

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E.1.036
Capitol Extension Building
1500 North Congress Avenue
Austin, Texas

Tuesday,
July 10, 2012
10:00 a.m.

MEMBERS:

J. PAUL OXER, Chair
TOM H. GANN, Vice Chair
LESLIE BINGHAM ESCAREÑO
LOWELL KEIG
JUAN S. MUÑOZ
J. MARK McWATTERS

STAFF:

TIM IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

AGENDA
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CALL TO ORDER, ROLL CALL 4
CERTIFICATION OF QUORUM

Pledge to flag 4

CONSENT AGENDA

1. Approval of the following items presented in the Board materials:

a) Presentation, discussion, and possible Approval of the award of a temporary Community Services Block Grant contract to South Central Texas to provide services in Edwards, Kinney, Real, Uvalde, Val Verde and Zavala Counties 5

b) Presentation, discussion and possible approval of the award of a Community Services Block Grant contract to Community Council of South Central Texas to provide services in Dimmit and LaSalle County 5

c) Presentation, discussion and possible action regarding a final order adopting 10 TAC Chapter 5, Subchapter J, Sections 5.1001 - 5.1004 for the Homeless Housing and Services Program. Withdrawal of proposed Section 5.1005 and proposed new Sections 5.1005 - 5.1007 for public comment in the Texas Register 5

d) Presentation, discussion, and possible action to publish a proposed new rule for the Taxable Mortgage Program, 10 TAC Chapter 28, Sections 28.1- 28.9 for public comment and publication in the Texas Register tabled

e) Presentation, discussion, and possible action regarding a proposed repeal of 10 TAC Chapter 1, Section 1.6 concerning Historically Underutilized Businesses and proposal of a new 10 TAC Chapter 1, Section 1.6 concerning Historically Underutilized Businesses program for public comment and publication in the Texas Register 5

- f) Presentation, discussion, and possible action to approve amendments to Neighborhood Stabilization Program I contracts 5
- g) Presentation, discussion, and possible action regarding inducement resolution number 12-034 for Multifamily Housing Revenue Bonds and an authorization for filing applications for private activity bond authority, 2012 waiting list. 5

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P R O C E E D I N G S

MR. OXER: Good morning everyone. I would like to welcome you all to the July 10 meeting of the Texas Department of Housing and Community Affairs governing Board. We will start by taking roll here and certifying the quorum.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Professor McWatters.

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz is not here yet, but he is expected to be on the ground. I am here. We have at least five present, which is a quorum, so we can safely proceed. If you would please stand and salute the flags.

(Whereupon, the Pledge of Allegiance to the United States Flag and Texas Flag was recited.)

MR. OXER: Thank you. Okay, Tim, we have a -- before we get started with the formal part of the meeting, we have a --

(Pause.)

MR. OXER: All right. Let's take up the consent agenda. Is there any more -- have we got anybody to recognize in the audience?

MR. IRVINE: No, sir.

MR. OXER: Okay. Julie. Hey, there you are. I have got my close distance glasses on. I can't see you back there. Okay. Good morning.

Welcome. I am glad you could join us today. And if I feel a little red dot on my forehead, I will know where it is coming from.

Okay. Well, let's go to the consent agenda. There are -- are there any comments on the consent agenda from the Board? I understand we have a request for comment on one. Let's have it, then. That is okay. We are sort of making this up as we go, today.

MR. IRVINE: For those of you who aren't familiar with the new protocol, if you want to speak on an item, come queue up here on the front row, and just come straight to the mic and announce yourself.

MR. OXER: Yes. We are going to keep the first couple of seats over here for our staff who will be involved in what is going on, on the active item. So anybody that wants to speak on an item, starting over there in line.

That is what we will do. I expect we are going to have a request for comment at some point, here. So we will start where you are sitting right there.

You are welcome to speak. But that will be our on deck circle there. Line up. If you have an order that you would like to speak in, then line up across there so the one farthest to the left speaks first -- from our left. So, Mr. Marquez.

MR. MARQUEZ: Hello, Mr. Chairman. Thank you. Board. My name is David Marquez. And I am here to speak about the Neighborhood

Stabilization, and Hidalgo County Housing Authority. And I have brought with me the Executive Director.

Mike, do you want to introduce yourself?

MR. LOPEZ: Mike Lopez, Executive Director of Hidalgo County Housing Authority.

MR. MARQUEZ: Of course, we are in favor of the approval of all of the 25, 30 extensions that the Board is going to take today, hopefully. But I just need some clarification, okay.

In talking to Sue Nance the other day, it seems like there is a difference between the extension of the contract and the loan. And I just want to make sure that we are covering both the extension of the contract and the loan at the same time.

And the other thing is, is that even though we have a contract that seems to run to July 12th to begin our payments on houses that are sold -- the 31st, I'm sorry, of '12. I just wanted also a clarification that this would make it back to the original date of October 31st of '11. I just need some kind of clarification from the Board on what you are approving.

MR. IRVINE: We ask Marni Holloway, the Director of the Neighborhood Stabilization Program of Texas, to address this, please.

MS. HOLLOWAY: Good morning. I'm Marni Holloway. I'm the Director of the Neighborhood Stabilization Program. The item that is brought to the Board today allows for further extension of contracts that had original end dates of August 31, 2011.

We are allowed under the NSP rule to administratively extend

those contracts up to a year. These contracts are ones that likely will not be completed by August 31st of 2012. And we are requesting the Board's approval to extend those.

For the Hidalgo County contract, and to respond to your question, this is the first step in the loan modification. We have to have a contract in order to extend the loan out to that contract period.

MR. MARQUEZ: Right. And then that brings up another question. The approval by the Board takes care of the action of the contract being in compliance. The fact that the contract won't be ready, is not an issue right now for what we need?

We need to be compliant with the program, the Housing Authority. And after working for months and months with staff and so forth, we need a clarification from the Board that says if we grant the extension, everybody on this list is in compliance with TDHCA. I think that's what I am really looking for, or a clarification of it.

MS. HOLLOWAY: What will happen, moving forward, if the Board does in fact, grant the authority to make these extensions, it is that we will work with the Hidalgo County Housing Authority to extend their contract through amendment, and we'll work with them to extend their loans in which, of course, are the security instruments on the properties.

Just the Board action alone doesn't bring everyone into compliance, because we haven't gone through the contract amendment process and said, we want milestones or modify those loans you have, modify those legal documents.

MR. OXER: So what you are saying, Marni, what you are saying is that the Board action, assuming we approve this, this gives you the authority to go out and execute those contracts?

MS. HOLLOWAY: Yes.

MR. IRVINE: It basically gives us a framework where everything can be brought current into compliance. But we have to document it through contract amendments and through amendment to the loan.

MS. HOLLOWAY: Exactly.

MR. MARQUEZ: Okay.

MR. OXER: It defines the playing field. And then you have got to get out there and win the game.

MR. MARQUEZ: All we need to do is be in compliance. That is all we need.

MS. HOLLOWAY: And we are happy with work with the Housing Authority to make that happen.

MR. MARQUEZ: Okay. Good enough. Thank you very much.

MR. OXER: You are welcome. Okay. Any Board members have any items to pull?

(No response.)

MR. OXER: I'd like to pull Item 1(d) for some more discussion. I saw Eric here. Eric? There you are. I'm sorry. We will deal with it when we come to it.

I just want to pull it for some discussion here later. Maybe the first one we take up. But I would like to extract Item 1(d) from the consent

agenda. Is there any other items from the Board?

(No response.)

MR. OXER: Okay. I would entertain a motion.

MS. BINGHAM ESCAREÑO: Move to approve the consent agenda, with the exception of 1(d) being pulled for further discussion.

MR. OXER: Okay. Motion by Ms. Bingham to approve the consent agenda with the exception of 1(d).

MR. KEIG: Second.

MR. OXER: Second Mr. Keig. Is there any discussion?

(No response.)

MR. OXER: Any other comments?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous. Okay. Since it is 1(d), now Eric.

MR. PIKE: Good morning.

MR. OXER: Good morning. Did you have something prepared for this? To be able to talk to us about some of that? Or are you just going to be doing this off the cuff? I know I called you off the cuff.

MR. PIKE: It will be off the cuff.

MR. OXER: That is okay. That is all right. Yes. The boss

over here will help you.

MR. PIKE: Okay.

MR. OXER: All right. So this is the new rule for the Taxable Mortgage Program, under the TBA program.

MR. PIKE: That is correct.

MR. OXER: Okay. And run over quickly, just an overview of that program?

MR. PIKE: Right.

MR. OXER: High point outlines. All right. Don't worry about getting everything perfect. I just want to hear a general outline on it.

MR. PIKE: Sure. Historically, the Department has utilized the sale of tax-exempt mortgage revenue bonds to fund its First Time Homebuyer Program. As I think, we have had discussions previously, the market is sort of upside down from where it normally is.

And it is not allowing us to be able to sell mortgage revenue bonds that would enable us to attain an interest rate that would be attractive to consumers. If we were to do a tax-exempt mortgage revenue bond program today, interest rates would probably be in the low fives. I think, as you are aware, market rate is currently about 3.75 or 4 percent.

So what we have done is, we are looking at a new concept. And that will provide an alternative source of funds for us to continue to be able to offer that program.

And what we are proposing to do is, we have entered into a contract with a TBA provider. TBA stands for to be announced. And basically,

what that organization will do for us is they will sell mortgage backed securities into the open market, much like mortgage lenders do every day.

If you have a loan, I have a loan, let's say Mr. Gann has a loan. Our servicer will pull those loans and then --

MR. OXER: Mr. Gann makes loans. You understand that.

MR. PIKE: Well, that is true. And so anyway, those will be pulled. And then sold into the open market by this TBA provider. And thereby, enabling us to offer interest rates, first lien mortgage interest rates as well as funding for down payment closing costs assistance.

And so our existing first time homebuyer rules were not adequate, if you will, or would not be applicable on this program. And so we are bringing these rules to the Board today, to enable you guys to put them out, to improve them, hopefully, to put them out for public comment. And then we will come back in September to adopt those rules.

MR. IRVINE: If I might expand on that just a little bit.

MR. OXER: Sure.

MR. IRVINE: When Eric referred to this as a new concept, it is actually -- it is an old concept. This is pretty much just a straight up market execution on the delivery of mortgage loans. When we issue under our bond program, there are several factors that are difficult to manage.

One of them is that there are very strict limitations under the Internal Revenue Code on permissible yields on our bond spreads. So we are always having to manage that very carefully.

Then there is also the fact that you generally -- because of cost

of issuance problems, when you put bonds out, you put out a large amount of bonds. So that sort of fixes your cost of originating mortgages. And as the market varies significantly from those costs, you have got to manage those kinds of issues.

In this sort of approach, it is something that really doesn't involve the spread management issues, or yield management issues, because what you are doing is you are going to a third party provider.

And they are saying, all right, 60 days or 70 days, whatever pre-agreed time or reasonable time that will enable you to issue and close and fund the loans, 60 days from now, I will purchase mortgage loans from you that are originated under these underwriting criteria, and these interest rates. And I will pay you this guaranteed purchase price.

So we know up front how many loans we have got to deliver, what the pricing is going to be, what the net financial effect to us is going to be. And we're structuring this so that we put aside a small portion of our funds, our cost-of-issuance funds, NCC fees, things like that, to create escrow balance. We currently target it around -- probably somewhere around \$2 million.

And the real transaction is between the servicer and the TBA purchaser. The servicer will obtain the loans that are originated through our network and sell them to this purchaser, at this pre agreed pricing mechanism. So that escrow balance will be there to cover the risks that they have with respect to each other's counterparties.

If the servicer can't deliver all of the loans, TBA provider needs

to be delivered, and there is a financial problem because of that, they look to the escrow. If the TBA provider is not able to purchase the loans that are delivered, if the servicer will have to execute by delivering those loans into the market at large, again, they will look to that escrow balance to cover any financial shortfall because of market risk.

So it is a much more efficient way to manage the actual origination process, the interest rate risk management process. All of these processes. It is also, frankly, an anomalous moment in time, where we can actually get a more attractive execution on this concept than we could under tax-exempt bonds. We fully anticipate that sometime, the market for tax-exempt bonds will return, and that will create a more favorable outcome.

You know, we also, I must underscore, are not changing the fundamental characteristics of the underlying mortgage origination activity. You know, I think that with all of the things going on at the federal level, the GSEs, everybody is looking at tightening underwriting standards, and this program is no exception.

I think that there is a clear consideration being given to tightening underwriting standards. The servicer makes decisions, for example, regarding FICO scores. And we are anticipating that our servicer will be moving up the FICO scores for these loan originations.

So you know, in effect, it is a managed risk process that will enable us to keep active in the market. Under our bond activity, we basically have, I think, a couple of months of activity left that we could be funding through this program. We are doing a lot right now. We are originating

probably about a million dollars a day here, somewhere.

MR. PIKE: Correct.

MR. IRVINE: Sometimes, more.

MR. PIKE: Sometimes, more. Generally, about a million a day.

MR. IRVINE: Yes. It is a very active and well received program. The other piece of it that I think is really important to understand is down payment assistance. When we issue bonds and use those as the means to fund our first time homebuyer loans, the vast majority of them need down payment assistance under the way that the investors, that the FHA program and other federal programs create their down payment requirements and get down payment assistance that comes through a governmental program up to a certain level, and actually count that as part of your down payment assistance. Whereas, if it comes from a third party loan or gift or whatever, you may not be able to count that as part of your down payment assistance. So that is a unique piece of value that the states' involvement in this program bring to the table. When we do tax-exempt originations, our down payment assistance is really coming from other sources such as excess value in the indenture, or other programs, such as the Trust Fund, HOME or NSP, whatever.

Under this TBA program, one of the cool things is that the second lien loans are included in the execution. And what we basically create is this self-funding stream where we make second lien loans to go with the first time homebuyer loans, and they're sold to the TBA purchaser.

But as those payments come back, it recycles, so there's more

money to do this activity. One thing, after all of that good rosy news, I would say, there is one little glitch in the rule. And it would probably be prudent for us to bring this back for actual approval to publish at a later date, hopefully the late July Board meeting, the issue being that the rule has got references to umbrella rules that we are working on. And those umbrella rules will be coming to this Board at the late July meeting. And what we would be afraid of, is if we submit it right now to the Register, it would reject the rule, because they reference other rules that are not in existence yet.

MR. OXER: Okay. Are there any questions from the Board?

(No response.)

MR. OXER: This is a fairly important program for what we are doing.

MR. PIKE: Right.

MR. OXER: Particularly for our portfolio management. And what this does, as best as I can tell, is it changes the way that we are investing that down payment assistance. So that it goes in and rolls over faster?

MR. PIKE: Correct.

MR. OXER: So there is a lot of states that are doing this. There are a lot of other states that are doing this. This is not something that is -- we are not doing anything magic or new, or that had its risk profile modified and characterized properly.

MR. PIKE: Exactly. There are a number of states that have

actually been operating a program similar to this for several years, such as Alabama has been one of the active parties, Idaho. And then there is other states that are beginning to do this as well.

MR. OXER: I suspect that is largely because the interest rate environment has got to the point that it is upside down. Anything else we can do.

MR. PIKE: Correct.

MR. OXER: Okay. Well, if nothing else, but for the sort of administrative facility of making sure we make the rules work, because we're changing. I don't want to get in a hurry on this. I want to make sure we have got the rules set correct and structured properly.

So I would like to table this until the next meeting, because we are only two weeks away from that. And two weeks is not going to kill you on this program.

MR. PIKE: No. We can wait another two weeks.

MR. OXER: How long can you hold your breath, Eric? Okay. So two weeks. I would like to get that part straightened out, because I want to make sure the Register -- when we advertise this one, make sure this is right.

MR. PIKE: So we will bring it back on September 20, or the July 26 meeting.

MR. OXER: Right. In terms of the action on this item, I think.

MR. GANN: Motion to table?

MR. OXER: Yes. Motion. Yes, I would move to table. I don't think that --

MR. GANN: I will make a motion to table 1(d).

MR. OXER: Okay. Motion by Vice-Chairman Gann to table 1(d) until the July 25 meeting.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Is there any other comment?

(No response.)

MR. OXER: No other comment. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: And there are none. It is unanimous. Thanks for that, Eric.

MR. PIKE: Thank you.

MR. OXER: I am pretty sure we will get this, let's see if we can get this straightened out.

MR. PIKE: Okay.

MR. OXER: Okay. Let's go to the action items. Item 2. David.

MR. CERVANTES: Good morning, Mr. Chairman, members of the Board, Mr. Irvine. Good morning.

Item 2(a) is a presentation, discussion and possible action regarding the FY 2013 operating budget. In accordance with Texas Government Code Chapter 2306, TDHCA is charged with preparing an operating budget for Board adoption on or before September 1 of each fiscal

year.

The proposed fiscal year 2013 budget corresponds to the second year of the General Appropriations Act, passed by the 82nd Texas Legislature as approved by the Governor. From a high level, the developments that have impacted this budget are the completion of the ARRA programs, such as the Weatherization Program, and the Homelessness Prevention and Rapid Rehousing Program.

This budget also includes a modest adjustment in relation to the Neighborhood Stabilization Program. Of course, you know that the Neighborhood Stabilization Program I has a key deadline for completion of March 31, 2013. So again, we are starting to compensate for that in this budget cycle.

The other thing that is included in this budget and that has impacted this budget are pre-ARRA programs. These are the core federal programs that we have at TDHCA. And again, due to Congressional action, in the 2012 cycle, we have also seen a shift in some of the grant allocations for these federal programs. So included in this budget are also settled adjustments that we are making to adjust to the changes that are taking place in our federal programs.

And finally, the Board approved on April 12th a recalibration of TDHCA to kind of realign the way the organization is established. This budget is the first budget that will display a full fiscal year of the recalibration, as was designed, again, and approved by the Board on April 12.

Your packet includes a comparison report that I think is key to

this item right here. I would call your attention to page 6 of that item. And I think that's the key schedule in the comparison report that we have included.

The intent of the comparison report is to provide you information between 2012 and 2013, as it relates to the expenditures that are associated with both years. You also see some general information regarding full time equivalents for the Department. And then of course, you see the accompanying methods of finances that are involved with funding the budget for 2013.

What you see in the budget is a budget that will come in at \$25.9 million in 2013. It does register a 17 percent decrease from last year, which is about \$5.3 million, in terms of the annual decrease. And when you look at the variances, I think it is important to note that the majority of the decreases taking place, you start to see the effects of the phasing out of the ARRA programs. Okay.

And as I said, the Neighborhood Stabilization is also being adjusted. So you also see a bit of contraction in programs such as the NSP program. Even though most of the contraction is attributed to the ARRA program and the phase out, there are some other initiatives that have been taken by the Department this coming fiscal year, and have generated modest savings.

For example, it used to be that we used to use hard copy letterhead. We have moved towards electronically process on our own letterhead. That achieves some savings for the Department.

There has also been the creation of an administrative pool at

the Agency. So as opposed to hiring temporary employees, we now more effectively use our administrative pool to provide overall Agency support. And those are some of the items that are attributing to some of the cost savings.

I would call your attention to the methods of finance. And as I said earlier, most of the method of finance is kind of accompanying the reduction on the expenditure side.

There is one line item, which is the appropriated receipts line item that does show an increase. And what you see in this area probably, a year ago, maybe two years ago, we started bringing in what is known as an assets management fee.

If you recall, we implemented programs such as the tax credit assistance program, and the tax credit exchange programs, and accumulated some of the fees. What you see now, through the recalibration and the movement forward, you see an infusion of some of those fees starting to take effect as we built a more robust asset management unit for the Department.

And so these types of things, in addition to some benefits adjustments that we are making are attributing to the increase in the method of finance associated with appropriated receipts, and the fees that we generate for the Department. The remaining sections of your packet provide additional information related to full time equivalents, the capital budget, and the individual budgets for the divisions and sections of TDHCA.

At this time, I would note that the Department is prepared to certify the funding, and recommends approval of the 2013 budget. If the Board approves this budget, it will be submitted to the Governor's Office and

the Legislature.

This budget, of course, I would note, is a key instrument for us as we move forward through the Legislative Appropriation Request, because it does set a very important building block for us, that we will layer into the LAR. And this will serve as one of the primary tools for us to have a benchmark as to where we will receive in '14 and '15.

So with that, that concludes my presentation. I am available to take any questions that you might have on this item. Yes, sir.

MR. OXER: Questions from the Board?

MR. KEIG: Just one quick question. On the professional fees for outside auditing, do you recall the reason for the decrease of about 100,000?

MR. CERVANTES: Yes, sir, Mr. Keig. The reason for the decrease is because of the ARRA programs. We had injected some additional funding in the past to be able to encompass the single audit work that was going to be performed on the federal programs that we had during that phase.

And so now what you are seeing is the decline to take it back to the audit. So our more core program in 2013.

MR. KEIG: Thank you.

MR. CERVANTES: Yes, sir. Any other questions?

MR. OXER: Any other questions from the Board?

(No response.)

MR. OXER: Okay. Our action is item is to approve this.

MS. BINGHAM ESCAREÑO: Move to approve the budget,

operating budget.

MR. OXER: Okay. Motion by Ms. Bingham to approve the budget as presented.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. Any other discussion?

MS. BINGHAM ESCAREÑO: Just one other, to commend David and the staff for good work on incorporating in the reduction for all of the ARRA projects that are coming to a close and being fiscally responsible as the state has asked us to. It is a good budget.

MR. CERVANTES: Thank you very much. I would like to acknowledge someone today. You speak of the staff, and I would like to recognize Ernie Palacios.

MS. BINGHAM ESCAREÑO: That is the staff.

MR. CERVANTES: Yes. Mr. Palacios and his staff are key to the development of this item. I think I have the easy part when I come here. But behind the scenes, Ernie and his staff are working diligently, preparing the materials, and of course, maintaining the controls for the Department fiscally.

MR. OXER: And too, the -- I mean, this is -- when the ARRA funding came through, talk about a pig in a python, so just managing that process. So I think you are seeing the results of the last bite that you are swallowing.

MR. CERVANTES: Yes.

MR. OXER: Good. So my hat is off to you for the quality of the detail of the budget, because, you know, I am sure that was an extraordinary

experience to have that much money come through that hard and that fast.

MR. CERVANTES: It has been interesting times.

MR. OXER: All right. There is a motion by Ms. Bingham to approve the budget. Second by Mr. Keig. Any other comments?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous. Thank you, David. Okay. Moving on to 2(b). Moving on to 2(b).

MR. CERVANTES: Moving on to 2(b); 2(b) is kind of a continuation of 2(a). Under Chapter 2306, we are required to provide an independent budget for the housing finance portion of the Agency.

And again, this reflects -- this budget is intended to reflect the fees that we generate on the housing finance side of the business. And again, these are the fees that we generate with our single-family, multifamily programs, through bond issuances. It incorporates the compliance fees that we generate; tax credit fees that are also compiled and brought into the Agency.

MR. OXER: So you are essentially looking at mortgages?

MR. CERVANTES: We are looking at definitely the housing side of the business for sure, and the fees that were generated on those types of concepts. The last one that I mentioned of course are the asset

management fees, which have been the most recent ones that have created a new type of fee, or a new type of income for the Agency.

And so this particular budget again, under 2306, there is very specific language that sets out that we approach the Board, that we provide an independent budget that is submitted. And again, this too will go to the Governor's Office, and the Legislature and so on, to designate exactly where the fees are being applied, and where the overhead is taking place, in relation to the fees.

So that is what you would find in this particular budget. It is \$14 million. It is a subset of the budget that I just mentioned in 2(a). And I think that's it, on this particular item.

MR. OXER: So this would report back into the earlier budget?

MR. CERVANTES: This is a component of the larger budget that we just -- that you just approved.

MR. OXER: Right.

MR. CERVANTES: In 2(a). Yes, sir.

