12 recommendation on item 5(a).

13 We're moving to item 6(a), which is Marni
14 Holloway's item.

15 MS. HOLLOWAY: Good morning. Can y'all hear me?

16 MS. BINGHAM: Yes, we can hear you.

17 MS. HOLLOWAY: Good morning.

18 Item 6(a) is presentation, discussion and
19 possible action regarding a waiver of certain requirements
20 in 10 TAC 11.2011(a) of the 2020 QAP regarding errors in
21 calculation of application fees.

22 The 2020 QAP includes changes from previous
23 years related to deficiency requirements for correcting
24 errors in the calculation of application fees. The
25 revision requires that the deficiency period for curing

1 calculation errors be three business days from the date
2 the fee was originally required to be submitted and may
3 not be extended per the rule. Failures to cure that error
4 timely can be considered grounds for termination.

5 For the 2020 9 percent cycle, staff has found
6 one instance of this error in one application, 20167
7 Laurel Flats. The fee was required to be submitted on
8 February 28 and the total fee was not included, there was
9 a miscalculation.

10 When staff began its review of the application
11 on March 30, it was determined that the submitted fee was
12 insufficient. At that time it was impossible for the
13 applicant to meet the rule requirement regarding payment
14 within three days after it's due. Amendment to the QAP to
15 change this requirement is not an available solution at
16 this time.

17 It's not possible for staff to implement the
18 rule, as we typically do not review for fee calculation
19 errors within a time frame that would have the applicant
20 correct the issue within three business days from the date
21 that it was originally required to be submitted,
22 particularly for the 9 percent program.

23 Waiver of just that sentence that the
24 deficiency period is that three days after submission
25 provides fairness for all applicants and allows staff to

1 address the issue through the administrative deficiency
2 process without individual waiver requests.

3 Staff recommends that the sentence in 10 TAC
4 11.2011(a) that the deficiency period for curing fee
5 calculation errors be three business days from the date
6 the fee was originally required to be submitted be waived
7 for all 2020 applications.

8 I'd be happy to take any questions.

9 MS. BINGHAM: Board members, what questions do
10 you have of Marni?

11 MR. VASQUEZ: Marni, I have two questions here.

12 So this is something we can clean up in the QAP to make
13 it three days after notification for a future one?

14 MS. HOLLOWAY: Right. And that's already
15 programmed into 2021 changes.

16 MR. VASQUEZ: Okay. Which makes sense. If
17 they don't know that there's an error, how can they
18 respond?

19 MS. HOLLOWAY: Right.

20 MR. VASQUEZ: And then just for this particular
21 applicant, when we did notify them, you said somewhere in
22 here they did timely respond?

23 MS. HOLLOWAY: Yes, they did.

24 MR. VASQUEZ: Okay. Great. I see no problem
25 with it.

1 MS. BINGHAM: Great. Currently there is no
2 public comment on this item.

3 If there are no further questions of Marni,
4 we'll entertain a motion on item 6(a).

5 MR. VASQUEZ: I'd like to make a motion to
6 approve staff's recommendation to provide the waiver as
7 described.

8 MS. BINGHAM: We have a motion from Mr. Vasquez
9 to approve staff's recommendation. Is there a second?

10 MS. THOMASON: Second.

11 MS. BINGHAM: Ms. Thomason seconds.

12 Nathan or Renee, is there anybody that's shown
13 up to speak on this item?

14 MS. NORRED: No, ma'am, there is no one
15 preregistered or in queue in the questions box.

16 MS. BINGHAM: Thanks.

17 Any further discussion?

18 (No response.)

19 MS. BINGHAM: So a motion from Mr. Vasquez, a
20 second from Ms. Thomason for staff's recommendation. All
21 those in favor, aye.

22 (A chorus of ayes.)

23 MS. BINGHAM: Opposed?

24 (No response.)

25 MS. BINGHAM: That motion carries on item 6(a).

1 So we'll move to item 6(b). These are the RFAD
2 for the 2020 applications, and we have a list of it looks
3 like about 20 applications.

4 Marni, are any of these being pulled or are
5 they all still on the agenda?

6 MS. HOLLOWAY: I haven't been informed of any
7 of them being pulled off of this report.

8 MS. BINGHAM: Okay. Very good.

9 This is what I think we'll do for these. These
10 are the ones that are the requests for administrative
11 deficiencies, so there's an applicant and then there's a
12 party that's requesting the administrative deficiency.
13 Correct?

14 MS. HOLLOWAY: Correct.

15 MS. BINGHAM: And we'll get Marni to go over
16 them. I'm assuming we're going to go one by one, do you
17 think?

18 MS. HOLLOWAY: So in the past in our live
19 meetings I've gone through them one by one and we've
20 waited for somebody to stand up if they want to speak.
21 You know, holding the meeting in this manner makes that a
22 little more difficult and the moderator may need to keep
23 an eye on who's looking to speak to which.

24 MS. BINGHAM: Okay. And I know when we were
25 preparing for the meeting there weren't a whole lot of

1 folks registered, but clearly that may have changed by
2 now. So what we need to do is continue to run effectively
3 and efficiently.

4 I think what we'll do at this point is we'll
5 still have the three-minute timeline for speaking and
6 we'll allocate up to two speakers for the party requesting
7 and two speakers for the applicant, unless the Board has
8 any concern about that guideline, or staff.

9 (No response.)

10 MS. BINGHAM: Okay. Hearing none, then, Marni,
11 I think we're ready to proceed with item 6(b).

12 MS. HOLLOWAY: Okay. This is the report of
13 third-party requests for administrative deficiency under
14 10 TAC 11.10 of the 2020 Qualified Allocation Plan.

15 The QAP provides for third-party requests for
16 administrative deficiencies, affectionately called RFADs,
17 through which an unrelated party, person or entity may
18 bring new material information about an application to
19 staff's attention.

20 Third parties may request that staff consider
21 whether an application be the subject of administrative
22 deficiency based on the information submitted with the
23 request. Staff will consider the request and proceed if
24 it deems appropriate under the applicable rules. Requests
25 are required to include sufficient credible evidence that

1 if confirmed would substantiate the deficiency process.

2 The RFAD process may not be used to appeal a
3 decision staff has made on another application. If a
4 request involves a non-priority application, staff may
5 disregard it unless that application moves to a priority
6 position.

7 We've posted the requests, the deficiency
8 notices if there were any, all supporting documentation
9 received from the applicant and the staff determination on
10 each of them.

11 The Board has final decision-making authority
12 on any of these issues and my direct staff to take a
13 different action on any of the RFADs, however, a requester
14 does not have an appeal right regarding the staff
15 determination on an RFAD.

16 Where staff concluded that a request results in
17 the loss of points or other action, the impacted
18 applicants have already been notified and given a separate
19 opportunity to appeal that staff determination. Staff has
20 also provided a notice of the result of the request to
21 each of the requesters.

22 So starting out on application number --

23 MR. ECCLES: Actually, Marni, if I could jump
24 in.

25 MS. HOLLOWAY: Yes.

1 MR. ECCLES: This s Beau Eccles.

2 I'd like to point out, though, that the folks
3 who are requesting an RFAD do not have an appeal right;
4 however, you will see that there are a number of these
5 RFADs where they have created an appeal. Indeed, some of
6 them are later on in the agenda, and I just wanted to
7 mention that some of those people, it would be redundant
8 for them to be speaking against the RFAD and then
9 following it up on their appeal.

10 So I just wanted to be clear that if some of
11 them don't speak on the RFAD, it has no bearing on the
12 fact that they're going to be opposed to this action on
13 the appeal, and it shouldn't be taken as they're accepting
14 it; it's that their appeal right is coming up.

15 MS. HOLLOWAY: Okay. And again, this is a
16 report item, so as we're going through it, if the Board
17 feels that a particular item should be remanded to staff
18 to be reconsidered, we certainly would do that, but
19 acceptance of this report is simply that it's acceptance
20 of this report.

21 MS. BINGHAM: Great. So Marni, before you get
22 started.

23 Do the Board members have any questions for
24 Marni about the process?

25 MR. VASQUEZ: Yes. I'm still a little unclear.

1 So anyone on this list simply has an RFAD filed against
2 it, and the staff is saying that it's a valid deficiency
3 that is correct, the allegation is correct, or not? Or
4 are you making any statement as to whether the RFAD filing
5 was correct or not?

6 MS. HOLLOWAY: Well, as we go through the list
7 there are a couple of them here that are really appealing
8 staff's decision on an application, saying staff didn't do
9 it right, in which case the RFAD rule itself says that
10 that's an invalid use of this tool.

11 There's one that the RFAD is really not about
12 an application issue but a decision that was made outside
13 of the application process and really is not susceptible
14 to review under the RFAD. And as we're going through the
15 list, I'll be telling all of the conclusions that we've
16 made and the actions that we've taken as a result of each
17 individual RFAD.

18 MR. VASQUEZ: Okay. All right

19 MS. HOLLOWAY: All right. Any other questions?

20 MS. BINGHAM: So Marni, the Board's engagement
21 in today at this point is to hear the report, and if the
22 Board would like to remand one of the requests or the
23 staff's position back to staff, then the Board would
24 request that?

25 MS. HOLLOWAY: Yes. Then staff would

1 reconsider that item based on staff's direction and take
2 another path, or if the concern is that the staff would
3 like more information on a particular RFAD or something
4 like that, then we would be bringing that back also.

5 MS. BINGHAM: Great. Okay. I think we're
6 ready. Let's go ahead and proceed with the first one.

7 MS. HOLLOWAY: Okay.

8 The first one is application 20018 called The
9 Park Tower. The request submitted asked the Department to
10 review the application's proximity to application 20063
11 Azalea West, which is within two miles, to determine which
12 application should move forward pursuant to the two-mile
13 same-year rule.

14 Staff determined that an administrative
15 deficiency was not necessary. Both applications have a
16 score of 171 points, tiebreakers determined that
17 application 20063 Azalea West would move forward based on
18 the first tiebreaker.

19 The next one is on the same application, 20018
20 The Park Tower.

21 Should we be pausing in between to see if
22 someone wants to talk about these?

23 MR. WILKINSON: Why don't we just tell the
24 moderator to speak up if someone is wanting to talk on
25 one, and if we have one, go back, no vote has been taken.

1 MS. NORRED: This is Renee. I have a couple of
2 people that want to speak but it's for 20177, which is
3 Avanti Legacy Valor Heights, but I can just chime in.

4 MS. HOLLOWAY: Okay. 20177, I'll take note of
5 that.

6 The next one is also on 20018 The Park Tower.
7 The request asked the Department to determine whether the
8 applicant should have reported the presence of an
9 undesirable site feature because the site is located
10 within 500 feet of the Gachman Metals and Recycling
11 Company. The request also questioned whether the
12 application provided appropriate documentation to qualify
13 for concerted revitalization plan points.

14 Staff sent an administrative deficiency to the
15 applicant requesting information regarding the recycling
16 plant. The application has been terminated due to the
17 undesirable site feature and is currently working through
18 the appeal process. We don't have it at this Board
19 meeting, but we expect to have it at the early July
20 meeting.

21 The next application is 20051 Village at
22 McArdle.

23 MR. DARUS: Madam Chair. We did have one
24 individual who signed up to speak on application 20018.

25 MS. BINGHAM: Okay. Very well. Thank you.

1 MS. NORRED: We're unmuting Valentin Deleon.

2 MS. DELEON: Good morning, Madam Chair, Board
3 members. Can y'all hear me okay?

4 MS. BINGHAM: Yes. Good morning, Valentin.

5 MR. DELEON: Thank you. I'll be really brief.
6 I wasn't planning on speaking on this today, and Marni
7 was exactly right, that we're working through the appeal
8 process, so I can save my comments for the next Board
9 meeting and we'll continue that process through staff. So
10 I just wanted to make sure that this wasn't my last
11 opportunity.

12 So that's it. Thank you.

13 MS. BINGHAM: Thank you.

14 MS. HOLLOWAY: Not at all. I mentioned earlier
15 and as Val points out, any action that we have taken on an
16 application that triggers an appeal right will go through
17 that separate appeal process. This report is simply a
18 report that we've got something that's going to trigger
19 that appeal in some instances.

20 Application 20051 Village at McArdle. The
21 request asked the Department to determine whether the
22 feasibility report included a preliminary site plan that
23 met the requirements of the rule. Staff sent an
24 administrative deficiency to the applicant and accepted
25 its response which detailed how the site plan met each of

1 the requirements.

2 The next one, 20054 Gulf Shore Villas, the
3 request asked the Department to look at a number of items.

4 The OnTheMap report for proximity to jobs points they
5 believe may have been manipulated, the zoning
6 documentation for readiness to proceed, whether the
7 application qualifies for underserved area points, and
8 whether appropriate documentation for utility allowance
9 was provided.

10 We were able to make determinations regarding
11 the utility allowance, zoning and readiness to proceed
12 documentation were acceptable. We found that the
13 application qualified for three points instead of four
14 under underserved area.

15 Regarding the proximity to jobs item, while the
16 request included no evidence that the documentation is not
17 valid, staff was not able to duplicate the report that was
18 included in the application. We sent an administrative
19 deficiency requesting information and the applicant
20 responded he was unable to correctly use the Almanac
21 program and therefore used his own method obtaining the
22 information.

23 The 2020 applications manual includes step-by-
24 step directions for using the Almanac tool. Using those
25 steps we were able to locate the development site and run

1 a report that showed fewer than 2,000 jobs within the
2 required radius which is the lowest number required to
3 score points under this item.

4 The applicant was provided a scoring notice --
5 I'm going to correct what I just said in a moment -- the
6 applicant was provided a scoring notice that denied the
7 points requested for the scoring item and they have
8 appealed. If the executive director denies the appeal,
9 any Board appeal will appear at the early July meeting.

10 Shay is then telling me that the utility
11 documentation was not found acceptable and that will be
12 reviewed and that will be reviewed by the Real Estate
13 Analysis Division. There's a possibility they used the
14 wrong data.

15 Application 20075 New Hope Housing Savoy. The
16 request questions whether the application is qualified for
17 points under proximity to jobs saying that the dates on
18 the Almanac report have been modified.

19 Staff determined that the evidence provided was
20 not sufficient to prove that the date was incorrect and
21 does not believe that the supporting documentation is
22 susceptible to confirmation. We've taken no further
23 action on this item.

