

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

John H. Reagan Building
Room JHR 140
105 W. 15th Street
Austin, Texas

July 12, 2018
8:02 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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P R O C E E D I N G S

1
2 MR. GOODWIN: We will convene the July 12,
3 2018, Board meeting for the Texas Department of Housing
4 and Community Affairs, and we will begin with a roll call.

5 Ms. Bingham?

6 MS. BINGHAM ESCAREÑO: Here.

7 MR. GOODWIN: Mr. Braden?

8 MR. BRADEN: Here.

9 MR. GOODWIN: Mr. Goodwin here.

10 Ms. Reséndiz?

11 MS. RESÉNDIZ: Present.

12 MR. GOODWIN: Ms. Thomason?

13 MS. THOMASON: Here.

14 MR. GOODWIN: Mr. Vasquez?

15 MR. VASQUEZ: Here.

16 MR. GOODWIN: We have a quorum. I would ask
17 Tim to lead us in the Pledge of Allegiance.

18 (Whereupon, the pledges were recited.)

19 MR. GOODWIN: We will begin with the consent
20 agenda. Is there anyone that wants pull anything off of
21 the consent agent or any comments or questions about the
22 consent agenda? If not, I will accept a motion to
23 approve.

24 MR. VASQUEZ: So moved.

25 MR. GOODWIN: A second?

1 MS. RESÉNDIZ: Second.

2 MR. GOODWIN: All those in favor, say aye.

3 (A chorus of ayes.)

4 MR. GOODWIN: Opposed?

5 (No response.)

6 MR. GOODWIN: Next we will go into the action
7 items, and our first action is 2(a), a report of the
8 meeting of the Audit and Finance Committee. Ms. Thomason?

9 MS. THOMASON: Yes. We had a meeting of the
10 Audit and Finance Committee earlier this morning, and at
11 that meeting, Michael Lyttle presented certain policy
12 elements related to the Department's LAR for 2021 -- I'm
13 sorry -- 2020 to 2021.

14 The Committee voted to recommend approval by
15 the full Board, and Mr. Lyttle would be available to
16 answer any questions.

17 MR. GOODWIN: Okay. Any questions for Michael?

18 (No response.)

19 MR. GOODWIN: If not, do I hear a motion to
20 approve?

21 MR. IRVINE: And just for the record, the
22 elements presented including the administrator's
23 statement, the proposed 10 percent reduction schedule
24 requested by the Governor and the Legislative Budget
25 Board, as well as the details of the appropriations

1 request itself, plus there was an extended discussion over
2 earned federal funds.

3 MR. GOODWIN: Okay. Any other questions or
4 discussion? If not, I'll entertain a motion.

5 MR. BRADEN: I'll move to approve.

6 MR. GOODWIN: Move to approve. A second?

7 MR. VASQUEZ: Second.

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

9 (A chorus of ayes.)

10 MR. GOODWIN: Opposed?

11 (No response.)

12 MR. LYTTLE: Mr. Chairman?

13 MR. GOODWIN: Yes, sir.

14 MR. LYTTLE: If I may make one comment about
15 that item? I would really be remiss if I didn't
16 acknowledge some of the hard work of our staff on this
17 project.

18 You know, David Cervantes, our director of
19 administration, CFO, he and his staff did fabulous work;
20 Ernie Palacios, Krissy Vavra, Joe Guevara, Paul Ford, they
21 were all real all-stars. From my staff, Elena Peinado
22 worked tirelessly on this -- on the LAR and helped with
23 performance measures, and also Julie Lang from our Fair
24 Housing Data Management Reporting Division also put in a
25 lot of hours in helping with performance measures.

1 And you know, in some respects, like the
2 competitive tax credit realm, the LAR process is a long
3 process, an arduous process, and really doesn't complete
4 until the -- you know, the end of next session when the
5 budget gets approved hopefully and receive our
6 appropriation.

7 But you know, we've got some great people, and
8 they did a lot of great work on this. So I just want to
9 make sure that they are acknowledged.

10 MR. GOODWIN: Thank you for acknowledging them,
11 and if any of those people are here, would you please
12 stand up so we can say thank you. Thank you.

13 (Applause.)

14 MR. LYTTLE: Thank you.

15 MR. GOODWIN: Thank you, Michael. 2(b).

16 MS. HOLLOWAY: Good morning, Chairman Goodwin,
17 members of the Board. I'm Marni Holloway. I'm the
18 director of the Multifamily Finance Division. Item 2(b)
19 is just a quick report regarding schedule and proposed
20 changes for 2019 QAP and the Multifamily Rules submission.

21 The proposed 2019 QAP is required by statute to
22 be approved by the Board prior to September 30 and sent to
23 the Governor no later than November 15 for his approval,
24 rejection or modification. Staff anticipates posting an
25 initial draft of the QAP on our website in August to

1 solicit informal input, not formal public comment, but to
2 solicit input from stakeholders.

3 We are hoping to have a meeting of the Rules
4 Committee shortly after, and we'll be presenting the
5 proposed version of the QAP to you at the September 6
6 meeting. Statute describes the QAP as setting criteria
7 and priorities for the allocation of tax credits and
8 providing information regarding the administration of and
9 eligibility for low income housing tax credits.

10 Staff believes that compiling all requirements
11 applicable to the 9 percent round will make the rules more
12 usable and more clearly comply with statutory
13 requirements. Therefore, we will be reincorporating most
14 of Chapter 10 into the QAP, so into Chapter 11.

15 Because Chapter 10 will no longer exist in its
16 current form, the corresponding changes will be made to
17 Chapter 12, which is our Multifamily Housing Revenue Bond
18 Rules, and Chapter 13, which is our Multifamily Direct
19 Loan Rule.

20 The Asset Management and Compliance Rules will
21 remain in Chapter 10. That's my report. If there any
22 questions?

23 MR. GOODWIN: Jean, did you want to comment on
24 this report?

25 MS. LATSHA: Yes, just really quickly. Jean

1 Latsha with Pedcor Investments. I've had a little bit of
2 back and forth with staff on this, because I read what was
3 going on, and I have to admit, I was struggling trying to
4 figure out what problem we were trying to solve.

5 I think the rules have been in place the way
6 that they are for a while and there was a lot of thought
7 given to making sure that they were meeting those
8 statutory requirements.

9 There's a statement at the beginning of
10 Chapter 11, I think it is, that talks about incorporating
11 Chapter 10, and looking at the QAP as one document. In
12 order to satisfy those statutory requirements, possibly
13 maybe just a revision to a couple of sentences at the
14 beginning of that, instead of a complete reorganization.

15 If there really is a statutory problem, it
16 might be an easier fix. I haven't delved into this a
17 whole, whole bunch, like I said, just a little bit of back
18 and forth, but I think there's a way to kind of keep the
19 structure that we have, that we've had for several years,
20 that there was a lot of thought given to that structure,
21 and how the development community uses it, as well as
22 staff.

23 I personally think it's working. I don't know
24 that I've heard much from the development community to
25 think it's not working, so if there's a way to keep it, my

1 suggestion would be to keep it. Thanks.

2 MR. GOODWIN: Thank you. Any questions or
3 comments?

4 MR. IRVINE: If I might make a comment on that?

5 MR. GOODWIN: Well, your mic is not on.

6 MR. IRVINE: Sorry. If I may make a comment on
7 that, I don't believe there's any statutory infirmity or
8 problem. I think that this is a matter of clarity and
9 simplicity, and frankly, consistency.

10 It's been pointed out to me by several people
11 that as multiple rules treating a common set of activities
12 tend to evolve, they don't always evolve in complete
13 synchronization, so there is a desire to go through this
14 kind of from the ground up, and ensure synchronization.

15 We also want to follow this Board's perceived
16 policy direction to simplify and streamline. So also, you
17 know, Texas is a great place to invest, and we're
18 attracting lots and lots of new folks to participate in
19 multifamily development, and we think that a single one
20 rule for the Tax Credit Program will make it easier for
21 newbies to come into the world.

22 MR. GOODWIN: Any other questions or comments
23 from the Board? If not, I'll entertain a motion for
24 approval of this report, acceptance and approval.

25 MR. BRADEN: So moved.

1 MR. GOODWIN: Second?

2 MR. VASQUEZ: Second.

3 MR. GOODWIN: Any other discussion? If not,
4 all in favor, say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Okay. We're moving on to item 3,
9 and we've got -- we've had two applications in item 3(a)
10 that have been withdrawn and one that has been approved,
11 so we have one remaining, which is 18020 St. Elizabeth.
12 The others, 18086, 18157 have withdrawn, and 18221 has
13 been approved.

14 MS. HOLLOWAY: Correct.

15 MR. GOODWIN: Good. Okay.

16 MS. HOLLOWAY: All right. Item 3(a),
17 presentation, discussion, and possible action on timely
18 filed scoring and other appeals under 10 TAC Section
19 10.902 of the Department's Multifamily Rules relating to
20 the Appeals Process.

21 This is -- as you mentioned, this is
22 application 18020 for St. Elizabeth Place. Through a
23 letter submitted as public comment, we were informed by
24 the Progressive Fifth Ward Community Association that they
25 had not received notification of the St. Elizabeth Place

1 application as required by statute and the rules.

2 We confirmed that Progressive is a neighborhood
3 association that was on record with the Texas Secretary of
4 State's Office as of the beginning of the application
5 acceptance period -- this is the first test and rule --
6 and that the organization's boundaries included the entire
7 development site. This is the second test.

8 The two tests informed the applicant which
9 neighborhood organizations must receive the specific
10 notifications described by rule and statute. The
11 preapplication and application forms include space to list
12 the neighborhood organizations that have been notified.

13 In this case, Progressive was not listed in
14 either place. The preapplication listed four neighborhood
15 organizations, three of which have the same street address
16 as the Applicant. We issued an administrative deficiency
17 requesting evidence that notification had been sent or
18 that it was not required.

19 The Applicant was not able to provide either.
20 In their response, Applicant described searching city
21 records for neighborhood organizations. Both the statute
22 and the rule specifically call out organizations
23 registered with the county or state.

24 Progressive Fifth Ward is registered with the
25 Secretary of State and a search for Fifth Ward on the

1 website pulls up a name -- pulls up their name and a list
2 of business organizations. A search for Progressive Fifth
3 Ward on that site pulls up the organization directly.

4 So you're able to just search through the
5 Secretary of State website and find them. The Applicant
6 further describes how Progressive was formed in 2017 by a
7 group of board members from Fifth Ward Redevelopment
8 Corporation, which is one of the groups that share an
9 address with the Applicant.

10 They describe the involvement of Progressive
11 members in early development planning and claim that their
12 participation negates the requirement to provide
13 notification because the individuals knew of the
14 redevelopment plan.

15 They also claim they were unaware that
16 Progressive had incorporated. The Applicant also
17 describes sending a letter to Progressive on January 17
18 requesting that they provide a letter of support to the
19 City of Houston, and they claim that they have provided
20 Progressive with the quantifiable community participation
21 packet on February 27.

22 Quantifiable community participation is a
23 method to gain eight points on an application. They state
24 that multiple efforts were made to have Progressive
25 provide comment concerning the project to TDHCA. The

1 requirements for neighborhood organizations that provide
2 input for scoring under QCP are the same as for
3 organizations that must be provided notification.

4 The Applicant goes on to describe a letter sent
5 by State Senator Borris Miles to Progressive regarding the
6 preapplication which included a copy of a part of the
7 notification TDHCA sends to all elected officials. The
8 letter does not contain all of the information required by
9 rule to be in a neighborhood organization notification and
10 it does not fulfill the clear requirement in statute and
11 rule that the Applicant must provide the notification.

12 Further, the addressee on the letter has been
13 redacted, so we're not able to confirm that it was sent to
14 Progressive. The Applicant claims that emails and phone
15 calls to Progressive provide the same information that
16 would have been provided in formal notification, but they
17 fail to produce these emails or any evidence that the
18 information was provided prior to the preapp.

19 Clearly, the Applicant was aware of Progressive
20 Fifth Ward Community Association, and the information
21 confirming that they should be notified was readily
22 available prior to the beginning of the application
23 acceptance period.

24 The full application includes a signed and
25 notarized certification that the preapplication met all

1 threshold requirements and no additional notifications
2 were required. Information provided in the deficiency
3 response indicated that this certification is not accurate
4 and that the application failed to meet the notification
5 requirements.

6 After evaluating the response to the
7 administrative deficiency, staff determined that the
8 Applicant had not adequately proven that they made the
9 required notifications to the appropriate neighborhood
10 organizations.

11 A letter removing the six preapplication
12 points, because the preapp did not meet threshold, and
13 terminating the full app because it also did not meet
14 threshold, was sent to the Applicant. In their appeal,
15 the Applicant restates some information included in the
16 deficiency response and again describes their good-faith
17 effort to identify neighborhood organizations of record.

18 They describe a lack of a list of civic
19 organizations at both the county and state and claim that
20 there has been a change in rule that removed what they
21 call a safe harbor. They are referring to it as a safe
22 harbor.

23 In response to this claim, we've gone back to
24 QAPs from 2013 and forward. All include the language
25 regarding being on record with the county or state. In

1 2017, we clarified that the state agency that maintains
2 records of incorporation is the Secretary of State.

3 As I mentioned earlier, a search of their
4 website did pull up this organization under multiple
5 search modes. The appeal continues to discuss the four
6 organizations that were notified, stating that membership
7 of Progressive in a larger group of neighborhood
8 organizations, which is the Greater Fifth Ward Super
9 Neighborhood 55, which did receive notification, fulfills
10 the requirement.

11 They provide no evidence that the notification
12 provided to Super Neighborhood 55 was passed through to
13 the membership, so it's impossible for us to evaluate that
14 claim. In summary, the notification prior to
15 preapplication was not timely accomplished, as required by
16 statute and the QAP.

17 As a result, the preapplication is rejected.
18 This renders the application ineligible for the preapp
19 points. The notification prior to full application was
20 not timely accomplished as required by statute and by law.

21 As a result, the application has not established -- the
22 Applicant has not established that it met a threshold
23 requirement.

24 This isn't something that can be cured at this
25 point, which presents grounds for termination. Staff

1 recommends that the Board deny the appeal.

2 MR. GOODWIN: Any questions for Marni?

3 (No response.)

4 MR. GOODWIN: If not, do I hear a motion to
5 hear comments?

6 MR. VASQUEZ: So moved.

7 MR. GOODWIN: Second?

8 MS. THOMASON: Second.

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

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: Okay. I'm assuming --

14 MS. ANDRÉ: Good morning. My name is Sarah
15 André, and I am here on behalf of the Applicant, for St.
16 Elizabeth Place. You heard from the staff that the
17 Applicant failed to notify a neighborhood organization,
18 and I think staff did a great job of setting a plate of
19 food in front of you.

20 You've got, you know, your meat and potatoes
21 there, but they did not give you any aroma or flavor of
22 what happened. We understand staff's opinion in this
23 matter. We wholeheartedly disagree with it. Two weeks
24 ago, I stood here before you and told you how proud I was
25 to be part of this team, to be part of this development,

1 and I feel the same way today.

2 Fifth Ward Community Redevelopment Corporation
3 is by design a community-based organization. They are
4 inclusive by nature. They uphold integrity and honesty as
5 their core values. They would never, ever knowingly
6 disregard or un-inform a stakeholder.

7 Progressive Fifth Ward, who has raised these
8 allegations, if you will, they're a splinter group with a
9 \$50 membership fee. That's the base of entry that was
10 previously part of Fifth Ward Civic Club, which received a
11 notification according to the rules.

12 Progressive is also a part of the Greater Fifth
13 Ward Super Neighborhood 55, which likewise received that
14 formal notification. Ms. Erica Hubbard, who leads
15 Progressive, not only received notification of the
16 application, she was involved in the committee that chose
17 the architect for this project and the co-developer for
18 this project.