MR. OXER: Okay. Any questions from the Board?

(No response.)

MR. OXER: Again, it is extraordinarily detailed, so --

MS. BINGHAM ESCAREÑO: Move to approve.

MR. OXER: Okay. Motion by Ms. Bingham to approve the budget for 2(b), for housing finance.

MR. GANN: Second.

MR. OXER: Second by Vice-Chairman Gann. Any other

comments from the Board?

(No response.)

MR. OXER: There appear to be no other comments from the participants here today. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

MR. CERVANTES: Thank you very much.

MR. OXER: Thank you.

MR. CERVANTES: By the way, thank you for the casual dress attire. Appreciate it.

MR. OXER: For those of you who can't see, we don't have any socks on.

MR. CERVANTES: Thank you all very much.

MR. OXER: Just for the record, with regard to the casual, we will make sure that everybody -- we will put it in the record now, so that at the July 25 meeting everybody will know, yes, we are serious. I'm sorry -- the 26th. Yes, the 26th.

Because I did ask for a show of hands last time, and all of you put your hands up. Or most of you did; 90 percent of you. Okay. All right. Let's go on to number 3.

Mr. Gann.

MR. GANN: Well, I was going to give you a report on the

Strategic Planning and Budget Committee. We met last night at the TDHCA office, about six o'clock, and that was one of several meetings that we have been having on the subject.

We have kind of been developing the LAR for the 2014 and '15 budget. And needless to say, this has been that work in progress, that David and Ernie have been working on. All of the blocks you have been hearing about, we are starting to build this building now, the next year, and the next two -- biennium -- and for the next biennium anyway.

And it continues to be a work in progress. That work in progress, even when we get through with it, we will be going onto those areas where they can now actually change anything we put in it anyway. So it is a continuation of the work in progress.

But our deadline is August 16th, to have ours turned in. And we are going to have this is writing to the Board and in the Board book on the meeting on the 26th. And that concludes my report.

MR. OXER: So we will go through a formal, sort of approval and review on the next meeting.

MR. GANN: That is right.

MR. OXER: So good. Is there any action we have to take on this today?

MR. GANN: No.

MR. OXER: This is a report, then. Okay. Are there any other questions from the Board?

(No response.)

MR. OXER: I might note that Dr. Muñoz who is en route, his plane has just landed as we have been informed. Probably happy to get in out of the weather all of the way down from Lubbock today. He was unable to attend and participate last night.

So we will retain an option for him to make comments on that, as he chooses, when he arrives. So okay.

Good morning, Elizabeth, number 4.

MS. YEVICH: Number 4. I am Elizabeth Yevich, Director of the Housing Resource Center. And I am here to speak on agenda item 4, which is the presentation and discussion on the preliminary results of the contracts for deed prevalence project with the University of Texas at Austin.

And as you may recall, in August 2011, TDHCA entered into an agreement with the University of Texas at Austin for this project. We were commissioned to this project to fulfill the 2010 Texas Sunset Advisory Commission's recommendation to conduct a one-time study on the current prevalence of contracts for deed in Texas Colonias and to report the results to the Legislature by December 1, 2012.

The project has been conducted in three phases. Phase One started in September, 2011. It was completed in December of 2011. It generated the number of recorded contracts for deed in each of the counties selected.

Phase Two started in January 2012, and it ended in May. Phase Two resulted in estimates of the unrecorded contracts for deed. Phase Three is still ongoing. It is involving extensive interviewing of the Colonia

residents to understand more fully the land practices that have developed in response to the regulation of contract for deeds.

UT at Austin has submitted five bimonthly reports since their start last August. Three of which, I had previously reported to this Board. UT now has preliminary results of the final report. This final report is due in 60 days; August 31st.

And this morning, I am pleased that two of the leads on this research team are here to present an overview of this preliminary study. We have with us Dr. Peter Ward, who is professor of public affairs and sociology. And Heather Way, who is the UT's director -- or Director of UT's Community Development Clinic. And with that, Dr. Ward, and Heather.

MR. WARD: Thank you very much, indeed, Elizabeth. And good morning, Chairman. Good morning, members of the Board. And it is a pleasure for us to be here today to be able to report briefly.

We have been asked to report and speak over the two page report that you -- interim report that you have before you. And to spend not more than five minutes doing that.

As Elizabeth has just said, there are three phases to this project. Phase One, the recorded contract for deed in which we have conducted in ten counties, seven of which are in the border, and three of which are in Central Texas.

The reason why we are doing that is because although your primary interest is in contract for deed and contracting in colonias, there are also a large number of colonia-type subdivisions outside of the border region,

which we call homestead subdivisions. And there are a number outside of Austin. So we have actually taken Travis, Bastrop County and Guadalupe County and included within those, within our contract for deed analysis.

Phase Two is the unreported contract for deed, those which are not recorded. And then Phase Three is the more detailed analysis of the data set that we have generated and an understanding of the processes.

We are in excellent shape to complete our report, and as Elizabeth has just mentioned, we completed Phase One and Phase Two, and we are well on track to complete Phase Three and to wrap up the report, and deliver the report to you at the end of all this.

On Phase One is to just highlight a few of the findings that we are coming up with: Contracts for deed we are finding -- we looked at the periods of 1989 through 2010. And for those ten counties, we found something like 15-1/2 thousand contracts for deed have been recorded, and an additional thousands are veterans' landlord contract for deed.

So contract for deed has been a very important mechanism for conveyancing land in colonias, and in colonia-type subdivisions outside of the border. Of those 15-1/2 thousand, something like just over 5,000 contracts for deed are outstanding. They are recorded contracts for deed which have not yet converted to the full deed. So what that suggests to us is that contract for deed continue to be an important -- recorded contract for deed continued to be an important mechanism for conveyancing in colonia and colonia-type subdivisions.

When we try and look at how contracts for deed, recorded

contracts for deed have changed over time, given the legislation in 1995 that was sort of to -- well, to regulate recorded contracts for deed. And then in 2001, outside of the border region, the legislation, we find that contracts for deed increase from around 600 in the early 1990s and through to '95, when the legislation kicked in. They kicked up to about 1,200, Year 2000. And then they have declined since then, as a result of changing practices, which is one of the things we look at in Phase Three.

But the bottom line here is that even in 2008, '09, '10, there's still 500 contracts for deeds or thereabouts each year being recorded. So what this tells us is that recorded contracts for deed continue to be an important element in the process of land conveyancing in colonia-type subdivisions.

We have that broken down, of course, where each of the counties in which we have been working. I won't go into each county, because they do vary. But we are looking in detail at what is going on in each county.

The second phase has obviously been -- and the source of those data in Phase One has been obviously the county records of the county clerk's office, the county court and so on. And that has been hard work, but straightforward. It is counting data to the extent that we can get clean data. And usually, the data is reasonably clean. One or two counties have been problematic.

Phase Two is much more difficult, because we are talking about unrecorded contracts for deed, that are not in the public domain. So in

order to ascertain the non-recorded contract for deed, we have had to conduct major surveys.

That major survey we did, as Elizabeth said, starting in January, we have worked in eight counties two of which are non-border counties. We have worked over 65 settlements, most of which were randomly selected, in order to allow us to extrapolate for the county level. We completed over 1,200 surveys face to face. So that is for the basis of the data that we are analyzing for the unrecorded contracts for deed.

One of the key points here, we can only give you estimates of unrecorded contracts for deed that people are using and have used in the past in order to acquire their homes. We are estimating, and we have come up with a conservative estimate and a liberal estimate, and what we call a moderate estimate. And we are under work on the moderate estimate to date, which is fairly close to the conservative estimate.

And what that tells us is, that something like 12 percent of acquisitions in colonias have come through, are coming through unrecorded contract for deed. The prevalence of that unrecorded contract for deed is highest in Hidalgo and El Paso Counties; we have had certain difficulties with both weather and starting terms of the low figures that appear to be coming out of them.

What we are finding here is that if you go with the liberal estimate, it would be 30 percent unrecorded contract for deed; the conservative estimate is 9 percent. We are thinking about 12 percent of lot acquisitions were currently have been acquired through unrecorded contracts

for deed. So if you add this to the recorded contract for deed, contracts for deed, recorded or unrecorded remain an important element.

In Phase Three, which is where we are now, what we are trying -- having done those accounts, and those estimates, we are now trying to understand what is -- and predict, what is likely to happen with contracting and deed titles in the future. And we are obviously analyzing this major database that we have been able to generate, to gain insights about these processes.

But we are also going back to what we call interesting cases. To particularly interview particular developers to interview people who have acquired it in particular ways, and so forth.

One point I would mention to you is that 20, just over 20 percent, 22 percent of the households we surveyed are not owners. They are renters, primarily. So that is a significant proportion of activity that is going on in colonias, today. We are also finding high levels of vacant lots in colonias, in subdivisions.

Something like 22, 20 percent of the lots, the 6,000 lots that we visited in order to conduct the survey are vacant lots. And we try to find out more about the nature of the ownership of those vacant lots. We are finding people abandoning their properties, walking away from their homes, walking away from their lots. We are trying to find out more about that.

We are trying to look at developer practices. How developer practices have changed, because today, most of the contracting that is going on within older colonias are consumer-to-consumer sales. They are no longer

developer to purchaser. They are consumer. Someone who has purchased previously from a developer is now selling it all.

So we are kind of -- we are looking at how developers are morphing or changing their titling practices, and we're looking at how consumer-to-consumer sales are occurring. Are they occurring under contract for deed? What sort of contracts for deed are they occurring? -- because invariably they are seller financed by the person who is selling.

We are also looking at -- trying to look to the future to see, what are the likely implications of succession in inheritance of these properties. Many of the people living in colonias are in their 60s. Very few of them, less than 10 percent, or around 10 percent have wills.

So what this means, is that the transfers and the conveyance in the future, or the inheritance of these properties in the future is likely to take place under intestacy law. So we are interested in looking at how that is likely to affect the way in which these properties are titled, held, and transferred in the future.

So we are interested in exploring these intestacy issues as well. So that is Phase Two. And as I said, what we are trying to do here is to get a better understanding of the processes, and to be able to get a little ahead of the process in terms of understanding and advising both the Board, the Department, and the Legislature in terms of some of the likely downstream implications of titling and contract for deed in the future.

MR. OXER: Thank you, Dr. Ward. Are there any questions from the Board? Professor McWatters.

MR. McWATTERS: What percentage of contracts for deed are actually converted to deeds? And what percentage of contracts for deeds are lost? And what is the reason for the loss?

MR. WARD: Those are very good questions. And of course, it is extremely difficult for us to ascertain what -- the precise number that actually do arrive at deeds, because in order to do that, you need a very close documentation of the title trajectory of a particular contract for deed through.

So you need to take each case of contracts for deed that you have and to see the outcome of that contracts for deed further downstream. We haven't been able to gather those sort of data, with the exception of one county, where -- Maverick County, which has, as you will see in the data set, Maverick County contracts for deed continue to be important.

Contracts for deed continue to -- recorded contracts for deed continue to be important in Maverick County. When we request it, and we are able to happenstance to get a title company to provide us with a 10 percent sample of the recorded contracts for deeds that we have provided to that title company. So they were able to give us -- in that one instance, they were able to give us the trajectory.

The data for that one county, let's emphasize, it is only for the one county. The data suggests that if you -- something like 40 percent of those contracts for deed recorded ended in deeds. Something like 15 percent or thereabouts are still current. So we don't know whether they are going to drop in or drop out.

What that leaves us with is something like 42 to 43 percent

were failures. In essence, people have been, those contracts for deeds have been forfeited. They have reverted to developers. All of those people have walked away or left their properties.

So if we are talking about -- if it is in the ballpark of 40 percent of contracts for deed recorded that don't ultimately pan out, that is, to my way of thinking, that is a rather higher proportion than I would have expected. And one of the things we are trying to look at -- so to answer your question, that one case is just about 40 percent.

Just to extend, in terms of Phase Three, this is one of the things we are trying to look at in Phase Three. What we call flip rates. The extent to which developers are flipping their properties.

So that within the county appraisal district, you can begin to ascertain which where lots are being purchased, and that are going back to the developer, another thing we saw. We are trying to get a sense of these flip rates. In traditional colonias, the older established colonias that were established and largely populated in the '80s and '90s, I think you will find lower levels than the 40 percent.

But in some of the new subdivisions that we have been working in, which are developed under modern subdivision rules since 2000, or late 1990s, 2000. There, we are getting a sense that there are quite aggressive practices by developers that are regularly flipping.

They are selling legally, under contract for deed or under a warranty deed with a lender's lien. And then, those people are not being able to maintain the payments, and it is being flipped.

MS. WAY: Just to add one thing. We can only project, because we can't go back in time on the unrecorded contracts for deeds that have much higher rates of contracts that haven't been included, but they haven't reached -- been able to obtain title via deed. But it is unfortunate.

We are not able to go back in time and look at, okay, all of the people who have acquired, via an unrecorded contracts for deed in 1985, '86, and so on. How many of those today have been able to acquire deed. But we can -- we can only present that that would be much more related to title.

MR. OXER: But you can only search through where there are in fact, records.

MS. WAY: That is right. That is right. And we thought, one of the things we were most surprised about is even going with the thousand-plus interviews we did, face-to-face interviews with residents, and how much there was lack of information, even among sellers as to what kind of title they had, and so that is why we had to really dig deep in the records.

The owner would say, well, I think we may have a contract for deed; we don't know if it's recorded or not. We have to go search into the title records, and found a lot of inconsistencies, of what people thought they had. And they are aware of that. So what it means to have title and to not have title.

MR. OXER: Did you have -- did they have, in the part, the ones that you interviewed, did they have paperwork that you could look at to determine whether that was the case?

MS. WAY: We asked for paperwork. And at times, were able

to obtain that. And other times, not. It just depending on, if the time that was available for the interview, and their comfort level in providing that paperwork to us to look at.

But we took pictures of a lot of the paperwork. We did review that. And we will be putting some copies of that redacted information in our final report.

MR. OXER: That seems just -- third party objective, I was looking at this. That seems like there were, at least in some cases, where they had made a purchase. And they were a little casual about the documentation? Or were they?

MS. WAY: I teach a community development clinic at the law school. And even my law students coming in, I have a student buying a home. They don't know the differences in title. We have to teach them, and these are law students.

And so I think it is common. If you are buying a home for the first time, unless there is someone guiding you through that process, an attorney or a title agent, walking you through the process of the documents you need and looking over your shoulder, I think it is easy for anyone to fall into the situation where there are signed documents that maybe aren't the best documents for them to be signing. And that is one of the biggest --

We ask people when they also -- they have never sold a home before. And for the purchase of their home, did they use -- did they get any kind of assistance. And very few people obtain assistance.

And so they are just relying on the word of the developer about

where they need to sign, and what they need to sign. There is not a closing agent, or a real estate agent helping them through that process.

MR. WARD: Where people had a deed, they were usually clear that they had a deed. They would say, yes, I got my deed. It is a warranty deed. They would usually be able to say when they got it.

The problem was, is that how they acquired that deed. And that is where there is a real issue about their memory often ten or 15 years ago, they may be a little skittish about stating that they bought from a developer through an unrecorded contract deed, or a contracts for deed recorded.

Which is why having the name of the purported owner, having the year in which they first acquired the lot, that is when we have to go back to the appraisal district records, the county records office, in order to try and do that particular case, and track that particular case. Simply because we weren't able to see a recorded or an unrecorded contract for deed that they signed, ten or 15 years earlier.

MS. WAY: I was supposed to add my name for the record, Heather Way, the Director of the Community Development Clinic at UT School of Law.

MR. OXER: That is a little issue we have. Penny, she will spank me if I don't do that. My hand.

(Simultaneous discussion.)

MR. OXER: Don't get all excited.

MR. McWATTERS: Let me ask this. If 42 percent, back on the

envelope, one county, 42 percent contracts for deed do not end in deeds, of the traditional financing in those same counties, what do you think the default and foreclosure rate would equal?

I am trying to compare apples to apples the best I can. Contract for deed versus deed. And how many home owners entering into those transactions end up with a home and their deed free and clear?

MR. WARD: I can't answer that with a number, but there is data in the public domain. So we could -- if you are interested in that comparator, we would be able to ascertain the proportion of, if you like, failed deeds to formal market contracting.

We would probably want to look at it over a period, because clearly, 2008, 2009, you are going to find a lot more there. But if you would like that comparator as a part of our Phase Three analysis, we could certainly provide that. That would be very easy to get.

MR. McWATTERS: I think the contracts for deed have perhaps a well deserved dubious reputation. But you can say that, but then, I think it would help to back it up. And just say, the reason it has a dubious reputation is because people entering into the contracts 42 percent of the time lose their home.

But a traditional lending transaction deed, you know, the rate is 10 percent. But then you have to go beyond that and look at the people who had contracts for deed who had not qualified for traditional financing.

So maybe the contract for deed is the only option. I am not sure. If there is a 40 percent chance of losing your home, and losing your

whatever equity is in it, perhaps another approach would be better renting or whatever. I'm not quite sure.

MS. WANG: One of things we do know too, is that the interest rates are significantly higher on the contracts for deed. We are looking at 12 percent interest rates, compared to a product of TDHCA or other program, or a bank, that would be significantly lower. They are the highest possible interest rates you can see are on these loans.

MR. OXER: So this is the home equivalent of payday loans.

MR. WARD: And just to go back to your point, they are -- this is the reason why contracts for deed are used. It is because it is the only form of seller financing.

And if -- and so people who buy through, using seller financing mechanisms, which is contract for deed, are low income who are unlikely or unable to acquire formal financing through mortgage loans and such, and what they do, as Heather has just pointed out, they contract in. It's a long-term process, a ten-, 15-year period of payments.

There are developer practices to try and restrict the capacity to be able to pay a balloon payment. And that is one of the things we are trying to identify as well. Some of the practices of development really try and prolong this process. But with interest rates of 16, 17, 18 percent and just life course events, some people need to be able to sort of sell out.

They find it very difficult to sell, and that's why they're converting -- they either walk away from their properties or they rent out those properties.

This is an interesting thing that's really occurred in the last ten, twelve years, is this increase in colonia subdivisions, the phenomenon of renting. It's essentially a market mechanism in order not to lose your shirt by having to walk away from the property, but for divorce reasons or work reasons, you have to move away from the site.

MR. OXER: So how long -- typically these developers would have somebody on this sequence for 15 years. And if they miss a payment in year ten, how long before the developer reaches in and takes that property back and evicts them?

MR. WARD: Well, usually in a recorded contract for deed, there's a clause that says -- a forfeiture clause, which is essentially usually something like three monthly payments. The extent to which developers really pursue those individuals after three payments depends upon the developer's perception of capacity to flip that particular lot or better just to continue to cut the person some slack.

If you remember, in -- the contract-for-deed legislation of 1995 required that no longer could you in perpetuity, for the extent of the contract for deed, threaten to forfeit, or threaten to pull it back. After 40 -- I think 40 payments, or three years, or 40 monthly payments, you gave that -- that the individual had some level of protection in terms of compensation; they didn't lose the whole lot and -- property, if it was repossessed by the developer.

MR. OXER: It sounds like a harsh environment to be working in.

Any other questions from the Board?

(No response.)

MR. OXER: This is a report item, Elizabeth?

MS. YEVICH: Yes. It's a report item.

MR. OXER: So when will the project conclude?

MS. YEVICH: By August, end of August.

MR. McWATTERS: One other question.

MR. OXER: Okay.

MR. McWATTERS: It would be helpful to know the consumers who enter into these contracts for deed, what they know, and what are their expectations; what's the level of disclosure; what's the level of true understanding? -- because if 40 percent lose homes and they are planning paying interest at 12 percent rate, what they're doing is really de facto renters at a high rate.

MR. WARD: You are absolutely right. That's not something that we built into the study, because we would be asking retrospectively about how you -- ten years ago, what was your level of understanding. There would be a real problem in terms of reconstructing that level of understanding.

What one could do -- and perhaps this is something we could do in the future -- would be to look at people who have acquired their properties in the last twelve months or who are in the process of acquiring properties. That's where you can really get a good sense of the level of information that they have, the type of practice that they have, their expectations, their capacity to be able to maintain payments, and so forth.

So in order to answer your question, it would be a new kind of

research design, in order to come up with the sort of questions -- answers to the questions you have.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Any other questions?

(No response.)

MR. OXER: Okay. Thanks, Elizabeth.

MS. YEVICH: Yes.

MR. OXER: Do you want to make the presentation? Do you want to come up here?

Mr. Wolfe, please. Good morning.

MR. WOLFE: Good morning.

MR. OXER: So far. Sit in the middle. We get the target on you easier that way.

MR. WOLFE: How's that?

MR. OXER: That's good.

MR. WOLFE: Mr. Chairman, Members. My name is Mark Wolfe. I'm the Executive Director of the Texas Historical Commission and, under federal law, the state's historic preservation officer.

And although our agency is probably better known by more people for things like the Main Street Program or the State Historic Sites that we administer across the state, or the 15,000-plus roadside markers or the Main Street Program, or the Texas Historic Courthouse Restoration Program, or any of the other things that we do publicly, we are also a regulatory agency, and we have a role both under state and federal law.

Under federal law, in Section 106 of the National Historic Preservation Act, our Agency is required to review every federal action in Texas that might have some impact on historic resources, and that keeps us pretty busy.

In the last year we had over 18,000 actions that we had to participate in; everything from putting up a cell tower under federal license to major work being done on federal property, such as one of the military installations in the state.

But when the federal stimulus package was released, a very large amount of money started coming to Texas, and we were a little worried, because our agency was not provided with any resources to deal with that. We were simply told there would be a lot more federal action in Texas than there was before, and we were going to have to figure out a way to resolve that.

And we had a call from TDHCA, folks in the Energy Assistance Division, saying a large amount of money was going to be coming in for weatherization projects. And that's fabulous. Some of those projects were going to involve historic resources, and could we get together and have a conversation about how we might handle that. So that conversation led to a two-part agreement.

The first part was a written agreement that defined more closely exactly what kinds of projects we really needed to see, because we didn't need to see projects that weren't involving historic buildings. There was work on historic buildings that we knew wasn't going to cause any harm to them; we

didn't need to see those.

So we very closely defined the body of projects we were going to need to review.

And the second part of that, and probably the most impressive and most important part to us, was that TDHCA was able to provide a staff person for about two years to review those projects full time, sitting in our office, doing that work under the auspices of our Agency. And that was what made the deal work for everybody.

We were able to clear those projects so much more quickly than we would have been able to do under any other sort of arrangement. And we are very grateful for that.

In fact, we were so impressed by the person that y'all hired to do that work, that after her contract was over, we hired her as a full-time employee. So we are really happy to be able to keep her in a somewhat different position.

So I had a plaque, a certificate that I would like to award. It is our award of merit to the Texas Department of Housing and Community Affairs Energy Assistance Division for its partnership in providing a staff member to assist with expediting Weatherization Assistance Program projects associated with the American Recovery and Reinvestment Act from the Texas Historical Commission.

MR. OXER: Well, that's worth a picture. Let's have the Energy Assistance staff here?

(Photographs were taken.)

MR. OXER: Thank you very much.

(Applause.)

MR. OXER: Mark, we appreciate being thought of, and recognizing the efforts that staff put in, because I have had some opportunity to deal with NHP problems on major federal EIS work. And dealing with that office is not the most favorite thing I have to do in a lot of these states. So I am sure we found it different. So thanks again.

MR. WOLFE: Thank you.

MR. OXER: Okay. We're on to number 5, action number 5. Cameron.

Is this one going to get deep, Cameron, or can we do this a little --

MR. DORSEY: It's up to you.

MR. OXER: All right. Let's get started. We will take a little break here in a little while. About a quarter to 10:00, we will take a break.