24 Application 20077 Lockwood South Apartments.
25 The request asked the Department to determine whether the

1 application should have reported the presence of an
2 undesirable site feature because the site is located in
3 close proximity to the Southern Crushed Concrete Plant.
4 The applicant provided evidence that the rock crushing
5 machine had been removed from the site and the remaining
6 crushing machine would be an acceptable distance from the
7 development. We've taken no further action.

8 20083 Lakeview Preserve. The request questions
9 whether the information provided in the application
10 regarding the site's location in a 100-year flood plain is
11 sufficient to find it eligible. The applicant provided
12 information showing that by meeting local requirements the
13 site will exceed the Department's requirements for
14 developments in a flood plain.

15 There was a question regarding access to the
16 site that has been resolved since the Board book was
17 published, and this application will be moving forward in
18 our review process.

19 Application 20089 Hamilton Wolfe Lofts. The
20 request asked if the concerted revitalization plan
21 described eligible problems that are appropriate for a
22 CRP. In its response to an administrative deficiency, the
23 applicant provided information showing that in fact the
24 CRP does meet the rule.

25 20092 Fiesta Trails. The request questions

1 whether Interstate Highway I-10 and a railroad track
2 constitute barriers under the opportunity index which
3 would make the applicant ineligible for those points.

4 We found that I-10 represents a physical
5 barrier, as specifically described in the rule, along the
6 western boundary of the census tract, and railroad tracks
7 represent a physical boundary along the entire eastern
8 boundary of the census tract, separating the subject tract
9 from the higher-income census tract that would allow the
10 application to qualify for the points.

11 The application was provided a revised scoring
12 notice reducing the score by seven points, and it lost its
13 six pre-application points. The applicant appealed to the
14 executive director and he has denied that appeal. The
15 applicant's appeal will be moving forward to the Board.

16 MS. NORRED: Vice Chair Bingham, this is Renee.
17 We have two speakers for 20092 Fiesta Trails, and that
18 would be Tamea Dula and Tim Alcott.

19 MS. BINGHAM: Great. Thank you very much.

20 MR. WILKINSON: Do they want to wait until
21 their actual appeal item?

22 MS. HOLLOWAY: Which is later in this agenda?

23 MR. DARUS: Madam Chair, are we waiting until
24 6(d) then for these comments?

25 MS. BINGHAM: I think what we wanted you to do

1 was maybe ask the speakers if they have a separate agenda
2 item to maybe clarify for them do they plan to speak now
3 or would they speak at their actual agenda item which
4 is --

5 MS. HOLLOWAY: 6(d).

6 MS. BINGHAM: Yes. Thank you. 6(d).

7 MR. DARUS: They are responding now and it
8 sounds like they would like to wait.

9 MS. BINGHAM: Very good. Thank you very much.

10 MS. HOLLOWAY: Okay. The next application is
11 20144 The Enchanted Gardens. The request questions
12 documentation of site control, whether the application
13 provided appropriate documentation to qualify for points
14 under proximity to jobs, and whether the application
15 provided appropriate documentation for points under input
16 from community organizations.

17 Staff determined that this application is not
18 competitive relative to other applications in the
19 subregion and will likely not be eligible for an award
20 through the collapse. Should the application be
21 considered for award, staff will consider the RFAD
22 materials during review.

23 Application number 20146 Foxtail Cottages. The
24 request states that the application did not use the
25 appropriate database to qualify for proximity to jobs

1 points. The applicant's response to an administrative
2 deficiency showed that they had used jobs outside of the
3 required one-mile radius so that the application does not
4 qualify for those points. The applicant did not appeal
5 that item and retains no appeal rights in the future for
6 that.

7 MS. BINGHAM: Marni, can you repeat the
8 application number on that one? I think I got lost.

9 MS. HOLLOWAY: 20146 Foxtail Cottages.

10 MR. WILKINSON: It's not in the agenda or the
11 Board book.

12 MS. BINGHAM: Did it come in a supplemental?

13 MS. HOLLOWAY: Oh, you know what, it was
14 terminated.

15 MS. BINGHAM: Okay. Gotcha.

16 MS. HOLLOWAY: I must have been working on my
17 presentation from an earlier Board presentation. My
18 apologies.

19 Application 20147 is Kestral on Cooper. The
20 request claims that the application did not provide
21 appropriate documentation to qualify for concerted
22 revitalization plan points. Through the deficiency
23 process and later through the appeal process the executive
24 director has granted the appeal and the application was
25 awarded those points.

1 20150 Palmville Homes. The request asked the
2 Department to determine whether the information provided
3 in a neighborhood risk factors report meets the
4 requirements of the rule. We found that both the rule and
5 the form allow for the applicant to determine the extent
6 and amount of supporting information that pertains to the
7 neighborhood risk factors disclosed and we've taken no
8 further action.

9 20177, this is Avanti Legacy Valor Heights, and
10 as I understand it, we do have some folks that want to
11 speak to this one. The request asked the Department to
12 determine whether the applicant should have disclosed a
13 business that may be a junkyard as an undesirable site
14 feature.

15 In its response to an administrative
16 deficiency, the applicant provided acceptable evidence
17 from the City of McAllen that the business is not a
18 junkyard and no further action has been taken.

19 MS. BINGHAM: Great. Thank you, Marni.

20 Nathan and Renee, do we have speakers for 20177
21 Avanti?

22 MS. NORRED: Yes, ma'am. We have Michael Beard
23 and we are going to unmute him, and then after that we
24 have Jeff Beckler.

25 MS. BINGHAM: Great. Thank you.

1 MR. BEARD: Good morning. Can everyone hear
2 me?

3 MR. VASQUEZ: Yes.

4 MR. BEARD: Great. Good morning, Madam Chair,
5 members of the Board. My name is Michael Beard with BETCO
6 Consulting, and we represent the applicant who submitted
7 the RFAD against application 20177 Avanti Legacy Valor
8 Heights. I wanted to talk to the Board about the facts of
9 the RFAD and why the site in question qualifies as a
10 junkyard.

11 Fact one, to be considered a junkyard for the
12 2020 QAP, a site would need to satisfy the definition of a
13 junkyard found in Section 396.001 of the Texas
14 Transportation Code.

15 Fact number two, when you reference the Texas
16 Transportation Code, junk is defined as copper, brass,
17 iron, steel, ropes, rags, batteries, tires or other
18 material that has been discarded or sold at a nominal
19 price by the previous owner of the material. The term
20 does not include a wrecked vehicle.

21 The site in question that falls within 300 feet
22 of the proposed McAllen tax credit development includes
23 the following items that we believe satisfy the definition
24 of being considered junk: corrugated scrap metal, steel
25 shelves, toilets, bathtubs, old appliances, unused window

1 A/C units, a stripped down jet ski, rusted 55-gallon
2 barrel drums, and a set of rusted vending machines.

3 Fact number three, also from the Texas
4 Transportation Code a junkyard is defined as a place where
5 a business that owns junk, and is operated to store, buy
6 or sell junk and keeps all or part of the junk outdoors
7 until the business disposes of the junk.

8 The site in question is zoned C-3, general
9 business. The applicant states that the site is a private
10 auto repair shop, and if that is the case this is still a
11 business even if it is private. Furthermore, the fact of
12 the matter is if you take all the items identified in the
13 pictures on pages 496 through 512 of item 6(b) supplement
14 RFAD documents included with your Board book off of that
15 site, then you would still left with a slew of junk.

16 So based on the provided facts, what we have is
17 a business that owns junk, stores junk, and keeps all or
18 part of the junk it owns outdoors until the business
19 disposes of the junk. It's important to note that to be
20 considered a junkyard the definition uses the word "or"
21 when stating store, buy or sell junk.

22 This distinction means it only has to satisfy
23 one of those requirements. The business in question does
24 not have to buy or sell the junk, even if it only stores
25 these items that are considered junk outside, it still

1 satisfies the definition of a junkyard.

2 Therefore, per the rules of the 2020 QAP the
3 facts speak for themselves. The site that was identified
4 within 300 feet of the proposed McAllen tax credit
5 development by definition is a junkyard and should have
6 been disclosed at application per the threshold
7 requirements of the section 11.101(a)(2)(A) of the 2020
8 QAP.

9 I thank you for your time and would be happy to
10 answer any questions the Board may have.

11 MS. BINGHAM: Thank you, Michael.

12 Does the Board have any questions of Michael
13 Beard?

14 (No response.)

15 MS. BINGHAM: Does the Board have any questions
16 of Marni as follow up to Michael's comments?

17 (No response.)

18 MS. BINGHAM: Nathan and Renee, do we have
19 another speaker?

20 Thank you, Michael.

21 MS. NORRED: Yes, ma'am. We have Jeff Beckler
22 and we are finding him to unmute him, and then after that
23 we have Michael Tamez.

24 MS. BINGHAM: So just a second. So we're going
25 to have two speakers max representing the requester and

1 two speakers max representing the applicant. So we've had
2 one that represents the requester. Correct? And then
3 we'll have Jeff Beckler speak, and then Renee and Nathan,
4 we can figure out after that what we do with the next
5 speaker.

6 MS. NORRED: Okay. Thank you.

7 MR. BECKLER: Okay. Can you guys hear me?

8 MS. BINGHAM: Yes. Good morning.

9 MR. BECKLER: Okay. Thank you. Good morning,
10 Madam Chair, Board members and staff. My name is Jeff
11 Beckler, also representing the developer that submitted
12 the RFAD.

13 I implore the Board to look at the April 9,
14 2020 photographs on pages 496 through 512 of the RFAD
15 Board book for application 20177 and ask yourself one
16 question: Do you see junk? According to the
17 Transportation Code's definition, this is a junkyard. The
18 city's definition is irrelevant.

19 The QAP does rely on input from the city, it
20 does allow the city's input to override TDHCA's rules in
21 some places, such as the two times per state average per
22 capita and the one-mile, three-year rules.

23 This case in particular is an undesirable site
24 characteristic, and as such, is a threshold requirement
25 and the QAP does not provide any way for it to be

1 overridden by city input.

2 Undesirable site features are covered by
3 Section 11.101 and in paragraph (a) it says a development
4 site cannot be closer than 300 feet to a junkyard and
5 references the Texas Transportation Code for a definition
6 of a junkyard.

7 So with that rule in mind, I would also like to
8 ask the Board this question: Would this photo warrant an
9 applicant to acquire a predetermination or a waiver from
10 staff to mitigate the threshold requirements stated in
11 Section 11.101 of the 2020 QAP? We feel that it would.

12 The applicant claims in their rebuttal that
13 they contacted local municipality in September of 2019 to
14 verify that this was not a junkyard and the city claimed
15 it was not. Where is evidence of that inquiry? It was
16 not included in the full application.

17 The only evidence of that inquiry is a letter
18 dated May 13, 2020 submitted in the RFAD response. At the
19 time of post-application staff considered this to be a
20 junkyard and issued a deficiency letter. Staff should not
21 have allowed a determination by the city to overrule the
22 Transportation Code's definition.

23 We do not disparage the city's letter, and by
24 their rule this may not be considered a junkyard, but it
25 is not their rules that we should be following. We feel

1 that should this recommendation be allowed to move forward
2 it's certainly a catalyst for distortion of the rule.

3 Precedence and every future predetermination is
4 at risk, predetermination that is procedural at the
5 developer level and upheld at the statute level. We
6 further believe the rules and statute we all abide by were
7 overlooked by the applicant and now they're trying to
8 correct that.

9 We sincerely ask that you reexamine the
10 situation and rule against staff's recommendation.

11 I certainly appreciate the Board and the
12 staff's time and the opportunity to speak, and I thank you
13 all.

14 MS. BINGHAM: Jeff, thank you very much.

15 Do the Board members have any questions of
16 staff or Jeff?

17 (No response.)

18 MS. BINGHAM: Okay. Thank you.

19 So Renee and Nathan, you said there's another
20 speaker?

21 MR. DARUS: Yes, Madam Chair. We did have two
22 additional speakers but they appear to be on the same side
23 of the issue as the previous speakers.

24 MS. BINGHAM: Okay. So there's no speakers
25 that are in the queue to speak representing or supporting

1 the applicant?

2 MR. DARUS: That is correct.

3 MS. BINGHAM: Okay. Let's go ahead and move
4 forward then.

5 MR. WILKINSON: I just have one small comment.

6 I think we're kind of limited by the actual statutory
7 definition of junkyard, that it be a business that both
8 owns stuff and is operated to store, buy, or sell junk,
9 and they don't do that, they're not a junkyard, they're a
10 business that has a bunch of junk in their yard.

11 MS. BINGHAM: Hey, Bobby, since you mentioned
12 that, so both of the speakers were mentioning the Texas
13 Transportation Code. Is that the code that we use to make
14 that definition, or do we use a different statute or
15 regulation on what a junkyard is?

16 MS. HOLLOWAY: We specifically cite the Texas
17 Transportation Code in our rules regarding this item.

18 MS. BINGHAM: So Michael mentioned the deal
19 about store, buy or sell and saying that that is any of
20 the three, store it, buy it or sell it, and his position
21 is even if they don't buy it or sell it, they store it,
22 and so that makes it by the Texas Transportation Code a
23 junkyard or junk store.

24 MR. WILKINSON: Right.

25 MS. HOLLOWAY: I am not familiar enough with

1 that particular section of code to respond to that right
2 off the top of my head, and that isn't a question that's
3 come up before that I have some kind of precedent that I
4 have for you.

5 MS. BINGHAM: Okay. No action but I think that
6 I will just make a little mark by that one and then when
7 we're wrapping up if we want to revisit it, then we can do
8 that.

9 MS. HOLLOWAY: Certainly.

10 MS. BINGHAM: Thank you.

11 MS. HOLLOWAY: Okay. The next RFAD is number
12 20181 Avanti Valley View. The request asked the
13 Department to determine whether the application is
14 eligible to compete in the rural set-aside claiming that
15 the earlier submitted request for rural designation should
16 not have been approved.

17 The information staff relied on to determine
18 that the City of Hidalgo, which is designated as rural, is
19 outlined in the Board item. Because the request is not
20 one that falls within the administrative deficiency
21 process contemplated in the RFAD rule, we have not
22 reviewed this matter any further.