19 She sat in those meetings, filled out a score
20 sheet and provided an opinion. Her letter to TDHCA, which
21 is in all the packet, dated June 11, where she raised
22 these procedural issues, states very clearly that she
23 received notice prior to the deadline.

24 You've heard all these details and, you know,
25 sort of the who, what, how of the rules, and I am not

1 saying that rules are unimportant. They are important.
2 But there's a time and a place for common sense to come to
3 the fore, and as a Board, as this body has the latitude to
4 exercise its good judgment.

5 In a case like this, you've got some privileges
6 that the staff is not allowed to take. The law states
7 that Applicants must give notice. It doesn't state how,
8 when, what. I think what we take away from that is that
9 what's important is that notice is given, that developers
10 who intend to use federal funds reach out, are forthright
11 with the community in their intent to use those public
12 funds, and what you're going to hear is, that's exactly
13 what happened.

14 I have one final point, if somebody will donate
15 some time. I find it very ironic that one can send a
16 certified letter that never gets opened or, in many, many
17 cases, comes back to my office and that checks the
18 notification box that an organization that was involved in
19 making decisions on the project has not been notified.
20 Thank you.

21 MR. GOODWIN: Any questions for the speaker?

22 (No response.)

23 MR. GOODWIN: Okay. Next?

24 MS. FLANAGAN-PAYTON: Good morning, Board
25 members. As Kathy Flanagan Payton, the CEO of the Fifth

1 Ward Community Redevelopment Corporation and the person
2 responsible for ensuring process and implementation, I can
3 accurately affirm that Erica Hubbard and Progressive
4 received notification, both verbal and written notices,
5 regarding St. Elizabeth, provided by myself and at least
6 two other members of my team before and after the
7 preapplication and application deadline.

8 And quite frankly, I want to share with you
9 that regardless to whether we were using tax credits or
10 not, as the Fifth Ward CRC has long since developed a
11 corporation organizational policy of community building,
12 engagement, outreach and inclusion, Progressive, along
13 with other community groups are always notified and
14 solicit their input in our projects and in our activities.

15 I'm disappointed at the fact that, with the
16 exception of Progressive, every community organization
17 that has a role in that community has provided this
18 project with a letter of support.

19 I will assure you that if I'm guilty of
20 anything, it's over-notification and over-solicitation of
21 requests for support from Progressive. I say that now
22 because I've developed a reputation within the community,
23 because you see, in 1963, the Houston Chronicle's headline
24 read, "A First All the Way Around."

25 And the reason it said that is because I was

1 the first baby born in Houston that year, who also
2 happened to be born at St. Elizabeth Hospital, where my
3 mother also served as a nurse. So in that event, I think
4 I'm special.

5 So every time I walk into a room now I speak
6 and boast about how proud we are of the potential of this
7 adaptive, mixed-use, redevelopment project that is an
8 anchor for Houston's Fifth Ward.

9 Allow me to be very candid, that in this
10 community today, affordable housing is being outpaced by
11 market-rate housing at an alarming rate, and we tried to
12 explain that to you regarding gentrification comments last
13 week.

14 Our notification process is an intentional
15 inclusion strategy to solicit community input that, given
16 the changing demographics in the area, sometimes makes it
17 challenging to reach consensus. I don't want it to get
18 lost.

19 This is why we personally invited four
20 residents to participate on a nine-member selection
21 committee that helped us to develop the RFP, which
22 suggested the use of tax credits, as well as review
23 responses that were received by our respondents.

24 Erica Hubbard and the Progressive Group
25 participated in this process. Each of the Respondent's

1 proposals suggested that we use tax credits to finance
2 this project as one of the most viable strategies. Beyond
3 that, Senator Miles -- if I may complete?

4 MR. GOODWIN: Okay.

5 MS. FLANAGAN-PAYTON: Beyond that, Senator
6 Miles, who just this past November moved his offices to
7 Lyons Village, a tax credit project in the heart of Fifth
8 Ward, and provided residents -- notification to those
9 residents. After receiving this email and this mail from
10 Senator Miles' office, Ms. Hubbard also called me, and we
11 spoke at length about this letter and about the project
12 definition and objectives to assure her that the original
13 proposals had not changed.

14 So I too concur with staff who speaks about the
15 confusion regarding our request for support. They are
16 correct, but we erred on the side of caution, because we
17 notified all of our community stakeholders and continue to
18 do so and engage in dialog and solicit their input about
19 the shaping and the development of St. Elizabeth Place.

20 So in closing, after 25 years as a CEO, I
21 recognize that we cannot satisfy 100 percent of the people
22 100 percent of the time. And this is one of those
23 instances where we're not able to solicit the support of
24 one of 40,000 residents who are excited about this
25 development and cannot wait to see it happen, to create a

1 better place for people to live and work and play in Fifth
2 Ward. Thank you.

3 MR. GOODWIN: Any questions?

4 MR. ECCLES: Just a -- it's a quick question,
5 and it's going to run through any of these presentations
6 because I don't think that we're talking about the caliber
7 of this project whatsoever or the veracity or intentions
8 of the Applicant.

9 None of that is really in play, but my question
10 is going to just deal with the statutory requirements for
11 preapplication and application, and that is, what evidence
12 is in the preapplication that the Applicant notified the
13 Progressive Fifth Ward Community Association?

14 MS. FLANAGAN-PAYTON: We have email
15 communications between myself and my staff. I personally
16 sent an email, I personally called Ms. Hubbard, so has my
17 staff, Jernason Gonny [phonetic], as well as Jessica
18 Thompson, who notified the Applicant, who notified the
19 stakeholder of the definition of this project which
20 outlined the number of units, the financing structure, the
21 detail, the unit mix.

22 Everything about this project was explained in
23 that letter and in those conversations.

24 MR. ECCLES: Now -- and the reason why I'm
25 asking this, and if others want to address the more

1 specific requirements of the statute, because it's going
2 to be repeated, not just at preapplication but at
3 application, it's the same thing.

4 It's evidence in the preapplication, evidence
5 in the application, that Progressive Fifth Ward Community
6 Association was notified, because when we look at the
7 preapp and then we look at the application, there are
8 community organizations listed, and Progressive is not one
9 of them.

10 And then at the application, there's a
11 certification that every one of the community
12 organizations that need to be notified was notified at
13 preapplication, and Progressive is not added to that list.

14 So that's the statutory thing that this Board
15 is having to deal with.

16 MS. ANDRÉ: Sure. And I'd like say those are
17 in the rules and the QAP. They aren't in the statute.
18 The statute doesn't address what one -- or how one does
19 this, and it is common knowledge and commonly done that
20 you can change between preapp and full app. So at preapp,
21 there was no knowledge that Progressive would have fit the
22 development.

23 In particular, on my part, I never heard of
24 Progressive Fifth Ward until February 27. I don't know
25 how much head space you guys have, you know, a day before

1 a Board meeting, but the day before the deadline, I was
2 focused on quantifiable community participation, not did
3 we notify these people at preapp and did they exist at
4 preapp?

5 So between preapp and full app, you've got that
6 ability to say, oh, another group has come to the fore.
7 They are located -- they are listed on page 10 of the
8 Secretary of State between a boxing club and a church.
9 They are difficult to find.

10 So you know, if we want to get into the nitty-
11 gritty, we can. What I have said over and over again is
12 that I believe we meet the statutory obligation to engage
13 with the community and to notify them. We've never said
14 that we met the QAP or the Multifamily Rules' definition
15 of the letter.

16 There was a letter written like that. I have
17 seen it. Ms. Payton believes she sent it; she just simply
18 cannot prove it. They have done a massive file clean-out,
19 and you know, many people would have just created a notice
20 and sent it in to you, and we would not be here today.

21 But these are people of integrity who are here
22 giving you their belief of what happened.

23 MR. GOODWIN: Any other questions?

24 MR. BRADEN: I just have one or two. So --

25 MR. GOODWIN: I think we have a Board question,

1 Sarah, for you.

2 MS. ANDRÉ: For me?

3 MR. BRADEN: Yes.

4 MR. GOODWIN: Uh-huh.

5 MS. ANDRÉ: Yes, sir.

6 MR. BRADEN: You just made a statement that
7 statute doesn't require this. I, like many people on this
8 Board, think this is an exciting project. We were excited
9 about it. But this action item forced me to pull out the
10 statute and read all this stuff in detail.

11 You know, the statute says the preapplication
12 process must require the applicant to provide the
13 Department with evidence that the applicant has notified,
14 and then lists any neighborhood organization on record
15 with the State.

16 I understand you made good-faith efforts and
17 nobody tried to hide anything, but they were on record
18 with the State. It's not -- you know, it didn't --

19 MS. ANDRÉ: I'm not denying that.

20 MR. BRADEN: But you just argued statutorily
21 that that wasn't the case --

22 MS. ANDRÉ: Because --

23 MR. BRADEN: -- and it's not correct that --

24 MS. ANDRÉ: -- what staff is arguing is that
25 we're required to provide a specific type of notice in a

1 specific manner.

2 MR. BRADEN: That's not what staff is arguing.

3 MS. ANDRÉ: That is what they're arguing, and
4 that is what we've been through over and over again.
5 We've looked at this upside down and backwards. I'm going
6 to let the attorney take it.

7 MR. PALMER: So the statute requires that you
8 provide --

9 MR. GOODWIN: Name, please.

10 MR. PALMER: Oh, this Barry Palmer with Coats
11 Rose. Sorry. The statute provides that you must provide
12 notice to any neighborhood organization on record. It
13 doesn't say how that has to happen. The Department's
14 rules require that it be in writing. Statute doesn't
15 require that it's in writing. So --

16 MR. BRADEN: But you're supposed to provide the
17 Department with evidence that it took place --

18 MR. PALMER: Yeah, and --

19 MR. BRADEN: -- and so there were
20 certifications with respect to this organization. The
21 emails and things which may very well took place -- I
22 guess they were not provided as part of the preapp. I
23 mean, where is the --

24 MR. PALMER: But --

25 MR. BRADEN: -- evidence that notice took

1 place?

2 MR. PALMER: Yeah. Well, we are going to be
3 reading into the record here in a minute letters that we
4 have evidencing that the notice took place --

5 MR. BRADEN: As of the preapp date?

6 MR. PALMER: -- but -- yes, as of the preapp
7 date, but we've never read that requirement on the preapp
8 to say that you've got to put all your evidence in your
9 preapplication location that notice was given. All you
10 put in the preapp is certification that notices were
11 given.

12 MR. BRADEN: Right. But that certification did
13 not include this organization.

14 MR. PALMER: That's true.

15 MR. BRADEN: So at the preapp, there was no
16 evidence put in there to indicate notice was given to this
17 organization.

18 MS. ANDRÉ: There is no evidence provided in
19 any preapp for any applicant --

20 MR. BRADEN: I disagree. The certification is
21 evidence. That's what Barry was just saying.

22 MS. ANDRÉ: The certification is what you know.
23 If you read the certification, it says, our knowledge.
24 We have done this to the best of our knowledge. You
25 cannot notify a group you've never heard of. You cannot

1 notify a group that you're unaware is registered in a
2 specific way.

3 I have made that error in the past, and I've
4 notified, you know, Austin Bicycle Club, which has its
5 boundaries as the entire Austin -- all these different
6 groups. You can't do that if you don't know that they
7 have the boundaries -- that they have your site in the
8 boundaries.

9 It's impossible to do that. So the
10 certification is to your knowledge.

11 MR. IRVINE: May I make a comment --

12 MR. GOODWIN: Sure.

13 MR. IRVINE: -- to that point, Mr. Braden? The
14 statute is very clear that you cannot amend or supplement
15 or change your application once filed, with one very
16 narrow exception, and that is in response to an
17 administrative deficiency.

18 An administrative deficiency was provided, and
19 in the Applicant's response to the administrative
20 deficiency, this documentation that's being discussed was
21 not provided. So as a matter of record, we do not believe
22 there is any documentation or other evidence that the
23 notification was provided that is in the application.

24 MR. PALMER: We have some evidence that we'd
25 like to present on that.

1 MR. GOODWIN: Let me ask our counsel a
2 question. Is it appropriate, when this was required to be
3 submitted with the administrative deficiency, to now hear
4 it as an appeal?

5 MR. IRVINE: I believe the appeal rules do
6 provide that the record may not be enlarged upon appeal.

7 MR. PALMER: I don't believe it's appropriate
8 to say that this information that's being presented right
9 now in front of the Board can somehow join the application
10 or preapplication, if -- that said, it's -- that would be
11 the legal import of it, is that this would be
12 demonstrative or argumentative, but I don't believe that
13 it can technically join the application or preapplication
14 right now.

15 MS. BURCHETT: Sally Burchett with Structure
16 Development. Unfortunately, these two folks couldn't take
17 off work and so I'm here reading their testimony sort of
18 as a proxy for them. I'd love to read the letters if you
19 don't mind.

20 MR. ECCLES: That's your call.

21 MS. BURCHETT: Okay. So I have four letters.
22 Two are -- you will care less about, so I will be very
23 brief. I'll read excerpts. The first one's from Bridget
24 Steel, who is a member of the Progressive Fifth Ward
25 Community Association.

1 The second one is from Joetta Stephenson, the
2 president of the Greater Fifth Ward Super Neighborhood
3 No. 55, and then the Fifth Ward Chamber of Commerce and
4 Habitat for Humanity. This is from Bridget Steel.

5 "Dear Ms. Holloway. My name is Bridget Steel
6 and I'm a member of the Progressive Fifth Ward Community
7 Association. I attest that I was fully aware before
8 January 9, 2018 of the proposed adaptive reuse of 110
9 apartments financed with low income housing tax credits
10 with construction commencing as early as 2018.

11 "The planned renovation of St. Elizabeth
12 Hospital for affordable housing is the buzz of our
13 neighborhood and the Progressive Fifth Ward Community
14 Association. The adaptive reuse project is common
15 knowledge and not a result of a private conversation I had
16 with any one individual.

17 "Furthermore, the objections of the Progressive
18 Fifth Ward Community Organization president expressed in
19 the letter to TDHCA dated June 11, 2018 do not reflect the
20 opinions of the Progressive Fifth Ward Community
21 Association at large."

22 And her number and email for questions. And I
23 sent this to staff last night. The second one is from
24 Joetta Stephenson --

25 MR. ECCLES: And I just need to interrupt to

1 contextualize this. This was sent to staff last night.
2 Ms. Steel, Bridget Steel, is not listed on the
3 certification of formation of nonprofit corporation for
4 the Progressive Fifth Ward Community Association as the
5 registered agent for service --

6 MS. BURCHETT: Yes.

7 MR. ECCLES: -- on the organization.

8 MS. BURCHETT: She is a member.

9 MR. ECCLES: As recited in that letter.

10 MS. BURCHETT: Yes. Okay. Thank you.

11 The second letter is from Joetta Stephenson.

12 "Dear Mr. Irvine. As president of the Greater Fifth Ward
13 Super Neighborhood No. 55, I'd like to offer you the
14 following information.

15 "Our neighborhood organization is a parent
16 organization with many members. One of our members is the
17 Progressive Fifth Ward Community Association. We have
18 regular meetings where we provide details of proposed
19 neighborhood developments and happenings, et cetera, to
20 our members.

21 "The Progressive Fifth Ward Community
22 Association president, Erica Hubbard, has attended several
23 of our meetings, including the installation of new
24 officers, during which I became president of the Greater
25 Fifth Ward Super Neighborhood No. 55 on January 3, 2018.

1 "Her super neighborhood attendance document
2 through several of our sign-in sheets Ms. Hubbard was
3 present at the following meetings: January, February,
4 April and June."

5 And she has her number and email too if there
6 are any questions. And then Fifth Ward Chamber of
7 Commerce.

8 "Fifth Ward Chamber of Commerce members and
9 executive committee has attended multiple neighborhood
10 planning meetings." This is by Bridget Dorian.

11 And then Habitat for Humanity goes to say that
12 Fifth Ward CRC has been intentional about making sure the
13 Fifth Ward community and neighbors were included.