MR. DORSEY: Cameron Dorsey, Director of Multifamily Finance. Item 5 is just a report on challenges. We wanted the opportunity to just kind of convey where we are at with challenges.

The way timing worked out, just when challenges were due, combined with the response time frames allowed to applicants and the review time allowed under the rule, and necessary for staff to process these. We were not able to get all of the challenges reviewed and resolved for this meeting, which would have been my goal, because waiting until the late July meeting can make things pretty difficult, and, you know, it's all down to the

wire.

That said, I just thought we would go through and tell you where we're at. We got what we would call 54 challenges. Now that is 54 submissions, you know, from individuals.

Among those 54, there were actually multiple issues in many of them, so the total number of issues at play in the challenges is more in the 90s.

MR. OXER: How many projects or applications have challenges?

MR. DORSEY: Not certain.

MR. OXER: That is the list we have.

MR. DORSEY: You can look at the list. And there is -- you can see the ones that got multiple challenges. I can actually count them. One, two, three, four -- it looks like twelve got more than one challenge, or were challenged from two different distinct individuals or organizations.

But we have also asked Rick, those at the time of the posting of the Board book, we had already issued determinations on. We actually got through a lot more now. Just this morning, I checked with Rick before I came up here, we posted resolutions or determinations with regard to all but about ten of the challenges.

So we expect to get through the remaining ten challenges by the end of this week, and post determinations on those. We expect in total, perhaps a handful of those determinations will ultimately result in appeals that appear on the next Board meetings agenda. So it is not a huge number of

appeals that you all will have to hear.

The reason is, when staff reviews a challenge, and makes a determination that the challenge is not valid, that is the end. That is the final determination. That is not appealable by the challenger. So it is only those cases in which we determine that a challenge is valid, and issue a determination that either results in a termination or a deduction of points, or those kinds of actions where the applicant would be provided an opportunity to appeal that determination to you all.

VOICE: So, the challenged.

MR. DORSEY: That is right. So that is kind of the scope of where we are at. We have got about ten left to go. And we expect about you know, somewhere in the realm of a handful of appeals to result from those determinations, which will appear on the next meeting's agenda.

MR. OXER: Okay. A quick break here. Just time out. I would like to welcome Dr. Muñoz to the meeting. Glad you made it, Juan. The weather -- fun time flying this morning?

DR. MUÑOZ: Sorry.

MR. OXER: Okay. Continue.

MR. DORSEY: So there is no Board action necessary. It is effectively a report item that appears here so we can talk about it. Yes. If you all don't have questions, I will move on to Item 6.

MR. OXER: Are there questions of the Board? Anyone on the Board?

(No response.)

MR. OXER: This list of challenges, you are continuing to winnow that group?

MR. DORSEY: Yes. We have about ten remaining to get through. The rest of them, we have already issued a determination on.

MR. OXER: Okay. Any other questions from the Board?
(No response.)

MR. OXER: Okay. So, report item only?

MR. IRVINE: Just a comment. The reason everybody got up so early this morning, and started this meeting so early, is because we are preparing for the worst, but hoping for the best. And it was all going to play out so that either a lot of appeals and issues had to be heard at this meeting, or at the next meeting.

And so it just kind of set the stage for probably significant work at the next meeting. And we really do try to schedule these meetings so that there will be time to have all of the appeals heard fully, and openly. And then there will still be time for staff to go back and make the necessary adjustments, if any, to the list before we settle in the business of awarding credits.

MR. OXER: Yes. I think what should be noted for everybody out there, on this next meeting, which is the Thursday, the 26th, two weeks from this coming Thursday will be -- we will start early again; 8:00. Go through this whole process as deep as we can.

And rather than loading the process up on Cameron that afternoon and trying to sort through the wreckage on the results of that, trying

to get it overnight, then we will actually issue and announce the credit awards Friday morning, the 27th, if we get through it all.

MR. IRVINE: If we can get through it all in time.

MR. OXER: I just think this is something that is sufficiently important that it shouldn't be rushed through.

Do you, Cameron?

MR. DORSEY: No, absolutely. You know, we definitely don't want to in haste make an error in recalculating the regional allocation and who ultimately gets awards. In the meantime, I will use my power of persuasion to try and talk people into not appealing.

MR. OXER: Yes. Ms. Bingham wishes you good luck with that, and I would like to join in that. All right. Next one.

MR. DORSEY: Okay. Item 6 is appeals. And I was able --

MR. OXER: I'm sorry. You are right. My mistake. Michelle, you have some things to read into the record.

MS. ATKINS: Michelle Atkins, Executive Division. We have three people who wanted to register their opinion on Project number 12379. All three of them are for the same project. All are requesting approval of their request. Angelica Baldiva, Betty Jo Dunlap, and Lori Weaver.

MR. OXER: And they are from the area, I would suspect?

MS. ATKINS: Yes. Ms. Baldiva is Migrant Education Program. And Ms. Dunlap is with LFEDC. I am not sure what that stands for. And then Ms. Weaver is a PTO member.

MR. OXER: Okay. Do you have anything to add to that,

Cameron?

MR. DORSEY: We will make sure that we work through all of the issues in an objective and a fair and transparent manner, and issue a determination on this.

MR. OXER: You are going to be busy for the next couple of weeks, I can tell.

MR. DORSEY: Yes.

MR. OXER: Yes. All right. Anticipating as I do, we are going to have such an adventurous time on the next item, I am going to suggest we will take a break right now. A quick break. Be back in our chairs at a quarter to 10:00; that's about 18 minutes.

(Whereupon, a short recess was taken.)

MR. OXER: Okay. Let's get started again. We have one more comment on Item 5, which is for the Multifamily Finance Department. Mr. Fisher.

MR. FISHER: Good morning, Board members. My name is Bill Fisher. I'm with Sonoma Housing out of Dallas. Good morning. I'm speaking on the Gulf Coast Arms challenge that I filed.

I'm sorry. I caught them late. They just posted it last night; I couldn't see it on my PDA. But the concern I had about Gulf Coast Arms, I would like you all to put it on the agenda to reconsider their appeal.

If you will dial back to February, this is one of the very few waivers that the Board granted. They brought forward a HUD half contract transaction in Houston that is 50 feet from the railroad tracks, which is an

eligibility item. And the power lines are right along that same boundary, between there.

So in their appeal request to staff, they asked for a third waiver that was not dealt with at the time. And I don't think the Board was aware of it. And I think it affects the outcome of the appeal.

The property currently consists of one-bedroom, two-bedroom, three-bedroom, and four-bedroom apartments. Fourteen one bedrooms, I believe 32 four-bedrooms. Their unit mix eliminates all of the one-bedrooms. So you granted a waiver to a project in a minority area where you basically waived the significant benchmark for unit mix.

There are no one-bedrooms in the current unit mix, and they have eliminated, I believe, 24 of the 32 four-bedrooms. I think that's something that the Board needed to know before they granted the waiver.

Number two, I think the issue of the elimination of family floor plans goes directly to the legal basis under which you are granting the waiver, which is preservation of affordable housing. How do we justify that we are preserving affordable housing, it could be rehabbed under the rules.

They got a point advantage by demolishing and reconstructing it. They could have put the same unit mix back as well. So they chose to deviate materially from the unit mix, which seems to have been a significant issue for many of the Board members. And you should have known that at the time.

And I believe the fact that they are eliminating floor plans does not preserve affordable housing. And in fact, it guts your authority to grant the

waivers.

And my biggest concern is, I don't think the Board knew that at the time. If you did, and you approved it, then the issue is moot. If it is not, I would ask the Board Chair to put it on the agenda, and have the appeal for the waivers, the three waivers dealt with at the same time, so that the Board members have all of the information when they grant those waivers.

I want to remind you that in several of these high opportunity area transactions, including the one at the last Board meeting in Houston, we are not granting waivers for those transactions. Yet, we are granting a waiver to this transaction which certainly had two clear ineligibility items.

And I believe the third one that renders your ability to grant a waiver to preserve affordable housing is not in this. I would be happy to answer any questions.

MR. OXER: Thank you for your comments, Mr. Fisher.

MR. FISHER: Sure.

MR. OXER: Any comments from the Board?

(No response.)

MR. OXER: Anything at all?

(No response.)

MR. OXER: Thanks, sir. Did you have anything to follow up on that? Or is that something that we need to -- is there an appeal on that one, for next --

MR. DORSEY: No. Mr. Fisher, I believe, challenged that application. And we found that each point of the challenge, we felt the

application was compliant. With regard to the issues, I can talk about them. It is off the top of my head. But I remember all of the issues. Basically they submitted a waiver request that included a waiver of three different items. One was unit mix.

MR. OXER: Hold on, Cameron.

MS. DEANE: Okay. Because the Item 5 is limited as a report, I would really limit -- just take the input. And then if you want to take it up at the next meeting, to do that.

MR. OXER: Okay.

MS. DEANE: It is not posted for those other folks that might have been interested in this item, to come and talk.

MR. OXER: Okay. All right. That is a comment on the --

MS. DEANE: It is generally under the challenge, at five.

MR. OXER: Right. So that was a report item on that you gave. There were comments from Mr. Fisher requesting to have that item posted for the next meeting. Okay.

MR. DORSEY: Should I talk or not?

MR. OXER: No.

MR. DORSEY: Okay.

MR. OXER: The answer is always to be quiet in a meeting like this. Given an option, always be quiet.

Okay. Thanks, Bill.

MR. FISHER: It is an action item. It is not a report item.

MR. OXER: Item 5 was --

MR. FISHER: It is an action item. It is under the action items starting with number 2. The Board items are the one, action items are --

MS. DEANE: Right. I think the notice to the public would be though, that this is -- he is giving a report. He is listing. And each individual item is not going to be taken up. And I would also mention that denials of challenges are not appealable.

MR. DORSEY: The item itself reads presentation and discussion versus presentation, discussion and possible action.

MR. OXER: So it is presentation and discussion. For this --

MS. DEANE: You can receive, I think you can receive input on it. But I would just -- that would be it.

MR. OXER: No. We are not looking for action on this. So much as I was asking, if you have sufficient data that you can respond, just to respond. Just to add back into the data onto this record. Otherwise, we will make sure it is clarified for the next meeting, to confirm the decision that the Board made.

And for the record, so that everyone here knows, the fact that something is listed as an action item means that it is acted on individually, as opposed to dealt with under the consent agenda. It has to be addressed individually.

It does not necessarily mean that it is actually something that the Board has to "act on" or "resolve." Okay.

That's enough on that one, Cameron. Go to number 6.

MR. DORSEY: All right. Number 6, Appeals.

I will note to start off that my power of persuasion did work in one instance. We have five appeals, not six as listed on the agenda. Pecan Creek and Pecan Grove chose to withdraw. So we will handle the other four.

The first one is Hawk Ridge Apartments. This is a 9 percent -- 2012 9 percent application. This is for a development located in White Settlement, in Urban Region Three, and there are a couple of issues of appeal.

I guess, let me first say that this is an appeal that is resulting from a challenge. So we found that the challenge had validity on at least a couple of points and had corrected those issues in a revised scoring notice, effectively. And the applicant chose to appeal to the Board that revised scoring notice.

The first issue regards community input, other than quantifiable community participation. And this is an item, where there is the absence of the neighborhood organization. An applicant can seek points for community input other than quantifiable community participation, which is limited to just neighborhood organizations.

In this particular instance, the applicant submitted several letters of support from community or civic organizations. One of those letters came from the Naval Air Station, Fort Worth, Joint Reserve Base Regional Coordination Committee.

And the issue with that letter that staff found is that it didn't actually affirmatively state its support for the development. It basically made a determination that the development would not be inconsistent with the

planning functions, or the planning -- the development plans that that Regional Coordinating Committee exists to implement.

For example, there is a noise attenuation issue that is mentioned in the letter and then that the development would comply with that, so it is not a documentation of their support for the transaction. It is simply documenting of being consistent with requirements that that committee implements.

Not dissimilar from consistency with zoning or something like that. In these cases, we require very explicit affirmative statement of support. And it simply didn't comply.

In lieu of that complying, the Applicant has requested, or has argued that the neighborhood organization -- basically what happened in this case is, there was an organization that didn't meet the requirements of a neighborhood organization in the QAP. And so they weren't -- their letter of support wasn't counted for quantifiable community participation.

They would like that thrown over into this category, and for it to count under the "other than quantifiable community participation" category. And I think that there are some other issues that might need to be discussed on this particular topic.

MS. DEANE: If I can. Yes. Sorry. I apologize. I keep sticking my nose in here. To the extent that this item involves the interplay between QCP letters and non QCP letters, those two different scoring items.

I would suggest that you seek legal advice in executive session before going into that aspect of it, because the interplay between those items

are at play in some litigation that we currently have pending. And also in an OAG opinion request. And so I suggest some legal advice before going into that aspect of it.

MR. OXER: Okay. We will table that one for now, until after we have had Executive Session.

Go to the next one.

MR. DORSEY: Sounds great.

MS. DEANE: Table all of Hawk Ridge?

MR. OXER: Correct. We will table Hawk Ridge until after Executive Session and lunch.

Okay. Next one, Cameron.

MR. DORSEY: Okay. So the next point of appeal on this same development -- do you want to table the whole item?

MR. OXER: The whole thing.

MR. DORSEY: The whole thing? All right.

MR. OXER: Tax, parts, labor, installation, carrying charge, indentures, and dealer prep. Okay. Go to the next one. Shipping and handling.

MR. DORSEY: All right. Garden Walk of La Grange and Schulenburg and Weimar. This is an at-risk USDA transaction that is scattered site development. This is something that is very clearly allowed under the Rule 110.

And in this particular instance, they are basically taking three existing USDA transactions and combining them under a common financing

plan. And they are going to own and operate them under one limited partnership. And for that purpose, we generally treat this type of transaction as a scattered site development.

The issue at play is that the City of Weimar has more than twice the state average of units, of tax credit units per capita. And the reason that matters is because when that is the case, we have a statutory requirement for the Applicant to seek a resolution from the City acknowledging that fact, that there are more than twice the state average of units, and supporting the development despite that fact.

In this particular instance, that resolution was not provided to the Department. It is kind of a strange circumstance, though, because the QAP speaks of a development that doesn't -- basically that the development is in an area that doesn't qualify, because the development is located in three separate areas, it is a little bit difficult.

I see where the applicant could get a little bit confused. And I would have expected to be able to provide some guidance prior to cycle. But no guidance was sought. And they didn't seek out a resolution.

You know, what we are doing here is we are going back to the statutory requirement. Did statute contemplate the concept of scattered site development? I would argue that that is probably fairly unlikely in this particular item, that it would have contemplated that.

What it did contemplate is that where there is a city that has more than twice the state average of units per capita, and we are putting more tax credits there, a resolution is required. And that is exactly what is

happening in this situation.

And that is the basis on which we moved forward with a termination of the application for failure to submit a resolution. Staff recommends denial of the appeal on this subject.

MR. OXER: First of all, are there any questions of the Board?

(No response.)

MR. OXER: Okay. The three cities, locations for the project are at what distance, what remove from each other?

MR. DORSEY: They are in more than one county. I know that much. I think they might be in more than one region, state service region as well. There is a good drive between them. These aren't next door to each other, you know, ten minutes' driving distance.

MR. OXER: So is there anything? If we look at this projected -- let's go to the far end of unreasonableness on this. You can have three projects in an application like this. One in El Paso, one in Brownsville and one in Lubbock.

MR. DORSEY: You know, the only way that we really saw this application continuing under -- within the cycle, given that it is under -- it is within two separate regions, is as an at-risk USDA deal. If it was trying to compete in any other way, I don't know how we would deal with it, because you would have to somehow parse out the credits and give them credits from two different regions. And things just don't work that way. So this is relatively unique. I am not sure I have seen it before.

MR. OXER: I'm struggling. It's in two regions.

MR. DORSEY: Two separate --

MR. OXER: Two separate regions under our --

MR. DORSEY: Service regions. But at-risk doesn't compete by region.

MR. OXER: Within those regions.

MR. DORSEY: Yes. We take 15 percent off the top of the allocation, and basically that amount of money is a statewide pot for at-risk and USDA deals. And it's by virtue of applying into that set-aside that this application was deemed to not be non-compliant.

MR. OXER: All right. Say that again? What you just said. Say that again. I want to make sure we are clear on this. So this is competing in the at-risk -- the state set-aside at-risk but not for any particular region.

MR. DORSEY: Right. The at-risk deals compete statewide. Basically if you have an at-risk deal in Houston and you have an at-risk deal in Dallas, those two can compete against each other.

MR. OXER: The state is one region in the at-risk category.

MR. DORSEY: That is right.

MR. OXER: Okay.

MR. DORSEY: That is right. And so it's a bit unique. I will say that that is a little bit off topic, though. The real problem --

MR. OXER: The real issue is that they didn't do the two-times letter.

MR. DORSEY: The real issue is they didn't do the two-times letter. At least some of these credits in some of these units are in an area that

violates that two-times per capita. And a resolution would be necessary. It's that simple.

MR. OXER: But not all three of the regions?

MR. DORSEY: Not all three of the pieces of the development are located within that area.

MR. OXER: So if, stick the one that is in the area, the one third of the project, the one component of the application that is in the area that has the two-times that they would need the letter, were this to be a standalone application competing in that region, and we recognize it is not, they would have had to have a letter, a resolution from the City saying they recognize that they are in excess of the twice the state average on it.

MR. DORSEY: That is right. That is exactly right.

MR. OXER: Do other at-risk projects -- if it was a standalone at-risk project for the single city at-risk projects, even though it is in a statewide, does it require that the city in which the project would be located provide that resolution also?

MR. DORSEY: Yes. In fact, I believe we have one. I believe Georgetown is over the two times per capita. And we have a development located in Georgetown, in the USDA and at-risk set-aside competing against this particular application. I believe they did submit the two times resolution.

DR. MUÑOZ: You believe that they did, or they did?

MR. DORSEY: Well, this is all from memory. If they didn't, they wouldn't still be in cycle. And they are. So they must have.

MR. McWATTERS: Cameron, one thing we could do would be

to give them until the July 26th meeting to come up with a letter. But I think there may be a statutory problem with that. The Executive Director and General Counsel would like to comment on that?

MR. IRVINE: Well, the eligibility section of 6703 simply states that an application is ineligible if the development is located in a two-times city, and it doesn't have --

MR. OXER: Without the resolution.

MR. IRVINE: It doesn't have the required resolutions. So I would say that it really turns on the fact that there are units that would be present in the community triggers the requirement that the City adopt a resolution saying, yes. We understand that. We are already well supported with tax credit assistance, but we want more.

The fact that some of the credit assistance would be going to other areas, is to me not really telling, dispositive or relevant. The fact of the matter is, there will be credit units in this city that already have the concentration. And this city government hasn't said, notwithstanding this concentration, we want one.

MR. DORSEY: Right. I will say that they did submit a letter of support from the City Manager, indicating that they certainly would have pursued such a resolution if they knew one had been necessary. But you know, that letter does not comply with the statute or rule. And it obviously, there is no resolution still to date.

MR. IRVINE: And the statute does specifically state that the city approval must be prior. Prior approval, prior to the application.

MR. OXER: Any questions from the Board? I have to entertain --

MS. BINGHAM ESCAREÑO: Comments. Is there public comment?

MR. OXER: Not until we have a motion.

DR. MUÑOZ: Cameron.

MR. DORSEY: Yes.

DR. MUÑOZ: That letter from the City Manager, that was submitted with the application in a timely way?

MR. DORSEY: No. It was submitted on June 6th. It was after we made the determination that they didn't meet the requirement.

MR. OXER: So you have got a project with three components that requires three times the diligence.

MR. DORSEY: Yes. I think that there is generally some additional burden when you pursue a scattered site development like this, to make sure that you comply in each of the locations, basically. And there is some additional due diligences necessary.

MR. OXER: What would a conventional in the previously experienced -- in your previous experience, what does scattered site mean? Two or three locations in one town, or what?

MR. DORSEY: We see it scattered in two separate towns sometimes, and that is all right. It is just -- you know, there is nothing that prevents one from doing this. It is just that you have got to make sure that you have all of your ducks in a row.

It is kind of like, it is easier than submitting two separate, completely separate applications. But it is more due diligence than submitting a one site application.

DR. MUÑOZ: On the rare occasion where you have these type of scattered site applications, I mean, do you make a special effort then, to inform the developer that there are you know, unique requirements?

MR. OXER: Or do you even know before they are submitted?

MR. DORSEY: We generally don't really know before they are submitted. I think it is pretty well known that these types of developments present some unique issues, and that seeking guidance in this type of case is probably --

DR. MUÑOZ: And then, you weren't contacted?

MR. DORSEY: No.

MR. KEIG: Move to deny the appeal.

MS. BINGHAM ESCAREÑO: I second.

MR. OXER: Okay. Motion by Mr. Keig to deny the appeal, which is staff recommendation. Second by Ms. Bingham.

Are there any more comments from the Board?

(No response.)

MR. OXER: Is there public comment?

MR. HAMILTON: Mr. Chairman, Board members, I appreciate -- my name's Derrick Hamilton of Belmont Development Company. I'm the developer of this development. I appreciate staff's thorough review, and I would just like to comment a little bit on the issue of two-times.

It didn't come to our attention that we hadn't met that requirement until staff notified that. And we ran the calculation. We looked at this development as one development, 40 units. When you calculate that over the two counties, the number we come up with is less than that two times per capita.

Like Cameron mentions, the City of Weimar acknowledged in a letter that, had they known that this was an issue, they would have provided us a resolution of support, had we known that we needed that resolution. And I'll be honest; this is our first application in Texas.

We're a development management ownership company that specializes in rural development. We have about 3,500 units in five states, specializing in the preservation of USDA-financed communities, which sometimes causes a little brain damage. It presents challenging issues like this.

This is three properties that, standing alone, you couldn't get a tax credit syndicator interested in; you know, La Grange is 16 units, Weimar is 16 units, and Schulenburg is eight units. So even 40 units is a little more challenging. But definitely standalone on those wouldn't be attractive to any investors.

One thing I would like to say, I know we don't have that resolution. We are not putting additional units in any of these cities. We're just doing substantial rehabilitations on existing units that are there.

In particular, the Weimar property is actually a former tax credit property that has an extended-use agreement, so all we are doing is

substantially rehabilitating all of those units.

I guess, other than that, I don't have a whole lot to say. These towns are all twelve to 20 miles apart, each. They kind of form a little triangle. Weimar is in Colorado County. Schulenburg and La Grange are in Fayette County.

We spent a substantial amount of time and resources in doing this. And when you are looking at a scattered site development, you are talking about three market studies, three appraisals, three sets. It is a very time-consuming, very resource-intensive process.

And we would just like to ask, I don't know if the correct word is waiver. That might be a good word today. But an exception --

MR. OXER: Waivers mean something here. Okay.

MR. HAMILTON: Yes.

MR. OXER: Waivers, appeals and challenges actually mean something in these proceedings. So I warn you with that.

MR. HAMILTON: Yes. Okay. I won't even say a word for that. Even as one of the members suggested, maybe time for the City of Weimar to provide a resolution of support. They indicated in their letter that they would do so, and they would have done so had they known.

But we are just asking to try to keep this application alive and hopefully be able to rehabilitate these units.

I will mention, just to describe these units a little bit, because of the drought last year, specifically our Schulenburg property sits about like this (indicating), and we have a number of units that are unoccupiable right now

because of the damage from the foundation shifting, that kind of stuff. So the need is definitely there. So we just ask for maybe an exception in this case.

MR. OXER: Good choice of words.

MR. HAMILTON: Right.

MR. OXER: All right. Are there any questions from the Board?

MR. KEIG: Yes.

MR. OXER: Mr. Keig.

MR. KEIG: The numbers that you ran -- and I will let him speak for himself, too, but what was Mr. Dorsey's response to your numbers? Why did he not accept your numbers, in terms of --

MR. HAMILTON: I don't think there was a clear response to the calculation number that we put in our letter. Correct me if I am wrong. We looked at it as one development.