23 Application 20184 The Heritage at Abilene. The
24 request asked us to look at a number of items, including
25 qualification for concerted revitalization plan points,

1 historic revitalization, leveraging of private, state and
2 federal resources, and their pre-application
3 participation. They also questioned if the development is
4 infeasible and if it should be terminated for failure to
5 disclose neighborhood risk factors for blighted
6 structures.

7 Staff was able to resolve all of the issues
8 after review and a deficiency process with the exception
9 of the concern regarding the concerted revitalization.
10 The Department had not been provided a document that meets
11 all of the requirements of the rule because the
12 comprehensive plans submitted describes Abilene
13 neighborhoods in general but includes no documentation of
14 a study or recommendations for the specific original Town
15 South area or any other area included in this neighborhood
16 layered empowerment zone. So it's a comprehensive plan
17 and an empowerment zone plan but they don't seem to tie
18 together by looking at specific areas.

19 The previously published application score was
20 reduced by seven points, and the applicant has appealed to
21 the executive director. If that appeal is denied, it will
22 be before you on the July 14 agenda.

23 MS. BINGHAM: Hey, Marni, I apologize. It
24 looks like we actually did have on Avanti Valor there is a
25 speaker, Michael Tamez, who may have been speaking in

1 support of the applicant.

2 Nathan, do you have access to Mr. Tamez now, or
3 no?

4 MR. DARUS: Yes. Mr. Tamez was hoping to speak
5 in favor of staff recommendation, so we do have him, he is
6 unmuted.

7 MR. TAMEZ: Good morning. Can everyone hear
8 me?

9 MS. BINGHAM: Yes.

10 MR. TAMEZ: I apologize for kind of the snafu
11 there. Me and the applicant, I'm actually here on behalf
12 of him, Henry Flores. Also, he's trying to get in as
13 well, he's just having a little technical difficulties on
14 his end to unmute himself, I guess.

15 Well, I want to keep this very short and brief.

16 I am in support of staff recommendation. As they pointed
17 out, we actually met with the City of McAllen on September
18 5, 2019, raising concerns on if this was a junkyard.

19 They assured us that it was not, it did not
20 meet city code or ordinances that deemed it a junkyard.
21 We also got additional support letters from them in
22 addition to local municipality statements stating -- they
23 actually provided us a letter stating that this is not a
24 junkyard.

25 And to the question about the Transportation

1 Code, it by definition does not meet the definition of a
2 junkyard and therefore was not required to be included as
3 part of the application, as the other people have pointed
4 out.

5 However, as they forgot to mention there's
6 other references in the Texas Department of Transportation
7 Code that reference specifically junk and other things
8 like salvage yards, which I think they might be trying to
9 be all looping into one argument here.

10 But the true definition of a junkyard is not
11 what we meet, and again, we did meet with the city, we did
12 have these conversations early. You know, there's nothing
13 disingenuous here that we've done.

14 And if possible, I'd really like to try and get
15 Henry Senior into this meeting as well.

16 MS. BINGHAM: Great. Thank you, Michael.

17 MR. TAMEZ: Thank you for your time.

18 MS. BINGHAM: Don't mute up yet, Michael.

19 Nathan, do you have Henry Senior, Mr. Flores
20 available, or no?

21 MR. DARUS: I'm going to unmute him right now
22 and we'll see if he is available.

23 Mr. Flores, you are unmuted. Mr. Flores, we're
24 showing that you have yourself muted.

25 MR. ECCLES: Madam Chair, while we're waiting

1 on Mr. Flores -- this is Beau Eccles -- since you had said
2 you wanted to circle back to it, Texas Transportation Code
3 Section 396.0013 defines junkyard as "A place or a
4 business that owns junk and is operated to store, buy or
5 sell junk, keeps all or part of the junk outdoors until
6 the business disposes of the junk."

7 So as Executive Director Bobby Wilkinson
8 mentioned, it's not just that it's a business that stores,
9 buys or sells it, it has to be a business that owns it and
10 is operated to store, buy or sell junk.

11 MR. TAMEZ: In this case the city met with the
12 owners and they do not operate a business to buy, sell or
13 store junk.

14 MS. BINGHAM: Thank you. Thanks, Beau.

15 Nathan, were you able to get Mr. Flores, or no?

16 MR. DARUS: No. Mr. Flores is not showing as
17 active.

18 MS. BINGHAM: Very good.

19 MR. TAMEZ: Can I make one --

20 MS. BINGHAM: Actually, I think the time is up.

21 We're going to go ahead and move to the next item, but
22 thank you very much, Michael for your comments.

23 MR. TAMEZ: Thank you for your time.

24 MS. BINGHAM: Okay, Marni.

25 MS. HOLLOWAY: All right. I believe the next

1 one is application 20200, this is Lofts at Temple Medical
2 District. The request asked the Department to determine
3 whether the OnTheMap report submitted in the application
4 qualifies because it was not dated as of October 1 but
5 before pre-application final delivery date.

6 In its deficiency response the applicant
7 provided information showing that the OnTheMap report
8 meets the rule in question. They state: The rule does not
9 establish a requirement that the date on a submitted
10 report be before the pre-application deadline, only that
11 late data set used be the data that is available as of
12 October 1 but before the pre-app final delivery date.
13 This data set did not change during that time period.

14 Staff determined that the OnTheMap report meets
15 the requirement of the rule.

16 That same application, 20200 Lofts at Temple
17 Medical District, the request asked the Department to
18 determine whether the provided OnTheMap report using the
19 2015 data set is acceptable.

20 After reviewing the deficiency response, we
21 concluded that the QAP specifies which data to use and
22 does not allow for an applicant to define its own
23 requirements for scoring. Using the appropriate data set
24 the application will be awarded five points for proximity
25 to jobs. Staff sent a scoring notification to the

1 applicant and they did not appeal.

2 Application number 20223 Campanile on Briar
3 Hollow. The request questions whether the applicant
4 notified the president of the board for the Houston
5 Independent School District elected after the pre-
6 application was submitted. The rule does not require that
7 a person elected to the same jurisdiction be re-notified,
8 so no further action was taken on this RFAD.

9 Application number 20235 Madisonville Estates.

10 The request asked the Department to determine if
11 appropriate evidence of tax-exempt status for the
12 Madisonville Noon Lions Club was provided to qualify for
13 input from community organization point. The applicant
14 has provided evidence of the organization's tax-exempt
15 status which staff has verified with the IRS. We will not
16 be taking any further action.

17 MR. VASQUEZ: I'm sorry. Which application was
18 that?

19 MS. HOLLOWAY: That was 20235 Madisonville
20 Estates.

21 MR. VASQUEZ: Okay. Again, I don't think
22 that's in the Board book either.

23 MR. WILKINSON: I'm showing that one.

24 MR. BRADEN: It's in there.

25 MS. HOLLOWAY: Yes, it's there.

1 MR. VASQUEZ: I jump from 223 to 200.

2 MS. BINGHAM: It's on page 468.

3 MS. HOLLOWAY: In the main Board book it's on
4 page 468.

5 MR. VASQUEZ: Okay, if everyone else has it.

6 MS. BINGHAM: Great. Thank you.

7 MS. HOLLOWAY: Next is application 20240, this
8 is Livingston Pioneer Crossing. The request asked the
9 Department to determine whether staff properly reviewed
10 the application for documentation to qualify for readiness
11 to proceed points.

12 Like I said earlier, per the RFAD rules any
13 RFAD that questions a staff's decision regarding staff's
14 scoring of an application filed by another applicant will
15 be disregarded. Staff also determined that the RFAD
16 question has been addressed through the application, the
17 RFAD does not contain new information.

18 Application number 20264 Juliette Fowler
19 Residences. The request asked the Department to determine
20 whether staff properly reviewed documentation to qualify
21 for sponsor characteristics.

22 Again, the RFAD cannot be used to question a
23 staff decision regarding an application.

24 Also on 20264 Juliette Fowler Residences, the
25 request asked the Department to determine whether the site

1 control is a legally enforceable document because it does
2 not include a price and proof of consideration.

3 Staff reviewed the site control documentation
4 and determined that the option agreement includes
5 sufficient consideration and it was clarified through a
6 deficiency notice the land would be transferred without
7 cost between related entities. We've taken no further
8 action on this item.

9 Application 20272 Westwind of Dumas. The
10 request questioned whether the application should be
11 terminated because site work costs included in eligible
12 basis exceed \$15,000 per unit and the application did not
13 include a letter from a CPA.

14 The assertions in the RFAD were addressed
15 through the application review and deficiency process
16 through which the applicant provided a CPA letter.
17 There's no further action on this item.

18 Application number 20273 La Grange Springs.
19 The request questions whether the development qualifies as
20 a high cost development and whether one of the letters
21 provided appropriately expressed its support for the
22 development

23 Staff review indicated the application as
24 submitted does not qualify for the twelve points requested
25 using the hard cost calculation, but does qualify for the

1 points using the subtotal building cost calculation.
2 Staff review indicated that the letter submitted by the La
3 Grange Chamber of Commerce sufficiently identifies the
4 development and states its support.

5 Application number 20300, this is Ridgecrest
6 Inn Apartments. The request asked the Department to
7 determine whether the documentation provided regarding a
8 neighborhood risk factor meets the requirements in the
9 rule.

10 MS. BINGHAM: Marni, excuse me. Sorry about
11 that.

12 MS. HOLLOWAY: I'm sorry. That one was
13 terminated, Shay sent me. Yes. My apologies.

14 I told Shay this morning that going through
15 these meetings without her sitting right next to me is a
16 little nerve-wracking. She keeps me on track.

17 MS. BINGHAM: It's her fault, yes, definitely.

18 MS. HOLLOWAY: No, it's not her fault, it's my
19 fault, entirely my fault.

20 (General laughter.)

21 MS. HOLLOWAY: Application number 20309, this
22 is Casitas Los Ebanos. The request asked the Department
23 to consider multiple concerns within the application:
24 should they have disclosed an undesirable site feature due
25 to area chemical plants and plans for a windmill farm; did

1 they provide appropriate documentation to qualify for
2 opportunity index leveraging or local government support
3 points; documentation regarding a farmland designation was
4 not provided; the request suggests that there is no
5 zoning; and questions the water and sewer expenses.

6 Staff was able to resolve these issue, with the
7 exception of the local government support, through the
8 deficiency process. The request questions the validity of
9 the February 26, 2020 resolution provided by the City of
10 Bishop to the application.

11 We've since received public comment from other
12 sources about the issue that indicates that the City of
13 Bishop has scheduled a meeting to ratify previous actions
14 taken by council at their February 24, 2020 meeting and
15 consider a resolution in support of the Community
16 Development of Brownsville's application for housing tax
17 credits for the development of affordable housing just
18 north of Bishop, Texas to called Casitas Los Ebanos.

19 In light of this proposed action by the city
20 council, staff determined that the resolution submitted in
21 the application had not been adopted before the full
22 application delivery date. The applicant received a
23 scoring notice and will have the ability to appeal staff's
24 determination.

25 Application 20317 Merritt Edge Senior Village.

1 The request questions whether the application provided a
2 complete OnTheMap report for points under proximity to
3 jobs and whether it included documentation to qualify for
4 points under sponsor characteristics.

5 The applicant's deficiency response explained
6 how the needed documentation was found in other parts of
7 the application and explained what appeared to be fault in
8 the OnTheMap report. There will be no further action on
9 this item.

10 Next is 20329 Fish Pond at Huntsville. The
11 request questions the site work costs included in eligible
12 basis exceed \$15,000 per unit and it cites a missing
13 letter from a CPA.

14 The assertions in the RFAD were addressed
15 through the application review and deficiency process. In
16 response to the administrative deficiency, the applicant
17 provided the CPA letter and staff does not consider this a
18 material deficiency.

19 Next is 20342 Cottages at Cedar Ridge. The
20 requested questioned the application's eligibility for
21 points under readiness to proceed.

22 Staff had previously identified the issue that
23 was in the scoring notice. The applicant appealed to the
24 executive director and was denied. That appeal will be
25 heard later today by the Board.

1 MS. BINGHAM: Marni, I think that Nathan said
2 somebody was going to speak but maybe they're going to
3 speak at the actual agenda item for the appeal on
4 Cottages.

5 MS. NORRED: Vice Chair Bingham, yes, that's
6 correct.

7 MS. BINGHAM: Great. Okay. Thank you.

8 MS. HOLLOWAY: Those are all of our RFAD items.
9 Staff recommends the Board accept the report of third-
10 party requests for administrative deficiency under 10 TAC
11 11.10 of the 2020 Qualified Allocation Plan.

12 MS. BINGHAM: Great. Are there any questions
13 from the Board?

14 MR. VASQUEZ: I had -- go ahead, Paul.

15 MS. BINGHAM: Mr. Braden.

16 MR. BRADEN: I have a question on 20177, the
17 whole junkyard thing. I mean, you look at those pictures
18 and it looks like a junkyard, and I understand that our
19 definition is tied to the Transportation Code, and did
20 staff and Beau have enough opportunity to review the
21 Transportation Code to definitively advise us that it does
22 not fall within that definition? Which I know we have
23 people on each side saying it did, and other people saying
24 no it didn't.

25 MS. HOLLOWAY: Of course, we looked at it in

1 light of our rule and agreed with the local government
2 determination that this was not a junkyard. In general,
3 you know, in a number of places we defer to local
4 government for eligibility determinations under
5 undesirable site features. We have a number of places,
6 and it's actually says in there, if there's a shorter
7 distance under local code that we will accept that as
8 mitigation under our rule.

9 If the Board would like us to take another look
10 at this and bring you back a very clear report on just
11 this item specifically and evaluating against the
12 Transportation Code and the local determinations, of
13 course we'd be happy to do that.

14 MR. BRADEN: Well, because we're tied to the
15 Transportation Code in our rule, I wanted to make sure
16 that that's the rules that we're measuring ourselves
17 against because I do think it's a valid point that the
18 city itself might have different rules in terms of local
19 ordinances and guidance, and they should have their laws,
20 so that's the only question I would have.

21 Beau started speaking to this issue when we had
22 the item up. If he's comfortable that we're clearly
23 within this and he can give us that advice, I'm okay with
24 if Beau is okay with it, but that's the only question I
25 would have.