14 And so if I just may sum up, we acknowledge
15 that we did not meet the rules or QAP, but we do purport
16 that the Progressive Fifth Ward had notice and knowledge
17 of the project before the preapplication.

18 MR. GOODWIN: Okay.

19 MS. BURCHETT: Thank you.

20 MR. PALMER: Good morning. Barry Palmer with
21 Coats Rose speaking on behalf of the Applicant. And we've
22 had a lot of talk here initially about following the
23 rules, but if we were really following the rules, we
24 wouldn't even be here today, because what triggered all
25 this was an RFAD submitted by Erica Hubbard after the RFAD

1 deadline and without paying the fee.

2 Ms. Hubbard testified at the Houston City
3 Council, and she acknowledged that she had been aware of
4 the project for a couple of years, that she participated
5 as part of the selection committee for the developer, but
6 that at some point, she turned against the project when
7 she learned that they were going to house some veterans in
8 the project.

9 But she was certainly aware of the project for
10 quite some time and had received notice in a number of
11 ways through the Super Neighborhood Group, through
12 conversations and emails with Kathy Payton, and when she
13 failed at City Council to derail the project, she sent an
14 RFAD to TDHCA claiming that she hadn't received proper
15 notice.

16 But she sent that RFAD on June 11, after the
17 June 1 deadline for RFADs, and she didn't send the fee,
18 the check, that you're required to submit with an RFAD.
19 So if staff had properly followed the rules, they would
20 have responded back to Ms. Hubbard saying, You missed the
21 deadline for filing an RFAD, and by the way, you didn't
22 send a check.

23 But instead, they had recommended termination
24 of this application on, you know, a technicality that
25 would not have ever been raised if it weren't for this

1 June 11 RFAD submitted after the deadline, and you know, I
2 guess you could try to call it something else than an
3 RFAD, but if you look in your Board write-up, staff refers
4 to this as being in response to an RFAD that they did this
5 research.

6 So I would request that you acknowledge that we
7 have met the statutory requirement, and that notice was
8 given. This Applicant was -- or this neighborhood group
9 was well aware of the project for quite some time and that
10 you deny the staff request for termination. Thank you.

11 MR. GOODWIN: Any questions?

12 MR. BRADEN: Actually, I have a question maybe
13 more of Tim. So, Tim, how do you respond to that, like
14 that the RFAD came in after the fact and without a fee so
15 it didn't qualify, so --

16 MR. IRVINE: Well, I did not view it as being
17 submitted as an RFAD. I viewed it as somebody who, by
18 statute, was entitled to notice advising us that they had
19 not received a statutorily required notice. The other
20 aspects of the letter talked about various issues with
21 regard to the development, and I frankly ignored them.

22 But I didn't see how staff could ignore a
23 person who was statutorily required to be notified
24 advising that they were not notified. To me, it's -- you
25 know, it's one of those things where it's not just a

1 matter of substance; it's actually a matter of procedure.

2 You know, if somebody says, hey, I hear you're
3 going to court on Monday morning at nine o'clock, and you
4 know you're going to court on Monday morning at nine
5 o'clock, but unless you've been served, that proceeding is
6 not going to go forward, so --

7 MR. PALMER: So most of the RFADs --

8 MR. GOODWIN: Mr. Palmer, just a second.

9 MR. PALMER: Yeah.

10 MR. VASQUEZ: Mr. Irvine, I guess I have a
11 question then, given this counter-technicality that's just
12 been presented by Mr. Palmer: At what point would we say
13 this letter is too late?

14 I mean, if we had already -- today you're
15 saying it's on time, but if this information came up after
16 they had already been qualified -- we'd already deemed
17 them qualified, when then would it be too late?

18 Would it be after we allocated the funds to
19 them and then we find out that they weren't apparently,
20 you know, properly notified? Would that be too late to
21 submit this? Would it be right before they signed the
22 final documents to get the funding, and then we find out,
23 oh, you didn't -- this mystery organization submitted this
24 letter and they shouldn't have been qualified in the first
25 place?

1 MR. ECCLES: Well --

2 MR. VASQUEZ: I mean, at what point do we draw
3 that line, if they're not following the rest of this -- it
4 is a de facto RFAD.

5 MR. ECCLES: I --

6 MR. VASQUEZ: I mean, they missed the deadline
7 and didn't present it properly.

8 MR. ECCLES: Let me answer those questions kind
9 of in order and as presented by this situation. If what
10 was sent in after the RFAD deadline was an allegation that
11 a rule created by this Board, and it was a Board rule, but
12 not a statutory requirement, and it was a request for
13 administrative deficiency, I think that would have just
14 been taken as -- it's too late and there's no check with
15 it.

16 This is a statutory requirement. That's not
17 something within this Board's authority to say it's too
18 late when we have not vested this property interest in
19 this. The award has not been made at this point. The
20 ability to have the process necessary to ask again and
21 allow the ability to appeal to the executive director to
22 come before this Board and show that it had satisfied the
23 statutory requirements was still available.

24 So again, the distinction between RFAD and it's
25 too late, and coming back before the Board, is one of --

1 is it something that this Board could waive as a rule, or
2 enforce in accordance with its RFAD rule? This is
3 actually outside of that.

4 Yes, it is a rule, but it is a rule that is
5 verbatim in many instances quoting the statutory
6 requirement. Thus, when notified prior to award of a
7 statutory infirmity of the preapplication and application,
8 I believe it had to travel this path.

9 MR. VASQUEZ: So up until the actual award is
10 finally made -- you're advising as our counsel that up
11 until the award has been made, new information could come
12 to kill the deal or disqualify a deal? I'm sorry.

13 MR. ECCLES: Well, I'm not going to say, like
14 if somebody comes running in with something, you know, at
15 the next Board meeting and says, it's all got to stop.
16 Recall that what I also said is, with the opportunity for
17 staff to say, respond to this, and for them to appeal to
18 Tim, and then to come before the Board.

19 There was the ability for the process to play
20 out in an organized fashion and allow every step to
21 progress. So that's also part of the sort of sliding-
22 scale property interest being vested in this.

23 MR. BRADEN: And one of the distinctions is
24 that it's a statutory RFAD?

25 MR. ECCLES: It's a principal distinction.

1 Yes.

2 MR. PALMER: So Mr. Eccles, what I understand
3 you to be saying is that if somebody is raising a
4 statutory RFAD, that they're not subject to the deadline
5 and they don't have to pay a fee. So if somebody raises
6 in their RFAD a statutory issue, they don't have to pay
7 the fee and they don't have to abide by the deadline?

8 Is that what you're saying?

9 MR. ECCLES: Mr. Palmer, I said what I said in
10 response to a question from you and from a question from
11 my Board member.

12 MR. GOODWIN: And I don't think the debate is
13 over this process. It's over this statute and this
14 situation that's up here at this point. I think if you
15 want to bring that up as a point, put it on a future
16 agenda and we'll be glad to discuss that. Okay.

17 MR. BRADEN: But in -- I mean, I don't want to
18 drag this on any more than necessary, but there's some
19 validity to that comment, and I'm not sure the answer is
20 no, because if at any time somebody brings to our
21 attention a statutory defect, we have -- and we have
22 enough time to address it, I think we have to address it.

23 You know, you talked about it. It's a process
24 that if somebody brings to our attention a statutory
25 defect, then Tim and staff has this process to go through,

1 and then if the conclusion is there's an actual statutory
2 defect, then we have to address that, and we can't -- I
3 mean, whether they filed the fee or not.

4 MR. PALMER: And we believe that we have
5 satisfied the statutory requirements of providing evidence
6 that notice was given to this neighborhood group.

7 MR. GOODWIN: Okay. Any other questions? Does
8 anybody else want to comment? I see one gentleman --

9 MS. HOLLOWAY: If I may, just --

10 MR. GOODWIN: Okay. Marni?

11 MS. HOLLOWAY: -- to correct the record, this
12 correspondence was received by Ms. Hubbard to our Housing
13 Tax Credit public comment email address. It was submitted
14 as public comment and was well within the deadline for
15 that submission. It was not submitted as an RFAD. I just
16 happened to open it up and read it, you know, before we
17 started putting all the comment together that we'll
18 present to you at the next meeting, and happened upon
19 this.

20 There is provision in, I believe, the third-
21 party -- in the RFAD rule that any party may bring these
22 types of questions to the attention of the executive
23 director outside of the RFAD process.

24 MR. GOODWIN: Okay.

25 MS. HOLLOWAY: I just wanted to correct the

1 record on that.

2 MR. GOODWIN: Okay.

3 MR. KOOGLER: Good morning. I'm David Koogler,
4 president of Mark-Dana Corporation. We have been
5 developing affordable housing using the LIHTC Program
6 since its inception. We develop in Virginia and in Texas.

7 Prior to joining Mark-Dana on a full-time basis, I was
8 partner in the corporate finance sections of two Houston
9 law firms and associate general counsel of an energy
10 company.

11 I'm here today to make comments with respect to
12 TDHCA Application No. 18020, St. Elizabeth Place. My
13 comments may or may not help St. Elizabeth Place, but I
14 feel I need to -- well, I also need to point out that we
15 do have two applications in Region VI urban, one of which
16 may be negatively impacted by the termination of St.
17 Elizabeth Place.

18 But I'm here to ask you to look back at the
19 decisions you've made with respect to these notification
20 provisions and evaluate whether we're taking a consistent
21 approach.

22 I think in order to take a consistent approach,
23 TDHCA should either, one, find that Progressive Fifth Ward
24 Community Association effectively received notice, and
25 therefore reinstate the six points and rescind the

1 termination of the application, or you need to find that
2 proper notice was not given and the applications regarding
3 notification to the new school board president in Houston
4 and in Lubbock, those notifications are also statutorily
5 mandated.

6 In the school board president notification
7 cases, TDHCA found that the new president effectively
8 received notice because she was a board member at the time
9 that the president of the ISD received notice, but she
10 actually never received notice from the applicant.

11 The facts underlying notice to Progressive seem
12 to be analogous to me, analogous to the school board
13 cases. To be consistent with the school board cases, I
14 think TDHCA should find that the president and other
15 members of Progressive effectively received notice prior
16 to the preapplication deadline because they had actual
17 knowledge of the St. Elizabeth development and the St.
18 Elizabeth application.

19 They even worked on the St. Elizabeth
20 development prior to the application deadline. So I urge
21 you to be consistent with the application of these
22 notification rules. They're in the same section of the
23 statute. They're in the same section of the QAP and the
24 rules.

25 I think we either need to take a strict

1 interpretation approach in all cases regardless of the
2 outcome, or a spirit of the rule interpretation in all
3 cases regarding -- regardless of the outcome. I
4 personally favor the spirit of the rule approach, because
5 there are already too many traps in this QAP that can
6 derail a good application. Staff's recommendation with
7 respect to the St. Elizabeth/Progressive notification is
8 based -- I just need to wrap --

9 MR. GOODWIN: Okay.

10 MR. KOOGLER: -- is based on a strict
11 interpretation of the notification rules and requires
12 notification from the Applicant whether or not Progressive
13 had actual knowledge of the St. Elizabeth application or
14 received notification from other than the Applicant.

15 While in the school board president cases, it
16 seems TDHCA used the spirit-of-the-rule approach and did
17 not require notification of the -- from the Applicant to
18 the new school board president because the new school
19 board president already had actual knowledge of the
20 applications.

21 MR. GOODWIN: Okay.

22 MR. KOOGLER: Thank you.

23 MR. GOODWIN: Thank you. Any questions?

24 MR. BRADEN: I have a question. Again, maybe
25 it's more of staff.

1 MR. GOODWIN: We've got a question --

2 MR. BRADEN: In the school board cases that he
3 refers to, school board president cases, none of the
4 school board presidents were showing and complaining that
5 they didn't receive notice.

6 MR. ECCLES: Well -- and this actually may be a
7 process question for Marni. I believe actually the
8 distinction between those two -- it's not really a statute
9 or as much as a rule-based discussion of the election of a
10 school board superintendent taking place, and whether that
11 was actually an election or just the new appointment of a
12 school board superintendent.

13 So Marni, do you have thoughts on that?

14 MS. HOLLOWAY: I believe that that's how we got
15 there, how we landed on that decision. All of the -- both
16 in Houston and in Lubbock, those questions were the result
17 of an RFAD, of RFADs, and in all cases, we either had --
18 actually, in all cases, we had information from the
19 superintendent that they had received notice by virtue of
20 being on the board or in other roles or that when they
21 started the job, the notification was handed to them from
22 the previous --

23 MR. BRADEN: I remember that now, and
24 superintendents aren't elected.

25 MS. HOLLOWAY: Yeah. Well, and I think that,

1 you know, there's a difference between -- the difference
2 here is that it's an organization that's saying, we as an
3 organization were not notified.

4 MR. GOODWIN: Any other questions?

5 MR. VASQUEZ: I have a question. And just
6 seizing upon -- David, I didn't get your last name.
7 Sorry. But just one phrase he used in this, saying --
8 referring to the staff's interpretation of the rules -- is
9 that a fair characterization that it's -- the notice --
10 we're interpreting what the rules or statutes say is
11 deemed as notice?

12 MS. HOLLOWAY: I am applying the plainest
13 reading of the statute, which says the applicant must
14 notify the neighborhood organization that is registered
15 with the county or state.

16 MR. VASQUEZ: But the format of that
17 notification is staff's --

18 MS. HOLLOWAY: Is described in --

19 MR. VASQUEZ: -- interpretation?

20 MS. HOLLOWAY: -- is described in rule, and
21 it's all written out, you know, all very specific about
22 what that notification should contain and we actually
23 provide a template for applicants to use to provide those
24 notifications.

25 MR. IRVINE: And I would layer on one other

1 important element. I think that the question is, does the
2 preapplication and/or the full application, as
3 supplemented or clarified by the response to the
4 administrative deficiency process, set forth a record that
5 provides evidence that the required notification was given
6 by the Applicant?

7 MS. HOLLOWAY: Uh-huh.

8 MR. IRVINE: That's a question.

9 MS. HOLLOWAY: Uh-huh.

10 MR. GOODWIN: Any other questions for Marni?
11 Do you have a comment you wanted to make, sir?

12 MR. KOOGLER: For whatever it's worth, yes.
13 You know, I know that the school board cases also looked
14 at this election appointment distinction, but I'm not sure
15 really, and I also think you probably don't want to
16 revisit this, but I'm not sure it was a valid distinction,
17 frankly.

18 And so it appears, and it has the appearance of
19 in some cases -- we interpret the underlying facts in a
20 manner that results in the outcome that we want and in
21 other cases, we don't because it results in the outcome
22 that we want.

23 I don't think -- and correct me if I'm wrong,
24 but I don't think the statute talks about reading
25 notification at all, whether it's with respect to elected

1 officials or not. I think the statute just says you have
2 to notify these people at preapplication and you have to
3 notify these people at full application.

4 So kind of -- you know, if you didn't renotify
5 these people at full -- at preapp, you still have to
6 notify them at full app, whether you have language in
7 there that says you've got to renotify. Just the reading
8 of those two provisions in the statute would require that
9 renotification.

10 So I'm not sure the election distinction was
11 ever really the distinction that should have been made,
12 but be that as it may, I still think that a strict
13 interpretation of the statute really wouldn't apply to the
14 school board cases, and it clearly is being applied here.

15 I would say bad facts make bad law, and
16 unfortunately we've got some bad facts here, but I hate to
17 see this application lose out on a technicality, because
18 again, it does appear to me -- and I haven't been involved
19 at all, so I'm just listening to the same things you
20 are -- it does appear that Progressive was fully aware --
21 probably was made aware through discussions, emails.

22 So I think you could find that they did receive
23 the statutory notification, that they did receive all of
24 the elements that are contained in the template, even
25 though they did not receive the template. So those are my

1 thoughts. Thank you.