You know, the QAP doesn't specifically talk about how to calculate that two times per capita when you are talking about scattered sites. We looked at it as 40 units in two counties, and not 16 units here, and 16 units there. And so I don't think staff actually responded to our number.

MR. KEIG: Do you want to respond to that?

MR. DORSEY: Sure. So the way that this is implemented is, we post as part of our site demographics report on December 1st of this year, or last year, a list of all of the places in Texas, and counties within Texas. And we identify the tax credit units and bond deal units within that place or county. And the population calculate -- we do the calculation for applicants just to make it easier for them.

Weimar, just as a matter of fact, produces a more than two times per capita figure, the -- I think the calculation used by the Applicant was to take each of the locations where these developments are located, take the population from each, add those together, add all of the units together, and then come up with a new calculation to apply, based on it being a scattered site, which is --

MR. OXER: So the net effect is that for a scattered site like this, if this stands, you would have one that was in a category that needed a two-times letter, and two that weren't. You could average down. And so then your idea, or your assessment, that wasn't required, because you averaged in with a bunch of others for which it would not have been required.

MR. DORSEY: Right. That is exactly what they have done. Which you know, I can see why someone may have gone that route. But the problem is, that you know, the statute is really about, Weimar has more than two times the units per capita. Averaging in other places is not really --

MR. OXER: It doesn't change it.

MR. DORSEY: It doesn't change the fact that Weimar has more than the state average.

MR. HAMILTON: And it has had more than the state average, two times more than the state average for some time, because we are talking about rehabilitating existing structures.

MR. DORSEY: Well, in this case we are. It could theoretically have been -- what could have put them over --

MR. HAMILTON: We are not adding to the inventory.

MR. DORSEY: That is right. They are not adding to the inventory with this particular --

MR. OXER: So not having added to it, what is there already, which is being rehabilitated, puts it in at twice, the two-times category.

MS. BINGHAM ESCAREÑO: It is already there.

MR. OXER: It is already there.

MR. HAMILTON: Well, that is where I am at.

MR. DORSEY: Let me make a distinction. I don't think that the existing development that they are -- that is in Weimar, that is the subject of their application is a current tax credit development. We are talking about other units that aren't associated with this application caused it to go over the two times per capita.

MR. OXER: So they are over two times regardless of what he does.

MR. DORSEY: That is right.

MR. OXER: Okay.

MR. DORSEY: So they would need a resolution. And let me say, it is really about resources, not about whether the units are existing, or not existing. This is about, this is a resource issue.

And if a city gets more than their "fair share" of resources, then basically statute is directing that the Department to get a resolution from the City saying, yes, we recognize that, and we still feel like there is continued need. We need more of these resources. It is not so much about the units.

MR. OXER: So they are asking for them rather than having

them forced onto them, because these developments are not welcome in every location necessarily.

MR. DORSEY: Right. It is an opportunity for the City to say look, we have gotten our fair share of the tax credit resources. You know, we bow out for now. And it come down to a concentration type of thing.

MS. BINGHAM ESCAREÑO: Are the units currently occupied?

MR. HAMILTON: Yes.

MS. BINGHAM ESCAREÑO: Did your letter say that this was your first development in Texas, your first tax credit development in Texas. Or no. Did I misread that?

MR. HAMILTON: Which letter?

MR. OXER: He said it, but I don't think his letter said it.

MS. BINGHAM ESCAREÑO: That is his letter. This is our first application in the state of Texas?

MR. HAMILTON: Yes.

MS. BINGHAM ESCAREÑO: Okay.

MR. HAMILTON: I will say that the City of Weimar's letter, I don't know if you have that in front of you, that they did also note that they weren't aware of that designation as well.

DR. MUÑOZ: But that letter was submitted after the deadline.

MR. HAMILTON: It was. Yes. It was in response to us finding out that we needed a resolution from the City of Weimar. We asked the City if they could provide --

DR. MUÑOZ: But you should have found out before the

application.

MR. HAMILTON: Correct.

MR. OXER: And -- I'm sorry. Go ahead, Juan.

DR. MUÑOZ: Yes. Cameron, I am having some trouble understanding. You know, he has got existing affordable housing. They are going to rehabilitate them. They are already occupied. How does that add to the concentration? Are they already sort of in that twice the state average condition now?

MR. DORSEY: They are already in that.

DR. MUÑOZ: I don't understand the resource argument you are making.

MR. DORSEY: Sure. So if we give -- let's say we give \$100,000 in tax credits for this rehabilitation, that \$100,000 in tax credits could have gone to an area that doesn't have more than twice the state average of units per capita for a new construction project, for some other purpose, and could have been used.

So whether there are existing units, or new units, they are still getting resources that could be used elsewhere in the state. And where --

MR. OXER: Where there was not --

MR. DORSEY: Resources haven't -- where as many resources from tax credits have not historically been available.

DR. MUÑOZ: Yes. That is true. However, this may be a better project. This may be a more promising project, with more established builders. And so you know, your argument is speculative.

It may go somewhere else more deserving, and it may not. But the inventory, sort of the ultimate inventory is improved by whatever they do, or whatever is done somewhere else. And in the end, you are trying to get more rooftops. I just --

MR. IRVINE: Can I address that? I don't even think the statute contemplates you getting into that discussion. The statute simply states that as a matter of law, the application is ineligible for consideration unless there is a prior resolution from the city.

MR. OXER: And I will, as Board Chair, and having to be the referee in this sector, or having to corral the response here, I would suggest to you, this is your first application. And while we appreciate that it is a USDA and at-risk application, everybody here in this room will tell you, this is a -- to call this a hyper-competitive market might be one of the more significant understatements you will hear today.

While I understand your point, we have -- as a product of consistency with other applications that have done something similar, we have an explicit rule within the law and under the QAP that as Mr. Irvine wrote earlier, spoke earlier, Section 2306.6703, ineligibility. An application is ineligible for consideration if the development is located in a municipality, not group of municipalities, a municipality or county or is located outside a county that has more than twice the state average of units per capita supported by housing tax credits and private activity bonds, unless the Applicant has obtained prior approval of the development from the governing body of the appropriate municipality or county containing the development.

Now that is -- the QAP is most explicit on this. And it has guided some difficult decisions that we have had to make before. So I would offer that up to the Board for consideration.

MR. HAMILTON: Yes. I would just like to go back and say, that it doesn't specifically explain how to make that calculation when you are talking about a scattered site over multiple cities. And it doesn't specifically identify the term "developments," either. And I'm not trying to belabor the point, but I just -- am just trying to --

MR. OXER: Well, I understand your point. And you have an obligation to try to defend your project. We have an obligation to defend the process.

MR. HAMILTON: I understand.

MR. OXER: We are always working in the edges here, in the creases. So if this was straight down the middle, 500 yards down the fairway, we wouldn't see you.

So the interpretation on this is, since this -- if you could take all of this, and average it out, out of a place where there were an excess of those credits that had already been concentrated, the two-times concentration existed, you could conceivably average that down to anything, without regard to what the municipality had, without some recognition of their invitation for those credits to be brought to add to that concentration. I think that's the crux of our issue here. Is that your thought on it, Cameron?

MR. DORSEY: Yes.

MR. OXER: Okay.

MS. BINGHAM ESCAREÑO: Mr. Chair?

MR. OXER: Yes, Ms. Bingham?

MS. BINGHAM ESCAREÑO: Actually, I would like to withdraw my second.

MR. OXER: Okay. Withdrawal of second by Ms. Bingham. So we have a motion by Mr. Keig with no second.

MR. GANN: I will second.

MR. OXER: Second now by Vice-Chairman Gann.

MR. McWATTERS: I have a question.

MR. OXER: Okay. Mr. McWatters.

MR. McWATTERS: Cameron, how difficult is it to determine if there is a two-times problem? If you were just looking at this de novo and you saw this thing, the statute in the QAP, you said, I wonder if I have a problem there, what would you do then?

MR. DORSEY: You would go to our site demographics report, which is effectively fundamental to filling the application out. And look up that location. And then it has a -- basically it tells you on the spreadsheet whether it is or is not over the two times per capita requirement.

To give you an idea of what else is in that spreadsheet, if you wanted to determine if your area is urban or rural, that is in there as well. If you want to determine if you have a chance at being in a high opportunity area, that is in there as well. If you wanted to determine if you are in a central business district, that is part of that same spreadsheet or workbook. So it is pretty part and parcel to the application process.

MR. McWATTERS: Is this online?

MR. DORSEY: Yes.

MR. McWATTERS: So the burdens of complying with this, even to me, at least seems to be fairly low.

MR. DORSEY: I would say that there are -- that that is the case. I think it is legitimate to say that it doesn't clearly tell you what to do with a scattered site development.

But I will also tell you that we can't get into the QAP, a determination of all possible scenarios with respect to real estate development. So you know, I think it probably should have resulted in an email saying, hey how do you guys deal with this? Or just preemptively, get a resolution that the city supported the deal.

MR. McWATTERS: Okay. So you go to the website. You can see the two-times. And then the question would be does it apply to this sort of scattered site deal? And then you could phone or send an email, and there would be clarification on that from the staff.

MR. DORSEY: Yes. Definitely. Or just get a resolution, because the city supports it already anyway.

MR. McWATTERS: Thank you.

MR. OXER: Any other comment from the Board?

(No response.)

MR. OXER: Okay. We have a motion to deny the appeal by Mr. Keig. Second by Vice-Chairman Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

MS. BINGHAM ESCAREÑO: Aye.

MR. OXER: One opposed; that is Ms. Bingham. Thanks.

MR. HAMILTON: Thank you.

MR. OXER: For the record, we hope you will come back next year.

MR. HAMILTON: Okay.

MR. OXER: There will be a little more money in the pot next year.

MR. HAMILTON: Thank you.

MR. DORSEY: All right. The next one is one you all have heard before. This was before you at the last Board meeting. And the Board made a decision to table this particular appeal for this meeting.

I will kind of cover some of the ground again, since a couple of you all weren't at the last meeting. This is an appeal on 1701 Canton, EVERgreen Residences. This is an application for a development, supportive housing development located in the downtown area of Dallas.

I think it is probably important to note that there are three applications that are within two miles of each other. Basically they are all located right around downtown Dallas, or within downtown Dallas.

And pursuant to our statute, we can only award one of those developments because of what we term the two-mile same-year rule. Basically if there's multiple applications within two miles of each other during the same year, we can only give credits to one of those.

Again, this is a concentration issue. And it's to spread credits around throughout the cities to more than -- and not concentrate them in one neighborhood or very small area.

The reason I bring that up is both because there will be someone making public comment on this particular application, but also to point out that these three are in very staunch competition with each other. They are basically a dead heat. And that a decision with regard to any of the particular subjects of appeal will be determinative of which one ultimately is competitive.

So there are multiple issues at play. The first one is the cost of the development by square foot. I will tell you what the other ones are, before I even address that one. The preapplication incentive points. The length of affordability period, and the repositioning of existing developments.

I am going to go ahead and talk about the length of affordability period first. This was a four point item. This is basically an item where you can elect to extend your affordability period from 30 years to 35 or 40 years, and get points for that, if you are not a rehabilitation development.

We further put out some guidance with respect to that, that basically said, if you aren't demolishing all of the buildings, basically if you are doing rehab on any particular building, then you don't qualify for these points. In this case, we took the points away because they were doing rehabilitation on the community building.

But we are now recommending that the Board approve the reinstatement of those points, after considering the more substantive aspects

of the application, and the fact that the community building reconstructing, it really doesn't make sense in the context of this application, because it was previously rehabbed. Some funds were spent on that.

That they provide other services through that building. So it is part of the development, but it also has some other functions and some other deal-specific aspects.

So we are recommending the reinstatement, that the Board approve the reinstatement of those four points. So now, do you have any questions on that particular one?

(No response.)

MR. DORSEY: If not, I will move on to the ones where we are not recommending reinstatement of points. The first one is cost of development by square foot. This provides twelve points if you are under certain thresholds in the cost, development cost per square foot.

There are certain categories of costs that the QAP instructs must be included within that calculation of the costs per square foot. Offsite costs is one of the categories that is required to be included under the rule. In this particular case, the Applicant believed they qualified for the points, but did not recognize that offsite costs were required to be included in the calculation.

They have also indicated that they made some other errors in the application that warrant removing offsite costs from the calculation, and from that category under development cost schedule. Namely, that they are performing the work, the offsite work. That the City will be performing that work.

We have got a number of issues here, but I am going to kind of lay out what our rationale was in taking the points away. And then built into kind of the administrative deficiency issue. First, we looked at the fact that the work is necessary to facilitate the development.

This is offsite work that has to be done to do the development. From that perspective, it makes sense that it would be included in the development cost schedule, and thus included in the cost per foot calculation.

MR. OXER: It looks like the City building a driveway onto the property or something.

MR. DORSEY: Right. The other thing is, that the application itself overwhelmingly supports the inclusion of the offsite costs. The offsite costs are in part -- at least in part being funded with funds from the City. And those funds from the City were also included within the sources of funds in the application. There's also a commitment that commits those funds to the partnership.

In addition to that source of funding, was initially being utilized for points under a different item. So to remove the costs associated with that funding, but to count the funding is kind of -- you know, splitting the baby. Now they did have another source that they could use to count for that same point item. But that is not how it was initially conveyed. So that is one consideration.

Again, there is that commitment of funds from the City to the owner itself. The other thing is, that the Applicant submitted an offsite cost estimate from a third party engineer. And that jives with the offsite costs

reflected in the application, and would suggest that the funding from the City is not sufficient to actually cover the full cost of the offsites; about 280,000, which would then suggest that, well, the Applicant must be paying for those offsite costs.

Which would lend itself to inclusion of those costs in the application, and thus, in the cost per foot calculation. However, they have indicated that those costs, that that offsite cost estimate is really a third party cost estimate if the Applicant were doing the work.

But they are saying, no, we are not doing the work. The City is doing that work. And so, that is not really a cost estimate for what it is going to cost the City to do that work.

The problem is again, there is this kind of overwhelming, this overwhelming evidence that inclusion of the costs in the cost schedule was legitimate. And that it made sense to do that, and include it in the cost per foot calculation.

There is one statement in one portion of the application that would suggest that that is not an appropriate way to deal with it. It basically suggests that the City will be paying for the offsites and what have you. The problem with that is, that we have this mountain on one side, and this one statement on the other. And it takes quite a leap of faith to say, all right. You can go change your application up completely to reflect what is in this one statement. And not only that, we are going to give you twelve points that makes you win, potentially win over other applicants, based on that kind of leap of faith. So that is, we are showing what is going on with that

item, and what is of concern to staff.

They also draw out the fact that we let them submit some documentation, and that is true. We do generally -- when it is difficult to see everything that is going on with an issue, we do allow the Applicant to respond, and give us some more information to fully consider the issue. But after that information was submitted, we full considered the issue and felt like, look this is really the right thing to do, based on what was submitted on its face.

And the other thing they point to is that it is not a material deficiency. And I don't think that that is actually a relevant subject, because if it were a material deficiency, under the material deficiency requirements, we would actually be required to terminate the application, not just take points away. So that is not really at play in this particular instance.

It is just -- was it appropriate to cure, to allow them to change all of this stuff, under the administrative deficiency process, which is what they wanted really to do. And we felt that allowing them to do that and giving them twelve points, given this kind of mountain over here was just not appropriate. Okay. That is one issue.

The preapplication incentive points, we recommend being a function of what your action is on the other items. Basically the reason that we didn't give them those points, is because they lost too many points in the other items, which is how the QAP reads.

Basically if your guess at preapp, your self-scored guess at preapp is too different from what your actual score is at the end of the day,

then you don't get preapp points. And it is really just a function of what the other point items are.

MR. OXER: And is for the purpose of keeping people from just tossing in something on the preapp?

MR. DORSEY: That is right. That is right, so that -- we would recommend that that just be a function of your other actions. The repositioning of existing developments is probably the toughest one for staff to wrap their brain around. Well, it is the easiest one for us to come to a conclusion on. Let me say that.

It is three points that can be elected by Applicants, proposing substantial rehabilitation and reconstruction of an existing non-affordable development constructed between 1980 and 1990. Okay. That is what the deal is.

And one of the requirements -- this is the language from the QAP. One of the requirements is the development contain residential buildings originally constructed between 1980 and 1990. In this particular case, I believe the building was originally constructed in 1947. It was converted to residential in the 1980s.

And that they are saying that the basic conversion in the 1980s should qualify them for being considered as built during the 1980s. And we are saying, while it may become residential during the '80s, that slab was poured, those walls were put up well before the 1980s. And that is the basis on which this point hinges. So we are not recommending reinstatement of those points, based on the fact that we believe the original

construction, the date the slab was poured, the date the exterior walls were put up in 1947 or what have you, that that is really when you are at play.

MR. OXER: You have got a few posts on this thing.

MR. DORSEY: Yes.

MR. OXER: Okay. Do we have any questions of the Board?

(No response.)

MR. OXER: Well, can I have a motion. And then we will consider public comment. And so on all of these, to be clear, do I hear four components.

MR. DORSEY: There are four components. One we are recommending. One we are recommending as a function of your other actions. And then the other two are the substantive issues that I think that are under consideration at least from the Applicant's perspective, those are the issues they must speak to.

MR. OXER: Right. Mr. Keig.

MR. KEIG: I want to move to approve the appeal on the twelve points for cost per square foot, just that line.

DR. MUÑOZ: Is it twelve?

MR. DORSEY: Yes. It is twelve points.

DR. MUÑOZ: Second.

MR. OXER: Okay. Motion by Mr. Keig and a second by Dr. Muñoz to approve the appeal for cost per square foot. We are going to have to go through this individually, I can tell. Okay. Recalling your comment,

Cameron, the cost per square foot was in excess of what was allowable based on the inclusion, or them not including these offset costs.

MR. DORSEY: Based on them included the offsite costs, they are at \$101 per square foot which is above the \$95 per square foot as submitted originally in the application.

MR. OXER: What you are saying is, that they are materially different in their cost per square foot? They don't have an accurate cost per square foot in your estimation, in your assessment?

MR. DORSEY: Right.

MR. OXER: Okay. Mr. Keig.

MR. KEIG: Mr. Dorsey, you've read their July 9 letter. You have had an opportunity, yes?

MR. DORSEY: Yes.

MR. KEIG: And their third bullet point on page 3, they address the \$280,000 difference.

MR. DORSEY: Uh-huh.

MR. KEIG: Did you have any comments on their explanation for why they would not be over?

MR. DORSEY: My comment really is that if we can either accept this concept, that the City is doing the work, that the Applicant is not doing the work. And that on that basis, it shouldn't be included in the cost per square foot.

And further, that they should be able to change the application to reflect that or that substantively, the application on its face, violated the rule.

And that these are such major changes, in spite of the evidence that what they submitted made sense, from the perspective of including those offsites in the calculation. I mean, it is really what is at play.

That is just one component of that kind of mountain of "this makes sense to include," was that whole \$280,000. Well, the fact that they included an offsite cost estimate that is not the real offsite cost estimate is -- you know, if that is not what it's going to cost, then I don't know what value there was in submitting it in the application. It is again, part of that -- the application said something that they are saying that isn't really what is going on.

There is one other thing that I will say here. The difficulty is that when we are dealing with an appeal, the Board's decision is instructive to staff on what to do in regards to other situations that we encounter. It's interpretations of rules.

And the problem is with this one, it has got this leap of faith in there that is really difficult to -- the fact pattern is what it is. There might be individual circumstances that are compelling in this case. And a waiver might be something to consider.

But the idea that we applied the rule inappropriately, then I am looking to you guys to say, all right. Well, now how do I need to apply the rule, based on what the Board's decision was, because an appeal is a decision regarding how to apply the rule.

And it would be really difficult to, I think, you know, break that down and say all right. Well, I can apply this across the board, when really it

has got this leap-of-faith kind of issue going on.

MR. OXER: Do you have a thought about how to respond to his question about how to apply this rule in the future?

MR. KEIG: No.

MR. OXER: Okay.

MR. McWATTERS: By --

MR. OXER: Please.

MR. McWATTERS: By adopting the motion on the floor, you will risk being inconsistent with prior practice.

MR. DORSEY: The inclusion of offsite costs in this particular scoring item, I believe, is a new thing this year. And as a result, it would be instructive on how to go forward. But I don't believe that it would be inconsistent with the past.

MR. McWATTERS: Is this the type of issue that you would expect someone to contact you and ask about, inquire how this would be treated?

MR. DORSEY: Uh-huh.

MR. McWATTERS: What I am trying to get at is, was there an element of surprise in the staff's response here, or was it reasonable to think that someone should have said, you know, maybe we should inquire.

MR. DORSEY: They, I think, admittedly, they didn't realize that offsite costs were included, just -- it is black and white in the QAP that offsite costs are included. I mean, that is black and white. The issue at play is whether the City doing that work should get the offsites excluded, and whether

or not they should be able to modify their application to reflect that exclusion of offsite costs.

I mean, as a matter of fact, you can't read the QAP really, to exclude offsite costs. But offsite costs are a complicated thing. You can have all kinds of -- you can have all kinds of ways offsite costs get done.

The seller could be required to complete some work, prior to conveying the site. You know, the City can be doing the work. It could be work that is just happenstance is already being done, and is kind of planned and under way.

And while it benefits the development, it was going to go forward whether the development went forward or not. So you know, if I had to write the rule over, I wouldn't have included offsites in this calculation.

MR. OXER: Particularly not in that description of it, because what we are really -- I guess what I am trying to get to is, when we look at financing a project, what we want to evaluate is those parts that go into the assessed value that the developer is going to have to use.

Now if the City gives them the land, gives them all of that, and says hey, go do this, and they can produce a project economically, efficiently, those offsite costs work to its detriment, apparently. Right?

MR. DORSEY: Uh-huh.

MR. OXER: Okay.

MR. DORSEY: These offsites are clearly connected to this development. I mean, they are part and parcel to this development. The funding that they are getting to do the offsites is part of the application. Part of

the City's commitment to get this development done.

The offsite costs wouldn't necessarily be incurred if this development wasn't moving forward. So it is definitely part of the development in this case. But again, the --

MR. OXER: But those costs are not being borne by the developer.

MR. DORSEY: They are not being borne by the developer is what they are saying.

MR. OXER: Or by the development.

MR. DORSEY: In the application itself, would suggest that the costs, overwhelmingly suggests that the costs are being borne by the Applicant. Whether they are through financing obtained from the City or not. I mean, it definitely speaks to the application, to the costs being part and parcel to this development, being done by the developer.

You know, again, there's that one statement that says that is not what is going on. But that is hard to rely on. I mean, remember, this is twelve points. This is a matter of an application winning or not winning. And it's all based on allowing them to make pretty substantive changes based on one sentence in an application that wasn't part of a financing commitment or something. It is just an applicant statement, against the commitment to the partnership of the funding, against the offsite third-party cost estimate, against the fact that they're included in the application on its face in the cost schedule, and what have you.

MR. McWATTERS: How is the term offsite cost defined in the

QAP, or is it?

MR. DORSEY: It is not.

MR. McWATTERS: It is not. Is it reasonable to conclude that a cost that is subsidized by a city is an offsite cost versus it being a non-offsite cost?

MR. DORSEY: Yes, you could make that leap. I think there are a few logical places to draw the line. One is that if it is an offsite cost, it is necessary to facilitate this development being built, no matter who is doing the work, then it should be included as an offsite cost. I mean, that is a pretty logical place to draw the line.

Another place you could draw the line is, you could say, even if it is necessary to facilitate the development, but if the developer is not responsible for getting the work completed, and the work is being completed by the City, with City funding, then that is a logical place to draw the line. But even if you decide where to draw the line, then you have to get past the whole part where they had to make the change to their application significantly to actually reflect that.