1 MS. BINGHAM: Beau, are you available?

2 MR. ECCLES: Of course I'm available.

3 We're not beholdng to the Texas Department of
4 Transportation's determination, we're just using their
5 definition. So I believe that it was just in the opinion
6 of staff that there was not sufficient evidence to say
7 that this is a junkyard considering that there was not
8 evidence presented that this both a business that, you
9 know, has the junk and stores it.

10 We had insufficient evidence that would quality
11 if definitively as a junkyard; therefore, the
12 municipality's determination that it was not a junkyard
13 was one that we were comfortable going with.

14 We didn't drill down, we didn't do our own
15 independent investigation, we generally don't do that, but
16 this is not a -- what I want to say is that we're not
17 speaking for the Texas Department of Transportation, we're
18 not saying that it could not be determined to be a
19 junkyard, it's just that for purposes of challenging the
20 application and saying I think it is a junkyard, it would
21 just be, huh, I guess maybe it could be a junkyard isn't
22 really enough to disqualify it as an ineligible site under
23 the rules.

24 MR. BRADEN: I mean, you look at those
25 pictures, I mean, they seem pretty strong.

1 MR. ECCLES: I understand that. The
2 countervailing evidence is that this is a really sloppy
3 auto shop and they have a lot of junk out there.

4 MR. BRADEN: You know, the air conditioning
5 unit, you know, they have washers and dryers as well. I
6 mean, I don't know.

7 MR. VASQUEZ: It looks like a duck, walks like
8 a duck, quacks like a duck.

9 (General laughter.)

10 MR. WILKINSON: We could have residences in the
11 future that have junk in their yard and are they a
12 junkyard, or an electrical contractor at the shop and they
13 have a bunch of scrap wire and broken out equipment out
14 back but they're not operated to store it and sell it. It
15 looks junky.

16 MR. VASQUEZ: From the sounds of it, it sounds
17 like it's hinging upon whether they are in the business of
18 being a junkyard.

19 MS. HOLLOWAY: Uh-huh.

20 MR. VASQUEZ: It's clearly a bunch of junk in
21 the yard, but the business of it, I think DOT says they
22 have to be in the business of it to be defined as a
23 junkyard.

24 MR. BRADEN: But I wonder if somebody walked in
25 there and said, I want to buy that old piece of junk on

1 the side of your yard that's growing all the weeds over, I
2 believe I'd say yeah, I'd go for it.

3 MR. WILKINSON: Well, that would be entrapment,
4 right, if we sent somebody down there and offered to pay
5 them to buy junk or store junk. It might be the first
6 time they would say yes.

7 MR. ECCLES: I'd like to remind the Board that
8 we are not a law enforcement entity.

9 (General laughter.)

10 MS. BINGHAM: Thank you, Mr. Braden. So I have
11 a little marker next to that one. Maybe when we're making
12 our motion we can think through whether or not that one
13 would be included in staff's recommendations or not.

14 Were there any other Board -- I think, Mr.
15 Vasquez, did you have a question about any of the RFADs?

16 MR. VASQUEZ: Yes, and I'm not sure I'm asking
17 this specifically about this RFAD but just general to
18 Marni. On 20317 the Merritt Edge Senior Village, and not
19 that I'm against old people working, but does the OTM,
20 really should that apply to a senior living facility? I
21 mean the proximity to jobs just doesn't make sense if it's
22 a senior/retirement community.

23 MS. HOLLOWAY: So there are a couple of places
24 that let an elderly development -- or we're considering
25 changes to the QAP where like an elderly development would

1 not be able to take advantage of opportunity index points
2 for good schools and would only require that facilities
3 align with the population.

4 So potentially -- and that's something that we
5 certainly could look at for the 2021 rule, although I
6 would point out that there are senior developments that
7 only require one member of the household to be 55, and I
8 can tell you that there are still some folks out there at
9 55 who are working really hard every day.

10 MR. VASQUEZ: I'm 54, so I hear you.

11 MS. HOLLOWAY: Well, I'm 55, so there you go.

12 Yeah, so I see your point. The other point of
13 it too, I think -- and we can talk about this in
14 rulemaking -- is that proximity to those jobs probably
15 also brings proximity to other amenities, so proximity to
16 the facilities where those people are working or proximity
17 to schools.

18 MR. VASQUEZ: I think we can talk about this
19 when we get into some of the QAP meetings.

20 MS. HOLLOWAY: Certainly.

21 MS. BINGHAM: Board members, any other
22 questions on any of the other requests?

23 (No response.)

24 MS. BINGHAM: So would there be a motion --
25 let's see, did I already -- oh, I have a motion, I think.

1 Do I? No, we didn't take a motion on this. Right? So
2 we would entertain a motion for staff's recommendation on
3 the outcome of all of these requests for administrative
4 deficiency, or a motion addressing any requests that you
5 would you like to see different action on.

6 MR. BRADEN: I'd like staff at least to take
7 another look at 20177.

8 MS. HOLLOWAY: Certainly.

9 MR. BRADEN: So I would make a motion to
10 approve staff's recommendation with the exception of
11 20177, where I would request that they take another look
12 at that.

13 MS. BINGHAM: Thank you. So we have a motion
14 from Mr. Braden to approve staff's recommendation with the
15 exception of the RFAD on 20177 Avanti Valor. Is there a
16 second?

17 MR. VASQUEZ: Second.

18 MS. BINGHAM: Mr. Vasquez seconds.

19 Any discussion?

20 (No response.)

21 MS. BINGHAM: All those in favor aye.

22 (A chorus of ayes.)

23 MS. BINGHAM: Opposed?

24 (No response.)

25 MS. BINGHAM: Motion carries.

1 Thank you very much. Great work.

2 We would like to take a -- Bobby, can we take
3 the break right now?

4 MR. WILKINSON: Yes, it's a good time.

5 MS. BINGHAM: Great. Let's take a quick ten-
6 minute break. I have 11:22, so at 11:32 we'll reconvene.
7 Take a quick break. Thank you guys.

8 (Whereupon, a brief recess was taken.)

9 MS. BINGHAM: So we are reconvening the Board
10 meeting. It's 11:33.

11 And Marni, I think we're on item 6(c).

12 MS. HOLLOWAY: Yes.

13 MS. BINGHAM: And if you'll present the item
14 and then I think Michael Lyttle has a letter to read into
15 the record for 6(c).

16 MS. HOLLOWAY: All right. This is
17 presentation, discussion and possible action on timely
18 filed appeal of material deficiencies in housing tax
19 credit application 20030 Akins East under the Department's
20 Multifamily Program rules. The application proposes a
21 new construction of 181 units for an elderly population,
22 located in Austin, that will provide 145 restricted units
23 and 36 market rate units.

24 Staff determined that the application should be
25 terminated due to a number of threshold deficiencies

1 related to architectural drawings omitted from the
2 application. Of course, that's subject to the applicant's
3 ability to appeal.

4 Specifically, our rules for required
5 documentation for application submission include
6 architectural drawings, none of which were included in the
7 application.

8 In the appeal the applicant states that shortly
9 after submitting the application they discovered that the
10 drawings were not included, and their efforts to provide
11 them prior to the end of the application acceptance period
12 fell short.

13 They propose that other documents in the
14 application, namely the rent schedule and a building and
15 unit configurations log provides sufficient mitigation for
16 the absence of the architectural documents.

17 Staff does not agree, as the only item listed
18 in the requirements for architectural drawings that is
19 covered by these forms is the square footage of units.

20 Because the application did not include the
21 documents and information required by rule, staff
22 recommends that the appeal for 20030 Akins East be denied.

23 Be happy to answer any questions.

24 MS. BINGHAM: Does the Board have any
25 questions?

1 (No response.)

2 MS. BINGHAM: Let's read the letter into the
3 record, if we could, and then we'll move forward.

4 Michael.

5 Nathan, can you see if you can get Michael
6 Lyttle?

7 MR. DARUS: I have him.

8 MR. LYTTLE: Can y'all hear me now?

9 MS. BINGHAM: Yes.

10 MR. LYTTLE: All right. The letter is
11 addressed to Marni and the Board from State Representative
12 Cheryl Cole. It reads as follows:

13 "I would like to reiterate my full support for
14 the Akins East community proposed for House District 46.
15 I encourage the TDHCA Governing Board to approve the
16 appeal.

17 "Akins East proposes the most affordable units
18 in all of Region 7. The residents at Akins East will
19 benefit from access to public transportation and the
20 ability to age in place rather than be displaced by rising
21 housing costs in East Austin.

22 "Sincerely, Representative Cheryl Cole, Texas
23 House District 46."

24 Thank you.

25 MS. BINGHAM: Thanks very much.

1 Nathan, would you see if there's people that
2 are going to speak on this item?

3 MR. DARUS: Yes, ma'am. We have Valentin
4 Deleon.

5 MS. BINGHAM: Okay. Give me just a second.

6 So I would entertain a motion from the Board,
7 either action on this item or to hear comment prior to
8 action.

9 MS. THOMASON: I'll move to hear public
10 comment.

11 MS. BINGHAM: Very good. There's a motion to
12 hear public comment. Is there a second?

13 MR. VASQUEZ: Second.

14 MS. BINGHAM: Okay. Mr. Vasquez seconds.

15 All those in favor aye.

16 (A chorus of ayes.)

17 MS. BINGHAM: All right. Nathan.

18 MR. DARUS: Valentin Deleon, you have been
19 unmuted.

20 MR. DELEON: Good morning, Madam Chair and
21 Board members and Director Wilkinson. Can y'all hear me?

22 MS. BINGHAM: Yes. And can you see are you
23 logged in where you'll be able to see the timer?

24 MR. DELEON: Yes, ma'am.

25 MS. BINGHAM: Very good. So let's keep our

1 comments to three minutes. Thank you.

2 MR. DELEON: My name is Val Deleon. I am VP of
3 development for Housing Trust Group, and I'm their
4 representative for Akins East this morning. I'd like to
5 thank staff and Marni for doing such a great job
6 summarizing our circumstances, as painful as it is to
7 hear.

8 This combination really hurts for several
9 reasons, but I'm going to spare you all the sob story and
10 I'll save that for my therapy zoom call later.

11 I'd like to start with the QAP definition of
12 material deficiency, which I'm going to paraphrase in two
13 parts. The first part kind of goes like this: the
14 inability to provide documentation that existed prior to
15 submission of an application to meet threshold
16 requirements is material and may result in termination in
17 the case of threshold items. So this first part seems to
18 indicate that staff could have issued a deficiency asking
19 that we provide evidence that we were in receipt of our
20 architectural plans prior to the application deadline.

21 The second part of the definition reads: it's
22 possible that multiple deficiencies that could
23 individually be characterized as administrative when taken
24 as a whole would create a need for substantial re-review
25 of the application and would be characterized as a

1 material deficiency. So this second part seems to
2 indicate that without the plans the amount of deficiency
3 would be so significant that a comprehensive review could
4 not be complete.

5 I used to work at TDHCA in Multifamily
6 reviewing tax credit applications so I know that the
7 sealed architectural plans is a big deal, but I would
8 argue that architectural plans really don't become
9 critical until Real Estate Analysis conduct their review
10 after Program review.

11 That is to say during program review staff is
12 checking for scoring and their support documentation for
13 that and another big part is consistency, so looking at
14 unit sizes they need to be on the rent schedule,
15 building/unit configuration, unit floor plans, that's four
16 places in the application where staff needs to check and
17 when they're writing a deficiency, they're not just
18 writing one, they're writing four for one issue.

19 So what I'm getting at is that because the
20 application itself is somewhat redundant, there are issues
21 like this that actually create more deficiencies than
22 there are actual inconsistencies.

23 And on the flip side of this argument the
24 additional information can help staff complete a picture
25 of the development, so one example is our development

1 narrative for Akins East, it identifies the number of
2 units, population served, number of buildings and site
3 acreage.

4 So in summary, I just want to say the following
5 points. We haven't benefitted from any additional time.
6 We can prove that we had our architectural plans before
7 the application deadline, and as Marni said, our attempt
8 to get that remedied before the deadline fell short.

9 MS. BINGHAM: Thank you very much, Val. Thank
10 you for your comments.

11 Does the Board have any questions for Mr.
12 Deleon?

13 (No response.)

14 MS. BINGHAM: Okay. Thank you very much.

15 Nathan, is there anyone else to speak on this
16 item?

17 MS. NORRED: No, ma'am.

18 MS. BINGHAM: Thanks, Renee.

19 Marni, any other comments that you'd like to
20 make?

21 MS. HOLLOWAY: I believe that Val's description
22 of Program's review of the architectural drawings is not
23 actually complete. We look at a number of items beyond
24 the units themselves, we review for accessible routes, we
25 review for -- I'm looking at the building and floor plan

1 rule -- we look for accessible units, we look for the net
2 rentable area calculations, and the Program review looks
3 at a number of things within the architectural drawings.

4 And the argument that they aren't really
5 reviewed until they get to Real Estate Analysis, yes, Real
6 Estate Analysis does take a deeper dive into the drawings,
7 but that's still part of the entire application review
8 process, it's not separate from, it's part of the entire
9 review process, and a deficiency in an REA review is the
10 same as the deficiency in a Program review.

11 MS. BINGHAM: Thanks.

12 So if there are no further questions --

13 MR. VASQUEZ: I'm sorry. I have one quick
14 question.

15 MS. BINGHAM: Yes, Mr. Vasquez.

16 MR. VASQUEZ: Marni, I'm a little bit unclear
17 as to did they try to submit the architectural plans
18 before the filing deadline?

19 MS. HOLLOWAY: They did attempt to and included
20 in the Board book is a printout of the upload into our
21 Serv-U folders that shows when they were attempting to add
22 those architectural drawings to the record, and that's on
23 page 484 of your Board book.

24 MR. VASQUEZ: But we're not accepting their
25 attempt?

1 MS. HOLLOWAY: That attempt was too late for
2 the application deadline.

3 MR. VASQUEZ: Okay. So it was late.

4 MS. HOLLOWAY: Uh-huh.

5 MS. THOMASON: And Marni, was that attempt
6 successful?

7 MS. HOLLOWAY: It was ultimately. I don't
8 believe -- Shay is talking to me. Ultimately they were
9 submitted. I can't tell from the Board book exactly when
10 that happened.

11 MS. THOMASON: But in their first upload it
12 wasn't. When they went back to subsequently upload it,
13 the architectural drawings were not included in that
14 attempt.