2 MR. GOODWIN: Any additional questions?

3 MR. PALMER: Could I just --

4 MR. GOODWIN: We have a new speaker.

5 MR. PALMER: -- say one other --

6 MR. GOODWIN: Let the new speaker come first

7 and --

8 MR. PALMER: May I have a moment?

9 MR. GOODWIN: Okay, sure.

10 MR. PALMER: I just wanted to read one sentence
11 from the rules. This is on RFADs. "Information received
12 after the RFAD deadline will not be considered by staff or
13 be presented to the Board."

14 MR. GOODWIN: Thank you.

15 Yes, sir?

16 MR. CLEMONS: Harvey Clemons, Jr. with Fifth
17 Ward Community Redevelopment Corporation.

18 MR. GOODWIN: I need for you to sign in, Mr.
19 Clemons.

20 MR. CLEMONS: Can I --

21 MR. GOODWIN: Sure.

22 MR. CLEMONS: Will my minutes start after I
23 sign in?

24 MR. GOODWIN: Yeah, after you sign in.

25 FEMALE VOICE: I'll make sure.

1 MR. GOODWIN: We already docked you 30 seconds
2 for Barry's time.

3 MR. CLEMONS: Okay. Mr. Chairman and to the
4 Board, my point is simply this. We all know what's going
5 on here. It's clear. This is a NIMBY situation. We -- I
6 mean, it's clear the Mayor of Houston and City Council put
7 \$5 million into this project because they know the value
8 of it.

9 State Senator Borris Miles is on record with
10 support of this project. Harold Dutton, state
11 representative, has sent a letter in support of this
12 project.

13 MR. GOODWIN: In all due respect, sir, this is
14 over the issue of -- has notification -- not the project
15 and not that it doesn't have wide support, not that there
16 wasn't a good-faith effort. It's -- can you speak to the
17 point that's really in front of us, sir?

18 MR. CLEMONS: Yes, sir.

19 MR. GOODWIN: Would you please.

20 MR. CLEMONS: The point is, it is very clear
21 that Ms. Erica Hubbard knew about this project. She not
22 only knew about it; she participated in bringing it on
23 board at the genesis of the project in '16. She voted on
24 the selection committee of who the development team would
25 be.

1 She knew about it. You can't say, I know, and
2 then turn around and say, I don't know. We participated
3 with her. So from a statutory point of view, if the idea
4 is to make the entire community aware, we did that. She
5 was very much aware.

6 She is very much aware, and all the way through
7 the process, we continued to talk with her, and the
8 project did not change materially from what she selected
9 to the point to where we are now. So all I'm saying to us
10 is that judgment, good judgment, from the standpoint of
11 helping this community and bringing about comprehensive
12 neighborhood revitalization, requires at least a desire to
13 want to make this thing happen and to look at the rules as
14 you just looked at the rules in terms of your favor about
15 the notification.

16 If the notification came after the deadline,
17 and you continue to want to look at it, it's the same
18 thing that if you say that we didn't meet the deadline.
19 So I'm asking you, for the better judgment of the people
20 of this community and for consistency with looking at what
21 is real and what is factual, to approve this project
22 because it does not violate, in our opinion, the spirit of
23 the notification rules and regulations.

24 She was aware. She knew. The organization
25 knew. Thank you so very much.

1 MR. GOODWIN: Any questions?

2 MS. RESÉNDIZ: Mr. Chairman, I have a quick
3 question, and this question is more for Kathy, please. So
4 just listening to everything, it honestly does appear that
5 Erica Hubbard with Progressive Fifth Ward had a clear
6 understanding of what the project entailed as it relates
7 to St. Elizabeth.

8 This may be much too simple, and if you will
9 just help me understand. With the public hearings, when
10 it was mentioned that there were several months of logs
11 that Erica had participated in, you know, various forums,
12 on that log, wouldn't there be a section where these
13 individuals have -- are representing a certain
14 organization, therefore, you know, making it known that
15 Erica is representing Progressive Fifth Ward, because if
16 that's the case, then based off what Sarah had mentioned,
17 there was no knowledge of Progressive Fifth Ward amongst
18 your organization.

19 Will you help me understand if --

20 MS. FLANAGAN-PAYTON: So in February 2016,
21 Erica Hubbard was a member of the Fifth Ward Civic Club.
22 Her and a few of the residents exited that particular
23 group and formed the Progressive. The reason they left
24 the organization that they were originally a part of is
25 because they did not want to apply structure, did not want

1 to govern themselves by Robert's Rules of Order, did not
2 want to entertain a structure that would allow people to
3 conduct business.

4 Erica was a new -- is a new resident to the
5 community, has an express interest in helping the Fifth
6 Ward community, and in her role as a leadership of that
7 organization, we invited her again to be part of these
8 conversations and the dialog.

9 At no point in time were we aware that
10 Progressive Fifth Ward had incorporated. I did a personal
11 search. I'm in regular communication. So if your
12 question is to ask me is if I un-notified her, it's
13 impossible.

14 When she was part of the decision-making
15 process to define the structure of these project, the
16 number of units that this project would invite to this
17 community so that the density would not create hardships
18 in terms of traffic -- if you ask me in terms of the
19 selection of the developer, she was active in that
20 process, had extensive dialog, active and communicating
21 with the architect.

22 Still to this day, in terms of understanding
23 where we are in this project, she can acutely articulate
24 the definition of this project as it has been explained to
25 her, as she's participated in the program. When you look

1 for, in areas like Fifth Ward, there are a number of
2 organizations that just start up.

3 We recognize them all. They don't have to have
4 a registration to be a part of the dialog, because we are
5 looking for inclusion. Staff is correct. But when you
6 Google Progressive -- is what we know, because this
7 organization has used five names.

8 They refer to themselves as North Park Circle.

9 They refer to themselves as PFW. They refer to
10 themselves as Progressive. They refer to themselves as
11 Progressive Civic Association and not Community
12 Association. And when you look up Progressive, every
13 insurance company in the state of Texas shows on the --
14 and that's not an exaggeration. I did it myself.

15 This was not an attempt to exclude this
16 organization from being a part of this process. And I am
17 personally offended that she claims that she did not
18 receive notification and all of a sudden, now, she doesn't
19 know anything about this project.

20 She's very acutely aware, and we've received
21 correspondence since then, and this is about a number of
22 issues that have nothing to do with the betterment of life
23 in that community.

24 MS. RESÉNDIZ: So and just to be clear, my
25 comment wasn't about taking her or the organization out of

1 the equation, but just to expand on what you just said,
2 what are they incorporated as? What name are they
3 incorporated as with the Secretary of State's Office?

4 MS. FLANAGAN-PAYTON: The information that was
5 provided by this Department now shows, I believe, that it
6 is Progressive Fifth Ward Community Association, as
7 opposed to Civic Club.

8 MS. RESÉNDIZ: Right, right. But you said that
9 they go by all of the other --

10 MS. FLANAGAN-PAYTON: North Park Circle, Fifth
11 Ward Solidarity, PFW Community Association, and then
12 Progressive Civic Club --

13 MS. RESÉNDIZ: Okay.

14 MS. FLANAGAN-PAYTON: -- and Progressive Fifth
15 Ward Community Association.

16 MS. RESÉNDIZ: So would these all have been
17 organizations that you would have needed to include in the
18 documentation that staff was needing?

19 MS. FLANAGAN-PAYTON: No, they're all one
20 organization that operate under these aliases.

21 MS. RESÉNDIZ: Okay.

22 MR. GOODWIN: Other questions?

23 MS. ANDRÉ: If I can just address the technical
24 nature of that, and they are not registered with the
25 Secretary of State, all those aliases, so that's the

1 measure that we're looking at today, is whether or not an
2 organization is registered with the Secretary of State and
3 meets other criteria, but that's the primary one.

4 MR. GOODWIN: Okay.

5 MS. RESÉNDIZ: Thank you.

6 MR. GOODWIN: Additional questions? Any other
7 comments? Okay.

8 MS. MYRICK: Just one more. Good morning. My
9 name is Lora Myrick, and I am with Becker Consulting, and
10 I would also like to read a portion, just a sentence, of
11 the Multifamily Rules, where it talks about interested
12 persons. Actually, it's the QAP. Pardon me.

13 "Interested persons may provide testimony on
14 this report before the Board takes any formal action to
15 accept the report." And that has to do with the RFADs.
16 But I think what I want to come up here and talk about is
17 the one thing that I listen through all of this discussion
18 and exchange, is that I heard someone say, I didn't find
19 out about this group until February 27.

20 That's still before March 1, and you still
21 could have grabbed a notification, put it in the mail, put
22 it -- gotten it out there, if nothing else, to cover your
23 bases, because of -- this development is so important and
24 complex, why would you want that to get in the way of your
25 development?

1 So I heard someone say, I acknowledge that it
2 was present on the 27th of February. We've known that
3 they're out there. We don't need to be here because if
4 that notification was sent, we wouldn't be discussing
5 this. Thank you.

6 MR. GOODWIN: Thank you. Any questions? Are
7 Board members ready? Marni, will you come back up? Leo,
8 did you have a question? Karen, did you have a question?

9 MR. VASQUEZ: I guess I was just looking for
10 some summary clarification from staff and counsel.

11 MR. GOODWIN: Okay. Give some summary
12 notification, Beau, as to what we've focused here on. It
13 seems to me that we're focused on the notification and the
14 preapplication points, and did it meet statute
15 requirements. You had --

16 MR. ECCLES: I think that that's --

17 MR. GOODWIN: What Marni --

18 MS. HOLLOWAY: That's exactly the question.
19 You know, was notification as required by statute and rule
20 provided to this organization that was registered with the
21 Secretary of State both when the preapp was submitted and
22 when the application was submitted?

23 MR. GOODWIN: Uh-huh.

24 MR. IRVINE: And was there evidence in the
25 application?

1 MS. HOLLOWAY: And was there evidence? Yes.

2 MR. GOODWIN: Yeah.

3 MR. BRADEN: I have a question, and I believe
4 it's more for the legals. So let's assume, and I think
5 I've been personally satisfied that the Applicant has
6 demonstrated that Progressive, this agency, had actual
7 knowledge.

8 But that is not satisfactory -- I'm asking a
9 question -- for the notice requirement under the statute?

10 And I'm also asking, in light of -- what -- I forget the
11 gentleman -- he made the point about the superintendent
12 and the presiding officer.

13 I mean, you know, obviously those people were
14 not here objecting, saying, I didn't get notice, so
15 there's a huge distinction. But --

16 MR. ECCLES: Well, the question that I think
17 would govern all of those questions as it relates to
18 2306.6704 preapplication process would be, is there
19 evidence in the preapplication that the Applicant has
20 notified here the neighborhood organization on record with
21 the State or county?

22 And when it relates to the superintendents, was
23 there evidence in those preapplications that the applicant
24 had notified the superintendent and presiding officer of
25 the board of trustees of the school district? If there

1 was evidence of that happening, that's what satisfies the
2 statutory requirement.

3 I think in the superintendent cases -- and I
4 don't want to speak out of line on this -- I think the
5 question was, between preapplication and application,
6 somebody else became the superintendent, but it doesn't
7 mean that there was no evidence that the superintendent
8 was notified.

9 It's just that the superintendent changed, and
10 then we get into the rule-based question of -- is that an
11 election when a group of trustees gets together and says,
12 who's going to be our president of the board of trustees
13 next year?

14 Is that an election or is that part of -- we're
15 only talking about a public election along the lines of a
16 state representative?

17 MR. BRADEN: Okay. So let's assume the
18 superintendent stuff is factually different. So in this
19 case, we have -- they say that they presented evidence
20 that there's actual notice, that these people actually
21 knew what was going on, but that's not sufficient.

22 That cannot be constructive notice under the
23 statute?

24 MR. ECCLES: Well, again, the question is, when
25 they submitted the preapplication, when they submitted the

1 application thereafter, was there evidence in that
2 preapplication, in that application, that the Applicant
3 had notified?

4 I think we've established and it's been agreed
5 that Progressive Fifth Ward Community Association is a
6 neighborhood organization on record with the State in
7 which the development is to be located and whose
8 boundaries contain the proposed development site.

9 So Progressive Fifth Ward Community Association
10 is an organization that should have received notification.

11 Is there evidence in the application, in the
12 preapplication, that they received that notice?

13 MR. VASQUEZ: And do we have the discretion to
14 say that the Applicant is representing to the best of
15 their knowledge and good faith they have notified everyone
16 that needed to be notified and outside of that written
17 preapp, I think they've presented compelling evidence that
18 that one organization, by virtue of their -- that
19 organization's president being part of the discussion, was
20 in fact notified.

21 The president of the organization was notified;
22 therefore the organization was notified. So we have kind
23 of two different parts. To the best of Applicant's
24 knowledge, they made the notification to everyone that
25 they thought needed to be, and then in reality, the actual

1 facts of the matter -- the organization, Progressive, was
2 actually notified, because their president was intimately
3 involved and knowledgeable of the --

4 MR. IRVINE: I would respond that, if in
5 response to our administrative deficiency, they had
6 provided the emails that were given before the applicable
7 dates to the other folks, then there would have been some
8 evidence that the notifications had been provided, and at
9 that point, I would think the issue is not -- was the
10 statutory requirement met, but was the rule requirement
11 met?

12 And I think that the Board would have a great
13 deal more latitude in addressing a rule construct than a
14 statutory construct.

15 MR. ECCLES: Well, and let me put it even more
16 plainly. Let's say that they had sent notification to the
17 Progressive Fifth Ward Community Association but had
18 failed to list it in their preapplication and application,
19 and then in response to -- hey, where is this; this is a
20 notice of administrative deficiency -- they had said,
21 oops, forgot, here it is, here is our notification that
22 satisfies the threshold requirements as listed in the QAP,
23 which is what the statute later requires, if they then
24 showed that, that would be one thing.

25 But in response to the administrative

1 deficiency, it was admitted that they checked with a City
2 website to see who are the neighborhood organizations that
3 we should give notice to, and Progressive was not in that
4 City database.

5 But the statute requires that it's those
6 neighborhood organizations on record with the county or
7 state, and those weren't checked. This is --

8 MR. VASQUEZ: It's a gotcha.

9 MR. ECCLES: -- this -- it's a statutory
10 gotcha. That's the problem.

11 MR. GOODWIN: The rule comes down to the
12 evidence being in the application or in the
13 preapplication.

14 MR. ECCLES: That's what the statute comes down
15 to.

16 MR. GOODWIN: That's what the statute comes
17 down to. Okay. Any other questions.

18 MR. ECCLES: We have one more.

19 MR. GOODWIN: One more comment?

20 MS. DULA: Thank you. I'm Tamea Dula with
21 Coats Rose. I wrote the response to the administrative
22 deficiency. I'd like to point out that staff has
23 overlooked the fact that we included with that response
24 the letter from Senator Miles that was provided by Erica
25 Hubbard on February 28, I believe, sent to Kathy Payton

1 with regard to this.

2 In the letter as responding to the
3 administrative deficiency, we discussed the conversations
4 that have been had. Attached is an exhibit with a
5 certification by Kathy Payton that the details in the
6 letter were true and correct to the best of her knowledge.

7 That is evidence that was provided pursuant to
8 the administrative deficiency. Number two point that I'd
9 like to make. There's a problem here. We have to show
10 that all neighborhood organizations of record with the
11 State and the County have been notified.

12 If you call the Secretary of State and say, may
13 I please have a list of the neighborhood organizations in
14 Harris County or some other location, they don't maintain
15 such a list. You cannot obtain such a list by checking,
16 you know, a search of registered entities.

17 If you call the County -- and I did this -- the
18 County says, we don't maintain such a list. We recommend
19 you go to the City. Now, years ago, it was said that if
20 you went to the City and got their list, that the City,
21 being an outpost of the state, so to speak, that was
22 considered being of record with the State.