MR. OXER: So let's hold aside here, for a moment, the apparently fuzzy interpretation of offsite costs. Not in terms of what should be related to the project, but whether or not they were included in this application, because it shows a couple of different numbers on this. Right?

MR. DORSEY: Right.

MR. OXER: Okay. So they -- the application comes in. It is made there. You have a question. And they are asking to change the

application. So is it a material difference? A material change in their application.

MR. DORSEY: It doesn't constitute a "material deficiency." But I would suggest that it is beyond the scope of an administrative deficiency.

And you have got to be careful when you are talking about deficiencies and point items, because you know, point items, this is an area where if I asked someone, if I tell anyone that they are over the costs per foot limit, I guarantee their response will be to change their application to comply.

And so I have got to be really careful about when we allow them to do that and when we don't allow them to do that; and when we don't allow them to do that, to make sure that I am not allowing this kind of gaming to go on. Where it needs to be a change -- the way we implement this, is --

MR. OXER: At some point the application has got to be fixed, where you do the assessment.

MR. DORSEY: That is right. And usually, it is based on what was originally submitted, unless there is a clear documentable discrepancy that is already revealed and clearly documented in the application itself.

And an example I use most often is there is a unit that is 900 square feet in the rent schedule, and it is 910 square feet in the architectural plans, then I say which one? And that is easy.

You know, and I am not going to allow you to go say it is 980 square feet, so that you can get under the cost per foot limit, if you violated it, at either of those. You get to choose what is already evident within the application. If I allowed you to go modify your application and make the unit

980 square feet, when there is no evidence in the application to support doing that, then I might as well just give the points, and not even evaluate the point item.

MR. KEIG: A quick question.

MR. OXER: Yes, sir.

MR. KEIG: I am looking at their flow chart with the July 9 letter. And they seem to indicate that they put it in there because there was a blank, fill that in, offsite costs.

So my question is, if they really were zero to them, did they also calculate in the application their costs per square foot? Did they have to calculate it, and include that number, and come up with the calculation? Or is it something that staff does to come up with that calculation?

MR. DORSEY: We identify specifically which line items they need to include in the calculation. But we don't have in the Excel spreadsheet a thing that spits out the number.

And there is some good reason for that. I could go into that. But there is other circumstances, where certain types of developments get to include some of the community space, or some of the hallway -- or it includes corridor space. So it would be really difficult to just spit a number out for them.

MR. KEIG: But do they have to calculate the cost per square foot and put it in their application?

MR. DORSEY: No.

MR. KEIG: No. All right. So conceivably, they may have thought that that was not being included. And they were just -- it is possible --

MR. DORSEY: Oh, I think that they thought offsite costs were included. I think that they just misunderstood what the rule was.

MR. OXER: But it is clear that offsite costs are included?

MR. DORSEY: Yes. And we put out an FAQ that actually, we backed out -- we basically said, all right. This is a line item in the development cost schedule. Here is the specific wording in the application that is used. Take that, and include it in the calculation. Actually like laid out the formula with words, in our FAQ, to make sure there was no confusion.

I think that there were -- the folks that put this application together were pretty rushed. They were doing it in quite a short, compressed time frame. I think it just got missed.

Now, whether it got missed, I don't know that that is substantive to whether they should or shouldn't be included, or whether it can or can't be cured through the administrative deficiency process. But I think as a matter of fact, I think they just made a mistake.

MR. KEIG: So we don't have a definition though, of offsite costs. Right?

MR. DORSEY: That is right.

MR. KEIG: Do we have any frequently asked questions or like that on whether or not it was cost borne by the developer?

MR. DORSEY: No.

DR. MUÑOZ: Is there any doubt that the City of Dallas would bear these costs?

MR. DORSEY: I think at this point, these folks -- well, these

folks are honest. I mean, yeah, I think that the City is going to bear the costs. I think that that is a fact. It is just that --

DR. MUÑOZ: In their little flow chart, they say that they provided incontrovertible evidence.

MR. DORSEY: Yes. I wouldn't dispute that. That the City will actually -- at the end of the day, that is true. It is just -- you know, allowing the cure as an administrative deficiency when it is this substantive for other applicants, where I might not -- you know, it is --

MR. OXER: It is a bit of a stretch for an administrative cure.

MR. DORSEY: Right.

MR. OXER: Okay. Tim, do you have something?

DR. MUÑOZ: Why is it a bit of a stretch for an administrative cure?

MR. DORSEY: Because it -- because that evidence wasn't in the application. And the overwhelming evidence was that on its face, the application as completed --

DR. MUÑOZ: That the developer was going to incur those costs?

MR. DORSEY: Right. There was that one statement that created the question in our minds of what was going on. And when they responded, it necessitated so many changes to still achieve the points, that we felt it wasn't appropriate to cure that many issues through the administrative deficiency process, which also rose to what was included for this other point item.

I mean, they were using the City's financing to count these points for underwriting -- another point item. So they wanted to include the financing of the points under this item, and exclude the cost --

MR. OXER: But not --

MR. DORSEY: The cost that financing is paying for, for one of the other items. And they found a way around that. By having a different source that they could substitute in. But in a sense, that is kind of what was going on.

MR. OXER: So you can't finance something that is not a cost, is what you are saying.

MR. DORSEY: Right. They have got to balance. If you have a cost, you have a source.

MR. OXER: If you have a tax, you have a penalty. Sorry, that is a bad joke.

MR. McWATTERS: Cameron, you said that there were two other --

MR. OXER: Everybody take a deep breath and laugh a minute.

MR. McWATTERS: You said there were two other projects competing in the same geographic area? Are they supported by the City of Dallas? Will they receive financing through the City of Dallas?

MR. DORSEY: All three have submitted documentation that they have got support from the City of Dallas. All three have resolutions from the City of Dallas for support, as well as funding from the City of Dallas. So the City of Dallas is behind all three. I will say that --

MR. OXER: They are behind all three, but only one can be funded.

MR. DORSEY: Only one can be funded.

MR. OXER: Because they are in such proximity.

MR. DORSEY: And the City of Dallas, I believe, knew that. They contacted me actually before the cycle to figure that out. They chose, I think to support all three, and just let the process play out.

MR. McWATTERS: Well, how did the other two handle offsite costs in computing cost?

MR. DORSEY: I can't recall if any of them had offsite costs.

MR. OXER: Did they have commitments by the City?

MR. DORSEY: They --

MR. OXER: Apart from the resolution, did they have financial commitment by the City?

MR. DORSEY: They had documentation that they would be seeking financial commitment from the City. At a minimum, that is what is required. I think one of them may have had a full on --

MR. OXER: Hey I am seeking a spot on Boston for the Red Sox, okay, to play first base. But I don't think I am going to get there.

MR. DORSEY: Well, I think -- well, right. I think oftentimes, the cities align their financing, their approval up with when what our process is.

MR. OXER: They don't do anything. They wait until, and see --

MR. DORSEY: Right. I think one of them didn't get some financing from the City in a recent council meeting. But I think it probably

would be unfair to hold that against them, because they aren't required to prove that financing up until --

MR. OXER: Right.

MR. DORSEY: Until commitment, which happens in August.

MR. OXER: So essentially, the City said, it is contingent on whoever survives this process.

MR. DORSEY: The City said, they supported all three. And presumably, they anticipated this process playing out, that yielding the winner.

MR. McWATTERS: So just to close my question, there is no inconsistency then, among the three applications as to how the per square foot cost was calculated, relative to outside costs?

MR. DORSEY: There definitely is no inconsistency. We did go back and review that. We have also talked to this particular applicant about it, I think briefly. There was no inconsistency.

MR. OXER: Okay. We have a motion on the floor by Mr. Keig and a second by Dr. Muñoz. And there is a letter to be read onto the record. Michael?

MR. LYTTLE: Okay. This letter is addressed to Chairman Oxer and the TDHCA Board members from State Senator Royce West.

"Dear Chair Oxer and TDHCA Board members.

"The City of Dallas has a pressing need for permanent supportive housing for homeless children and their families. To meet this need, two of our premier nonprofits, Family Gateway and the First Presbyterian Church of Dallas, in unison with the City of Dallas, the Dallas

Housing Authority and local neighborhood organizations have come together to assemble two acres of land downtown, to develop 130 units affordable apartment community to serve homeless families.

"The City of Dallas has committed 4.6 million to this venture. And the Dallas Housing Authority has committed 100 project-based rental vouchers.

"This application, TDHCA 12182, has my strongest support. Family Gateway and First Presbyterian Church of Dallas currently work very hard to meet the needs of homeless families in the Dallas community. Between them, they serve hundreds of homeless kids and their parents each and every day. They are so well respected in the community, that they were able to gain the support of not only the City of Dallas but of the neighborhood organizations serving the downtown community as well, including the Downtown Residents Council and the Farmers Market Stakeholders Association.

"I strongly encourage you to grant the appeal of this application, and restore the points that have been rescinded by staff, due to their interpretation of the QAP. We at the Legislature know there will always be gray areas regarding the interpretation of policies, such as in this case. This is why the TDHCA Board is given the discretion to act on appeals.

"I urge you to use your discretion in this matter, and grant the appeal of this application. The City of Dallas has a strong need for this type of permanent supportive housing. And no one could have assembled a better team to make this happen for our City. Without an allocation of housing tax

credits, this worthy project will not be able to proceed.

"Thank you for your consideration of my request. And please use your discretion as a Board to grant this appeal. Sincerely, Royce West."

MR. OXER: Thank you, Michael.

All right. Did the other two projects -- the City of Dallas supports all three projects?

MR. DORSEY: Yes.

MR. OXER: From what you said.

MR. DORSEY: That is right.

MR. OXER: From indications. Okay. Did Senator West provide any documentation of support for the other two projects?

MR. DORSEY: I am not sure. But I can find out.

MR. OXER: That would be a nice question to answer. And I take it there was very little opposition to any of these projects.

MR. DORSEY: No. That is not the case.

MR. OXER: Just thought I would toss that out for you, and see if you could hit it back past me. Okay.

MR. DORSEY: There was some opposition to at least one of the three, community opposition. It didn't constitute quantifiable community participation in terms of being an eligible neighborhood organizations with respect to that particular development. But it is opposition, and was sent in as public comment.

If you want to kind of know what a split decision would do, I will just tell you that a decision to not award any one of these items would result

in, at a minimum, a tie where this applicant would lose the tie breaker. So the lowest point item that's at play is three points. That would take them down three points. And that three-point loss would put them tied with another application, and based on the tie breaker, this applicant loses.

MR. OXER: So this is a children at risk or a children -- basically a children's project. Is that correct?

MR. DORSEY: No. It's a supportive housing development.

MR. OXER: Supportive. What are the other two?

MR. DORSEY: One is reflected as a general, and one is reflected as supportive housing.

MR. OXER: Okay.

MR. DORSEY: So there are two that are supportive housing. One in general. One is listed as general at play.

MR. OXER: All right. Is there any other public comment?

(No response.)

MR. OXER: Is there any comment from the Board?

MS. BINGHAM ESCAREÑO: There has got to be public comment.

MR. OXER: You are supposed to be sitting up here if you want to have comment, okay. Anybody? Just to remind everybody, if you want to have comment on an item we are discussing, the on deck circle is right up here. Or the on deck line.

MR. KEIG: Was that a hand spanking?

MR. OXER: That was a hand spanking.

MR. DORSEY: Senator West, I believe, supported all three. Sent in support letters for all three.

MR. OXER: All right. Who is first?

MS. McIVER: Good morning. My name is Diana McIver, and I am President of Diana McIver and Associates. And we are the consultants to the Applicant for this particular project, 1701 Canton. And with me today also speaking are Buddy Jordan, with First Presbyterian Church of Dallas, and also Rob Alberts, who is the Executive Director of Family Gateway.

A little background; 1701 Canton is proposed as 130-unit permanent supportive housing to be located in downtown Dallas. As I told you at the last meeting, it's not plain vanilla. So a little bit of a complex project. And in fact, if you read, I didn't count them. But if you read the staff write-up, you'll see the word "complex" many multiple times when they are discussing this development. Why is that?

One, because it has got three sites. The sites combined to about 2.2 acres. But one of them is currently -- these programs that are operated by Family Gateway. And they are on land that is leased from the City of Dallas. And adjacent to it is a parking lot, and also a warehouse that is going to be demolished. So there are actually three parcels of land.

There also, as you remember from the last Board meeting, we have three types of construction. We have new construction. We have reconstruction and we also have rehab. The rehab being of the existing community center that does homeless services for kids and their parents.

We also have an expansive team involved. And we have ten

legal entities and 45 principals. Now that is a little out of the box also, when you are preparing these applications.

Because normally, you are going to have about three legal entities and three to five principals. But because this group, and all of these organizations within Dallas coming together, it leads to a very complicated organizational chart. In fact, the organizational chart had to go down to like a six-point font to even fit within the Department's format.

At the core, and it is an amazing team. But at the core of this team are two premier nonprofits from the City of Dallas. One is Family Gateway. And as I mentioned, they already have and operate a housing and supportive services at this particular location where they serve homeless families already.

And the other one is the First Presbyterian Church of Dallas which, I will let Buddy describe. But they serve thousands of homeless individuals and families each and every day in their homeless programs.

So we have got that as our core. And in addition to that, we have an experienced HUB who was brought in, and has construction experience. And we have also got a couple of for profit developers who will be lending their financial guarantees.

Our other partners. One partner, obviously is the City of Dallas. And the City of Dallas, as I say already leases this land. And it is their intent to acquire the other parcel and lease it back to the ownership structure for a dollar a year.

And beyond that, another partner is the Dallas Housing

Authority. And as I say, we are doing 130 units of supportive housing. A hundred of those units are going to be one-, two-, three- and four-bedroom units so that we can truly serve families.

When finished, this development is going to be able to serve 500 persons each and every day in the housing, because of the size of those bedroom units. They saw the need as being housing for families. And so rather than to use other discretion to do smaller units, they decided that the need was to do a true apartment complex with two-, three-, and four-bedroom units.

So because of this, the Dallas Housing Authority has committed 100 project based rental vouchers for the life of this project. That is virtually unheard of. And that is what makes supportive housing work, as you all know so well.

We are talking about a population that, you know, they can't pay the 60 percent rent. They can't pay the 50 percent rent. And a good majority of them struggle to even pay that 30 percent rent. So having those 100 vouchers is an important component of this.

And so it is easy to see why this group was able to get the support of Senator Royce West, the support of the State Representative, the support of the City of Dallas and the neighborhood organizations. And these are not easy neighborhood organizations. They are tough.

But they very early on went out with a very transparent program, actually did a blog saying exactly what they were going to do, and invited the community to comment. Now as a consultant, I find that -- I was

panic stricken.

But it worked for them. It worked for them because they were transparent, and they take up the community involvement, and they listened to those comments. And they addressed those comments head on.

Did the QAP consider this type of complexity? No. There has been a real move within the QAP to go to more of a check-the-box format. And that works on plain vanilla, but it doesn't really work on projects like this.

One, one of our deficiencies was that we couldn't have more than one construction type. But we do. We have three. The application has no guidance for situations where a city is going to buy and improve a site and lease it back. Do you show it as a source of use? Do you show it not at all? How do you deal with that kind of situation?

The application manual doesn't have guidance for what to do with offsite costs that would be paid by another party. The absence of addressing this would have constituted a deficiency had we not put in the offsite costs.

This year, something was done that when you hear me at QAP sessions, you are going to see that I am going to say, let's restore the scoring volume, because this year's application effectively eliminated the scoring exhibit for any scoring item, where staff could look elsewhere in the application to get that information.

In every other year, just going back to last year, when you want a score for an item, you would justify it. You would show your math. You would show your documentation.

And this year, in what we thought at the time was an effort to simplify the QAP, to condense the size for our applications, that scoring submission was eliminated. So we did not have a place in the application that we could say, cost per square foot, these are our numbers. This is how we got there.

So now moving to our visual aids. And this is in everyone's packet. And we did provide the audience with information. And I know that you have already addressed this chart. The chart was put together by Jill Hertz, who is the Chairman of the Board of Family Gateway, testified the last time, but had to be in Washington, D.C. today.

So the nature of our appeal, one. The City of Dallas already owns a portion of the site. They approved \$2.6 million for the acquisition of the adjacent site, including the offsites associated with this. In the initial application, we showed this \$2.6 million under site acquisition. But we erroneously included the offsites again as another line item. So our mistake was, we actually show offsites twice.

How did this happen? It happened because as we were going along, and we had an engineering report done. And that information was available, it was not until February 22nd that the City of Dallas approved this application. And so all along, where our folks had been meeting with the City of Dallas and talking about this site acquisition, including offsites, we did not know that decision until the 22nd of February.

And obviously, this application which is far more than 600 pages -- I think it's 7- or 800 pages -- was due on March 1. So that

information came in and was available on the 22nd. And you would say it's a slam dunk, but it was not a slam dunk.

This year, the City of Dallas -- I don't know how many applications they received. But I know a client of mine, the night before the 22nd, the 21st, just found out that they were not going to be supported. So it was not something that we could rely on that information. But on the 22nd, that was the vote they took.

Number two, correctly done, we should not have included either of these items in the development budget that shows the costs to be borne by the Applicant. Three, on our chart, we received a deficiency. And four, we responded with corrective documents.

Our competitors' disparate treatment -- our competitors also made similar mistakes in their applications and were allowed to correct. And in fact one of the applications was actually told by staff in their deficiency notice how to correct it, to do this and this, and we think you're going to be okay kind of thing. So all we are asking is for the same treatment; to be able to correct our application.

And number six, this gets into our conspiracy theory. At the June 14 Board meeting -- as Cameron says, it's is tough competition in Dallas, because particularly of this two-mile rule. But at the June 14 Board meeting, our competition advanced a conspiracy theory that we conspired with the City after the fact and that it was never the intent of the City to pay for these offsites.

This is blatantly false. And I want to walk you through these

facts, because this is extremely important. First off, there were a multitude of preliminary meetings between the Applicant, between the parties with Family Gateway and with First Presbyterian Church, and a private developer with the City.

Numerous, so that going into that meeting on the 22nd, it had already been determined, and in fact, suggested by the City of Dallas that they provide, that they basically purchase the site, and do these offsite improvements, and the onsite improvements and lease it back. It was their idea. Those discussions were there. And that is what the City Council agreed to on February 22nd.

And that was what was in the letter that we submitted in our application which was dated February 27th. We did disclose in our initial application to TDHCA where this was addressed in both the financing narrative, and as part of the site control exhibit, where it was stated in the site control exhibit -- because that is where it was important at that moment, the City of Dallas has committed \$2,603,720 in funding for this project to assist with site acquisition and site improvements.

The City will use those funds to purchase Parcels One and Two, make site improvements, and then will lease it back to the Applicant for a dollar a year. And then it says, please see part three, development financing for commitment letter from City of Dallas. So it was addressed in the application.

Then the next piece of evidence is on April 12th, there was a letter from the City of Dallas which stated. This letter confirms that the City of

Dallas intends to A) acquire and improve properties known as 1701 Canton and 702 South Ervay by constructing offsite and onsite improvements at the City's expense, up to the amount of 2.6 million.

The last time, at the June 14th meeting, you had the testimony of Bernadette Mitchell from the City of Dallas. And she indicated that it is the City of Dallas' process to simply provide, because they had the meeting on the 22nd. They needed to get those letters out on the 27th at the latest.

It is their process to do a generic letter. And they assume there will be deficiencies. They are a pretty experienced city player in this. So they anticipate that there are going to be deficiencies. And that they can take their time, and do the letter that really says the terms of the deal.

So that was the April 12th letter. But you heard her at the June 14th meeting, talking about that is their process. That is how they deal with it. And that was the April 12th letter that was provided, back in April.

As a final demonstration of attempt, we have attached Resolution 121737, which was passed by the City of Dallas on June 27, committing 2,603,720 for acquisition, demolition and site improvements for 1701 Canton. And additionally, they committed another 2 million in funding that would go for basically a cash flow, soft debt loan. So I mean, that is sort of the final demonstration.

And you ask if they are supporting everyone. Well, my understanding at this point is at that meeting, that particular meeting, they approved the funding for this project. And they also approved funding for another development in Dallas outside of our two-mile competing area called

Hatchers Square.

But that is what they approved. And I did hear that they turned down the funding for a competing project. And as Cameron said, that applicant does have the right to substitute financing. We are all allowed to substitute financing.

But that is where we are with the City of Dallas. So clearly, the plans all along have been for the City to purchase the site and do the on and offsite improvements.

Okay. Getting to seven. Major versus minor. And Cameron has talked about this. And really, a question is like, is this an administrative deficiency? And the correction of our mistake, we believe meets the definition of administrative, because that definition is basically information requested by the Department that is required to clarify or correct inconsistencies in an application that in the Department's reasonable judgment may be cured by supplemental information or explanation will not necessitate a substantial reassessment or reevaluation of the application.

This is the category we believe we fit in. Why? One, because it is part of the TDHCA review. We got a deficiency letter that says, please clarify your calculation of cost per square foot. And I attach them for you.

The exhibits that we provided were actually very simple exhibits. What we did is something called a development cost schedule. It is an Excel spreadsheet. And we simply removed the 2.6 million because we had it as both a source and a use.

And within that 2.6 million, is basically a purchase price of the

land of about or, 1.8 million, 1.9 million and the rest available for offsites and site improvement. So it was broken down into those two areas. We removed that, and we removed the offsites.

But remember by now, we have got the offsites in there twice. We not only liked them so much, we erroneously put them in there twice. Once, as part of the City 2.6, which includes offsites, and then again, a report from a private engineer that had done an engineering study that is later in a category for extra points this year.

So we believe that the information that we provided the staff did not affect our request for tax credits because neither the site costs, nor the offsite costs are ineligible basis. And so really, when you look at the changes we made to the application, and that is why I attached them to show you, they were very simple. You take out these two lines.

It is an automatic calculation. And it was not -- to me, it did not rise to the level of anything that would not be handled as an administrative deficiency. So you know, as Cameron talked about the material deficiencies, versus administrative.

And just to be clear, we are not asking you to change the rules for us. We are simply saying, let us correct a mistake. And so that is not changing the rules. I think that's a little different. I think we provided information as part of a deficiency process, to correct a mistake. And it is not one that took a lot of staff time. It was one that was a simple Excel spreadsheet change.

And then again, the other issue that was raised is the difference

between our private engineer, who as part of an engineering report, came up with an estimate of offsites that was roughly \$900,000. And so that is the -- that is where the difference of the 280,000 comes.

Now in reality, we shouldn't have put it in there in the first place. It was going to be back there in the engineering report. And had we not put something in that line, it would have been deficiency in hindsight. I would have rather dealt with that deficiency, than this issue.

But the reality is it shouldn't have been in there, because the offsites were going to be borne by the City. And we knew that on February 22 or February 23 after the meeting was over, and so that's the difference.

And so if you are -- and you all know this. But if you are a private contractor over here, and doing stuff on a third party basis, it is going to cost you more money than the City being able to do stuff with their own staff. So you know, they can get their own engineers out there, to do water and sewer kind of stuff. And it is a lot cheaper than me going to you, and asking for you to do the work. So there is that third party element that makes things more expensive.

So clearly here is what we are saying. We are saying that the 280,000, the 900,000, whatever those offsites are, they are not an expense to the Applicant. And they should not have been in our development budget. And at this point in time, we do have proof from the City of Dallas, not just that they think they will pay for them. But that they will pay for them. Clearly, this change did not cause a substantial reassessment or reevaluation of our application. We were asked to provide information. We provided information.

It was not cumbersome. A couple of entries, in an Excel spreadsheet. It did not affect our tax credit request. And we meet the definition of administrative deficiency. If the correction can be cured through the submission of supplemental information. And we did cure it through the provision of supplemental information.