15 MS. HOLLOWAY: Correct.

16 MS. THOMASON: Thank you.

17 MS. BINGHAM: So Marni, Mr. Deleon would like
18 to respond. I'm going to have remote just open up his
19 line.

20 And Mr. Deleon, if you could just respond to
21 whatever part of this that you'd like to respond to. I
22 ask you to keep the comments very short.

23 MS. NORRED: We are unmuting him now; he's
24 ready to go.

25 MS. BINGHAM: Hi, Val.

1 MR. DELEON: Thank you, Madam Chair. I just
2 wanted to clarify a few things. One, you know, I'm not
3 trying to minimize the amount of review that goes into
4 these applications. I really wanted really illustrate a
5 point that because of the nature of the application there
6 is a lot of information that is in the application.

7 It's not a mitigation for the architectural
8 plans, but you are able to get a sense of what we're
9 doing. We wouldn't be able to submit an application and
10 fill those exhibits out without having a set of
11 architectural plans.

12 And as far as submittal went, we uploaded a
13 copy of our application and then were doing a final run-
14 through when we realized that those plans were not in
15 there, and just having multiple staff in the PDF at the
16 same time, it got saved incorrectly and was uploaded
17 incorrectly, and we realized that what we thought was an
18 avoidance of a critical error was not and we learned that
19 Monday morning when we were kind of circulating that final
20 file. So that was our attempt, it fell short, but both
21 uploads were before the application deadline.

22 Thank you.

23 MS. BINGHAM: Thank you. Thank you very much.

24 MR. VASQUEZ: Well, again, I'm confused as to
25 the timing that I'm seeing on here. Was the deadline

1 February 28 at 5:00 p.m.?

2 MS. HOLLOWAY: At 5:00 p.m.

3 MR. VASQUEZ: So if I see the full app revised,
4 that PDF, it shows as being submitted February 28 at 4:55
5 p.m.

6 MS. HOLLOWAY: And that revised application
7 still did not include the drawings.

8 MR. VASQUEZ: Oh, it still not include it.

9 MS. HOLLOWAY: Correct.

10 MR. WILKINSON: Marni, when did we actually get
11 the architectural drawings?

12 MS. HOLLOWAY: I believe the week after the
13 application deadline. Remember the application deadline
14 was on a Friday, and as Val mentioned, they realized in
15 circulation internally on their side on Monday that the
16 drawings were not there. Shay is telling me that we
17 received the applications in May.

18 MS. BINGHAM: That we received the
19 architectural drawings?

20 MS. HOLLOWAY: We received the drawings in May,
21 actually May 7.

22 MR. VASQUEZ: And again, I guess I'm trying to
23 figure out whether or not to give them a break. Did they
24 communicate to staff during the following week that, hey,
25 we did not include the architectural drawings?

1 MS. HOLLOWAY: I believe they did shortly after
2 the application deadline let us know that the drawings
3 were not included, and at that point we also, I believe,
4 had the application under review and realized it
5 ourselves.

6 MS. THOMASON: I guess my question would be why
7 such a long wait between recognizing it at the very first
8 of March and not submitting them until May 7?

9 MS. HOLLOWAY: I can't answer that question.
10 Perhaps Val is still available and he can share that
11 information from his side.

12 MS. BINGHAM: Nathan, are you able to get Val
13 back again?

14 MR. DARUS: I will unmute him, yes.

15 MR. DELEON: Thank you.

16 So Ms. Thompson, the reason why we waited so
17 long really was, you know, when we identified the issue we
18 thought -- we went through a ton of scenarios of what was
19 the best way to respond, and really out of respect for the
20 application process and staff's time, we thought it best
21 to just wait.

22 There was a chance that we weren't even going
23 to be competitive, so why create an issue for staff that
24 they needed to fix immediately, you know, if we weren't
25 going to be competitive and we wanted to just let that

1 application process play out, which, you know, at the end
2 of the day may not have been the correct course of action.

3 But I do want to say that those plans have sat
4 on our server kind of hermetically sealed. We haven't
5 touched them or messed with them; they are as received
6 them on February 28, which we have provided evidence to
7 staff, the email from our architect kind of confirming
8 plans and date stamped which I believe is in your Board
9 book.

10 MS. BINGHAM: Thank you, Mr. Deleon.

11 Any other questions from the Board?

12 (No response.)

13 MS. BINGHAM: If not, I would entertain a
14 motion on item 6(c), which would be appeal timely filed by
15 application 20030 Akins East. Staff recommendation is to
16 deny the appeal.

17 MS. THOMASON: I'd like to make a motion to
18 support staff's recommendation and deny the appeal of this
19 applicant.

20 MS. BINGHAM: We have a motion to approve
21 staff's recommendation to deny the appeal by Ms. Thomason.
22 Is there a second?

23 MR. BRADEN: Second.

24 MS. BINGHAM: I hear a second from Mr. Braden.

25 Any further discussion?

1 (No response.)

2 MS. BINGHAM: All those in favor aye.

3 (A chorus of ayes.)

4 MS. BINGHAM: Opposed?

5 (No response.)

6 MS. BINGHAM: Motion carries on item 6(c).

7 Item 6(d), Marni, are you still up?

8 MS. HOLLOWAY: I'm here.

9 MS. BINGHAM: All right.

10 MS. HOLLOWAY: Item 6(d) is three separate

11 scoring appeals. The first one is presentation,
12 discussion and possible action on timely filed scoring
13 appeals under the Department's Multifamily Program rules
14 for application 20092 Fiesta Trails.

15 This application proposes new construction of
16 85 restricted units for a general population in San
17 Antonio. This application was subject to an RFAD
18 questioning whether the application qualifies for
19 opportunity index points.

20 As a threshold to gain these points, a proposed
21 site must meet one of three criteria. This application
22 claims that it fits under this part of our rule that says
23 the development site is located entirely within a census
24 tract that has a poverty rate of less than the greater of
25 20 percent or the median poverty rate for the region, with

1 a median household income in the third quartile within the
2 region and is contiguous to a census tract in the first or
3 second quartile without physical barriers such as, but not
4 limited to, highways or rivers between and the development
5 site is no more than two miles from the boundary between
6 the census tracts. For purposes of this scoring item, a
7 highway is a limited access road with a speed limit of 55
8 miles per hour or more.

9 For this particular census tract, Interstate 10
10 is the entire western boundary between the site's census
11 tract and two first quartile census tracts, and railroad
12 tracks represent a physical boundary along the entire
13 eastern boundary between the census tract and one first
14 quartile census tract.

15 In response to a deficiency notice prompted by
16 the RFAD, the applicant cited previous findings regarding
17 this same issue on other applications.

18 For applications 18038 and 18162, staff found
19 that there was no barrier, not because there was a
20 crossing but because the barrier between the tracts
21 existed only for a portion of the boundary.

22 Per that finding, the site is in an area south
23 of where the barrier begins and where the contiguous
24 census tracts can be accessed via Clovis Road. Applying
25 the rules of the QAP to this specific situation as it is

1 presented in the submitted application, staff does not
2 believe that there's a barrier between the census tracts
3 that would make the application ineligible for points.

4 The response also cited application 19126 out
5 of last year's round which is located in Arlington where
6 there simply was no barrier between census tracts. The
7 appeal claims that the mere existence of a highway or
8 railroad does not necessarily create a barrier if there
9 are vehicular or pedestrian crossings, although our rule
10 very clearly does not make this allowance.

11 We strongly urge you to acknowledge that mere
12 reference to limited access highways with speed limits of
13 55 miles per hour or more does not mean that such a
14 highway necessarily constitute a barrier when it is
15 designed to provide cross traffic access.

16 If there is no means of crossing that highway
17 without leaving the census tract, then there is a physical
18 barrier. If, however, there are crossing specifically
19 designed for vehicular and pedestrian traffic, then no
20 physical barrier exists.

21 Likewise for railroad tracks, if there are
22 sanctioned level railroad crossings designed for vehicular
23 and pedestrian safety, then there is no physical barrier
24 to the other side of the railroad tracks where a more
25 prosperous census tract may be located.

1 The appeal also suggests that failing to have
2 the development site located in a high median income area
3 can be overcome by having a contiguous census tract with a
4 high median income if there is a capability of travel
5 between the two census tracts, which is exactly how this
6 particular part of the opportunity index threshold
7 criteria came to be was discussions about contiguous
8 tracts with higher incomes.

9 So if this is true, if the barrier doesn't
10 create two very different neighborhoods that would be the
11 case, but this very clearly is not the case here where we
12 have this lower income census tract sandwiched between
13 higher income census tracts with these barriers.

14 While the appeal describes two streets crossing
15 the census tracts, the map actually shows no place to
16 cross between the tracts except at the northern and
17 southern boundaries.

18 The crossing streets are the other two
19 boundaries of the census tract. No residential streets or
20 pedestrian paths connect between the tracts where they
21 border each other, only the major streets that define the
22 northern and southern extremes of the subject tract.

23 Thus the only boundary between the census
24 tracts, as stated in the rule, is the railroad track
25 itself on one side and the highway on the other. This is

1 clearly shown on the backs of pages 533 and 534 in your
2 Board book.

3 As support for its position, the appeal points
4 to the review of application 20233 located in Quinlan, and
5 states that even though 20233 Quinlan Estates has only one
6 singular 80-foot wide point at the intersection of Highway
7 276 and Highway 36, the Department correctly awarded
8 Quinlan Estates with opportunity index points because
9 there is no physical barrier between the Q-3 side of
10 Highway 36 and the Q-2 side of Highway 36.

11 In fact, we determined through our review of
12 that application, Highway 36 is not considered a barrier
13 between the census tracts because it does not run between
14 the subject tract and the first quartile contiguous tract
15 indicated in the application.

16 The appeal also points to application 20024
17 located in Dallas that per the appeal is also requesting
18 Q-3 opportunity index points with census tract crossings
19 similar to Fiesta Trails presumably because they are using
20 the Department's recent and current interpretation of what
21 constitutes a physical barrier.

22 So while staff had not fully reviewed that
23 particular application at the time of publication of the
24 book, review of this particular issue found that there is
25 a Dallas Area Rapid Transit track line that does not

1 represent a boundary because there are at least four
2 crossings along the boundary between the two census
3 tracts.

4 In fact, the application that most closely
5 relates to our current question is 19189 located in
6 Cranbury where last year staff found and the Board agreed
7 that even though a bridge ran over the barrier and
8 connected the two census tracts, there was still a barrier
9 between them.

10 Documents submitted for the Board appeal
11 include an updated map showing Fredericksburg Road as a
12 crossing but this road is a one-way connector. The map on
13 page 554, the arrow on the map seems to indicate that
14 Fredericksburg Road crosses and continues under I-10 when,
15 in fact, this is connection from the road to the
16 northbound frontage of I-10.

17 The previously published application score was
18 reduced by seven points for this opportunity index scoring
19 item and the application lost its six pre-application
20 points subject to their ability to appeal.

21 Staff recommends that the scoring appeal for
22 20092 Fiesta Trails be denied.

23 I'll be happy to answer any questions.

24 MS. BINGHAM: Thank you, Marni.

25 Does the Board have any questions right now for

1 Marni?

2 (No response.)

3 MS. BINGHAM: And Nathan, I understand we have
4 some speakers; this would be for Fiesta Trails.

5 MS. NORRED: Yes. For Fiesta Trails we have
6 four speakers, and we have an order that they would like
7 to go in. I can call them out right now.

8 MS. BINGHAM: Just a second. So is there a
9 motion from the Board to either take action on this item
10 or to hear comment first?

11 MR. VASQUEZ: I move to hear comment.

12 MS. THOMASON: Second.

13 MS. BINGHAM: I hear a motion from Mr. Vasquez
14 to hear comment, a second from Ms. Thomason.

15 MS. THOMASON: Yes.

16 MS. BINGHAM: All those in favor aye.

17 (A chorus of ayes.)

18 MS. BINGHAM: Very good. Okay, Renee, we're
19 ready. We're good with them going in the order that they
20 have requested, and we'll just need to stick to the three
21 minutes.

22 MS. NORRED: Got it. So the first person that
23 will speak is Tim Alcott, followed by Sarah Andre, then we
24 have Nick Walsh, and then we have Tamea Dula at the very
25 end. So we are going to find Tim and unmute him.

1 Tim, you should be ready to go.

2 MR. ALCOTT: Yes. Can you hear me?

3 MS. BINGHAM: Yes.

4 MR. ALCOTT: So I'm Tim Alcott. I'm the real
5 estate legal officer for the San Antonio Housing
6 Authority, and I'm asking the Board to overturn the
7 staff's recommendation and award points to this
8 development.

9 I'm speaking to let the Board know this
10 development is to important SAHA, the City of San Antonio
11 and local residents. It will provide much needed
12 affordable housing to the area.

13 I know this area very well and so I'm going to
14 speak from the common sense perspective and I'll let the
15 other speakers talk about the more technical requirements.

16 I pass over the railroad tracks on DeZavala on a weekly
17 basis; my house is very close to this area.

18 The railroad tracks are by Clark High School in
19 Old San Antonio, has about 2,800 students there. On the
20 other side of the tracks is a local park called Gorrell
21 Park. The kids that go to Clark High School, if you go
22 there when school is in session, you'll see that they pass
23 over those railroad tracks and go over to that park, this
24 local gathering place.

25 You know, it is not two separate neighborhoods,

1 because people pass over this on a regular basis. I ride
2 my bicycle over that railroads tracks on a regular basis
3 as well as I go on to the local trailhead on the other
4 side of the railroad tracks.

5 The TDHCA staff, I want to add here, they do a
6 really good job and I think that if they were to go out
7 there -- I think the challenge has been is this
8 Coronavirus they haven't been able to see the site -- but
9 if they went out there they'd see it's not two separate
10 neighborhoods because people pass over this all the time.

11 It's not something I even think about whenever
12 I go down the road, that that railroad track is there. It
13 is easily passable. It's actually under construction
14 right now, they actually are expanding that. I've heard
15 they're actually adding sidewalks to the side but I'm not
16 positive about that, which makes it even easier.

17 But it is not a barrier, it's not two separate
18 neighborhoods. The kids that go to Clark High School
19 certainly live on both sides of the tracks. My wife, when
20 I started dating her, lived on one side of those tracks
21 and I lived on the other, so we passed over those all the
22 time. We were able to find each other; it certainly
23 wasn't a barrier.