23 Anybody that had registered with the City and
24 said, we are a neighborhood organization. We have an
25 interest in the Fifth Ward. Here are our boundaries. And

1 that would be who you would notify. Now, there's nothing
2 like that to let you know who to notify.

3 This organization went to the City and said,
4 you know, give us your list, and they were directed to the
5 list that the City maintains and a website where you put
6 in your address and the website identifies what
7 neighborhood organizations are active in that area, and
8 they did both, and they notified everybody.

9 And Progressive was not on that list. They
10 couldn't get anything from the county clerk, but
11 Progressive is likely to have been registered with the
12 county clerk, because generally speaking, not only
13 neighborhood organizations -- excuse me -- not only
14 property owners' associations or homeowners' associations
15 are registered with the county clerk by virtue of filing
16 something in the county records to show that they have
17 some interest in that property, and that information comes
18 up through the title commitment.

19 The title commitment showed nothing had been
20 filed in Harris County with regard to any kind of property
21 owners' association or neighborhood organization or
22 homeowners' association. So we've got a problem here.
23 There's no way to be sure when you go looking for an
24 organization that you have found every neighborhood
25 organizations that's entitled to notice.

1 Had Progressive instead called themselves
2 Unknown Neighborhood Association with an Interest in the
3 Fifth Ward, how would they ever been -- be located,
4 especially if they chose to lay low? This is something
5 that can be misused by unscrupulous developers who see
6 potential competitors out there.

7 You can easily create a neighborhood
8 organization, easily file a record with the Secretary of
9 State one day, and then not say anything. Choose a name
10 that doesn't have any connection to the location that's in
11 issue, showing your certification of formation, as did
12 Progressive, that you have certain boundaries. Include
13 the boundaries of your competitors' properties, and then
14 after the fact, on June 11 of that year, notify the TDHCA
15 that you had an interest and were not notified.

16 How could they have found you? Something needs
17 to be done to fix this.

18 MR. GOODWIN: Okay.

19 MS. DULA: Thank you.

20 MR. GOODWIN: Tamea, I don't think you stated
21 your name when you started.

22 MS. DULA: I am very sorry. Tamea Dula, Coats
23 Rose.

24 MR. GOODWIN: Any questions?

25 MR. BRADEN: Mr. Chair, it's my recollection

1 from reviewing the packet is that the letter that was
2 referenced was dated January 31 from the state senator.
3 What's the --

4 MR. GOODWIN: That's correct.

5 MS. HOLLOWAY: Yes, it is.

6 MR. BRADEN: -- the preapplication -- when was
7 the preapplication due?

8 MS. HOLLOWAY: The preapplication final date
9 was January 9.

10 MR. BRADEN: Even if you would take that as a
11 record, it wasn't on file. It wasn't evidence on file
12 with the preapplication deadline.

13 MS. HOLLOWAY: No.

14 MR. BRADEN: At the very least, you'd lose
15 those six points.

16 MS. HOLLOWAY: That is correct.

17 MR. GOODWIN: Any other questions for Marni?

18 (No response.)

19 MR. GOODWIN: If not, do I hear a motion from a
20 Board member as it relates to staff's recommendation?

21 MR. VASQUEZ: Okay. I'd like to make a motion,
22 but I want to make sure that legally the Board can take
23 this action, because I've been hearing different
24 perspectives on -- that might be an idea.

25 MR. GOODWIN: What was the idea?

1 MR. VASQUEZ: Well, okay. I mean, I would like
2 to make the motion to deny the staff's recommendation, but
3 I want to make sure that there's not any legal hurdle or
4 blockage to actually us doing that, and I want to say that
5 if we don't let this project continue on -- I mean, this
6 is -- we're just -- in my estimation, it's just a travesty
7 in bureaucracy.

8 I mean, again, it's another gotcha, that we're
9 trying to get out of that, and actually, in this case, I
10 don't think it's as much the Department saying, gotcha, as
11 this -- as Erica Hubbard doing this, you know, this one
12 person, who clearly was involved and had clear knowledge
13 of this project all the way through.

14 Therefore, in my mind, from a business
15 perspective, not necessarily from the lawyer perspective,
16 the organization, Progressive, had de facto notice
17 throughout this whole process. Them submitting this
18 letter saying, we didn't receive notice -- I mean, to me,
19 that's borderline -- it's quite -- it seems disingenuous
20 to be submitting this document to a state government
21 organization.

22 The arguments that the speakers have made here
23 today are compelling, I think, in the -- whether it's the
24 RFAD notice, or you know, missing timings and deadlines.
25 Some of these precedent other areas, I think, are -- maybe

1 not be exactly on point, but they reasonably correlate to
2 this.

3 We're looking for -- I think one of the early
4 speakers talked about -- let's look at this as a common-
5 sense approach rather than technicalities. So with all of
6 those factors in mind, again, I would like to make the
7 formal motion to deny staff's recommendations and not
8 disqualify the 18020 project.

9 MR. GOODWIN: Okay. A motion has been made.
10 Is there a second?

11 MS. RESÉNDIZ: Second.

12 MR. GOODWIN: It's been made and seconded. Any
13 discussion?

14 MR. BRADEN: Yeah. I appreciate the sentiment
15 that's being expressed. I can't vote for that, because I
16 don't think we have authority under the statute to do
17 that.

18 MR. VASQUEZ: And that's why I'm asking if --

19 MR. BRADEN: Again, you know, I think we've
20 been given that advice by our general counsel. You know,
21 I pulled all the statutes out. I just read it myself. I
22 can't disagree with that advice.

23 So, you know, even the arguments -- you know,
24 what I started thinking about is -- well, if we take the
25 January 31 letter from the senator as more evidence of

1 some type of notice that didn't come from the Applicant,
2 which is not consistent with the statute, but even then,
3 they lose six points, because the preapplication didn't
4 have it.

5 So that probably -- in fact, we have a problem
6 there, but while I -- you know, and I think everything
7 that was pointed here is correct. I think people acted in
8 good faith. I think there was, you know, actual
9 knowledge, and the only argument you can make is
10 constructive notice.

11 But I don't know if we have that latitude, so
12 that's why I cannot support this, and if it's voted for,
13 I'll have to vote against it.

14 MR. GOODWIN: I will be in the same boat for
15 the same reasons.

16 MS. THOMASON: I will too.

17 MS. BINGHAM ESCAREÑO: I -- just before -- it
18 sounds like it's going to die. I mean, I think the
19 Applicant has done a really good job. I mean, obviously,
20 it goes without saying -- I think we've all said it in one
21 way or the other -- it's an awesome, you know,
22 application, it's an awesome plan.

23 And I know you guys know that we're struggling
24 up here doing everything we can to try to figure out if
25 there's a way to get this done. What I hear the Applicant

1 saying, though, is kind of -- and I completely understand.

2 Presenting both angles, right? I kind of hear
3 two arguments. I could be wrong. One is, we didn't know
4 that this was a registered entity that needed to be
5 notified. That's one. And then the other -- kind of, I
6 hate to say -- angle, but the other argument is -- okay,
7 but if they were, they were notified. Right?

8 That's what I hear Mr. Palmer -- kind of the
9 argument. And I think where we're stuck a little bit is,
10 if you take -- so the first argument doesn't sound like
11 it's holding a lot of water because it is a registered
12 entity. Correct?

13 Like so -- so that one's -- we're struggling
14 with a little bit, although I understand the argument
15 about -- it's not very easy to find them between boxing
16 organizations and churches and stuff, that it's not easy.

17 Unfortunately, that sounds like something that we need to
18 handle somewhere down the line, but we have that
19 expectation for all applicants and all applicants are
20 doing their best to achieve that, then for us to carve
21 this one out and say, wow, it was hard for you guys.

22 We understand why you weren't able to find this
23 entity -- might not be the most equitable thing, you know,
24 for the Agency or the Board to do. The other argument,
25 though, is well, if it is an entity, the principal of this

1 entity did know that this development was being discussed,
2 had been notified.

3 I think the struggle that we're having with
4 that is, the statute, not the rule -- the statute says
5 there has to be evidence of it. Doesn't say, you know,
6 what the evidence needs to look like. The rule says what
7 the evidence needs to look like.

8 But the statute says there has to be evidence
9 in it, and I don't think -- just speaking for myself, I
10 unfortunately -- I don't hear what evidence was in the
11 preapplication. I hear it now. I hear it in a lot of
12 different forms now, but at the time, I don't hear where
13 the -- where we as a Board can say, yes, there was
14 evidence in the preapplication that the notification had
15 been made.

16 So on that basis, I probably would not be able
17 to vote affirmatively either.

18 MR. GOODWIN: Anybody else? Any other
19 comments?

20 (No response.)

21 MR. GOODWIN: We have a motion and a second on
22 the floor.

23 Leo, are you ready for a vote on that motion?

24 MR. VASQUEZ: Let's do it.

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

1 MR. VASQUEZ: Aye.

2 MS. RESÉNDIZ: Aye.

3 MR. GOODWIN: All opposed, aye.

4 MR. BRADEN: Nay.

5 MS. THOMASON: Nay.

6 MS. BINGHAM ESCAREÑO: Nay.

7 MR. GOODWIN: I think the motion -- your motion
8 has failed. Do we have a motion to approve staff's
9 recommendation?

10 MR. BRADEN: I regretfully make the motion to
11 approve staff's recommendation.

12 MR. GOODWIN: Do I have a regretful second?

13 MS. THOMASON: Second.

14 MR. GOODWIN: Which I think speaks for
15 everybody up here. All those in favor say aye?

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 MR. VASQUEZ: Nay.

19 MS. RESÉNDIZ: Nay.

20 MR. GOODWIN: Nay? Okay. I think the motion
21 has passed. So we're moving on to --

22 MR. VASQUEZ: Could -- Mr. Chairman, just --

23 MR. GOODWIN: Yes, sir.

24 MR. VASQUEZ: -- given the -- I would just like
25 to make an encouragement to the developers and the

1 community. In my mind, it's damn the torpedoes. I
2 encourage you to do everything you can to continue with
3 this project.

4 Forget -- don't let Erica Hubbard stop you from
5 doing it. There are so many bankers and community
6 organizations that if the community -- that if the City's
7 kicked in money for it, let's find others that can help
8 continue this revitalization of this area, because it's so
9 needed.

10 Don't give up, please.

11 MR. GOODWIN: I don't believe anything prevents
12 them, does it, Marni, from coming back next year with --

13 MS. HOLLOWAY: Oh, no, not at all.

14 MR. GOODWIN: Oh, so the project's still going
15 to be there, I'm going to assume, this time next year.

16 Okay.

17 MS. HOLLOWAY: Okay.

18 MR. GOODWIN: Moving on to item (b).

19 MS. HOLLOWAY: On -- item 3(b) is presentation,
20 discussion, and possible action on a remanded Request for
21 Administrative Deficiency regarding site eligibility under
22 10 TAC Section 11.3(g) related to Proximity of Development
23 Sites. The applications in question are: 18033, The
24 Miramonte, and 18047, Miramonte Single Living.

25 We have included mention in the Board item of

1 18043, Huntington at Miramonte, simply because it's
2 another application on that same site. So we received a
3 third-party request for administrative deficiency
4 requesting that staff review the application and determine
5 whether the development sites for applications 18033 and
6 18047 should be considered contiguous under our rules
7 related to proximity of development sites.

8 At our last meeting, the Board heard testimony
9 about the RFAD and directed staff to re-analyze these
10 applications and present this issue for Board
11 consideration.

12 We have included application 18043, Huntington
13 at Miramonte, which was not part of the RFAD or the
14 discussion at the last meeting, because it is the third
15 development at this site.

16 It is an elderly development, so it does not
17 violate the rule. Under our rule, if two development
18 sites serving the same population are contiguous, the
19 lower-scoring of the two applications is deemed non-
20 priority and not reviewed for award unless the higher-
21 scoring of the applications was withdrawn or terminated.

22 The development sites for these three
23 applications are carved out of a 38.199-acre tract of land
24 under common ownership. Exhibits A through C, which start
25 at page 101 in the Board Book Supplement, depict the

1 Applicant's delineation of the development sites, and
2 Exhibit D, which is on page 107, was inserted from the
3 RFAD.

4 It depicts the three sites together on the
5 property. The 38-acre tract has not been legally
6 subdivided. The information you see is only contained
7 within these three applications. The survey from the site
8 design and feasibility report depicting the three sites
9 and the drainage reserve is included as Exhibit E, at
10 page 109.

11 Contracts for the development sites are
12 attached also, and it is notable that the purchaser of the
13 38-acre tract is also the Applicant for 18033 and 18047.
14 Staff had initially reviewed the RFAD and determined that
15 the drainage reserve indicated in the contracts and on the
16 site depictions represents a parcel of land between the
17 development sites, and the rule was not applicable, as the
18 two development sites are not touching due to that
19 retainage by the seller, and so they are not contiguous.

20 We applied the determination of whether the two
21 sites were contiguous at full application only and did not
22 take into account whether the sites were represented as
23 contiguous at preapp.

24 Statute requires that we establish at
25 preapplication process -- the rule begins with: "The

1 preapplication process allows applicants interested in
2 pursuing an application to assess potential competition
3 across the 13 state service regions, subregions and set-
4 asides." Based on an understanding of the potential
5 competition, they can make a more informed decision
6 whether they wish to proceed to prepare and submit a full
7 app.

8 Further on, it states that "preapplications are
9 subject to the same limitations, restrictions or causes
10 for disqualification or termination as applications."

11 The preapplications for 18033 and 18047 were
12 both listed as developments to serve a general population,
13 and the preapplications internally referenced each other
14 to the point of showing the same site sketch, which is at
15 page 137 in your Supplement.

16 Under a plain definition of the term, these
17 development sites, as presented at preapplication, are
18 contiguous. Although it is not uncommon for a large
19 parcel of land to be submitted at preapplication as
20 multiple proposed development sites, as occurred in this
21 instance, the rule ensures that when contiguous sites
22 serving the same population are submitted at preapp, one
23 of them will not move forward or will be a non-priority
24 application.

25 Either way, an applicant assessing potential

1 competition at preapp would be able to count on only one
2 of those contiguous preapplication sites moving forward.
3 However, at full application, the development sites for
4 18033 and 18047 have been changed.

5 They are still next to each other, but they are
6 separated now by a strip of land that's being retained by
7 the seller of the property. This appears to have occurred
8 as a result of a February 11 amendment to the contract
9 which seeks to clarify that the seller is retaining 10-
10 foot strips between the parcels and purports to make the
11 amendment effective as of January 4, 2018.

12 The January 4 date is important because it's
13 when the application acceptance period began. The
14 question for your determination concerns the timing of
15 contiguity.

16 If submitted preapplications show two proposed
17 development sites as contiguous and serving the same
18 population, does the rule and the statutory rule stated
19 purpose of the preapps support the conclusion that only
20 one of the two contiguous preapplications could proceed?

21 Accordingly, must contiguity or the lack of
22 contiguity be plainly evident in the preapplication or is
23 that determination made only on the basis of the
24 development site information presented with the full app?

25 If the Board determines that contiguity

1 determinations are made at preapplication, then only the
2 higher-scoring of these two applications may proceed to
3 award. The lower would go to a non-priority status.

4 If the Board determines that contiguity
5 determinations are made only at full application, then
6 both of these applications would move forward. Staff does
7 not have a recommendation on this matter. We are
8 presenting it for the Board's determination.

9 MR. GOODWIN: Thank you, Marni. Any questions
10 for Marni?

11 (No response.)

12 MR. GOODWIN: We have speakers that want to
13 speak.

14 MS. DULA: Generally, you permit the developer
15 or the applicant to speak in response to the staff, and
16 we'd like to exercise that opportunity.

17 MR. GOODWIN: Okay.

18 MS. DULA: We know we have some opposition
19 here. On the last name, do I have to sign again?

20 MR. GOODWIN: I'm not sure about that rule.

21 MS. DULA: All right. Tamea Dula --

22 MR. GOODWIN: What is the statute on that rule?

23 MS. DULA: -- with Coats Rose. I'll do it in
24 an excess of legitimacy here.

25 Okay. Tamea Dula on behalf of Mgroup and Mr.

1 Mark Musemeche, the developer. What you heard at the last
2 Board meeting were complaints by competitors that two
3 general population developments were separated only by
4 these strips retained by the seller.