The second item of the appeal, which goes over here. This is the one called the repositioning points. It is a new QAP item. Some of us aren't sure why it is there. But basically it is --

MR. OXER: Diana.

MR. KEIG: It's not part of the motion. But if you want to go ahead and let her, for efficiency's sake, go ahead. I don't know.

MR. OXER: Yes. Where I was headed with this, is for efficiency, for purposes of this -- we will hear what you have to say on that part of it, on the second part.

MS. McIVER: Okay.

MR. OXER: But we've been hearing you for a while now.

MS. McIVER: Okay.

MR. OXER: Okay.

MS. McIVER: Yes.

MR. OXER: So I am trying to be as considerate as possible for something that is evidently a very complex project. And it deserves some attention. But I am going to have to ask you to get to it.

MS. McIVER: Okay.

MR. OXER: Please.

MS. McIVER: So do you want me to go ahead and address the second point of the appeal?

MR. OXER: Yes. Put your points forth on those, and we will deal with this.

MS. McIVER: And really, the chart I think says it very well.

MR. OXER: Does that satisfy you all? Is that okay with you?

MR. KEIG: Yes. As long as --

MR. OXER: Counsel?

MR. IRVINE: I think it would be cleaner just to go ahead and close it with the 12-point item.

MR. OXER: Let's leave it like this.

MS. McIVER: Okay.

MR. OXER: Let's leave it like this.

MS. McIVER: All right. It was the most complex of the issues. This one is simple.

MR. OXER: Do you think?

MS. McIVER: Yes.

MR. OXER: Okay. Earlier this week sometime, somebody made a motion on this project. I think it was Mr. Keig.

MR. KEIG: Yes.

MR. OXER: Made the motion to grant the appeal. Second by Dr. Muñoz. We have heard public comment from --

MS. McIVER: [inaudible].

MR. OXER: Hold on. Time out. I'm not spiking anybody here.

We heard comment from you, Diana. Apparently we would like to hear from -- and I suspect or hope that you represented your two colleagues? Or do they wish to speak as well?

VOICE: I just have a very brief comment.

MR. OXER: Emphasis on brief.

VOICE: Very brief.

MR. OXER: Okay.

MR. McWATTERS: I have a question.

MS. McIVER: Yes.

MR. McWATTERS: In your flow chart, Item 5, you talk about the distance between, of the three projects.

MS. McIVER: Right.

MR. McWATTERS: I asked Cameron earlier if the three projects were consistently treated. And I think the answer was yes. Although I maybe didn't ask the question in a wholly articulate matter. I don't know. But I need to ask about this. This is a serious charge. Would you please explain how a project or two projects were more favorably treated than your project?

MS. McIVER: Every single -- and I am sure there are other projects in the state as well, but we only examined the competing projects within this two-mile radius. And the other two competitors both had deficiencies notices from staff that they were over the cost per square foot limit.

On one, the other supportive housing development that is a block away from 1701 Canton, their deficiency said, you are over the square

foot item. You should look at including the 50-square-foot-per-unit common area. That is permissible for supportive housing.

And also, it looks like you didn't include the corridors in your development. They were allowed to submit that additional information which changed their square footage, which brought them under the \$95 a square foot.

In the other case, it was the Belleview project. And they had the same deficiency. You are over your square foot. And they had included within their costs, costs for commercial and retail space.

What they produced in response to their deficiency was, an email response with staff. And again, this is not -- it is not clear in the QAP. But they responded.

They had a staff preclarification that they would be able to take that out of their costs, because they had a staff -- a staff member had given them an email saying that they would not have to count those against their \$95 a square foot.

MR. McWATTERS: Cameron?

MR. DORSEY: The issue of inclusion of the corridor space and the certain portion of the community area in the calculation was really more of a -- just getting it clear in the application. We could see on its face, it already met the rule, because their architectural plans already had the community space and the interior corridor. Which we could actually independently calculate in the application as submitted.

We just wanted them to acknowledge that that is what was

going on. Really, more of two years from now, when we try to figure out what we did, so we can tell. That is really all it was.

The other one was just an issue where staff wasn't -- my staff reviewing the application wasn't clear that the Applicant had already received a determination prior to cycle starting on how to treat a specific issue. And so the response was basically staff getting this guidance. There was no change necessary. It was just, we got this guidance from staff. And so there wasn't a change in the application, actually.

MR. McWATTERS: So in your view, there was not disparate treatment among these three applicants?

MR. DORSEY: No.

MR. OXER: Okay. Buddy.

MR. JORDAN: Is it on?

MR. OXER: It's on.

MR. JORDAN: Buddy Jordan, First Presbyterian Church. I appreciate you all's time. I will make it brief. I've got four volunteer positions with the Church now: ruling elder, one of six trustees; I'm chair of the Stewpot, a pretty well known organization that Diana mentioned. I'll cut short all of the ad about that. And I'm also chair of our Housing Committee.

We've got a lot of community outreach programs. We've been there 150-plus years. I won't go though all of those with you all of the ones we had.

We were best known for feeding 1,500 people a day, every single day, not far from here. Our Church is located one block from this site.

We've been struggling for four years to try and find the right PSH project downtown. We have, just as has Family Gateway, numerous programs helping the homeless in this area of town.

And inside the freeway loop, in downtown Dallas, this is the most underdeveloped area. We do all sorts of things. But the biggest growth has been in the youth and children in the last ten or 15 years.

Our history of collaboration with all of these agencies to do all of these programs, they are not all self-generated. As to Family Gateway a year ago, their vision is the same as ours. We are trying to change homeless kids' and their parents' lives.

Our project is a little different. In that it is restricted to families. It is not PSH and SRO. It is strictly for families. As Diana alluded to, we specifically -- we went to a lot of trouble to get every single adjacent property owner's approval on this. We went in concentric circles outside of that; got all of the ones we talked to. We stopped, because we ran out of time.

We got the Farmers Market stakeholders, which as you all know from last year, is not an easy thing to do. That's very important. We've got this relationship with the City of Dallas. And in a lot of ways, where we serve the meals is in their homeless assistance center that's 70-percent funded by the City of Dallas.

This is an unusual situation. We have a Family Gateway, this property is complicated. Encore owns it. It has been very complicated to keep it under control. The other two properties, the City owns one of them. Another unrelated owner owns the other.

This has always been a project where they are going to buy and own -- they already own part of the site; they're going to buy the rest of the site, do the offsites, then lease it to us for a dollar a year.

In addition to that, they were also always going to give us this \$2 million loan, which qualifies us for the local government support. This project is gravely needed in this specific area downtown, where we and Family Gateway -- we are the dominant providers of services for the homeless in this area.

The Bridge does a really good job, too. They're about two or three blocks away. That's where we serve our meals. We need to take care of the homeless families in that area. We are the closest geographically to that.

As Diana said and I think Cameron alluded to some, the June 27 council meeting, it was a vote against funding the other PSH project inside the freeway loop, that is only two blocks from us. I just wanted to clarify that.

So these families need this permanent supportive housing. Family Gateway has been there a long time with the 30 units they already have. I just hope you all will grant this appeal.

MR. OXER: Any other comments from your side, your crew there, Diana?

MR. ALBERTS: I still have.

MR. OXER: Okay. Please.

MR. ALBERTS: Good morning.

MR. OXER: So far.

MR. ALBERTS: So far. Thank you for hearing our appeal. Thank you and the staff for your commitment to public service. I know it is not an easy job. I am Rob Alberts. I am the Executive Director for Family Gateway.

You have heard various things said about our project by our opponents which may stray from the truth. And God only knows what they are going to trot out today. But one of the things you heard last time, was our inability to follow directions.

I want you to see, I am wearing my boots today. Just as instructed. These aren't just any boots. These are special Charlie Dunn handmade boots from Capitol Saddlery. I have been wearing them for 40 years. I don't bring them out very often; only for special events like this and when my wife says, let's go dancing.

For most of those 40 years, I have been running not-for-profit organizations. I am not a developer. I am not an attorney. I am not a consultant.

I don't have any fiduciary -- excuse me -- any financial interest in this deal. All I am going to get out of it is a lot more work and headaches and heartaches that go with construction projects. But it's the right thing to do.

My career has been about making the world a safer, healthier, happier place for kids to grow up in. And right now, it is for the homeless kids; the youngest, most vulnerable Texans that we have. These are kids without a warm, safe place to put their heads at night.

These are kids without any sense of security or predictability in

their lives. These are kids, without some agent of change coming to them, will not escape poverty. That is what we are here for. That is what you guys are here for, I believe.

There are thousands and thousands of these kids in Texas. In DISD alone, Dallas Independent School District, they have identified 4,500 kids who are homeless. We are just scratching the surface. When you approve our appeal, you will help us serve scores of thousands by this project.

And why would you want to do this? Because we are really good at what we do. We find employment and education for the parents. Get them out of poverty. And education for the kids, so they will not grow up and be poor and be homeless. It is a return on an investment.

Isn't that what you are here for? Isn't that why in fact, you were chosen, literally chosen to serve in this, I guess, body. It is to make sure that precious public resources are invested prudently, wisely and effectively.

We take civic -- folks who are civic liabilities and turn them into community assets. What greater ROI is that, possibly? And I believe that is the intent of the program in the first place.

Finally, on rules again. I have started with rules and ended up with rules. Texas Administrative Code, Title 10, Part 1, Chapter 50, Rule 50.10, Section 4, the last line: "Nothing herein shall serve to limit the Board to apply discretion for good cause."

Now I know that means good cause as a legal phrase. We are the good cause that you are here to serve. And I beseech you to be the heroes, the Texas heroes that you are here to be. Thank you.

MR. OXER: Great. Thanks, Diana. Thanks to your team.
Okay. Any other questions from the Board? Okay.

(Pause.)

MR. OXER: Cameron.

MR. DORSEY: Yes.

MR. OXER: Take a shot at it.

MR. DORSEY: Sir?

MR. OXER: Take a shot at it. So you can report. Do you want to take it. Do you have it. Okay. That is good.

MR. DORSEY: I just wanted to very quickly point out that this is the problem. That reality and the application are two different things. And in order to evaluate an application, the application needs to reflect reality. And fundamentally, that is the problem. And that was a lot of explanation to convey the difference between this and this.

MR. OXER: Good morning, Ms. Dula.

MS. DULA: Good morning. Tamea Dula, Coates, Rose. Here on behalf of 1400 Belleview, which is one of the three projects located within the two-mile radius. And only one of these projects will survive.

This is the second year that 1400 Belleview has been before the Board for an allocation. Last year, they were the highest scoring nonfunded project in the area of Dallas. This year they have a shot at it. And we appreciate the fact that staff and the Board tried very hard to make the playing field a very even one.

In that regard, 1400 Belleview also had offsite costs. They

have offsite costs that are being paid for by the City with TIF funds. The City passed a resolution last summer to provide the funding for this project.

So it is a project with City support. It has City funding already committed to. In addition, it has a letter of support from Senator West. And it is on its own, a very worthwhile project.

Additionally, this project had a resident -- excuse me, a retail element to it, which created complications in terms of determining the price per square foot. This Applicant contacted last year, the TDHCA to determine how to handle it. They handled it. They got the points.

This year, they contacted TDHCA staff once again, to confirm that it was going to be handled the same way. That the retail portion of the project would not be considered in determining the cost per square foot. So that everyone is on an equal playing field. They received an email from TDHCA staff confirming that.

When it came time for the application to be reviewed, there was an administrative deficiency. It looks like your cost per square foot is too high. Please explain.

The email from TDHCA staff that confirmed that the retail component was to be backed out, and not included in that calculation. It was provided to the person who was reviewing it. And they said, okay. That is all you needed to say. We got the points on the cost per square foot.

This is an applicant who followed the rules. Who inquired when the rules were not quite clear. And who got their points legitimately.

I would like to point out that in the material that was provided to

you this morning by the Appellant, on page 2, the bullet point at the top of the page, which is the evidence in their application as to what they intended to do says that the City will use the funds to purchase Parcels One and Two, make site improvement, and then will lease it back. It says they will assist with site acquisition and site improvements. It says nothing about offsite improvements.

The City's commitment to provide offsite improvements is only made evident in the next bullet point, the April 12 letter, which is a month and a half after the applications were submitted. We request that you follow your staff's recommendation and that you deny this appeal. Any questions?

(No response.)

MR. OXER: Thank you, Ms. Dula. Any questions of the staff?

(No response.)

MR. OXER: Does your colleague have comments?

MS. DULA: Thank you. We will pass.

MR. OXER: Last summary, Cameron. Go through your one versus two again, on the board.

MR. DORSEY: I mean, it is really kind of word play, right. I mean, this Board is just -- their wording. But I think it contains what the problem is, which is that, one, we've got what was in the application. And two, it is what is reality. And those need to be one and the same.

And when it requires, we are talking about -- Diana was talking about, you know, it is a couple of boxes in an Excel spreadsheet. But it is not just those boxes. First of all, it is all of the other stuff.

It was the fact that we thought that, one, this source was being used to claim for points on another point item. And how that would have been affected. They are -- it is more substantive to the review process than that.

And I will also say, this was an outlier in terms of difficulty in reviews in general. And an outlier in terms of how substantive these changes are necessary. I mean, that is one thing that we have the benefit of, is you know, we look at a lot more than just what ultimately gets appealed. And so what you guys see are generally outliers. And this one was one.

MR. OXER: If it was easy to do, you do it.

MR. DORSEY: Yes. I think the project is great. If I felt like it was reasonable to allow them to change this stuff, sort of the administrative deficiency would have never appeared here.

MR. OXER: Yes. We are in a hyper-competitive situation. And every project on this list, every one of them -- and the Board recognizes, and I think I can speak for all of us here. The Board recognizes that every project that makes the effort to get to this point on this thing constitutes a worthy project.

And there is no small amount of effort that goes into getting here. So we recognize that. The hard facts are, we have only got so much money, and so many projects we can fund. Dr. Muñoz, did you have a comment?

(No response.)

MR. OXER: Okay. We have a -- let's see. There is a motion by Mr. Keig to grant the appeal.

MR. KEIG: To grant it.

MR. OXER: To grant the appeal.

MR. KEIG: On the 12 points.

MR. OXER: To grant it on the 12-point component.

MR. KEIG: Right.

MR. OXER: Okay. To grant the 12 points. And were they to receive those 12 points, does that make them competitive in the region?

MR. DORSEY: No.

MR. OXER: Not yet. Okay. All right. So there is a motion to grant the appeal, to grant the appeal for the 12 points only. That is the first component of this. Second by Dr. Muñoz. And that is --

MR. KEIG: Yes. Solely on the issue of --

MR. OXER: Cost per square foot.

MR. KEIG: The cost per square foot.

MR. OXER: Okay. No other public comment. Is there any more comment from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(A chorus of ayes.)

MR. OXER: Well, that is interesting. Four. Okay. The appeal is denied four to two, with -- let's make sure we have got this right. The motion to grant the appeal, your vote, Professor McWatters?

MR. McWATTERS: No.

MR. OXER: Your vote, Mr. Keig? It is aye.

VOICE: No.

MR. OXER: No, no, no, no, yes. Okay. The appeal is denied, four to two. And with that, do you have any sense that the second appeal is going to be less than an hour and a half that we spent on this first part?

MR. DORSEY: Yes. The last stuff will be easier. That was the hardest, the most difficult. That was the most difficult.

MR. KEIG: Didn't you say that some of the second part was contingent on the prior part? The action on the first part?

MR. OXER: That was on the preapp points only, though, principally.

MR. DORSEY: Right.

MR. OXER: Okay. Do it. Go. Let's go on the second part here right quick, and get it. Not right quick. Let's give it a fair hearing.

MR. DORSEY: All right. The next issue is on this same application, is the repositioning of existing development point item. And this is for -- the core issue with this one is, it has to be a deal built in the 1980s. An existing deal built in the 1980s. This one is built in the -- well, the buildings were built in 1947.

MR. OXER: The slab was poured in '47.

MR. DORSEY: That is right.

MR. OXER: It was converted into residential in the '80s.

MR. DORSEY: We don't see that as -- the QAP says, contains,

the development must contain residential buildings originally constructed between 1980 and 1990. I think what is at play is, they were originally constructed as residential in the 1980s. Or between 1980 and 1990. Their basic point is, it wasn't residential before 1980, so it is irrelevant what it was, when it was originally constructed.

MR. OXER: So the interpretation from the staff is, the slab is poured in '47, so that is when it was originally built?

MR. DORSEY: Right.

MR. OXER: So you are --

MR. DORSEY: It is now a residential building. And that building was originally constructed before 1980.

MR. OXER: Okay.

MR. KEIG: Question.

MR. OXER: Question by Mr. Keig.

MR. KEIG: In your writeup, you say the purpose is to encourage the conversion of the market rate housing to affordable housing. Can you give us a little context, how we know that that was the purpose?

MR. DORSEY: Sure. You know, we have a requirement in here, the implementation of that requirement is stricter than that general kind of concept. So the concept was we want to encourage the conversion of market rate deals to affordable deals. And there is a whole bunch of affordable housing constructed in the '80s that the idea is, if you go target that stuff and convert to affordable, that's great. We want you to do that. And the implementation of that is basically that there are no existing deed restrictions

recorded in the county records, and or renter income restrictions recorded in the county records.

This one, it is hard to say it is market rate. I mean, it is supportive housing now. But technically speaking, it doesn't have renter income restrictions recorded in the property records. And so technically it doesn't violate that requirement.

Substantively, probably it is not really what was -- you know, thought about when this rule was created. But we didn't really address it on that basis. It is really about when this building was originally built. That is the basis on which we --

MR. OXER: And the building in question, is it a multifamily building?

MR. DORSEY: There are 30 units of existing supportive housing within this building now. That is not what its original use was. But you know --

MR. OXER: So the intent of that whole program was to target basically -- to flesh that component of the portfolio out of market deals, and into affordable housing.

MR. DORSEY: Right.

MR. OXER: Okay. Do you have a comment on this?

(No response.)

MR. OXER: Any more comments that you would like to make?

MR. ALBERTS: Yes. Having recovered from that disappointment vote, we have decided to withdraw. There is no point in

wasting your all's time at this point. Save you the time and effort.

MR. OXER: Okay. I think that answers that one.

MR. DORSEY: I think there's still technically action necessary on the length of affordability, if you want to go with staff's recommend -- I'm sorry. The length of affordability period, which is, we recommended reinstating those points.

MR. OXER: They are withdrawing their appeal. So if they withdraw their appeal.

MR. DORSEY: They're withdrawing.

(Simultaneous discussion.)

MR. DORSEY: Okay. So the four points, and then the six points that would just be a function of the other items, which would be staff's recommendation.

MS. McIVER: Basically, Cameron, here is the math that I was doing. And that is basically when you lose the 12 points, you also lose the preapp points.

So that puts us 18 down. So even if we were to recover four, or to recover three, it still doesn't put us in competition, in a competitive scoring within anything in the top of the Dallas region.

MR. DORSEY: Okay.

MS. McIVER: So that was the reason that they elected not to have the Board spend any more time. Sorry.

MR. KEIG: Do you need the four points or not?

MS. McIVER: We will take the four points just out of principle.

Then we we'll leave.

MR. DORSEY: Okay.

MS. McIVER: And I think it sets a good precedent if that stays in as a QAP item next year.

MR. KEIG: Do we need to vote on that?

DR. MUÑOZ: Move staff recommendation.

MR. OXER: Yes, we have to vote on that. All right. There is a motion by Mr. Keig. I'm sorry. Dr. Muñoz.

MR. KEIG: I will second.

MR. OXER: Second by Mr. Keig. Staff recommendation on the four preapp points. I think if there is no other -- I'm sorry. The length of affordability points. A good point to have process. A good process is always a good process. Is there any other public comment?

(No response.)

MR. OXER: Is there Board comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous. We will keep that one in. All right.

MR. DORSEY: The next one on the agenda has been withdrawn; that's Pecan Creek and Pecan Grove.

And we go to Mariposa at Ranch Road 12. It won't take me too long, but it does have an overlapping issue with the one to table, if you wanted to just --

MR. OXER: Yes. All right. Here is what we are going to do, folks. We are going to go into Executive Session, which I will read into the record here in a minute. We have got an extended discussion to have regarding some legal issues. It is four minutes past noon right now. Let's be back in our chairs at 1:30. Okay.

All right. The Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, and to discuss certain personnel matters under Section 551.074 of the Act, and to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code.

The closed session will be held in Room E.1020. The date is July 10; the time is 12:03 p.m.

(Whereupon, the Board adjourned into Executive Session at 12:03 a.m.)

MR. OXER: Good afternoon, everybody. The Board is now reconvened in open session at 1330. That's 1:30 in the afternoon, for those of you who don't like military time.

VOICE: Cameron, is your microphone on?

MR. OXER: Yes. Thank you. It is now. Let's get a couple of microphones on, here. Can you hear me, Penny? Was that good? Okay. Because your microphone is on, right? Okay. All right.

There were no decisions made in our Executive Session. We only aired out some legal issues that are before the Board. So we continue with Mr. Dorsey.

MR. DORSEY: All right. Would we like to rewind and go back to Hawk Ridge, which was tabled before Executive Session. Or do you want to handle the last one --

MR. OXER: No. We need to -- let's go back and handle -- let's do Hawk Ridge.

MR. DORSEY: All right.

MR. OXER: Since there was a legal issue that bore on that one. So start that one.

MR. DORSEY: So Hawk Ridge then is a development proposing to be located in Urban Region Three. It is in White Settlement. We did not award, again, these issues are the result of a challenge.

We did not award two points for the letter from the Naval Air Station Fort Worth Joint Reserve Base Regional Coordinating Committee, as you all recall, because it did not make an affirmative and explicit statement of support for the development, but merely stated that it was consistent with their -- basically planning documents.

And in lieu of that, the Applicant would like a letter of support

that was submitted for the quantifiable community participation point item that was disqualified for that item to count for two points under the civic and community organizations point item, which is the -- we call it the other than QCP point item. And we also did not see fit to award two points for that.

It was simply an ineligible neighborhood organization that didn't qualify under the rules, and wasn't submitted for that particular point item. And wouldn't necessarily meet the broader community and civic groups point item. So that is the issue with that one. And what was discussed in Executive Session.

The other item is one point for economic development initiatives. This is an item that we have had some issues with on a couple of applications. The next appeal is on a similar subject.

Basically we have two point items that are kind of similar in how they get implemented. One is, economic development initiative point item, and one is the community revitalization plan point item.

And in many cases, we have had cities that created a neighborhood or community revitalization plan and/or an economic development initiative, effectively, very shortly before cycle, before the applications were due, and everything. And it appears, for the purpose of supporting the development and helping that development achieve two points.

However, there are a few instances where it looks like there is a lack of distinction between the economic development initiative and the community revitalization plan, which is a problem.

Within the QAP, I thought it was on the page, within the QAP, in

order to qualify as a community revitalization plan, one must have, as part of the letter from the appropriate local official, a statement affirming that the plan is not a consolidated plan, or other economic development plan, or citywide plan. The plan has been adopted, has been approved or adopted by ordinance, resolution or other vote by the governing body, et cetera. So it specifies that it can't be -- the revitalization plan can't be an economic development plan. Further, we generally try to ensure that one thing that is submitted can't qualify, doesn't qualify for two point items, because it can create some issues.

And as a result, when we are looking at this issue, we make sure there is a clear distinction that the economic development initiative that may be applicable and the community revitalization plan that is at plan are distinct and separate. In this particular case, with the Hawk Ridge deal, we have -- I guess I am just going to read from the resolution. I think that that is most telling thing to do.

The resolution says, "Whereas the area within this economic development initiative will assist in the revitalization of the neighborhood currently consisting of old or obsolete rental housing, and the revitalization plan is not part of a consolidated plan, economic plan or citywide plan" -- and it goes on to state the boundaries of both what they are claiming is the economic development initiative and the revitalization plan. And it states -- let's see.