24 But I'll turn it over to the other speakers who
25 are very close to the technical requirements of the rule

1 and have them talk about it.

2 MS. BINGHAM: Thank you.

3 Any questions for Tim?

4 (No response.)

5 MS. BINGHAM: All right. We're ready for the
6 next speaker.

7 MS. NORRED: Sarah, you are up next, and we are
8 finding you to unmute you. You are good to go.

9 MS. ANDRÉ: Thank you. Hi, everyone. For the
10 record, my name is Sarah André, and I'm a consultant to
11 the developer for Fiesta Trails.

12 As you've heard, Fiesta Trails is in a third
13 quartile census tract, it is sandwiched between two first
14 quartile census tracts on the east and west. Our appeal
15 is based on a super simple question: Is there a physical
16 barrier between our tract and the adjacent ones?

17 I find the staff's characterization of the
18 barrier somewhat misleading. We all know what a barrier
19 is. It's an obstacle that prevents access, and in this
20 case in particular movement, movement of people between
21 two areas.

22 I just don't see any way that the frontage road
23 and the railroad tracks between our census tract and the
24 adjacent tracts constitute a barrier. There is a highway
25 but it's above street level. There are five clear points

1 of access between the tracts, four of which have sidewalk,
2 crosswalks and traffic lights. There is may be a five-
3 minute drive or a ten-minute walk between the actual site
4 and the higher income tract. It's very close.

5 In staff's review they stated that the access
6 was only at the northern or southern boundaries, meaning
7 where the two corners meet, and they call that type of
8 access not contiguous. But when they awarded us points
9 for underserved, which also requires that tracts be
10 contiguous, there wasn't an issue.

11 So a tract can't be contiguous under one clause
12 of the QAP and non-contiguous under another. There's also
13 no rule that says you have to have access at a midpoint.
14 This isn't rural West Texas where the census tract is 75
15 square miles, it's a dense urban area. If you lived here
16 you would not perceive any barrier and you wouldn't decide
17 that you wouldn't cross the street for an incredible job
18 opportunity or an amenity that was on the other side.

19 I get why the maps required more scrutiny. I
20 even asked my staff, when we were looking at this, how is
21 the highway not a barrier, and then they showed me the up
22 close photos of the crosswalks and underpasses that
23 provide easy and clear access. The application that was
24 cited from last year in Arlington had one point of access
25 along a state highway with no sidewalk. There was issue

1 approving that as high opportunity.

2 I understand we might have a new interpretation
3 this year and I think it would be wonderful that if staff
4 wanted to clarify their interpretation that they do that I
5 the 2021 QAP and not do it midstream on a case-by-case
6 basis. There are other developments in this round with a
7 similar situation and the only difference is that they
8 haven't had an RFAD.

9 Thank you.

10 MS. BINGHAM: Does the Board have any questions
11 for Sarah?

12 MS. THOMASON: I think I have one question, and
13 I don't know if it's for Sarah necessarily but the comment
14 in the Board information from staff says that the road is
15 a one-way connector. Is there anyone that can speak to
16 that?

17 MS. ANDRÉ: I can. There are five points of
18 access, one of those is a one-way connector. But there is
19 also, I might add, no rule that says it has to be two-way
20 access. I think that's another great point for
21 clarification in the future.

22 MS. BINGHAM: Thank you.

23 Any other questions for Ms. André?

24 (No response.)

25 MS. BINGHAM: Thank you, Sarah.

1 Renee, the next speaker.

2 MS. NORRED: Next we have Nick Walsh on the
3 line, and he is ready to go.

4 MS. BINGHAM: Thank you. Good afternoon.

5 MR. WALSH: So for the record, my name is
6 Nicholas Walsh, and I'm a developer with the NRP Group.

7 Sarah provided a great explanation of the rules
8 as stated in the QAP, as well as precedent from this
9 program year and years past, but I would like to share my
10 observations from frequent visits to the development site.

11 Just last week I watched a mother safely push a
12 stroller, toddler in tow, over the railroad crossing into
13 the high opportunity tract in order to visit Gorrell Park.

14 On DeZavala I saw a man in an electric wheelchair cross
15 the street from the adjacent Q-1 tract into our
16 development's tract. I actually spoke with the gentleman,
17 learning he was heading to H-E-B for his lunch break.

18 That H-E-B is adjacent to our site and part of the Fiesta
19 Trails master plan.

20 Now, these are real-life observations, but let
21 me give you some hard data to back it up. 20,164 cars
22 cross between the tracks at the underpass on Huebner Road
23 every day; 20,896 cross over the railroad on Huebner; on
24 DeZavala 21,914 cross at the underpass, while 12,269 cross
25 over the railroad. And lastly, 20,584 cars cross between

1 the tracks on Fredericksburg Road every single day.

2 Now, in your Board materials we included a link
3 to a 30-second video showing all five crossings and the
4 lack of a barrier. I urge you to click on this link and
5 watch the video to see for yourself.

6 So in conclusion, I would say that it's clear
7 that a barrier does not exist if 96,000 cars, men in
8 wheelchairs, mothers with strollers, and countless others
9 cross between these census tracts every single days in
10 order to access parks, jobs and amenities in these high
11 opportunity areas.

12 We respectfully ask you to restore our high
13 opportunity points, and thank you for your time and
14 consideration today.

15 MS. BINGHAM: Thank you, Nick.

16 Any questions for Nicholas?

17 (No response.)

18 MR. WILKINSON: If you want to, I think we can
19 play the video on the screen. It shows someone walking
20 across.

21 MS. BINGHAM: Remind me again how long is it?

22 MR. WILKINSON: Thirty seconds.

23 MS. BINGHAM: Oh, that's fine. Okay. Very
24 good. Yes, that would be good.

25 MR. WILKINSON: Nathan, can we play the video?

1 MR. DARUS: Absolutely. Give me a couple of
2 seconds to pull it up.

3 MR. WILKINSON: Sure.

4 MS. NORRED: While Nathan is pulling up the
5 video, I just want to remind anyone if you would like to
6 speak on an agenda item, please indicate so in the
7 questions box. Don't forget to put the agenda item, your
8 name, your organization and your position.

9 (A brief video was played.)

10 MS. BINGHAM: Thank you very much.

11 Is Tamea Dula going to speak?

12 MS. NORRED: Yes, ma'am. We are finding her to
13 unmute her. She is good to go.

14 MS. DULA: Thank you. Yes, Tamea Dula with
15 Coats Rose.

16 I am only here -- I think the previous speakers
17 have expressed it very well. Thank you very much for
18 showing the video that we made using photographs
19 previously in the application but showing people actually
20 walking across there.

21 And the staff is really trying to impose a
22 higher level of connectivity on this application than the
23 QAP does, and the QAP really requires that there not be a
24 barrier.

25 We have, I think effectively shown that there

1 is no barrier across the highway and even less across the
2 railroad because it's at ground level. Now, there are
3 legal crossings, you can also illegally cross the railroad
4 tracks. There are no barriers between the two census
5 tracts, and we therefore ask that you find for the
6 appellee and you grant this appeal.

7 MS. BINGHAM: Thank you. Thanks very much,
8 Tamea.

9 Board members, any questions for Tamea? And if
10 not, we'll go back to Marni.

11 Mr. Vasquez, did you have a question?

12 MR. VASQUEZ: Not for Tamea; it will be for
13 Marni.

14 MS. BINGHAM: Marni, could you just follow up
15 on some of the comments?

16 MS. HOLLOWAY: The rule to my mind is very
17 clear regarding the highway. This is a limited access
18 highway, over 55 miles per hour. There are two crossings
19 at Huebner and DeZavala roads. Those are the only true
20 pedestrian crossings. They are at the ends of the census
21 tract. Those same two roads continue over and those are
22 the only legal crossings over the railroad tracks.

23 I think that if you look at the maps that have
24 been included in the book, particularly the one on page
25 534, you can see that there's a very distinct difference

1 crossing from one side to the other on both sides. We
2 hadn't included a railroad as a physical barrier in the
3 scoring item in the past and we may very well in the
4 future, but the whole idea of having a Q-3 census tract
5 share a character with a Q-1 or a Q-2 census tract is that
6 there isn't going to be something that prevents that
7 sharing.

8 And those of you who are familiar with Austin,
9 you know exactly what the issues are between the west side
10 and the east side of I-35. These are very common issues,
11 changes in neighborhoods between these barriers, and
12 that's why that part of that rule exists.

13 MR. WILKINSON: When I heard the appeal, you
14 know, we're constrained by the rule on the highway side,
15 it's a highway that's defined in the rule, but I thought
16 maybe the rail side, you know, there's decent
17 neighborhoods where you can cross the railroad tracks here
18 and there, but it there not being any crossings except at
19 the ends of the census tract made it seem like a barrier.

20 So I'm looking at the map on page 534, and
21 that's where one can see there's a big area, I guess a
22 park, and like a little forest, and you can get there, you
23 know, at the edges. So I guess would you consider that a
24 barrier at the rail side.

25 MR. VASQUEZ: I think I'm a little more

1 concerned about the highway side and the Board or the
2 Department having a consistent distinction between whether
3 it's -- I think we've had some other projects, I'd say
4 that was in San Antonio where we talked about it being an
5 elevated highway the entire way, so there's lots of
6 different ways to get across versus, I guess, here there's
7 just several overpasses that you can walk under.

8 I just know if we're able to define strictly
9 how many overpasses need to be present for someone to walk
10 through, it sounds like staff doesn't think there are
11 sufficient numbers of them here or sufficient elevated
12 highway, which I guess that doesn't even apply here other
13 than the overpasses.

14 MR. WILKINSON: I feel like the rule held me to
15 it didn't matter. If it's above 55 miles an hour, that's
16 just a barrier by the rule. Maybe we need to re-look at
17 that if the Board wants to. I feel like I had no
18 discretion on that side, but the rail side, even a
19 crossing or two within the census tract would have maybe
20 been okay.

21 MS. BINGHAM: So staff's recommendation is to
22 deny the appeal. Are there further questions, or would
23 entertain a motion.

24 MS. THOMASON: I'll make a motion to support
25 staff's recommendation on this appeal.

1 MS. BINGHAM: We have a motion from Ms.
2 Thomason in favor of staff's recommendation to deny the
3 appeal on Fiesta Trails 20092. Is there a second?

4 MR. BRADEN: I'll second it.

5 MS. BINGHAM: So Mr. Braden seconds Ms.
6 Thomason's motion.

7 Is there any further discussion?

8 (No response.)

9 MS. BINGHAM: I'll call for a vote. All those
10 in favor of the motion aye.

11 (A chorus of ayes.)

12 MS. BINGHAM: Opposed?

13 (No response.)

14 MS. BINGHAM: Was that an aye for opposed, Mr.
15 Vasquez, just for the record? I couldn't hear you.

16 MR. VASQUEZ: No. It was an aye for the
17 motion.

18 MS. BINGHAM: All right. Motion to deny the
19 appeal carries. Thank you very much.

20 Marni, we'll move on to 20329.

21 MS. HOLLOWAY: This is presentation, discussion
22 and possible action on timely filed scoring appeals under
23 the Department's Multifamily Program rules for application
24 20329 Fish Pond at Huntsville.

25 The application proposes new construction of 48

1 units for an elderly population in Huntsville, of which 42
2 will be income-restricted.

3 Staff determined that the application was
4 eligible for only 24 points for financial responsibility
5 out of 26 because the application did not include a letter
6 from a third-party permanent lender indicating a review of
7 the development and the principals. The application
8 requests TDHCA Multifamily Direct Loan funds as the only
9 source of permanent financing.

10 The appeal points out that the applicant is
11 unable to get a certification from a permanent lender
12 because the permanent lender is TDHCA itself. Further
13 points out that the application requirements state that no
14 term sheet is required when TDHCA is a lender -- which is
15 true.

16 Because it was impossible for the applicant to
17 receive this certification from TDHCA as the permanent
18 lender, they believe the certification from the
19 construction lender should suffice. This option is only
20 available to certain applications, including supportive
21 housing apps without permanent debt.

22 The applicant has appealed and the executive
23 director denied the appeal noting that although the
24 applicant made a compelling argument, he believed he lacks
25 the legal authority to grant the appeal because of the

1 specificity of the rule.

2 Staff requests that the Board determine whether
3 the application meets the requirements of the rule whether
4 the rule should be waived, also determining whether the
5 applicant qualifies for full points related to financial
6 feasibility.

7 Be happy to take any questions.

8 MR. VASQUEZ: Okay. Let me get this straight.
9 So they did have construction financing in place.

10 MS. HOLLOWAY: Yes.

11 MR. VASQUEZ: And it was impossible for them to
12 get from TDHCA a letter regarding permanent financing
13 because we don't issue those ahead of time.

14 MS. HOLLOWAY: Correct. And this is related to
15 a change in the QAP for 2020. Previously we had allowed
16 construction lenders for any deal to sign off as having
17 performed this review, but when you're talking about long
18 term feasibility, unless it's a construction to perm
19 lender, I don't know that a construction-only lender is
20 looking at the long term feasibility of the development,
21 they're only looking at that very short period.

22 And this is something that we missed when we
23 made this change in the rule that because the rule is so
24 specific, staff and the executive director aren't able to
25 grant these points without Board action.

1 MR. VASQUEZ: Okay. So we made a rule that's
2 impossible to follow under this circumstance, under the
3 circumstance where TDHCA is providing the permanent
4 financing.

5 MS. HOLLOWAY: Correct. And I think that for
6 2021 what we'll do is create some kind of pre-application
7 for direct loan where we could at least establish
8 eligibility under the key points of the direct loan
9 program and have that suffice as that lender review and
10 approval when we are the only permanent debt.

11 MR. VASQUEZ: Again, as far as we can tell,
12 assuming it clears this hurdle, they will qualify for a
13 direct loan?

14 MS. HOLLOWAY: The application has not been
15 through complete review, I believe, and --

16 MR. VASQUEZ: A preliminary review would
17 indicate they're likely to be able to get it from us?

18 MS. HOLLOWAY: Yes. And I'm also bound by I
19 can't say that someone is going to get an award or not
20 until y'all take action and make that award.