5 The opposing developer suggested that these
6 developments were actually contiguous. Staff, however,
7 has reconfirmed that they have determined that the
8 developments shown in the applications are not contiguous
9 because they do not touch at any point.

10 Complaints were also made that the two
11 developments were in Fifth Street, a census-designated
12 place, and these were likely to be funded when Houston
13 needs so much post-Harvey housing assistance. Actually,
14 Fifth Street CDP is located in the ETJ of Stafford in Fort
15 Bend County, and it is in the Houston/The Woodlands/Sugar
16 Land metroplex.

17 Of the 12 counties that are in Region VI, these
18 two developments are the only urban subregion applications
19 to be funded in any county other than Harris. They
20 therefore provide much-needed diversity. If one of these
21 applications was deemed non-priority due to being
22 contiguous in the preapplication, then the next
23 applications to be funded would be more Harris County
24 applications, and there would be none from any other
25 county.

1 Fort Bend County was also ravaged by Hurricane
2 Harvey, and these developments will provide 142 units of
3 affordable housing in Fort Bend County that are fast-
4 tracked on the readiness-to-proceed schedule.

5 I'd like to point out that this matter is
6 before the Board as a determination of whether continuity
7 determinations under 11.3(g) of the QAP are made on the
8 basis of preapplications or only on the basis of
9 information submitted in the full application.

10 If only the full application is considered,
11 both applications are good and eligible. Whether the
12 preapplication must show non-contiguity was never a
13 question that was presented to the Applicant, who only
14 found out about this issue when the Supplemental Board
15 Book was published on Monday evening.

16 The question that was presented to Mr.
17 Musemeche to answer was as follows: "Yesterday at the
18 Board meeting, interested parties addressed the Board
19 regarding staff's determination on the RFAD that was filed
20 for your applications.

21 "As a result of the RFAD" -- may I finish the
22 quote?

23 MR. GOODWIN: Sure.

24 MS. DULA: "Staff found that the sites for
25 18033, the Miramonte, and 18047, Miramonte Single Living,

1 were not contiguous. At the meeting yesterday, the Board
2 directed staff to bring the issue to the Board at the
3 July 12 meeting.

4 "The Board heard testimony regarding the
5 practical purpose of the drainage ditch as it alone
6 separates the two sites. If you would like provide any
7 further information regarding the drainage easement for
8 staff and the Board to consider, please send it to me by
9 five o'clock p.m. on Tuesday, July 3."

10 We responded to that, to that question.
11 Nothing about preapplications. That has never been an
12 issue. We were especially surprised because the
13 requirements for preapplication --

14 MR. GOODWIN: I thought you were just going to
15 finish that quote.

16 MS. DULA: It's this much more. The
17 requirements of preapplication submission make no
18 reference to contiguity in the QAP. The rules or the
19 statutes, none of them use that word in connection with
20 the preapplications.

21 Statutes relating to tax credit housing do not
22 even mention the word contiguous, contiguity, or any
23 variation of it. Non-contiguity is entirely a requirement
24 of the Department, not the legislature.

25 As written in 11.3(g) applications, which is a

1 defined term in the statutes, are what must be reviewed to
2 determine whether or not they are contiguous, and
3 therefore come within the meaning of 11.3(g)'s prohibition
4 of proximity, and staff has already determined that the
5 applications are not contiguous. Thank you.

6 MR. GOODWIN: Thank you. Any questions?

7 (No response.)

8 MR. GOODWIN: Next speaker? In favor or
9 against the project?

10 MR. PALMER: In favor.

11 MR. GOODWIN: In favor of the project.

12 MR. PALMER: Barry Palmer with Coats Rose.

13 Yeah, I --

14 MR. GOODWIN: Let the record reflect that Ms.
15 Reséndiz has left the --

16 MR. PALMER: Okay.

17 MR. GOODWIN: -- room.

18 MR. PALMER: Yeah. I'd like to point out that
19 this was an RFAD presented to the Board last month. The
20 Board -- or the last meeting, the Board asked staff to go
21 back and look at it again. Staff looked at it again and
22 confirmed that the applications are not contiguous under
23 the rules, and the rule on contiguity, 11.3(g), talks
24 about two or more competitive Applications, with a capital
25 A.

1 It's a defined term that means the full
2 application. There's no rule that says preapplications
3 can't be contiguous. So we were a little blindsided when
4 staff came out with this new concept at the 11th hour --
5 well, what about preapplications -- which had never been
6 talked about before, never -- the Applicant never received
7 any deficiency or opportunity to respond or opportunity to
8 appeal a negative determination.

9 So we really feel like there hasn't been a lot
10 of due process here for this brand-new issue to come up
11 two business days before the Board meeting. The
12 Supplement was posted Monday night, raising for the first
13 time this concept of, well, what about preapplications
14 being contiguous?

15 Which again, the rule is pretty straightforward
16 on this. It talks about a prohibition of contiguous
17 applications: defined term. It would make no sense to
18 have the contiguous rule apply at the preapplication stage
19 because at the preapplication stage, you're not required
20 to nail down what your site is.

21 You can just submit a 30-acre tract and say in
22 the preapplication, it's going to be somewhere in here,
23 and then at the application stage, you show it's going to
24 be these six acres. So how can you, at the preapplication
25 stage, determine contiguity if people can move their site

1 effectively between preapplication and application time?

2 So I would argue that the issue that you asked
3 to be re-looked at has been re-looked at by staff and
4 decided the same way they decided it before, and that this
5 new issue that they've raised, that was never in the RFAD,
6 it was never discussed at the Board meeting last month, it
7 was never noticed to the developer, is, number one, just
8 on its face -- it's not supported by the rules, but number
9 two, you know, it violates all concepts of due process.

10 MR. GOODWIN: Okay.

11 MR. PALMER: Thank you.

12 MR. GOODWIN: Questions for Barry? I have a
13 question, Barry. Why -- these two projects are right next
14 door to each other. There's a 10-foot strip. Why not
15 just make them one project? What was the motivation to
16 make them two projects?

17 MR. PALMER: It would exceed the credit cap.

18 MR. GOODWIN: Ah, that's what I hear.

19 MR. PALMER: But I would point out that in the
20 rules, there are other rules that are judged by distance.

21 There's the one-mile -- the two-mile/one-year rule.
22 There's the one-mile/three-year rule. So if the purpose
23 of this rule is to be -- is going to be proximity rather
24 than contiguity, then for next year, let's change the rule
25 and make it a quarter-mile, let's say.

1 You can't have a project within a quarter mile,
2 or whatever you want it to be. But right now, the rule
3 says contiguous, and developers have relied on what the
4 rule is right now. So you know, keep in mind, in
5 Region VI, we have the readiness-to-proceed points that
6 were put in by the Governor this year, where developers
7 who are funded have to close by October 31.

8 So developers in Region VI, including this
9 developer, have relied upon the -- you know, the fact that
10 they were shown to be in the money, that they didn't get
11 any deficiencies, they were cleared by staff, and this
12 developer spent over \$400,000 on this project, because in
13 order to close by October 31, you've got -- by now, you've
14 got to have full plans and specs.

15 You've got to be in for --

16 MR. GOODWIN: You went -- I think you went way
17 past my question. I do have another question, though, if
18 somebody else doesn't have one.

19 MR. BRADEN: Go ahead. I have a question in
20 relation --

21 MR. GOODWIN: My land development experience
22 tells me that I don't just put drainage ditches wherever I
23 want them, that usually a city requires me -- a
24 municipality of some governmental entity tells me when and
25 where I'm going to put those drainage ditches.

1 So I see this drainage ditch, which I think
2 last month was argued to be kind of an unusual formation.

3 Was this required by the City? Has the City of Stafford
4 required the drainage be done in this way?

5 MR. PALMER: I don't know. The --

6 MR. GOODWIN: Okay.

7 MR. PALMER: -- developer could respond --

8 MR. GOODWIN: Okay. All right.

9 MR. PALMER: -- to that question, though.

10 MR. MUSEMECHE: Hi, I'm Mark Musemeche. I'm
11 here representing Mgroup and Developments. So I apologize
12 for not being able to be here last Board meeting. We were
13 traveling, and so I think, had I been there, I probably
14 could have put a lot of this information -- corrected it
15 back then.

16 I understand there was concerns regarding the
17 perception of drainage strips that were done to separate
18 the property. There's two things here. Clear, we
19 understood the rule. The rule is simple. It's not
20 ambiguous.

21 It says, you cannot have two same-population
22 applications being contiguous. So we knew that. That's
23 the same rule every other developer had to work with. So
24 we're playing within the rule. Fact. But secondly, we
25 try to create a way that would also allow some purpose to

1 the original concepts when -- understanding these are
2 conceptual plans that go together in a preapp.

3 Or in January or November, we're putting things
4 together. It's not refined yet. We're still working on
5 the whole master development. We're working on all kinds
6 of complicated aspects to get our development. Well, at
7 that time, there were considerations for regional
8 detention, and master detention facilities for all three
9 parcels.

10 We didn't know yet. But we want to ensure
11 that, A, we met the rule, but B, that if we had to have
12 some drainage path that allowed all sides to have
13 connectivity to get to the public road, we accomplished
14 that.

15 So that was the question you had at the Board
16 meeting. And so when I was asked to speak to that, I had
17 Tamea prepare a letter responding to that. And if you
18 read that, you would see that, from that point to now,
19 they have developed even more.

20 The plat that was submitted and provided in the
21 testimony shows preliminary plats already approved by the
22 staffer, and it shows now an open landscape reserve. So
23 at the end of the day, we didn't have to do all the
24 drainage fee strips that we thought.

25 But today, on a plat that's already been

1 approved, it shows a fee strip of landscape reserve done
2 to meet the rule. There's no harm, no foul. I mean, you
3 can't penalize the developers for complying with the rule.
4 I didn't write the rule.

5 I'm not saying it's a good or bad rule, but
6 that's the rule, and it's the rule as of the Application,
7 capital A, not preapplication. So you know, we need to
8 rely upon, as a developer, the plain reading of that rule.
9 As Barry said, we're way down the road.

10 I mean, we are way down the road and the
11 project is being developed, being -- we spent a fortune on
12 these projects getting them to meet our commitment to
13 close by October 31. So this whole thing is just
14 completely blindsiding me today about a preapp argument,
15 which I don't agree with.

16 And so I'm just asking that we move on, that we
17 take the issue, what was asked last Board meeting, which
18 is -- what is the application requirement, and let us
19 proceed. And then the last thing I want to -- just one
20 final comment.

21 You realize that we're talking about 52 more
22 units going into this area, 52. That is the size of the
23 second deal that would either be a priority or non-
24 priority. I hardly think anybody is going to argue that
25 we're over-concentrating all of these units and Fifth

1 Street which is surrounded by Missouri City, City of
2 Stafford, and Fort Bend County, which was just as damaged
3 as, you know, Harris County.

4 So I think it's really a joke, quite frankly,
5 considering that we're doing all this over-concentration
6 in this area, when it's only 52 more units being the
7 second deal. Thanks.

8 MR. GOODWIN: Paul, you had a question?

9 MR. BRADEN: And I can ask it at any point in
10 this process, but who asks to retain the fee simple
11 strips? Did the seller say, oh, I want to keep these
12 strips?

13 MR. MUSEMECHE: The seller was going to sell
14 land. I mean, I'm sure he doesn't want to -- he didn't
15 want to retain that on purpose, but he had no choice to
16 sell the land --

17 MR. BRADEN: Did you or your legal
18 representative say, don't sell us these strips?

19 MR. MUSEMECHE: I'm not sure I follow your --

20 MR. BRADEN: Who came up with the idea that the
21 seller was going to retain the fee simple strips?

22 MR. MUSEMECHE: Collectively, between the
23 developer, us, and the land seller -- again, I'm not
24 denying any -- whatsoever that the rule wasn't part of the
25 process to meet the land configurations.

1 MR. BRADEN: Why would -- so what you're
2 saying -- you suggest -- I'll stop.

3 MR. GOODWIN: Okay.

4 MR. MUSEMECHE: Well, I mean -- Paul, again, we
5 can't get into what a land seller wants to do or not do.

6 MR. BRADEN: I understand what went on. You
7 all came up with a good idea, that you -- you know, some
8 clever lawyer came up with a good idea that they thought
9 it was a way to circumvent this rule. And so I understand
10 what's going on here, but the other part I don't
11 understand is -- you know, you look at that first
12 amendment.

13 So you walked in with the contract where it was
14 all contiguous. You amend in February, and you have an
15 amendment dated back to, you know, January 4, and that's
16 when it's no longer contiguous. The amendment says it's
17 for drainage purposes, but now the letter most recently
18 from Coats Rose says it's for open space.

19 MR. MUSEMECHE: As I said, this process is
20 fluid. There's not any developer that can get up here and
21 tell you, January 1 or November 1, we know exactly what's
22 going to happen six months later.

23 MR. BRADEN: I understand that, but why would a
24 seller of land want to keep the land for open space?
25 There wouldn't be any reason for it.

1 MR. MUSEMECHE: But that's his prerogative,
2 Paul. I mean, it's his prerogative. I get it. I'm not
3 sitting here and deny -- but there are other -- again,
4 there's other aspects. It could be a POA. There's a POA
5 involved with other -- the other attributes of these
6 developments.

7 It could be deeded to a POA. It doesn't really
8 change the fact that the rule doesn't require defense or
9 explanation as to the practical purpose of the fee strip.
10 It is a fee strip dedicated legally by subdivision plat.
11 I mean, I can't deny that.

12 I mean, that's what it is. And you can say you
13 don't like it or not --

14 MR. GOODWIN: And potentially --

15 MR. MUSEMECHE: -- but it doesn't really
16 change --

17 MR. GOODWIN: -- to have two separate sites to
18 avoid the cap of --

19 MR. MUSEMECHE: So --

20 MR. GOODWIN: -- the award.

21 MR. MUSEMECHE: -- this again -- and just for
22 what it's worth, we brought this up to staff. I've
23 commented on this about this particular proximity issue.
24 It didn't go anywhere. I mean, I tried to say, hey,
25 you're going to have over-concentration, in particular in

1 census tracts, which this is more likely, where you have a
2 bunch of census tracts, or like, one census tract that's
3 the hot census tract, and so all these developers go put,
4 you know, deals in there.

5 I've brought it up. It didn't go anywhere, so
6 perhaps next year, when you're drafting the new QAP, you
7 look at this and you put in a distance to really define
8 how far apart you want deals that aren't governed by the
9 statute which is the one-mile/two-mile rule.

10 MR. GOODWIN: Okay. Any other questions?
11 Other speakers? I assume these are the same gentlemen
12 that spoke last month?

13 MR. KELLEY: Yes, sir.

14 MR. GOODWIN: Or two weeks ago?

15 MR. KELLEY: Good morning, Chairman Goodman,
16 members of the Board. My name is Nathan Kelley, with
17 Blazer. I would like to request that the Board deem
18 Applications 18033 and 18047 contiguous and to designate
19 the lower-scoring application as a non-priority
20 application under Section 11.3(g) of the QAP.

21 As you mentioned last month at the June 28
22 Board meeting, we discussed these applications as they
23 relate to that, and whether they are contiguous and serve
24 the same population, and in a letter that the Applicant
25 delivered to the Department dated July 3, the Applicant

1 argued and just admitted that the sites aren't contiguous
2 merely because of this intervening ownership of fee simple
3 title being retained by the seller of the sites.

4 They explained the definitions of contiguous
5 and cite different dictionary definitions or references,
6 but they don't -- they failed to provide any evidence as
7 to the reason why this fee simple strip was retained.