"White Settlement hereby establishes the area bound by Loop 820 to the west, White Settlement Road to the north, Dale Lane to the east, Interstate 30 to the south, as a community revitalization area specifically

designated to promote new modern affordable rental housing to support the North Central Texas Council of Governments" -- et cetera. The recitals here create this kind of confusion in what is exactly the economic development initiative and what is the distinct and separate community revitalization plan such that they appear to be one and the same to us.

You know, it kind of uses the terms interchangeably and mixes them in some cases; for example, the statement, Economic development initiative will assist in the revitalization. It is like -- so basically we found that it should count as a point under one of them items.

Frankly, it is not a huge issue, since it is one point and one point. We didn't have a huge concern which item it counted under. But it should only count under one.

So we awarded one point, didn't award the other point. Move down the road. So that is the subject of an appeal. And that is it on this side.

MR. OXER: Okay. Our policy is to have a motion to consider before we invite comment.

(Pause.)

MR. OXER: This is on the one-point appeal.

MR. DORSEY: This is on both the community input, other than quantifiable community participation item, which had the letter from the Joint Reserve --

MR. OXER: Okay. So what -- clarify what the point differential is on this for edification for all of us, Cameron. If they don't qualify for this, is it two points, or is it 14 points, or is no points?

MR. DORSEY: Okay. On the community revitalization, economic development stuff, there are two one-point items at play. And we gave a point under one and, as I said, not under the other. And we can reserve that or do whatever we want. But it is just one point of the two.

MR. OXER: But you are saying whatever they provide qualifies for one point, for one or the other.

MR. DORSEY: That is right.

MR. OXER: So if they wanted the other point, they would have to have another letter for --

MR. DORSEY: Yes. It would have to be a distinct and separate kind of plan.

MR. OXER: Okay.

MR. DORSEY: They are not -- you know, I mean it is a very -- it is pretty clearly overlapping and confused, frankly. And they have the same boundaries and everything as far as we can tell. The community input, other than community participation, other than quantifiable community participation, I will break it down a little bit more. So --

DR. MUÑOZ: Just a minute. Could we consider taking these separately? That way, acting on the one point.

MR. OXER: Yes.

MR. KEIG: I will move that we adopt staff recommendation to deny the appeal on the 50.7(b)(22) economic development initiative.

MR. OXER: That is the one point initiative. Is that correct?

MR. KEIG: Yes.

MR. OXER: Okay.

MS. BINGHAM ESCAREÑO: I will second.

MR. OXER: Okay. Motion by Mr. Keig. Second by Ms. Bingham. Do we have public comment on that point?

MR. MCGILL: Thank you, Mr. Chairman, Board, Executive Director. I am Bert McGill. I am the sponsor of application 12025, Hawk Ridge Apartments in White Settlement.

You may recall last year when we were asking for forward commitments. I brought in a big aerial photograph. White Settlement is right inside the 20, right next door to Lockheed Martin, and the Naval Air Station. The Naval Air Station, as you may recall, we had the City Mayor, a council member, economic development director come.

And at that time, they brought an identical letter from the Naval Air Station. And we submitted it to the Board as a support letter. We used that exact same letter, and its content, updated it, and resubmitted it as a support letter this year for our reapplication on Hawk Ridge Apartments.

If you will recall some of their comments, the Mayor and the City Council, and the Executive Director is, the Naval Air Station needs additional military housing. And we have committed verbally to that. That we would give military discounts and to qualify for some exceptional -- to assist them in producing housing.

And that is where the beginning of this letter came from. So it was submitted last year as a support letter. It was submitted this year as a support letter for a non-QCP score.

And we did that because the military is short on housing, and they need additional housing to support Lockheed and the Naval Air Station. They have their own formats for submitting. And they responded in that same format.

I'm sorry. I have kind of gotten off the side, and started talking about the wrong section. Let me go back and talk about -- and it is all kind of tied together from the Naval Air Station point of view. And HUD, and the Council of Governments we received an award of like \$700,000. And part of that award went to the White Settlement, the city of White Settlement.

And so in the economic development portion, and the resolution that they submitted, those dollars are going to be used in that area, because that supports the housing, because that is one of the few areas in the City of White Settlement that is zoned for multifamily.

There is the economic development portion that was in the resolution. We did send in, and we do have a resolution. And it also supports the revitalization, because revitalization is also needed in the City of White Settlement.

All of their houses, their rental housing stock is old and obsolete. So they do need to have it revitalized. They need a new initiative. They have it right next door to this site. It is new housing, single-family housing.

So they are trying to raise the entire environment. So is it revitalization? Yes. Is it economic development? Yes. And they put it in the same resolution.

Now when I put that resolution in the application, staff came back to me and said, okay, this is unusual. And I said, what is unusual about it? And she said, usually we get letters. I said okay.

So they sent me back a deficiency notice and said, go get two separate letters from the City. One addressing the economic development and one addressing revitalization. I did so. We got the Mayor to sign. I returned it to the staff. I heard nothing further.

So I assumed that they were clear that one was for the economic development and one was for the revitalization, because actually in that area, and throughout the City of White Settlement, they are both needed, but that was the area for the multifamily that had zoning.

And so they put it together. And so I did exactly what staff asked me to do. And I think that according to the QAP, it doesn't really say letters, but it has to be supported by a resolution.

So we went and got a resolution. Then when the staff said we need letters, we went out and got letters. Now if they didn't understand the differences, they didn't call and ask.

But I will say that there is a need for both revitalization and economic development. And that is where, I think that that is where we will end in this, because I think that the city's purpose was to meet both objectives and get both points.

MR. OXER: Any questions from the Board?

MS. BINGHAM ESCAREÑO: Clarification from Cameron.

MR. DORSEY: Sure. Yes. So we were wrong. That is what

the challenge process is for; when we are wrong. And you know, we are wrong sometimes. We were given a lot of applications and a lot of stuff. My staff felt like the appropriate thing to do was to get the letter on each subject that kind of separated the two issues.

But I don't think that that really changes the fact pattern. Which is there is a resolution that confuses the issue, and has clearly kind of links the two. And they aren't separate and distinct per that resolution. And so despite the existence of the two separate letters, it is -- you know, I have a hard time saying the challenger here is not correct.

MS. BINGHAM ESCAREÑO: Can you point --

MR. MCGILL: This wasn't part of the challenger. The economic development was not part of George Wakeman's challenge.

MR. DORSEY: Is that right?

VOICE: I think that's right.

MR. DORSEY: Okay. Sorry. I am wrong again. So it wasn't part of the challenge. So basically what would have happened in this case, staff did what they thought they needed to do to resolve the issue. It goes up and gets reviewed by management. And when we look at the issue, we didn't feel like the fact -- that the letters changed the fact pattern.

MS. BINGHAM ESCAREÑO: So Cameron, can an applicant get both points?

MR. DORSEY: Yes. We have. It was never conceived of that way, but developers are pretty scrappy.

MR. OXER: You think?

(Simultaneous discussion.)

MR. DORSEY: Yes. You know, and we really relied on -- we really outsourced this whole thing to the City, and are trying to rely on their determination. It is just when you have a resolution that is meant to kind of document two separate and distinct plans.

And it is pretty clearly not separate and distinct. You know, even if you have those two letters, it doesn't really undo what we have got.

DR. MUÑOZ: Cameron, I have got a question now.

MR. DORSEY: Sure.

DR. MUÑOZ: Did they ask, when he approached your staff, for some clarification, and was led to believe that the same letter presented for two different purposes would suffice, was that with enough time to have possibly pursued two different documents, very distinct from each other? And submit in a timely way to be considered for both points?

MR. DORSEY: Let me clarify, because I think the process actually went a little bit differently. The application, there wasn't guidance sought initially. With the application came the resolution. Is that correct?

MR. MCGILL: That is correct. Yes.

MR. DORSEY: And then we got it. And we were reviewing it. And it didn't appear to meet the rule. So we asked for what we thought might help this meet the rule.

DR. MUÑOZ: Okay. That part right there. We thought -- we asked for what we thought might address the rule.

MR. DORSEY: Uh-huh.

DR. MUÑOZ: Did you ask them for the right document? Did you provide sufficient sort of direction? Because you said earlier, we were wrong. Could you have directed him differently?

MR. DORSEY: I don't believe so. The resolution is the documentation of the City's approval of these purportedly separate and distinct plans. That was done prior to the application cycle, and must have been done prior to the application cycle. At that point, while staff was helping him try and cure the issue, I don't believe that there was a cure.

MR. MCGILL: May I clarify?

MR. OXER: Yes.

MR. MCGILL: We must keep in mind that the deficiency notice said go out and obtain from the City two separate letters, using the exact language in the QAP and resubmit those to cure the deficiency.

DR. MUÑOZ: Okay. See, I don't understand. You are saying that by pursuing that course of action, you were curing the deficiency. A second ago, Cameron was saying that there was no cure.

MR. DORSEY: Right. Staff thought that that may -- that was staff's best estimate of what would help cure the issue upon management review. Which is probably true. That would have -- that was the most compelling thing they could have resolved the issue.

DR. MUÑOZ: When he pursued that course of action, then you deduced after, no, in fact it is not a cure?

MR. DORSEY: That is right. Which is how this works, because my front line staff ultimately has to -- they do their work on, say, 80

applications, or 85 applications. But at the end of the day, we have to look at it, and make sure the issue was in fact appropriately resolved across -- you know, that there was some consistency across a much broader playing field than --

MR. DORSEY: Okay. So Cameron, so you say we believe that if you pursue these two separate letters, this will cure the deficiency. They pursue the letters, submit the letters. And then you reexamine. In the totality of the application, and all of the statute. And then determine, what we advised is insufficient?

MR. DORSEY: Yes. And if it had been insufficient, but there was some other way to cure the issue, we would have provided that opportunity to the Applicant for sure. It is just that in this particular case, we don't believe that there really was a cure.

MR. OXER: But Cameron, on the revitalization plan, we have got into this before. And revitalization plans are specific plans. They are distinct.

They are -- it is not like a county-wide economic development plan. It is something specific to an area that has to have some municipal or government entity resolution that says we are going to revitalize this area. We are going to put money into this. We will do these things.

And it prescribes an area to be done. Is that correct? Is there a plan to that effect, in White Settlement?

MR. MCGILL: Yes, sir. It was part of the resolution.

MR. OXER: Okay. So the -- are you saying -- is your point that

there was not one, or that the two separate letters were insufficiently -- or that the resolution was insufficiently distinct?

MR. DORSEY: The resolution is insufficiently distinct. One resolution addressing an economic development initiative and revitalization plan that mixes the two up in the same recital, and treats them as one, or overlapping is not sufficient to meet each separate and distinct point item. And in fact, the -- I mean, this is tying economic development initiative with revitalization. And if we count it as revitalization, it can't be a broader economic plan. And if it is an economic development initiative, it can't be revitalization.

MR. OXER: And that is with respect to the QAP. And I understand that. But most municipalities or counties, or entities such as that are going to look at revitalization as an economic exercise.

MR. DORSEY: Uh-huh.

MR. OXER: Okay.

MR. MCGILL: May I make one more comment?

MR. OXER: Certainly.

MR. MCGILL: We do have to realize that we are dealing with the City of White Settlement. And they are not as tasked all of the time and cannot effectively understand how minor word changes can affect point scores. And if I can be held to that, accountable to that standard, but once again, we need to look at, you know, where is it coming from, and who is originating it. And what control do I have over a resolution.

MR. OXER: And I understand that, Mr. McGill. I recognize you

don't have any control over the City of White Settlement. I think we all do recognize that there's a certain amount of influence that we would like to exert on those entities, if only informative.

Cameron, do we have any instruction and FAQs or elsewhere that would suggest, if you are going to go -- or is it the fact that we haven't anticipated going after both of these points? The fact -- do we have any instruction that says, you have got to get a separate resolution for each one of them?

MR. DORSEY: You don't have -- I don't think that you necessarily have to have a separate resolution. It is just within the resolution, it has to be clear about what is actually being approved.

And let me readjust the agenda here, this is the agenda item for this approval. Discuss and take action with respect to resolution 998-12, supporting community revitalization and economic initiative. I mean, it is -- if you took economic initiative off, supporting community revitalization, I am not sure that -- you know. It just appears to me to be to be tied together. Not separate and distinct.

MR. OXER: Mr. Keig.

MR. KEIG: I am going to try to see if I can get some clarification.

MR. DORSEY: Sure.

MR. KEIG: Because I have got a lot of things that seem inconsistent to me.

MR. DORSEY: Sure.

MR. KEIG: So under the QAP, do you have to have a letter, or do you have to have a resolution for an economic development plan?

MR. DORSEY: You have to have a letter.

MR. KEIG: Okay. And do you have to have a letter or a resolution for a community revitalization plan under the QAP?

MR. DORSEY: You have to have a letter. But it has to state that it was approved by the governing body. Which a resolution is one form of. But the documentation is a letter.

MR. KEIG: All right. Now let's talk about the letters that they went and got after the resolution.

MR. DORSEY: Uh-huh.

MR. KEIG: The letter for the economic development plan, did it meet the requirements for the QAP?

MR. DORSEY: The two?

MR. KEIG: But I want to ask about them one at a time.

MR. OXER: Come on, Jean.

MR. KEIG: Even if they were almost the same letter. I want to know whether the letter that was for the economic development plan, it didn't meet the requirements for the QAP to get that scoring point.

MS. LATSHA: Jean Latsha. I am the Tax Credit Program manager for the TDHCA. If I remember correctly, Mr. McGill is right. And we issued a deficiency because we saw the resolution. So we asked for two letters, because we couldn't tell the difference between the plans. And if I remember correctly, he essentially gave us the same letter for each plan. And

while again, just like the resolution, one letter may have met the requirements of the QAP, which are almost the same for both of these point items. So I am looking at one letter. And I say, taken on its face, yes. It meets the requirements for the community revitalization plan. I take another letter which is exactly the same, with exactly the same words and referencing exactly the same plan. And I say plan, and not plans. And on its face, it meets the requirements of the QAP. But taken together, I don't see how --

MR. KEIG: All right. But in the administrative --

MR. OXER: Okay. But -- go ahead.

MR. KEIG: Under the administrative deficiency definition, when we have apparent inconsistencies, we can ask for clarifying information. So did we ask for some information from them to show that there was -- and I want to handle the economic development plan first, that there was a true economic development plan that was put in place prior to whatever the date is.

MR. OXER: March 1st.

MS. LATSHA: Did we ask for additional evidence to that fact?

MR. KEIG: Right. Or did they produce it themselves?

MS. LATSHA: I would have to say yes, because they had the resolution initially, and then submitted a letter.

MR. KEIG: Okay. So we had enough to clarify for us that they would be eligible for that one point for the economic development plan?

MS. LATSHA: Yes.

MR. KEIG: Now, I want to talk about the community revitalization plan. Hang on a second. Under the QAP, the community

revitalization plan cannot be an economic development plan. Right?

MS. LATSHA: Correct. Which is why we didn't award the point.

MR. KEIG: But, I did hear Cameron say that there may be some instances where you could have both concurrently. They can't be the same thing, because they are different requirements. But for this instance, did we also have a separate community revitalization plan that met our requirements under the QAP?

MS. LATSHA: I don't believe so.

MR. KEIG: And do you recall why?

MS. LATSHA: Because there was no statement that it was not an economic development plan in the letter that we requested. So maybe I misspoke earlier, when the letter that we received through the deficiency left out that statement, that it is not an economic development plan.

MR. OXER: Okay.

MS. LATSHA: And since I was looking at essentially the same letter, we decided that it met the requirements for being an economic development initiative. Not community revitalization.

MR. KEIG: But what I hear you saying now --

MR. MCGILL: You have got that backwards.

MR. DORSEY: Opposite.

MR. MCGILL: It is actually, you awarded the revitalization, but you didn't award the economic development. And the letters did talk, just like I mentioned at the onset of this conversation, it was that there is need for

revitalization, because the housing stock in the City of White Settlement is old and obsolete. And HUD had awarded the COG, and the COG has given their portion to White Settlement. And that is the economic development.

MR. OXER: I have a question, Lowell.

MR. MCGILL: And the letters talked about each of those.

MR. OXER: Do you want to continue that line? I have a quick question that might help.

MR. KEIG: Why don't you go ahead?

MR. OXER: In what way would a community revitalization plan differ materially from an economic development plan? I can think of a couple, but I would like to have these stated on the record.

MR. DORSEY: We leave that completely up to the City.

MR. MCGILL: That is not the QAP.

MR. DORSEY: We do not define what has to be a part of either; just that a revitalization plan can't be a larger economic development plan. It has to be specific to revitalization and, for example, not new development, as you are going out to -- it's a high growth area and new development, new subdivisions.

MR. OXER: Right.

MR. DORSEY: At least in our head. And I mean, let's go back to --

MR. OXER: We are in fact trying to rebuild older neighborhoods.

MR. DORSEY: Right. Let's go back to, I mean, the fact, the

resolution was done on February 28th. I mean, part of the problem here is we had a resolution done kind of at the last minute to meet these point items.

When really, the intention is never to have the initiatives created to get the points. It is supposed to be a preexisting thing, where you are going to develop in an area where there is already something existing.

And I mean, that is really where the problem comes in with the overlap here, is that we got a last minute resolution that is to meet two point items. And they weren't developed as separate kind of items, for an overall arching you know, city kind of --

MR. MCGILL: And you have to understand that the City of White Settlement is not out doing a lot of revitalization and economic development plans. They are just trying to do the best they can with what they have got.

MR. OXER: For their --

MR. MCGILL: And so without me going in there, and going, okay guys. We weren't successful last year. We need to be successful this year. And these are the things that we need some assistance on to make the application right, and score well.

And so that is my job, is to go out and train the City, and get the City to -- and if they want to support it, and they want affordable housing, they are going to have to assist me. And they have done an excellent job in assisting me. And I would like to bring them a development.

And I don't know whether, even if I got all three of these points that we are talking about today, whether I will be there. I am kind of hoping

that some of the governmental leveraging doesn't happen ahead of me. But you know, every point is precious. And that is what we are trying to achieve.

MR. OXER: I think there was an earlier comments, that these, most of the people backing these developments are, what was the term, Cameron? Scrappy?

So --

MS. BINGHAM ESCAREÑO: I have a -- were you going to continue, Mr. Keig?

MR. KEIG: I am going to let some other people talk.

MS. BINGHAM ESCAREÑO: I just have a brief question. Cameron, you mentioned the February 28th. And I was trying to figure out, yes. In the hard documents, a couple of pages from a HUD internet posting, and I didn't know if Mr. McGill provided this as proof.

But it is highlighted. The North Central Texas COG will receive \$640,000 for the planning of a livable military community project.

MR. OXER: Yes. He mentioned that.

MS. BINGHAM ESCAREÑO: It will provide for improved transportation and housing conditions, while providing a traditional neighborhood hometown feel. Is that what you submitted?

MR. MCGILL: That was in the original application with the resolution.

MS. BINGHAM ESCAREÑO: Okay. And so I am just asking, I know we are splitting hairs here, but when I am reading that, am I thinking economic development or am I thinking community revitalization?

MR. OXER: No. What you are thinking. What is he thinking. What are you seeing?

MR. MCGILL: Well, the money part is the economic development side. Absolutely. And the revitalization portion, is that plus what the City recognizes.

We are right across the street from the site. It is a very old multifamily, small multifamily development. And we will talk about the challenge. The challenger in the next two point deal is an apartment owner in the City of White Settlement, and has some old housing stock. He doesn't want me there. And that is why he is challenging.

MS. BINGHAM ESCAREÑO: So all I was trying to do, Mr. Keig, was -- so it sounds like we cross the revitalization hurdle. Like if they were standalone and we were -- I guess maybe my question is, what would you want to see? You said some folks are pretty enterprising and they get both points. What would you want to see?

What would you feel like, if it is not specifically delineated in the QAP? I mean, it is. Right? Letters. But we ended up with letters. But the letters don't seem to satisfy us.

What would you ideally have? What have other applicants provided that helped you go, okay. They got both points.

MR. DORSEY: Sure. We have seen separate resolutions. I think we have seen some that were part of the same resolution, but they were separate and distinct within the resolution themselves. I am not trying to apply a separate resolution issue, when it is not explicitly addressed in the QAP. I

don't care how many resolutions we have. Just that within the document that is presented, I need some separation and distinction. One option that I have seen used is, you can use the Governor's Office of Economic Development. They have some economic development initiatives. And you can use one of those to count. And then the City will also a revitalization plan. And so there will be some overlap. But clearly, this is two completely different bodies that created these things. Obviously, that would be separate and distinct as well.

MR. MCGILL: But that is not part of the QAP. It doesn't say it has to be separate and distinct, and it's "and," not "or" when we got to got to talk about 22 and 23. So it is -- if it would have been more clear, we would have instructed the City, we have to do it this way. And we weren't there when they did the agenda. I said, we needed both the economic development and the revitalization.

MR. IRVINE: Well, we do believe that it is separate and distinct in the QAP, because it is two separate and distinct scoring items. One scoring item says, cities doing this to provide for economic development. It is important.

And the other scoring item says, cities doing something different to provide for revitalization. You get another point. So what we need is something that shows that the City is doing something that substantively addresses two different scoring items. So there has got to be some level of differentiation, in my mind.

MR. MCGILL: And I think that was the request of the letters, and the letters made that distinction.

MR. KEIG: Okay. So what we need to do, in my mind, is determine do we have a genuine economic development plan? And do we have a genuine community revitalization plan? And as it stands right now, what did staff award or allow one point for?

MR. OXER: What did they say yes for, Jean?

MR. KEIG: Yes.

MR. OXER: Or what did you say yes for?

MS. LATSHA: We awarded community revitalization.

MR. KEIG: All right. Now, are you still -- have you changed your mind at this point whether or not that was -- if you got the two confused or --

MS. LATSHA: No. But I -- and forgive me, but I looked at a number of applications.

MR. KEIG: Just a few.

MS. LATSHA: If I remember correctly, too, I think not only could we not distinguish, but you know, we said to ourselves, all right. I think there is only one plan here. Is it an economic development initiative or is it a community revitalization plan? And I am remembering this colleague's situation too. And doing a lot of online research to kind of figure out what is this economic development initiative and we kind of couldn't wrap our heads around that -- the COG's creation of some plan that they had out there, actually, was an economic development initiative. So we went the community revitalization route. And like I said, but I think my biggest problem was, really distinguishing between the two. I think we would be up here having exactly

the same discussion, had we awarded the economic development initiative point and not the community revitalization point. The issue was, that I only saw one letter. I just saw it twice.

MR. KEIG: All right. The QAP makes a cross-reference to federal law with respect to community revitalization plan. Do you know of any guidance or anything from HUD that might give us some direction on what a community revitalization plan is?

MR. DORSEY: I'm sorry. Where?

MR. KEIG: It is under community revitalization -- Ms. Deane.

MS. DEANE: Yes. In the QAP, beside that reference where it talks about community revitalization plan, it represents Section 42. Do you know if Section 42 provides any kind of definition of community revitalization?

MR. IRVINE: No. Just says that you must provide preference for using QCT as a part of the cert of revitalization.

MS. DEANE: Okay. So it's not helpful. No.

MR. OXER: Okay. Mr. McGill, did you have another comment?

MR. MCGILL: I have a -- I don't have a comment. But Stuart Shaw is here, and I think he has a similar issue coming up next. And they want to make some comments regarding this issue, before you give your ruling.

MR. OXER: Well, then that -- your comment has to be specifically with respect to this item, you understand.

MR. SHAW: Yes, sir, Mr. Chairman.

MR. OXER: And your name. You have to tell her who you are.

MR. SHAW: I was about to.

MR. OXER: Okay.