21 MR. VASQUEZ: Okay. Well, unless somebody
22 else --

23 MS. BINGHAM: I have a question. So the way
24 that the writing that received says that you'd like the
25 Board to determine whether or not the application meets

1 the requirements of the rule or whether the rule should be
2 waived, and the also determine whether the application
3 qualifies for full points.

4 So if we were to follow kind of Mr. Vasquez's
5 reasoning, would we request waiver of the rule in this
6 specific circumstance, and if so, is there any specific
7 language we need to use relative to requesting the waiver
8 of the rule?

9 MS. HOLLOWAY: Hopefully Beau can help us with
10 that.

11 MS. BINGHAM: Okay. And then we do have a
12 commenter, but I'm holding for just a second on the
13 commenter just to see if we can get some guidance.

14 MR. ECCLES: I can help out on a motion should
15 you choose to go that way.

16 MS. BINGHAM: Okay. Mr. Vasquez, do you want
17 to make a motion now or would you want to hear comment?

18 MR. VASQUEZ: I'll go ahead and make a motion
19 and maybe the commenter will reserve his three minutes.

20 MS. BINGHAM: Great.

21 MR. VASQUEZ: So I would move that for the
22 circumstances of 20329 Fish Pond at Huntsville that the
23 Board waive the rule in question and determines that the
24 applicant qualifies for full points.

25 MS. BINGHAM: Very good.

1 Beau, do we need your help before I call for a
2 second?

3 MR. ECCLES: If it could also be appended, if
4 the members believe that this is the case, that the record
5 establishes that the loss of the ability to obtain these
6 points was both not reasonably foreseeable and was not
7 preventable by the applicant, and that by granting the
8 waiver it better serves the policies and purposes of the
9 Texas Government Code Chapter 2306.

10 MS. BINGHAM: Great. Okay. Just repeat all
11 that, Leo.

12 (General laughter.)

13 MR. VASQUEZ: That's exactly what my motion
14 wanted to say but I left that part out. I incorporate
15 that into my motion.

16 MS. BINGHAM: So we have a motion that includes
17 that the record establishes that the loss of points wasn't
18 within the control of the applicant and that it --

19 MR. ECCLES: Was not reasonably foreseeable or
20 preventable and it better serves the policies and purposes
21 articulated in Chapter 2306 of the Texas Government Code.

22 MS. BINGHAM: And it better serves what, Beau?

23 MR. ECCLES: The policies and purposes
24 articulated in Texas Government Code Chapter 2306.

25 MS. BINGHAM: Okay, that.

1 Do I hear a second?

2 MR. BRADEN: Second.

3 MS. BINGHAM: Mr. Braden seconds that motion.

4 We do have a commenter, we have somebody that
5 wants to comment.

6 MR. DARUS: Yes, ma'am. We have Sandy Watson.

7 Sandy, you are unmuted.

8 MS. BINGHAM: Sandy, are you there? We can't
9 hear you.

10 (No response.)

11 MS. NORRED: She is unmuted.

12 MS. BINGHAM: She may be available just if the
13 Board has questions. Nothing? Okay.

14 So we have a motion by Mr. Vasquez, a second by
15 Mr. Braden. If there's no further discussion, all those
16 in favor aye.

17 (A chorus of ayes.)

18 MS. BINGHAM: Opposed?

19 (No response.)

20 MS. BINGHAM: That motion carries. Thank you
21 very much.

22 Marni, the next one.

23 MS. HOLLOWAY: The next one is presentation,
24 discussion and possible action on a timely filed appeal
25 under the Department's Multifamily Program rules for

1 application 20342, this is The Cottages at Cedar Ridge.

2 This application proposes new construction of
3 64 units for an elderly population in Elgin, of which 40
4 will be restricted.

5 The readiness to proceed scoring item allows
6 five points for a development located in a disaster
7 impacted county declared by the Federal Emergency
8 Management Agency to be eligible for individual assistance
9 within three years preceding December 1, 2019. The
10 proposed development is located in Travis County, which is
11 not an eligible county under the rule.

12 The appeal states that Travis County was
13 included in a FEMA declaration issued on March 22, 2016.
14 The declaration was amended nine times, twice to adjust
15 the incident period, six times to add counties to the
16 declaration, and on March 1, 2017 to indicate a change in
17 FEMA personnel.

18 The appeal suggests that each of these
19 amendments amounts to a new declaration so that Travis
20 County was declared to be a disaster area on March 1,
21 2017, and therefore, within the time frame required by the
22 rule.

23 The appeal also asserts that even if Travis
24 County is not an eligible county, the applicant relied on
25 TDHCA's published guidance, and therefore, TDHCA should

1 deem it eligible.

2 After reviewing the appeal, staff determined
3 that Travis County was declared to be a disaster area on
4 March 22, 2016, and does not qualify under that three
5 years before December 1, 2019. While the amendments
6 establish different dates of declaration for the counties
7 subsequently added, they did not change the declaration
8 date for Travis County.

9 Regarding the reliance question, on November
10 20, 2019 staff published a list of counties eligible for
11 points under readiness to proceed that included Travis
12 County in error. We posted a corrected list two days
13 later on November 22, 2019 and followed the posting that
14 same day with a Listserv announcement explaining the
15 change.

16 Staff recommends that the scoring appeal for
17 20342 The Cottages at Cedar Ridge be denied.

18 I'd be happy to answer any questions.

19 MS. BINGHAM: Does the Board have any questions
20 for Marni?

21 (No response.)

22 MS. BINGHAM: It looks like we have three
23 commenters.

24 We'll entertain a motion either on the item,
25 action on the item, or to hear comment.

1 MR. VASQUEZ: I'd move to hear comment.

2 MS. BINGHAM: Okay. I have a motion from Mr.
3 Vasquez to hear comment.

4 MR. BRADEN: Second.

5 MS. BINGHAM: Mr. Braden seconds. All those in
6 favor aye.

7 (A chorus of ayes.)

8 MS. BINGHAM: Motion carries.

9 Okay, Nathan and Renee, we have commenters for
10 item 6(d), application 20342 The Cottages at Cedar Ridge.

11 MS. NORRED: Yes, ma'am, we actually have a
12 third now, just now. The first one will be Tiffany
13 Cornelius. We are finding her to unmute her. She is good
14 to go.

15 MS. BINGHAM: Great. Just a reminder that
16 we're limiting comments to three minutes. Thank you.

17 MS. CORNELIUS: Good afternoon. My name is
18 Tiffany Cornelius, and I am here on behalf of the
19 owner/developer of application number 20342 The Cottages
20 at Cedar Ridge, located in Elgin, Texas.

21 I would like to begin by thanking you all for
22 giving me the opportunity to speak and consideration of
23 the appeal submitted regarding eligible counties under
24 11.9(c)(8), Readiness to proceed.

25 On November 20, 2019, TDHCA published the list

1 of counties FEMA declared eligible for points under
2 declared disaster areas and readiness to proceed. The
3 proposed development is located in Travis County, and both
4 of the lists published by TDHCA confirmed Travis County
5 was indeed eligible to qualify for points. Section
6 11.9(c)(8) provides that the application is to be eligible
7 for individual assistance within three years preceding
8 December 1, 2019.

9 As outlined in our appeal documentation, FEMA's
10 declaration that Travis County is eligible for individual
11 assistance was first made on June 11, 2016. The initial
12 declaration was complete amended nine times to include
13 additional counties and clarify other administrative
14 matters as shown as amendments to the initial declaration.
15 The last amendment is dated effective as of March 1, 2017.

16 Since FEMA continued amending the initial
17 declaration with the last amendment dated in early 2017,
18 this validates that Travis County continued to receive a
19 FEMA declaration within the three years preceding December
20 10, 2019, as required per Section 11.9(c)(8).

21 It wasn't until we received the TDHCA notice of
22 scoring adjustment we were informed that the final
23 published list had subsequently been updated not once but
24 twice, removing Travis County as eligible.

25 From previous experience with the Department

1 and to our knowledge, these published lists have never
2 been amended to this extent, especially during prime time
3 of the housing tax credit application cycle. We are well
4 aware that mistakes happen and sometimes can be
5 overlooked, but not only did we rely on TDHCA's published
6 guidance but we also performed extensive research to
7 ensure we had all accurate information.

8 Therefore, we believe Travis County did
9 maintain a declaration for individual assistance that
10 remained in force for three years preceding December 1,
11 2019. As a result, we respectfully ask that you grant
12 this appeal to restore the five points for readiness to
13 proceed in order for us to move forward with the proposed
14 development

15 Thank you again.

16 MS. BINGHAM: Any questions for Tiffany? Or
17 Marni, any comments on Tiffany's comments?

18 MS. HOLLOWAY: No. Thank you.

19 Okay. Renee and Nathan, next speaker.

20 MS. NORRED: The next speaker is Cynthia Bast.

21 She is ready to go, and then Robbye Meyer will be the
22 last.

23 MS. BINGHAM: Very good. Cynthia.

24 MS. BAST: Hello. I am Cynthia Bast of Locke
25 Lord. We are representing the applicant and requesting

1 that the Board grant this appeal.

2 I think what you are hearing here is confusion
3 regarding what the rule means when it says that FEMA must
4 have declared a county to be eligible for individual
5 assistance for the three years preceding December 1, 2019,
6 declare being the operative verb here.

7 The problem relates to the fluidity of these
8 declarations. They are made and revised and don't
9 necessarily have a clear termination date. Our client's
10 position is that the ongoing adjustments by FEMA have been
11 modified in a declaration that continues to allow that
12 statement to have eligibility in this circumstance because
13 it's within the three years.

14 If TDHCA intended for the time to be calculated
15 from the date of the initial proclamation, the rule could
16 have been more explicit about that. In absence of the
17 specificity, our client requests that you grant the appeal
18 based on the fact that FEMA continued to modify this
19 declaration until 2017.

20 Thank you.

21 MS. BINGHAM: Thank you, Cynthia?

22 Any other questions? Any questions for Ms.
23 Bast?

24 (No response.)

25 MS. BINGHAM: And Marni, any comments?

1 MS. HOLLOWAY: No, I have no comments.

2 MS. BINGHAM: Thank you.

3 And then who did we say next, Renee?

4 MS. NORRED: We have Robbye Meyer is unmuted.

5 Robbye, you are good to go.

6 MS. BINGHAM: Hi, Robbye.

7 MS. MEYER: Hi. This is Robbye Meyer, and I
8 appreciate the time to speak to the Board.

9 I understand the frustration with the
10 application in this situation, because there are always
11 multiple changes and updates that occur during a cycle.
12 That's why we have a notification process and system put
13 in place that notify applicants and inform them of changes
14 that are made through the Department.

15 This applicant followed some of those changes
16 even after this revision that happened. They used the
17 revised application. So they had gotten notification that
18 these revisions took place, but they chose not to follow
19 this particular one because it didn't benefit their
20 application.

21 It's unfortunate that this revision or
22 correction actually took place; however, it's a
23 fundamental principle that it's the applicant's
24 responsibility to ensure that all information contained in
25 the application is correct.

1 The rules clearly state this, and it's the
2 applicant's responsibility. It's unfortunate, you know,
3 that there was a correction that had to happen, but it
4 happened.

5 We support staff's position for the
6 recommendation to deny the appeal.

7 Thank you.

8 MS. BINGHAM: Thank you, Robbye.

9 Are there any other comments, Nathan and Renee?

10 MS. NORRED: No, ma'am, there are not.

11 MS. BINGHAM: Okay. Any questions that the
12 Board has of Marni, or are we prepared to make a motion on
13 application 20342's appeal.

14 MR. VASQUEZ: I have a question, looking for
15 some clarification. So that was a two-day period in
16 November of 2019 where we had the wrong list including
17 Travis County?

18 MS. HOLLOWAY: Yes, that's correct.

19 MR. VASQUEZ: And so as of November 22, 2019,
20 we listed that Travis County was not eligible.

21 MS. HOLLOWAY: Correct.

22 MR. VASQUEZ: And that list stayed in place
23 until the filing deadline.

24 MS. HOLLOWAY: Yes.

25 MR. VASQUEZ: I'm missing how the applicant is

1 arguing that -- well, I guess they're saying because the
2 disaster declaration kept getting updated that that was an
3 effective reissuing of the -- the clock started again
4 every time they amended it?

5 MS. HOLLOWAY: Right. They have two arguments.
6 One is that that final amendment to the disaster
7 declaration on March 1 of 2017 that indicated in FEMA
8 personnel extended the initial declaration of Travis
9 County and sort of re-upped it on March 1, 2017, so it
10 would meet the requirements of the rule.

11 And they're saying if it's not that, then we
12 should still accept it because of the initial error in
13 posting that log.

14 MR. VASQUEZ: Okay. Well, that error of
15 posting was fixed; I don't see a validity in that. I
16 guess it's just a question of whether we -- I'd actually
17 almost go to Beau on this one -- whether amending the
18 disaster declarations in fact restarted on the clock, was
19 there really a new issuance or not. It sounds like a bit
20 of a stretch to me.

21 MS. THOMASON: This isn't the first time that
22 we've had this issue, and I think we did get clarification
23 from Beau previously.

24 MR. WILKINSON: I would say that it could only
25 be possible if there was a disaster declared that the

1 public assistance was found to be eligible, and then a
2 few months later, based on threshold, damage, whatever, it
3 was okay, now individual assistance is now eligible for
4 this county.

5 That's not what happened here at all. Some
6 other kind of adjustment to a disaster declaration a year
7 or two later has nothing to do with the declaration of
8 eligibility for individual assistance. This declaration
9 came from the Governor's Office.

10 MR. ECCLES: This is Beau.

11 MS. BINGHAM: Hey, Beau.

12 MR. ECCLES: I was just going to say that this
13 declaration was amended nine times, twice to adjust the
14 incident period to May 22, 2016 through June 24, 2016, but
15 then six times to add counties to the declaration and then
16 to indicate a change in FEMA personnel, but the appeal is
17 suggesting that each of these amendments amounts to a new
18 declaration so that Travis County was declared to be in a
19 disaster area on March 1, 2017, but that's not where the
20 declaration regarding Travis County occurred. And that
21 was all in Bobby's responsive letter also.

22 MS. BINGHAM: Okay. Any other discussion on
23 this item? We don't have a motion or a second yet on this
24 item.

25 MR. BRADEN: I'll make a motion.

1 MS. BINGHAM: All right, Mr. Braden.

2 MR. BRADEN: I'll make a motion to adopt
3 staff's recommendation and deny the appeal.

4 MS. BINGHAM: Okay. We have a motion from Mr.
5 Braden to adopt staff's recommendation and to deny the
6 appeal. Is there a second?