8 And the reason being is that there is no need
9 for the seller to retain, maintain, pay taxes on this
10 strip of land, other than to help the Applicant avoid this
11 rule, and further, the Applicant noted in this letter that
12 the 10-foot strip of land is no longer dedicated to
13 drainage, as was testified last month, but is now a
14 landscape and open space buffer, which is evidenced in
15 their narrative response, as well as in the preliminary
16 plat that the City of Stafford reviewed and approved, and
17 that they attached as an exhibit.

18 But this information only further proves the
19 point that the seller is retaining the strip of land, that
20 the seller's retention of this strip of land is needless,
21 and only to make these sites not contiguous, and an
22 obvious circumvention of the rule.

23 The Applicant also points to an email exchange
24 between itself and the Department dated February 7, 2018,
25 and I would note that the Applicant's question to staff

1 did not disclose the fact that they were arbitrarily
2 leaving this 10-foot landscape buffer to the seller only
3 to avoid Section 11.3(g).

4 I assume, and would like to think, that if the
5 Applicant had disclosed and been more transparent in its
6 question to the staff, that they would have made a more
7 clear -- that it would have been more clear that this was
8 intended to circumvent the rule, and the staff would have
9 responded appropriately.

10 Now, the Applicant further argues that
11 circumvention in this case should be allowed to pass
12 muster because they've spent money to advance their
13 development, and I believe that this argument is
14 irrelevant considering the circumstances, that we are all,
15 Harris County, Fort Bend County, what have you, in a
16 readiness-to-proceed situation, and other developers and
17 applicants behind these applications have gone through
18 that same process and spent time, money and other
19 resources to advance their developments.

20 I would also note that in 2016 and 2017, Fort
21 Bend County received seven deals and 700 units. So as to
22 say that they have not been under-subscribed over the last
23 few years, to the point where losing one deal this year
24 would put them at a -- you know, in a detrimental
25 situation relatively to Harris County receiving another

1 deal.

2 So I appreciate your comments and the
3 opportunity to speak in front of you again today.

4 MR. GOODWIN: Okay. Any questions?

5 (No response.)

6 MR. GOODWIN: Okay.

7 MR. BARTHOLOMEW: Good morning again. Jeremy
8 Bartholomew. Thank you all for your time and for your
9 service. I want to start -- I'm speaking in opposition of
10 these projects. Let me start, just big picture, of why
11 does this rule exist?

12 What is the purpose of a non-contiguous rule?
13 If we go grab a guy on the street and say, hey, there's
14 this non-contiguous rule. And you say, why would that
15 exist? The most obvious thing anybody is going to say is,
16 well, you don't want to put two projects right next to
17 each other.

18 That's the point. That's the entire point of
19 the rule. All this notion of, you know, does -- the way
20 that Fort Bend or Harris County or this -- the Applicant
21 is line to receive a project for Fort Bend County. Let's
22 just be clear.

23 What we're talking about is getting two and
24 potentially three projects, 21 to 32 percent of the
25 credits to the Stafford ETJ, which Stafford has 19,000

1 people. The CDP has 2,000 people. But that's not the
2 point.

3 The point is all related to this contiguous
4 notion. So as has been brought up, Mr. Braden asked
5 specific questions last -- at the last meeting, stating,
6 give me some type of reason why this exists. I'll note
7 hat it was on record that the response received from the
8 Applicant's attorney at the last meeting was it was for
9 the QAP, as has been determined today, and for drainage.

10 So I nearly fell out of my chair when I read
11 that now drainage is not the issue. Now it's turning into
12 a -- it's a landscape reserve. So it is utterly ludicrous
13 that we're sitting here talking about a situation like
14 this.

15 So red flags are going off everywhere. I'd
16 like to submit after I'm done speaking -- I have a letter
17 from Commissioner Rodney Ellis from Harris County
18 Precinct 1, who is bringing up concerns with this same
19 issue.

20 I would ask that it be read after I conclude.
21 The final point is, if you only look at this rule at full
22 application after a site plan is drawn, it is utterly
23 useless. It has no purpose. All you're telling
24 developers is, go gerrymander a site plan and then come
25 bring it to me and it will be okay, as long as the sites

1 don't touch.

2 This rule only makes sense if you evaluate it
3 before a site plan is drawn. So what they're saying in
4 this case, and what staff is saying is -- it only makes
5 sense at preapp, when you look at it before you've had a
6 chance to gerrymander it.

7 Otherwise, it's totally worthless. You're
8 giving developers -- it's a two-for-one special of saying,
9 oh, just go cut your site up and then you're good to
10 breach the cap. So again, there's going to be a project,
11 that -- Fort Bend County is going to be served.

12 The point is, it is in direct violation of the
13 spirit and the letter of this rule. May I submit this
14 letter, please?

15 MR. GOODWIN: Sure. Do you want to read it
16 into the record?

17 MR. LYTTLE: It's addressed -- letter is
18 addressed to J.B. Goodwin, Chair, TDHCA Board:

19 "Mr. Goodwin, I write to you today to express
20 my steadfast commitment to affordable housing in Harris
21 County Precinct 1 and the greater Houston area as a whole.

22 "The need for quality affordable housing is one
23 of the greatest challenges facing our county, and I
24 commend and support the Texas Department of Housing and
25 Community Affairs in the good work you do providing,

1 facilitating, and regulating such vital development in my
2 precinct and across Texas.

3 "Hurricane Harvey presented unprecedented
4 challenges in a number of sectors, perhaps none more so
5 than housing, and while the floodwaters did not
6 discriminate based on income, we know that recovery is
7 particularly difficult for our low- to moderate-income
8 individuals and families and that the damage to existing,
9 affordable multifamily properties exacerbated an already
10 dire situation for many.

11 "To that end, I am concerned by recent attempts
12 to take advantage of loopholes in TDHCA regulations in
13 such a way as to unfairly disadvantage qualified
14 competitive low-income tax credit applications in Harris
15 County.

16 "While I appreciate and support diversity in
17 affordable housing, acknowledging that this is not just a
18 large, urban county issue, regulations designed to benefit
19 less populous counties should not be open to exploitation
20 in such a way as to disadvantage other qualified
21 applications.

22 "I acknowledge the competitive nature of the
23 application process, but I am especially concerned with
24 the current situation in that as a direct result of the
25 exploitation of the contiguous property rule, no

1 applications in unincorporated Harris County stand to be
2 approved in the 2018 cycle.

3 "The Sheldon area, in particular, had an
4 existing need for affordable housing which was compounded
5 by the devastation suffered in that area during Harvey,
6 and as such, while I am concerned in principle by the
7 manipulation of the rules of TDHCA, I am particularly
8 troubled by the fact that an application such as
9 Rutherford Park, which I have supported as a step towards
10 addressing that need, stands to be denied as a direct
11 result of that loophole.

12 "Thank you for your consideration in this
13 matter and please contact me if you have any questions.
14 Sincerely, Rodney Ellis, Precinct 1 Commissioner."

15 MR. GOODWIN: Thank you. Yes, ma'am.

16 MS. BAST: Good morning. Cynthia Bast of Locke
17 Lord. I represent Blazer Residential and am testifying in
18 support of finding these two sites contiguous. I'd like
19 to refer to Mr. Palmer's testimony about this distinction
20 between application and preapplication.

21 The definition of an application in your
22 statute is an application filed with the Department by an
23 applicant and includes any exhibits or other supporting
24 materials. There's no distinction between preapplication
25 and application in the statute.

1 The word "preapplication" is not defined in
2 your rules. It's used in lower case. There are times in
3 your rules when application is used with the modifier
4 "full" application, and then times where it is not. I
5 think that's intended to distinguish between
6 preapplication and application.

7 Notably, the application acceptance period
8 begins on January 4. By definition, that's when the
9 preapplications can first be submitted. So I believe that
10 this is all part of the application process, and for the
11 reasons described by Mr. Kelly for the competitive process
12 and the fairness of looking at this, you have to be able
13 to look at this at the time of preapplication.

14 I advise clients on these kinds of issues all
15 the time. I have plenty of clients who acquire more land
16 than they need, and then they try to figure out how to
17 configure it. Mr. Musemeche is right. This is a fluid
18 process. There's no question about that.

19 There's an application in this round -- there
20 are two applications that I advised on that are, you know,
21 a general population and an elderly population that are in
22 proximity to each other. That fits the rule. They didn't
23 try to fit a third one on there. They didn't, you know,
24 try to do anything fancy.

25 Honestly, if I'd looked at this situation, I

1 probably would have said, why don't you put the general
2 and the elderly next to each other, and then if you want
3 that third application over there with that other
4 developer, you know, then put that one over there, and you
5 could fit into the rule that way.

6 But I do believe that there is good cause
7 within your discretion to tell the staff that, in
8 interpreting this rule, which is a procedural rule, that
9 the lowest-scoring application should not be prioritized
10 here because these two applications have contiguity at the
11 time of preapplication. Thank you.

12 MR. GOODWIN: Thank you. Any questions?

13 (No response.)

14 MR. GOODWIN: Any other --

15 MS. DULA: Tamea Dula, Coats Rose. I'd like to
16 respond to that set of comments. First of all, in the QAP
17 and the rules, consistently preapplication and Application
18 with a capital A are referenced. They are two separate
19 concepts.

20 In our discussions here this morning, Mr.
21 Eccles has segregated them into the application and the
22 preapplication, different concepts in your speech. We're
23 looking here at two different concepts: application and
24 preapplication. They are not one and the same.

25 Number two, the January 4 effective date of the

1 amendment to the earnest money contract. This is
2 something I do regularly. So do many, many, many real
3 estate attorneys. An amendment was made.

4 It was not intended to reflect a change of
5 approach in the middle of the deal but is intended to be
6 the parties' agreement as of the beginning of the
7 contract. That's why it's stated to be effective as of
8 the date -- the effective date of the entirety of the
9 earnest money contract.

10 So I don't think that that is a relevant factor
11 with regard to this. There was no effort to make it
12 effective as of the preapplication necessarily. But the
13 contract refers to the fact that the actual location of
14 the two tracts that are being purchased from the same
15 seller will be contingent upon the survey and defined by
16 the survey.

17 So it's always contemplated that we would go
18 back and look at where the different projects were going
19 to be. And, yes, indeed, the seller is retaining that
20 strip. He has an inducement to do so. He wants to sell
21 the land.

22 And so it was a discussion between the
23 purchaser and the seller as to how the land which was
24 being acquired in two different tracts and ultimately is
25 to be acquired in three different tracts because

1 additional land was brought in, which is within the
2 rules -- a discussion of how that could be done within the
3 rules of the QAP.

4 Here, it is within the clear language of the
5 QAP. Now, sometimes we screw up, and the rule doesn't say
6 what we thought it did, or the rule doesn't say what we
7 wanted it to say, and that might be the case, that you
8 don't want them to be non-contiguous.

9 You want them to be further apart than that,
10 but this rule is not just for one developer who wants to
11 do side-by-side projects. It also affects a project by
12 Mr. Kelly, which might be contiguous with a project by Mr.
13 Musemeche.

14 One of those would go. Here, we do not have
15 contiguity, however, and so both projects are eligible
16 under the QAP.

17 MR. GOODWIN: Any questions?

18 MS. DULA: Thank you.

19 MR. GOODWIN: Barry, did you want to speak
20 again?

21 MR. PALMER: Yeah. Barry Palmer from Coats
22 Rose. You know, the history of the Department in -- you
23 know, there are always rules that come up each year for
24 re-looking because, you know, the QAP is never perfect.
25 And when there's something that the Board realizes doesn't

1 yield the result that they want, that the precedent has
2 been to change that rule for next year.

3 But when you've got a rule that's clear on its
4 face, you really need to stick with that rule and change
5 it next year if you don't like the result, rather than
6 find some way to get around the rule that you don't like
7 by saying, well, contiguous -- it's not just really
8 contiguous; it means if you're some distance apart.

9 Well, what is that distance? I think if we
10 want a rule on proximity, let's have a rule next year,
11 revise the rule to say, proximity. But this year, let's
12 follow the rule as it currently is written, and that the
13 developer community has relied upon and find that these
14 projects are not contiguous.

15 MR. GOODWIN: Any questions?

16 (No response.)

17 MR. GOODWIN: Marni, I've got a question for
18 you. We obviously have --

19 MS. HOLLOWAY: Yes, sir.

20 MR. GOODWIN: -- 100-plus applications.

21 MS. HOLLOWAY: Uh-huh.

22 MR. GOODWIN: Has anybody else tried this and
23 declared this? Do we have any others that are in a
24 similar boat, where --

25 MS. HOLLOWAY: I --

1 MR. GOODWIN: -- you started preapplication
2 and --

3 MS. HOLLOWAY: I have not seen another
4 application that's handled this situation in this manner
5 with these strips.

6 MR. GOODWIN: That's what I'm asking. Okay.
7 Okay.

8 Go ahead, Sharon.

9 MS. THOMASON: Also for Marni. So if it had
10 been presented as it is now at preapplication, would staff
11 have had other -- another --

12 MS. HOLLOWAY: So we as staff have -- only have
13 the ability to apply the rule as it's written, and the
14 rule as it's written says "contiguous," and you know, by
15 definition, that means they don't touch. That's how we
16 came to that original conclusion with the RFAD.

17 MR. GOODWIN: Yeah?

18 MR. VASQUEZ: I'll probably have a question in
19 here somewhere, but I mean, this is interesting. As y'all
20 have probably picked up on, I'm against gotchas on
21 technicalities and everything. But in this instance, I
22 have to applaud the developer and his advisers that have
23 used these technicalities, gotcha, against us, because
24 this clearly, just blatantly, you know, flaunts the
25 intents of what we have, but follows the specific

1 technicalities --

2 MS. HOLLOWAY: The letter of the rule.

3 MR. VASQUEZ: -- and I'm assuming that this
4 10-foot strip is going to have to have its own appraisal
5 district ID number and everything is going to be plotted
6 and platted and everything like that, and as a former tax
7 assessor-collector of Harris County, I can tell you what's
8 going to happen is Divine Farms LLC will technically own
9 this 10-foot strip and abandon it.

10 I mean, so I would never pay taxes on it. And
11 the county's not going to come in to take it, because it's
12 useless, I mean, other than for these developers. So
13 getting back to -- so if we're going to go with
14 technicalities and -- rather than the spirit of what was
15 the intent, I don't see how we are going to deny the way
16 that this was put together.

17 I mean, it follows that technicality. What I'd
18 like us to discuss a little bit more, not in relation to
19 this vote that I think is going to happen, but is more
20 something -- I think it was Barry that first admitted it,
21 that really the root cause of this is the size of the
22 dollar value and then the ratios and everything that
23 apply, I mean, because if we could have put it all in one
24 project, it would have been a lot easier, I would think.
25 Is --

1 MS. HOLLOWAY: Right.

2 MR. VASQUEZ: -- so the real root cause of this
3 on breaking it into two projects is due to our rules on --

4 MS. HOLLOWAY: I'm -- yeah, I'm --

5 MR. VASQUEZ: -- the cost for putting --

6 MS. HOLLOWAY: -- not prepared to speak on why
7 the Applicant made that decision.

8 MR. VASQUEZ: Well, I'm just saying, the -- it
9 may not be our contiguous rule.

10 MS. HOLLOWAY: Uh-huh.

11 MR. VASQUEZ: It could really -- the root cause
12 of this is really caused by these other rules on the
13 finance structure and --

14 MS. HOLLOWAY: Well, and -- but -- and I
15 would --

16 MR. VASQUEZ: -- pretty much. Is that correct?
17 I mean is that --

18 MR. PALMER: Can I answer that question?

19 MR. VASQUEZ: That's -- and I wouldn't mind
20 him --

21 MS. HOLLOWAY: Okay.

22 MR. VASQUEZ: -- you know, answering that as
23 well, because I think that's --

24 MR. PALMER: Yeah. Well --

25 MR. VASQUEZ: -- what we might have to look

1 at --

2 MR. PALMER: You're not seeing the whole
3 picture, obviously, as well. There really are two
4 different developments in all practical -- there is a
5 multifamily, four-story, modern urban development on the
6 Miramonte, one- and two-bedroom conventional apartment
7 stock.

8 The second one are single-family and duplex
9 units. So it is different. And so cohesively, it was
10 thought out to be a bigger master plan. So that's the
11 logic behind -- you asked about why, and so yes, they're
12 general population, but they are different.

13 They're -- it's a single-family serving a
14 completely different population group than the workforce
15 being the more one- and two-bedroom apartment development.

16 So if that answers your question -- there was thought to
17 how these were created, but there was no assurance they
18 would all get awarded.

19 We don't know. I mean, we didn't, but we
20 thought we could try, and if it worked out, it worked out.

21 And so that's where it is today, but there was no
22 assurance we would get any of them. It was just -- let's
23 see what happens.

24 Any developer that competes does their best,
25 but we don't have any assurance until you get to where we

1 are today, where we are at this point, which -- these are
2 in the credits. They are in the money. So they can move
3 forward.

4 MR. GOODWIN: Well, I understood you to answer
5 my question earlier that it was motivated by the cap on
6 the award, that if you put these two projects together, it
7 would exceed --

8 MR. PALMER: Well, that's --

9 MR. GOODWIN: -- our cap.

10 MR. PALMER: -- correct. That's partially true
11 as well. I mean, again, that's --

12 MR. GOODWIN: That's partially true?

13 MR. PALMER: -- there's a cap -- yes, sir.

14 MR. GOODWIN: I have trouble with "partially."

15 MR. PALMER: Well --

16 MR. GOODWIN: Is it true or isn't true?

17 MR. PALMER: Well, yeah, that's true, that
18 there is a limit to how many credits an application can
19 make --

20 MR. GOODWIN: It's motivated --

21 MR. PALMER: -- but there is a cap to what we
22 can get as a whole anyway. Whether I've got one project
23 in Houston and one project in Dallas, I'm limited to what
24 I can get as a whole. Here there's still a cap to what
25 we're going to require, but, yes, it allows us to do

1 larger developments meeting the cap rules --

2 MR. GOODWIN: Uh-huh.

3 MR. PALMER: -- for sure.

4 MR. GOODWIN: And I don't think we're as
5 defined, frankly, from what you said as -- if we take the
6 word to mean, application. When I heard it read, any
7 application is considered an application, not just
8 necessarily the full and final application.

9 So I think if we were so preconceived to look
10 up and say -- or at least, I was -- that you know, this
11 was clearly one project that was cut up for reasons to
12 circumvent this rule, maybe the application that came
13 in -- the preapplication, that I can use that to justify a
14 vote in that position.

15 MR. VASQUEZ: I'm sure the Blazer guy is saying
16 to circumvent the rule, but they --

17 MR. GOODWIN: Yeah.

18 MR. VASQUEZ: -- will say to comply with the
19 rules.

20 MR. PALMER: Again, I cannot take exception
21 that there's some kind of, you know --

22 MR. VASQUEZ: It's the rule.

23 MR. PALMER: Right. I mean, we're meeting it.
24 I mean, and I can't -- there's all there is to it.

25 MR. BRADEN: And some of this are questions or

1 comments for staff -- again, you know, this whole item
2 made me pull out the QAP and kind of comb through the
3 rules, which is something I don't really love doing,
4 but --

5 MR. PALMER: I'm so sorry.

6 MR. BRADEN: -- you know, the question -- you
7 know, they're making statements that it technically
8 complies with the rule. I mean, but clearly, they found a
9 loophole or they think they found a loophole, but relying
10 on a very technical reading of the rule.

11 So it forces me to technically read the rules
12 too. So you know, I was looking at 11.9(e)(3), and that's
13 where all the preapplication points are set out. And
14 there is a section there -- there's (H) of that
15 subsection, and Tim and Beau are really the ones who
16 commented to this -- that says -- and these are just from
17 my notes.

18 I didn't bring my QAP. But all applicable
19 requirements were met. And one of the applicable
20 requirements -- there well could be 11.3(g) which talks
21 about the proximity of the development site. So at your
22 preapp, you know, you're supposed to have all applicable
23 requirements met, but one of the applicable requirements
24 could be proximity, because that's another part in our
25 rules.

1 And so the whole argument of whether or not the
2 preapp or the app, you know -- clearly, it was not
3 contiguous at the preapp. It's contiguous now at the app.
4 So I'm not -- did I say that wrong?

5 MALE VOICE: Yeah.

6 MR. BRADEN: But it was contiguous at the
7 preapp and not contiguous at the app. So they're saying,
8 oh, no, that's what the rule says. Well, I'm not sure.
9 You know, when I start combing through the technical
10 reading of these rules -- again, they're relying on a very
11 technical interpretation -- I read through that.

12 I'm, like, maybe, maybe not. I mean, I think
13 we could very easily say at preapp it should have been
14 this way.

15 MS. DULA: Marni, if that's --

16 MS. HOLLOWAY: Of course.

17 MS. DULA: Could I speak to that? Tamea Dula.

18 At the preapplication, you do not have to define what
19 your development site is. That's capital D, Development,
20 capital S, Site. What you have to do is show you have
21 site control, which is a defined term also.

22 This -- in this instance, there was site
23 control over about 30 acres. The development site for
24 these two different developments was not designated in the
25 preapplication, as is appropriate. When you get to the

1 application, the development site, which is shown in the
2 application, must contain some of the land, but not all of
3 it, and it could contain land that was not in the preapp.

4 But it must contain some of the land in the
5 preapp in order to be qualified for the preapp points.

6 MR. BRADEN: So then the preapp section --
7 right -- 11.9(e)(3)(H), would require that applicable
8 requirements be met. One of our applicable requirements
9 is proximity. Isn't that required by the preapp?

10 MS. DULA: It may well be, but you're not
11 defining what your development site is, so how can you say
12 that --

13 MR. BRADEN: Well, how would apply proximity to
14 the preapp? But you're --

15 MS. DULA: You can't.

16 MR. BRADEN: Well --

17 MR. IRVINE: Well, you would need to amend the
18 rule to define the requirement at preapp -- was to define
19 the development site, I guess.

20 MS. DULA: I would agree with that, because the
21 development site as a defined term doesn't -- is not
22 created until you get to the full application. Of those
23 30 acres that were in the preapp, 25 might have been
24 discarded and no longer under contract.

25 In this instance, all of the land plus some

1 extra land that hadn't been in the preapp was -- MR.

2 BRADEN: I mean, clearly, we need to fix the rule next
3 year. The real issue is whether or not the rule this
4 time -- you know, they gamed the system. Maybe they've
5 won this time, but it's -- you know, it's whether or not,
6 you know, we can get there otherwise.

7 MR. GOODWIN: Okay.

8 MS. DULA: Okay. Thank you.

9 MR. GOODWIN: Any other questions? Do you have
10 anything new to add, sir?

11 MR. PALMER: This is just really brief. It
12 is -- you all do have the discretion, though. This does
13 not exist in a vacuum. Everybody is aware of what's going
14 on here, and by going along with this, it's allowing this
15 to be made a mockery.

16 Everyone sees what's happening here. So my
17 encouragement would be to look at it with common sense and
18 to do the right things for this.

19 MR. GOODWIN: Okay. Any other questions,
20 comments?

21 MS. THOMASON: I have a question.

22 MR. GOODWIN: Okay. We have a question.

23 MS. THOMASON: Maybe more for Beau and Tim. So
24 in the previous case that we were talking about, there was
25 clearly a statute that the Board didn't feel that we had

1 discretion to take an action that would not be in line
2 with that statute.

3 Is that the case here, or is this more just the
4 rule?

5 MR. ECCLES: This is an interpretation of a
6 Board rule. The nexus with statute is, as Mr. Palmer has
7 pointed out, Application is with a capital A. Application
8 is not defined in the rules. Application, I see, is
9 defined at Texas Government Code 2306.67022, which Ms.
10 Bast read previously.

11 So within 11.3(g) in our QAP, you have the
12 Board interpretive question of -- if two or more
13 competitive HTC applications that are proposing
14 development serving the same target population on
15 contiguous sites are submitted in the same program year,
16 the lower-scoring application, including consideration of
17 tie-breaker factors, if they are tied scores, will be
18 considered a non-priority application and will not be
19 reviewed unless the higher-scoring application is
20 terminated or withdrawn.

21 The question is whether Application, capital A,
22 in 2306.67022 would include, in this Board's
23 interpretation, the preapplication.

24 MR. GOODWIN: Any other questions or comments?
25 Tim?

1 MR. IRVINE: Just one other comment. Going
2 back through the preapp points rule to Mr. Braden's
3 question and to Ms. Dula's comment about defining the
4 development site, it specifically says the development at
5 application is at least in part the development site at
6 preapplication.

7 So there is that one connecting statement.

8 MR. GOODWIN: I'm sorry, Paul?

9 MR. IRVINE: That's what it says.

10 MR. BRADEN: Which is being satisfied.

11 MR. GOODWIN: Right. Okay.

12 MR. PALMER: Barry Palmer.

13 MR. GOODWIN: Something new?

14 MR. PALMER: Yeah, something new. Well, you
15 know, I had raised the issue of due process, and if this
16 decision is going to be made based on the concept of
17 preapplication proximity or preapplication continuity, you
18 know, we just found out the staff was raising this issue
19 two business days ago, and have not had the opportunity to
20 properly brief it and go through the normal appeals that
21 we would ordinarily.

22 So if the decision is going to be on this
23 concept of preapplication, I would request that the Board
24 table this until the next meeting to give us the chance to
25 properly brief it. If the Board, however, decides to

1 decide this issue based on the rule at application, then
2 we would encourage you to vote that these are both
3 eligible.

4 MR. GOODWIN: So let me make sure I have it
5 clear. If we are in favor of you, then you would like to
6 know, yes, today, but if we're not in favor, you'd like to
7 have another shot at it this month?

8 MR. PALMER: No.

9 MR. GOODWIN: Or at the end of month?

10 MR. PALMER: If --

11 MR. GOODWIN: I mean, I just want to make sure
12 I'm understanding it correctly.

13 MR. PALMER: No, no --

14 MR. GOODWIN: I'm not understanding it
15 correctly?

16 MR. PALMER: Right. The -- what I'm raising
17 is, if a decision is going to be made on the
18 preapplication, based on the preapplication concept that
19 was just raised a couple of days ago, that we are
20 requesting that it be tabled.

21 MR. GOODWIN: So that, I would assume, be your
22 thinking that it would be voting against your client's
23 proposal in calling them contiguous, and that -- so I
24 don't think we can give you that option. I think the
25 option -- whatever motion is going to come -- unless you

1 would like to proceed and say you'd like to see the matter
2 tabled till next month, I would ask, are we going to have
3 to listen to another hour of everybody saying the same
4 thing that we've already listened to?

5 MR. PALMER: Well, we --

6 MR. GOODWIN: Do you want to table it now? Are
7 you getting a feel or a flavor that you want to table it
8 now? I can't undo a vote after --

9 MR. PALMER: Right.

10 MR. GOODWIN: -- a vote's been done, but --

11 MR. PALMER: I think that's a procedural
12 question that you need to ask. I mean, we're just trying
13 to -- I think the point was clear. I hope it's fine. I
14 sense --

15 MR. GOODWIN: Beau, you tell me if I am out of
16 line.

17 MR. IRVINE: I would respectfully say it's a
18 question to the members of the Board. Is there any member
19 that wishes to table the item?

20 MR. ECCLES: Well, if -- actually, before we go
21 there, you've raised due process. You believe that you
22 have not had an adequate opportunity to respond. What is
23 it that, if you had more than what you perceive as being
24 raised for the first time on Monday, that you have not had
25 an adequate opportunity to respond to before the Board

1 today?

2 MR. MUSEMECHE: I can answer that, Barry.

3 It's a question of whether or not what's
4 provided or not provided in the preapplication was in fact
5 contiguous. That whole discussion has not been had.
6 They're assuming that what was in the preapp was
7 contiguous.

8 We're not -- you know, we haven't discussed all
9 that. So I don't think you're there. I sense that
10 you're -- may not like the rule. I sense that you, you
11 know, feel like the application was sufficient at 11.3(g),
12 but if for some reason you don't, then this whole
13 discussion about preapp is based upon what we did or did
14 not provide in the preapp.

15 And so we haven't discussed what we did or did
16 not do in the preapp.

17 MR. ECCLES: Respectfully, to the Board, and I
18 do believe that the Applicant was asked whether they would
19 want to come to this meeting or the next one. I didn't
20 personally ask that --

21 MS. HOLLOWAY: I --

22 MR. ECCLES: Was this for a different app?

23 MS. HOLLOWAY: I think that we were pretty
24 clear that we, staff, prefer to come to this meeting --

25 MR. ECCLES: Sure.

1 MS. HOLLOWAY: -- so that we're not going
2 into --

3 MR. ECCLES: I understand that.

4 MS. HOLLOWAY: -- the last July meeting with
5 any uncertainty.

6 MR. ECCLES: I'm a bigger fan of providing more
7 process than truncating it, and I would recommend that if
8 the issue has been raised and they believe they have had
9 an inadequate opportunity to respond that would be
10 satisfied by going to the late July meeting, then I would
11 recommend tabling.

12 MR. GOODWIN: Any discussion?

13 (No response.)

14 MR. GOODWIN: Do I hear a motion to do so or a
15 motion -- should we deal with the issue now?

16 MR. VASQUEZ: It doesn't seem to me that it
17 would be in the best interests of the Applicant to wait
18 any longer for this decision. I mean, if we're going to
19 follow along with the --

20 MR. GOODWIN: We're not discussing --

21 MR. VASQUEZ: -- if we're following along with
22 the technical -- continuing to follow along with the
23 technical application of our rules and statutes, if I'm
24 the Applicant, I'd say, hey, please vote as fast as you
25 can on this.

1 MR. GOODWIN: I hear nobody saying they want to
2 table it, so do we hear a motion?

3 MS. BINGHAM ESCAREÑO: Move to find both
4 applications eligible and move forward, and then would
5 make a friendly recommendation to instruct staff to look
6 at the rules for future rules and further define --

7 MR. GOODWIN: Okay.

8 MS. BINGHAM ESCAREÑO: -- the rules around
9 contiguity.

10 MR. GOODWIN: Do I hear a second for that
11 motion?

12 MR. VASQUEZ: Unfortunately, yes, I have to
13 second.

14 MR. GOODWIN: Okay. Any further discussion?
15 (No response.)

16 MR. GOODWIN: Did you want to speak, sir?
17 No?

18 Okay. All those in favor, say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: All opposed, say no.

21 No.

22 Okay. It passes. We're moving on to -- item
23 3(c) has been withdrawn. Right, Marni?

24 MS. HOLLOWAY: Yes.

25 MR. GOODWIN: So all we have left is --

1 MS. HOLLOWAY: Public comment.

2 MR. GOODWIN: -- public comment. At this point
3 in the agenda, we'll take comments from the public for
4 items for the future.

5 (No response.)

6 MR. GOODWIN: Hearing no public comments, do I
7 hear a motion to adjourn?

8 MS. BINGHAM ESCAREÑO: So moved.

9 MR. GOODWIN: Seconded?

10 MR. BRADEN: Second.

11 MR. GOODWIN: All in favor, aye?

12 (A chorus of ayes.)

13 MR. GOODWIN: We'll see you back in a couple of
14 weeks.

15 (Whereupon, at 10:36 a.m., the meeting was
16 adjourned.)

C E R T I F I C A T E

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2
3 MEETING OF: TDHCA Board
4 LOCATION: Austin, Texas
5 DATE: July 12, 2018

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 123, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Housing and Community Affairs.

11 DATE: July 17, 2018
12
13
14
15
16

17 _____
(Transcriber)

18
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