7 MS. THOMASON: Second.

8 MS. BINGHAM: Ms. Thomason seconds the motion
9 Any further discussion on this item?

10 (No response.)

11 MS. BINGHAM: All those in favor aye.

12 (A chorus of ayes.)

13 MS. BINGHAM: Opposed?

14 (No response.)

15 MS. BINGHAM: The motion carries.

16 Are we at item 6(e)?

17 MS. HOLLOWAY: We are. Last one for today.

18 Item 6(e) is presentation, discussion and possible action
19 to issue a list of approved applications for 2020 housing
20 tax credits in accordance with Texas Government Code
21 2306.6724(e).

22 The Department's Board is required by the
23 statute to review the recommendations of Department staff
24 regarding applications and issue a list of approved
25 applications each year, in accordance with the QAP, no

1 later than June 30. Also, our statute requires that the
2 Board issue final commitments for allocations of housing
3 tax credits each year no later than July 31.

4 The list we're discussing today is simply a
5 list of applications that are eligible for an award. They
6 have not been terminated or withdrawn from cycle. On July
7 23 you will consider a list of applications that are
8 recommended by staff for award, so no award decisions are
9 being made today.

10 Initially 138 9 percent housing tax credit
11 applications were submitted for this cycle. Prior to
12 actions at this meeting, 13 applications have been
13 withdrawn or terminated. Applications that may be
14 ineligible for award due to requirements of statute
15 related to two-mile/same-year rule, developments reserved
16 for elderly persons are identified on this list with their
17 status indicated.

18 This is the list of approved applications as
19 required by statute. They are approved in the sense that
20 they have yet been identified as having a material
21 deficiency or other defect that would cause them to be
22 ineligible, or if such matters have been identified they
23 are still within their appeal window.

24 As provided by the QAP award recommendation
25 methodology, the Department will not perform a detailed

1 review of all applications. We review priority
2 applications that are most likely to be competitive.
3 Priority applications are based on self-score, preliminary
4 review, and other relevant factors.

5 As staff continues the review process,
6 applications remain subject to the identification of
7 material or administrative deficiencies, revised scoring
8 and/or applications may be found ineligible or to involve
9 ineligible applicants.

10 The list includes the current score for each
11 active application as well as relevant application
12 information. Those applications that have received a
13 final scoring notice are identified in the review status
14 column with C, indicating that Program review has been
15 completed when the Board book was posted.

16 Those applications that are currently under
17 review are identified with UR, and those with N have not
18 been prioritized for review.

19 At this time applications may remain subject to
20 underwriting, completion of any remaining Program review,
21 and a previous participation review. Further, the credit
22 amount reflected on this list is in most cases the
23 requested amount and may change to reflect the recommended
24 credit amount and/or may have conditions placed on the
25 amount in July if recommended for award. The underwriting

1 reports that have been completed to date are posted to the
2 Real Estate Analysis web page.

3 In addition to applications that may be removed
4 from the list for issues of financial infeasibility,
5 applications may also be removed from the list of approved
6 applications as determinations are made on appeals or as
7 the Board determines.

8 Staff recommends that the Board approve the
9 list of active applications for the 2020 competitive
10 housing tax credit round, modified as follows to reflect
11 actions taken at this meeting. Application 20030 Akins
12 East, 20316 Virginia Flats, 20288 Providence at Buna, and
13 20138 The Ella will be removed from this list moving
14 forward.

15 I'll be happy to take any questions.

16 MS. BINGHAM: Are there any questions for Marni
17 on the list?

18 (No response.)

19 MS. BINGHAM: There are no comments on this
20 agenda item, so we'll entertain a motion for approval when
21 the Board is ready.

22 MR. BRADEN: I'll make a motion to approve the
23 list as modified by Marni.

24 MS. BINGHAM: Okay. I have a motion from Mr.
25 Braden to approve the list as modified by Marni. Is there

1 a second?

2 MR. VASQUEZ: Second.

3 MS. BINGHAM: Mr. Vasquez seconds.

4 If there's no further discussion, all those in
5 favor aye.

6 (A chorus of ayes.)

7 MS. BINGHAM: Opposed?

8 (No response.)

9 MS. BINGHAM: And that motion carries.

10 Okay. We're looking into one issue before we
11 move on to open for comments on items that aren't on the
12 agenda, and so we're just going to hold for just a minute.

13 And Bobby, now can I make a couple of comments
14 about Grainger?

15 MR. WILKINSON: I think now would be a good
16 time.

17 MS. BINGHAM: Okay. So for those of you that
18 have joined us today, we lost earlier this month an
19 incredible person, a member of homebuilding and affordable
20 housing community. And most of you know that I've been on
21 the Board probably way too long, but I remember some of my
22 first meetings, and whenever Grainger MacDonald spoke, it
23 was always a voice of wisdom for me. He had such an
24 incredible amount of experience, and when he spoke he was
25 thoughtful and very honest, and I'm sure there's a bunch

1 of folks on this call that see him as a role model also.

2 I happened to look at the website -- I don't
3 know if Justin or any of the other folks are on the phone
4 today -- but I'm just going to read just very briefly
5 something that's on the MacDonald company website.

6 It says, "By any measure, Grainger MacDonald
7 ranked at the very top of the leadership cadre in the
8 North American homebuilding industry. He devoted decades
9 of service to the industry through the Texas Association
10 of Builders and several local homebuilding associations.
11 Grainger has influenced state and federal legislation
12 affecting construction and finance as an industry leader
13 for over two decades.

14 "In addition to a bachelor's degree in real
15 estate and finance from the University of Texas at Austin,
16 Grainger completed graduate work at Wharton School of
17 Finance. Grainger developed over 50 multifamily apartment
18 communities and scores of workforce housing units during
19 his lifetime. His statewide posts and appointments are
20 too numerous to mention, but he was the 2017 chairman of
21 the National Association of Homebuilders and served as a
22 board member on the Federal Home Loan Bank of Dallas."

23 We lost Grainger way too early, and we send our
24 condolences to Justin and the family.

25 Let's see, I know Beau is working on something.

1 Shall we go to general comments on non-agenda items?

2 MR. ECCLES: Actually, I'm down in the command
3 center now, I've left my office, and I have my mask on if
4 I sound a little bit funny.

5 There is a person who wanted to comment on
6 20329, and she is claiming vociferously that we had
7 blocked her. I just don't want to have any sort of
8 appearance of impropriety, and I would suggest that that
9 matter be reopened to allow for her comment and any sort
10 of responsive comment, and then the Board can determine
11 whether or not its motion and second and then subsequent
12 vote if it would like to re-entertain that.

13 MS. BINGHAM: Okay. All right. Beau, then I'm
14 going to ask for a motion to reopen that, if that's okay.

15 MR. BRADEN: Move to reopen 20329.

16 MS. BINGHAM: Okay. I have a motion to reopen
17 is it 20329 Fish Pond?

18 MR. ECCLES: Simply to accept comment.

19 MS. BINGHAM: To accept comment. And I have a
20 motion from Mr. Braden to reopen 20329 Fish Pond, to
21 accept comments. Is there a second?

22 MS. THOMASON: Second.

23 MS. BINGHAM: Ms. Thomason seconds that motion.
24 All those in favor aye.

25 (A chorus of ayes.)

1 MS. BINGHAM: Opposed?

2 (No response.)

3 MS. BINGHAM: Motion carries.

4 Very good. So Nathan or Renee, can we open the
5 line of the commenter that's in the queue for 20329?

6 MS. NORRED: Yes, ma'am, we are doing that
7 right now.

8 MR. DARUS: We are looking for Sandy Watson.
9 We have unmuted your line.

10 Vice Chair Bingham, in the questions box Ms.
11 Watson has indicated that she would prefer to have someone
12 else speak on her behalf. I don't know how you want to
13 handle that.

14 MS. BINGHAM: I thought that whoever spoke had
15 to register.

16 Is Beau still online?

17 MR. ECCLES: Yes, and as a matter of fact, I
18 thought that's what was going on, so if she is unmuted and
19 would like to speak, this is your moment, else the moment
20 will pass.

21 MS. WATSON: Can everyone hear me?

22 MS. BINGHAM: Yes, we can hear you.

23 MS. WATSON: I can't hear you right now so I'm
24 just going to assume that y'all can hear me. Thanks for
25 the nod.

1 Good afternoon, Madam Chair and Board members
2 and staff. And I'm sorry, I don't know what's going on
3 here, but I just wanted to speak on 20329 and mention that
4 while I know that this is a new rule and TDHCA apparently
5 was not prepared with the mechanisms to provide a
6 certification letter, it was still in the rule for the
7 2020 QAP and it could have been approached prior to
8 application.

9 Being that they couldn't get that
10 documentation, that they should have asked for a waiver
11 then and they should have asked for, you know, some
12 document that they tried to at least communicate.

13 We all know that documentation is required for
14 any point items, and they just simply put it in there. If
15 they had tried to communicate, that would have at least
16 been an effort to do that.

17 There was also the option that they could have
18 gone with different third-party financing for the perm
19 lender, and they didn't do that either. So the direct
20 loan was not the only third-party perm lender that they
21 could use, they could have done something else. So this
22 just feels like it's kind of an after the fact, you know,
23 let's move the penalty line and do it.

24 So again, I can't hear y'all, don't know what's
25 going on, but at least you've heard how we feel about

1 that. It's just kind of the 2019 rule, and it shouldn't
2 apply to 2020.

3 Anyway, thank you for your time, and I
4 appreciate your consideration on upholding the staff's
5 original recommendation to deny the appeal. Thank you
6 very much.

7 MS. BINGHAM: Thank you. Thank you very much.

8 So if there's no further action on that item,
9 Beau, do I need to close it back or does the Board need to
10 take any action on the item other than what was previously
11 taken?

12 MR. ECCLES: The Board could simply close its
13 comments on this; however, I'm being told that Cynthia
14 Bast would like to throw in her two cents as well and
15 respond to that, but that's for the Board's consideration.

16 MS. BINGHAM: Okay. I mean, it's open. Okay.

17 MS. NORRED: Cynthia Bast has been unmuted.
18 You're good to go.

19 MS. BAST: Thank you. I'll be brief. Again,
20 this is Cynthia Bast of Locke Lord, and we are
21 representing the applicant that requested that the Board
22 grant the appeal as the action was previously taken.

23 I want to make a couple of clarifications.
24 One, that the staff did not recommend denying the appeal,
25 the staff recommended that the Board make a decision. And

1 secondly, emphasize that as the staff said the applicant
2 did put the statements in their application, it's just
3 that they came from the construction lender, so it was not
4 that there was some substantial thing missing, it was just
5 that they came from the construction lender.

6 Again, I think that the Board made the right
7 decision here. We have a glitch in the rule, and I don't
8 think that the Board under any circumstances meant to make
9 any applicant ineligible for two points simply because of
10 their choice of lender.

11 So I appreciate the action that was taken and I
12 wanted to make these clarifications, and I just ask you to
13 uphold your prior decision. Thank you.

14 MS. BINGHAM: Great. Thank you very much.

15 I would entertain a motion that could include
16 closing this item.

17 MR. VASQUEZ: I'm comfortable with our prior
18 decision so I move to close comment on 20329.

19 MS. BINGHAM: Mr. Vasquez moves to close item
20 6(d) application 20329. Is there a second?

21 MR. BRADEN: Second.

22 MS. BINGHAM: Mr. Braden seconds. Any further
23 discussion?

24 (No response.)

25 MS. BINGHAM: All those in favor aye.

1 (A chorus of ayes.)

2 MS. BINGHAM: Opposed?

3 (No response.)

4 MS. BINGHAM: Motion carries. No additional
5 action was taken on that item. Thank you very much.

6 So now would be the time that we open up for
7 any other comments on items that aren't represented on the
8 agenda.

9 MS. NORRED: Vice Chair Bingham, we have Jason
10 Shaughnessy that wants to provide a public comment.

11 MS. BINGHAM: Great. Thank you very much.

12 MS. NORRED: He is unmuted.

13 MS. SHAUGHNESSY: Hello. Yes, my name is Jason
14 Shaughnessy, and I am providing comment on application
15 20116 in opposition of the Diane Street Villas.

16 First off, the builder did not provide
17 notification to the Shady Acres Neighborhood Association,
18 who is on record with the city as being an organization
19 within the boundaries of the proposed development.

20 Secondly, and I'll keep it brief, is that a
21 development such as this with approximately 108 units,
22 multilevel units, does not adequately have the
23 infrastructure with the surrounding roads, sidewalks, so
24 on and so forth that would be able to accommodate such a
25 facility with the increased traffic in this single-family

1 neighborhood.

2 And as I said, I do respect your time, and I
3 will keep it brief, so I conclude my comments at this time
4 in opposition of 20116, Diane Street Villas.

5 Thank you.

6 MS. BINGHAM: Thank you. Thank you very much,
7 Jason.

8 Are there any other commenters?

9 MS. NORRED: We have no other commenters.

10 MS. BINGHAM: Great. Anything else? Any
11 business from the Board or staff?

12 (No response.)

13 MS. BINGHAM: Okay. Well, this one went, I
14 think, a little more smoothly. Thank everybody for their
15 support and patience, and thank you everyone that
16 commented that honored our three-minute guideline. I
17 think it was greatly helpful. And so then if there's no
18 further business, we'll entertain a motion to adjourn.

19 MS. THOMASON: Motion to adjourn.

20 MR. VASQUEZ: I move.

21 MS. BINGHAM: Let's see, I have a motion from
22 Ms. Thomason and a second from Mr. Vasquez?

23 MR. VASQUEZ: Sure.

24 MS. BINGHAM: Great. All those in favor?

25 (A chorus of ayes.)

1 MS. BINGHAM: Great. Motion carries, meeting
2 is adjourned. Thank you all very much.

3 (Whereupon, at 1:03 p.m., the meeting was
4 adjourned.)

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MEETING OF: TDHCA Board

LOCATION: via telephone and web link

DATE: June 25, 2020

I do hereby certify that the foregoing pages, numbers 1 through 164165, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

DATE: July 2, 2020

(Transcriber)

On the Record Reporting
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