MR. SHAW: Board and Executive Director, I am Stuart Shaw. I am president of Bonner Carrington and the developer of 12371, which would be next. I am specifically addressing my comments to Mr. McGill's community.

We are both doing the same thing. Points have been awarded for both of these items to other developers. It is just unclear what the rules of the points are. The QAP is not clear at all, that these have to be separate and distinct. There is no language.

There is no definition of an initiative, a economic development initiative. There is no definition of a revitalization plan in the QAP, or as you all have just been told, and also our lawyers researched it, in Section 42. So it is pretty unclear.

And we are just trying to do the best we can. And we are dealing with cities who really want this housing. And we go to them, and do exactly what Mr. McGill said. So he went to them.

He has actually gotten two letters. And I just want to take issue. I think they are distinct letters. They are not one and the same. They may look similar. But they are going to be different subjects. It addresses community revitalization and economic development initiative.

And while there is some overlap, those are separate plans. His item says one and the other. It doesn't say one hyphen the other, or one slash

the other. It says one and the other. My English professor would say that is two plans.

And so I really -- we can make this pretty quick today, for my topic, because mine is going to go probably pretty much like his. My point is, is that the cities are trying to get their business done. And they are asked to do things. And they say, okay great. We are going to do an economic development initiative and a community revitalization plan.

There is nothing that is required of us that said anywhere in the QAP for us to make them separate and distinct. There is just not. And so I just wanted to say that.

MR. MCGILL: And Stuart, you gave me time, so I found both letters. I have them here. And I will read the different sections. They look the same. They have the same White Settlement letterhead on them.

And it says, after the beginning and so on, it says, the community revitalization. And you have the economic development letter in you Board book. But the community revitalization is the Hawk Ridge Apartments site is located in an area that the City has designated for multifamily housing. Existing units in the area consist of older multifamily units and exceed 25 years of age.

The proposed Hawk Ridge Apartments will revitalize the area with modern design, amenities, that are not currently found in the area. The community revitalization located within White Settlement, north of Interstate 30, along Dale Lane. This is not a consolidated plan, or an economic development plan or a citywide plan.

Whereas the economic development says -- gives the boundaries -- and initiative -- thank you.

It gives the boundaries, and is directed to targeted livable military community initiative currently underway by the communities within the Naval Air Station Fort Worth service area.

The Naval Air Station has expressed a concern for lack of rental housing in the area. And this initiative is in an effort by the City of White Settlement to assist in providing additional rental units in the area. So those are two separate letters, I believe.

MR. OXER: They are two separate letters. Okay. We recognize that. I think the issue, the issue appears to be whether or not those letters stem from two separate plans. Is that your interpretation, Cameron?

MR. DORSEY: Right.

MR. OXER: Okay. But the QAP seems to be, in their interpretation, silent on the differentiation. Or does it?

MR. DORSEY: I mean, it says that the revitalization plan cannot be a consolidated plan or other economic development plan.

MR. MCGILL: And that is what it says. And Cameron mentioned that it is up to the City to make the resolution, and to make the determination.

MR. OXER: We always get the little tiny thin hairs we have to cut up here, you know. Okay. Any other comments? Mr. Keig?

MR. KEIG: Yes. I have a question. He mentioned there were other developments that had gotten both points. How was this -- no. Mr.

Shaw mentioned that there were other. How is this different from the one that is on the table.

MR. DORSEY: Different from Mr. Shaw's or different from other ones that got this point.

MR. KEIG: All I am saying is Mr. Shaw brought up that there were other developments that got each of the points.

MR. DORSEY: This is the one that pretty much directly confuses the two options within the resolution itself.

MR. KEIG: So, what, they had separate resolutions in the other --

MR. DORSEY: They had separate resolutions, or they were under separate recitals with separate --

MR. OXER: So what you have been saying, let me get my -- you have got what they have described as two separate plans; one economic development and one neighborhood stabilization. Fair interpretation. It goes through one resolution that address both of those. You said that is okay. And then you come back out with two letters. That is how you said.

MR. SHAW: That is correct, for -- that is what he did. Two separate and distinct letters.

MR. OXER: Okay.

MR. MCGILL: Because the QAP doesn't really say it needs to be a resolution. It doesn't say it has to be a letter. So staff came back and said, produce us two separate letters. And that is what we did.

MR. OXER: So your defense or position, proposition is that

there are two separate plans as defined under those letters.

MR. MCGILL: That is right.

MR. OXER: Okay. Cameron?

MR. DORSEY: The fact that this has taken this long, thus far, is pretty clear to me that it is not separate and distinct. You know, this is supposed to be two separate type things that a City does of their own volition prior to the application cycle for the purpose of these things, outside of the tax credit program.

Yes. We do have folks that went to a city and had them do two separate resolutions for the purpose of their tax credit application. There is only so much we can oversee and actually regulate, and have the ability to do.

But at some point, he crosses the line, and becomes effectively what is gaming. And you know, he can go get as part of one resolution something that uses economic development initiative and revitalization within the same recital. It is really hard to say, all right.

MR. OXER: Given, it is hard to say that -- it is staff's job to make a clear distinction, or a distinction where it is clear. And you rightly bring it to us when it is not clear. That is where we have got now. Where it is, like I said, we are playing in the creases here. Okay.

DR. MUÑOZ: Cameron, I understand the distinction that you are making. And that the Executive Director has amplified. But when you -- and I understand that there is a certain amount of bureaucratic acumen assumed among the developers as to how sophisticated they are.

But when you have a document like this, from a City, that says

revitalization and economic development, it is just hard for me to conclude that the developer receiving that letter and that resolution wouldn't conclude that it would satisfy a question related to whether my project both encourages economic development and revitalization in some part, as a result of this project. I mean, you know, the resolution may have been drafted differently. It may have been drafted similarly with different headings, and different whereas, and be it resolved. But you know, if the charge to them -- this was my question earlier, you know -- pursue two very distinct documents that do the following, maybe they would have done it in exactly that way. But you have got to give the language.

MR. OXER: Let me add to that, too, Dr. Muñoz. That while I recognize, we are trying to have a good hard, sharp edge to all of the rules, and the things that we put down, for obvious reasons, I hope, Mr. McGill, because this is a pretty competitive process, as you may have recognized.

MR. MCGILL: Over 15 years, I recognize it.

MR. OXER: Right. Over the last 15 months, I have seen most of it. Okay. But there again, the City of White Settlement is under your care to produce these, a resolution. And I can understand how they and their -- they probably haven't ever done this before.

MR. MCGILL: No, sir.

MR. OXER: Right. And you have done this in Texas before.

MR. MCGILL: Yes.

MR. OXER: Okay. So just a point of clarification there.

DR. MUÑOZ: And Cameron, I think you are absolutely correct

in your initial assessment, because it doesn't comply with this sort of separate and distinct expectation traditionally. But I have great pause, given the language that was used by the City.

MR. DORSEY: You know, I think if the Board wants to grant the appeal, I don't think that there is a whole lot of unintended consequences with this particular item. And I expect that we can more effectively address it through the drafting of the QAP next year.

This isn't like some of the other ones that have a widespread impact on other folks, and what have you. I mean, it does impact other folks, but it won't cause a reassessment of a bunch of other applications.

DR. MUÑOZ: And you know, along that sort of thought, I think there has to be a more articulated distinction between these two objectives. I am just thinking in this particular case, given the language that was offered by the City and perhaps some of its unfamiliarity with how best to craft this. Perhaps we could have provided a little bit better helpful direction.

MR. OXER: Yes. One of the things we are doing is buffing off the rough edges and the burrs and the snags on this QAP. And I hope frankly, we start this next time, just go burn it to the slab and start over. Okay.

MR. DORSEY: Yes.

MR. OXER: That said, we have got -- don't everybody clap at once. All right. That said, okay, the distinction here is subtle and without -- I mean, it is a specific clarification within the QAP.

But they are trying to make, as I understand it, they are making the point that they are looking at, they see two different efforts going on that

one of which may lack the formality of a plan, of a written plan. But consists of components that were put together for them to do this work in that area.

MR. DORSEY: When we craft the QAP, I mean, these are supposed -- again, when we crafted the QAP, this was supposed to be an economic development initiative that was already in place. It wasn't supposed to be something to meet the QAP.

MR. OXER: Right.

MR. DORSEY: And that is why we don't have a bunch of requirements. We wanted it to be flexible. A real economic development initiative, already existing within the community. We don't want to regulate what cities have to do, especially because it is supposed to be preexisting.

MR. OXER: Is there any predate requirements on the plan?

MR. DORSEY: No.

MR. OXER: Okay.

MR. DORSEY: No.

MR. OXER: So the applications were due in March 31st.

MR. DORSEY: Yes. The date of the resolution complied with the rules. Certainly. It is just when you conceive of these options, the most substantive and real economic development plan is one that is not created right before the application comes in.

MR. OXER: Yes. It is most --

MR. DORSEY: That is why we need to have rules that allow in, not explicitly dictate a bunch of requirements that an existing plan that is really substantive can't meet. And so that is the tension.

MR. OXER: In the QAP, or RA -- let's see. We have got so many acronyms. In the frequently asked questions for the next QAP, you know, I don't want to litigate this, or go through the detailing on the QAP.

But I think it would benefit our process, our interpretation, you know, and it will probably screw up something else down the road with other unintended consequences. But at least if we said on here, in there somewhere, it has got to be separate.

Put a letter together. Put a generic letter or something. Do we have any generic language in the FAQ about letters? Do we have any examples of successful letters?

MR. IRVINE: We don't, really. But I would say that we have already started work on developing, on a new QAP that as you said, burns it down to the slab. And one of the things we are proposing is that we would include in as appendices, form letters.

MR. OXER: Good, because that said, to your point, Mr. McGill, that is something you can say. I don't have to make this up. Here is your generic letter. Fill in the blanks, and give it back to you.

MR. MCGILL: That is true. What Cameron said is absolutely correct. When you deal with the big cities who have all of these things on auto pilot. But they don't have them. In White Settlement they don't have a housing authority, housing developments, housing finance.

MR. OXER: They just have housing needs.

MR. MCGILL: They just have housing needs. And they are being overlooked. And it is all going on the other side of 820.

MR. OXER: Okay.

MR. IRVINE: It seems to me that basically sort of three ways you could approach this. One is, you could agree with Cameron. Gee, this is kind of confusing. And it doesn't clearly show that you have two different things. Therefore you can't be claiming two different point items.

Or you can agree with Bert and say, well, they may not be state of the art in terms of drafting, but they got out there the economic development issue. They got out there the community revitalization issue. We want to err on the side of deferring to local government, as Dr. Muñoz intimated.

The other possibility, I guess, is to allow for somebody to go back and seek additional clarification from the City. Did you have this in mind, this in mind or both in mind. Explain.

MR. OXER: So would there be any discussion on the record in the City Council meeting for that, that would have said, this is intended for both.

MR. MCGILL: I don't know. I was not in attendance at the City Council meeting. My liaison is economic development director, and he pretty much was the person who kind of coordinated with the City Council. And so I do not know.

MR. OXER: Go ahead.

DR. MUÑOZ: Rather than take the chance with options one or two, I like option three.

MR. OXER: And I hope you will recognize that the Board is trying to be exceptionally sensitive to the fact that there are interpretations on

this. And the intent is not to find -- we want to enforce our rules. But there are places where we are going to have to add some more information. And I think you are right --

MR. MCGILL: Are you asking for this?

DR. MUÑOZ: No. Here is what I am saying. We have a clear expectation that these are two distinct efforts and expectations.

And I think providing you with a reasonable amount of time to definitively receive from the City an indication that the resolution that you have provided with respect to economic development and revitalization is in fact the intention of the City. And to reinforce that, I think is a reasonable solution.

MR. OXER: I think you will notice that we are parsing things pretty tightly. Very closely here, to make sure that you have every advantage as far as we can offer it.

DR. MUÑOZ: And if you were to -- if you were to obviously furnish that document from the City, then you would be eligible for the point in both categories. Okay.

MR. MCGILL: Okay. I am a little confused. I do have the two letters. And that is what I thought was the clarification. And to go back in the time frame that we have and meet some sort of City Council requirement --

MR. OXER: Let me clarify.

MR. MCGILL: And I know before back to that --

MR. OXER: Let me clarify something.

MR. MCGILL: Okay.

MR. OXER: I think that Dr. Muñoz is saying, okay. He is not

asking you to go back and ask for another City resolution. He is -- we accept that your letters are there. And we recognize that there are differences in it.

I think what you are asking more, Juan, is to go back to the Council and have somebody there, your economic deal, and the City Managers give you some indication that the two documents are separate. Not that they are two separate letters, but that they were two separate plans. And some sort of supporting documentation to say, there are two separate plans.

Because if we get to the crux of this, that is what this is about. It is not about your two letters.

MR. MCGILL: Right. But the two separate plans are within the same boundaries.

MR. OXER: And that is okay.

MR. MCGILL: Okay. That is really -- I feel like I have delivered that. I really feel like I have delivered that in the application and now, reinforced with the letter. And you know, I don't know what else I am going to go get. I really don't have a template that you are asking for.

MR. OXER: Have you got another thought, Juan?

DR. MUÑOZ: I mean, my thought, I suppose, without being too blunt, I suppose I would say that you may feel that you have satisfied that threshold. But given our discussion, we may not be satisfied.

So I think it is incumbent upon you to approach the City and ask them for additional documentation that would satiate our questions related to the distinction between these two efforts. Otherwise --

MR. OXER: And that is not a resolution, that is just

documentation from the City Manager, or Mayor.

DR. MUÑOZ: I can't imagine, that given the degree of seriousness and commitment to this project that this underserved community has expressed, that they wouldn't willingly and quickly draft you something that could be amended with these documents, that would satisfy all of us.

MR. IRVINE: Might I offer that in terms of providing supporting documentation from all, for whatever, I guess it is not going to happen. So what has happened has happened. The record is built. What I would like to offer. My lawyer disagrees.

I would just propose that we draft a letter to send to the City, that puts a point-blank question that we want answered, are there these separate elements? And they respond in writing, at least their appropriate official, the mayor, whomever, confirming the answer to that question.

MR. OXER: Okay. Here is the parliamentary way we are going to take care of this -- or at least that I'd like to see this done. We have a motion on the floor by Mr. Keig to deny the appeal. There is a second by Ms. Bingham.

I would like to see that motion tabled until the July 26 meeting to allow time to exercise that option to get the information.

You are still alive. We put a bullet in front --

MR. MCGILL: Thank you.

MR. OXER: Say again?

MR. MCGILL: Do we have to take any sort of --

MR. OXER: And this point, we can table the motion for later consideration, without action at this point.

DR. MUÑOZ: Do we proceed with the recommendation to provide a letter that the City would respond to?

MR. OXER: That's what I would like to see happen. Do we have to formally act?

MS. DEANE: I think that would be very helpful.

MR. OXER: Do we have to formally act --

MR. MCGILL: Are you going to draft a letter to me for me to get executed, or will you send it directly to --

MR. IRVINE: What do you prefer?

MR. MCGILL: I think I'd better walk it down there.

MR. OXER: Here is my recommendation. I'd grab it and run. Okay. Just make sure you get there.

MR. MCGILL: I do appreciate the assistance in getting the format So we all have got -- receive what we want.

MR. OXER: Okay. Are we --

MR. GANN: Are you going to table?

MR. OXER: Hold on. Yes. We need -- do we require a motion to table the motion?

MS. DEANE: Yes.

MR. OXER: Okay.

MR. GANN: I so move.

MR. OXER: Okay.

DR. MUÑOZ: Second.

MR. OXER: Okay, Penny. There is a motion by Vice-Chairman Gann to table the motion to deny the appeal. Second by Dr. Muñoz to table that motion. Requires no public comment on the table.

All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. Unanimous. It is tabled.

MR. MCGILL: Thank you.

MR. OXER: Get on it.

MR. MCGILL: I have got to get one more --

MR. OXER: That is okay. You have got another piece on this one.

MR. MCGILL: I appreciate everyone's assistance and time on the one point. But we have another two-point issue, that I guess, Cameron, are you finished with your --

MR. OXER: Cameron, you are up. Two point issue, go.

MR. DORSEY: Well, this is the Joint Air Base issue and everything. I think I have fully talked to that, unless you want me to kind of run through it again.

MR. OXER: Quick summary.

MR. DORSEY: Okay.

MR. OXER: Sixty seconds.

MR. DORSEY: The letter was submitted for two points under, other than quantifiable community participation. That letter was from the Naval Air Station Fort Worth Joint Reserve Base Regional Coordination Committee.

That letter didn't explicitly and affirmatively state the Committee's support for the deal; it merely stated that it was consistent with the planning function of that Committee. And therefore, we did not award points on that basis. And then as an alternative, there is a desire to count the letter that was submitted for a different purpose than QCP, but was disqualified under that item transferred over and considered under this item.

MR. OXER: So it not being a QCP, since it is not, the point structure in this, they would have gotten 18 points if it was a quantifiable QCP. Let's go over the point score on this again.

MR. DORSEY: Okay.

MR. OXER: Make sure we are clear.

MR. DORSEY: They submitted this letter, a support from a neighborhood organization was submitted. That neighborhood organization failed to document compliance with the rules.

Basically they could not document that they provided 72 hours' notice prior to action being taken, which is a requirement within the QAP. Not specifically for the support letter, but in general, they meet the 72-hour notice requirement.

Generally, we look at bylaws or that type of thing to determine if there is -- if that requirement is in place. Or we will also look at examples of

that actually occurring. They did not document compliance of that requirement.

It was primarily by the absence of any documentation that said that they did need it, and they did not respond over a very long period of time, when we asked repeatedly for documentation that that requirement was met. So we said, you don't qualify as a neighborhood organization. And we gave 18 points under that item for not having a qualified neighborhood organization within the area.

Then we have -- so that means, if you get 18 points under that item, you can qualify for points under this alternative item. That has, that is up to six points for other community organization and civic organization and support letters.

That is the subject of this appeal. Is, we didn't count the letter that they wanted to, for two points under that item. They got four points. But then they had this letter that we didn't think qualified.

MS. DEANE: Could I make an offer, and the Board can take me up on this, or not.

MR. OXER: Please.

MS. DEANE: But in light of tabling the other item, there is a number of legal issues related to this that legal counsel would like an opportunity to revisit and look at. And especially in light of the importance of the issues of QCP and neighborhood support.

If the Board so desires to table this issue, along with the other issues, since they are going to be coming back next time anyway, and allow

Legal an opportunity to revisit some of these issues and the interplay of how the QCP -- how the letter qualifies either for QCP or neighborhood support, because there are several outstanding legal issues that I would like an opportunity to look at.

But I am just making that offer. I know it is completely up to the Board.

MR. OXER: And we don't want to make a spot flash judgment on the potential implications for some other legal aspects that we have to consider.

MR. MCGILL: Will I get the benefit of that review?

MS. DEANE: Absolutely. Absolutely. If anything changes, you will definitely get that, and an opportunity to see --

MR. OXER: I think that's -- you know, from my perspective, that seems to be an appropriate course at this point. So all we need now is a motion to table. Or do we need to table this and -- motion to table until the next meeting.

MR. GANN: I change my motion, the original motion. We have already voted on that, haven't we?

MR. OXER: Yes. We have already tabled the first part.

MR. GANN: Well, table the whole appeal.

MR. OXER: We can table this appeal until later, then. Okay.

Motion by Vice-Chairman Gann to table this component.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Any other comments?

(No response.)

MR. OXER: Any more comments from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

MR. MCGILL: Thank you very much for your time.

MR. OXER: We will see you in two weeks. I hope.

MR. MCGILL: I will be here.

MR. OXER: I hope so. We will too. It looks like so.

MR. DORSEY: This next item is so similar, so very similar to the other one, in terms of the community revitalization and economic development initiative that I think modifying staff recommendation to do the same thing, write a letter, go back to the City and get some clarification makes sense. And I checked with the Applicant and their counsel just a moment ago. And they said that that would be acceptable, an acceptable option.

MR. OXER: So at this point, your recommendation, staff recommendation is to table this one for further consideration at the next meeting?

MR. DORSEY: That is right.

MR. OXER: Okay.

MR. DORSEY: It is so similar to the one we just recently

heard.

DR. MUÑOZ: So moved.

MR. OXER: Okay. Motion by Dr. Muñoz to table consideration of this -- let's see which one it is -- 12371. Mariposa at Ranch Road 12, until the next meeting. Do I hear a second?

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. Okay. Is there anything you would like to add to that, Stuart?

MR. SHAW: Yes, sir. I am going to accept. But first, I am going to say, all due respect for everybody. I have a lot of regard for Cameron Dorsey and for the TDHCA staff's governing board.

We are not gaming anybody's system. Gaming the system is when the staff and TDHCA allows some of my competitors to go out and create a neighborhood group --

MR. OXER: The night before.

MR. SHAW: The night before, with three people. That is gaming the system. It is obnoxious to me. And we have never done it. And we are not doing it today. And we will never do something that is really obnoxious like that. We will work within the rules.

And I just want to make that clear, that my team, and I, and our entire company will do that. And I'm not mad. I am real grateful to be part of this program. But we are a good part of the program.

We are out doing good stuff for you guys, and for the State of Texas. And we are not doing something wrong. And I just want to make that

clear.

MR. OXER: And on behalf of the Board, I accept that explanation and appreciate your comment on it. And we never -- I can speak for Cameron and the staff in this particular case, that gaming the system is something that we have to protect against. And it is by no means an accusation leveled against you or anybody else here, so much as it is a consideration. We have to make sure is unavailable to those out there. So that is why -- we are at great effort to create something that is fair, reasonable and in a larger sense, creates a good outcome for you and for Texas and for the community we are all trying to serve.

MR. SHAW: And I'm with you.

MR. OXER: We appreciate you being here.

MR. SHAW: Thank you. And contrary to what you said, I could point out some people. But I won't. But I hope that we can come up with a QAP and give staff really the rules where they can fairly enforce this, to where people can't get away with stuff like that. That neither you nor I want.

MR. OXER: Okay. Let's -- we appreciate your comments. They are in the record. So this last one has been -- we have a motion on the floor by Dr. Muñoz. Second by Ms. Bingham to table this consideration until the next meeting. Is there any other public comment?

(No response.)

MR. OXER: Is there any Board comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous. All right.

Executive position from the Chair. Time out. We're going to take a break here. Be back in five minutes to 3:00. Or are we done?

(Simultaneous discussion.)

MR. OXER: Okay. Well, if we're that close, we will now -- what, we are through already? Okay. There are those, we have a portion of the meeting reserved to accept public comment for anything that was not brought up. We are unable to have action, or to take action on anything that would be offered today. The effort that you will make, if you wish to speak, come up here and sit down. This is informational only. And it goes to our efforts at creating -- okay. Back to my original.

(Simultaneous discussion.)

MR. OXER: Hold your positions there. We are going to take a quick break. Yes. Let's take a quick break, and do a pit stop. Be back in our seats at 3:00 straight up, ready to go.

(Whereupon, a short recess was taken.)

MR. OXER: All right. We are back in session here. It is 3:00 straight up. It is time for our public comment component here.

While I would like to make as much time as we possibly could available to everybody here, that wants to make a comment, I have to assume that you have got to be able to say what you need in five minutes. We run on

a clock here, on everybody. You know. I will give you a three-minute warning and then the five-minute hook, okay.

VOICE: You're on the clock.

VOICE: Yes.

MR. OXER: Okay. All right. We are going to go left or right. Your first four, jump up there, if you want to speak together. And when we get there, we will go left to right. My left. You get to start.

(Simultaneous discussion.)

MR. OXER: All right. Who wants to be first. Speak, please. Welcome.

MS. BALDIVIA: Good afternoon, Board members and staff. My name is Angelica P. Baldivia, and I've lived in La Feria, Texas for the past 26 years, which I sincerely call home. I also work with the Migrant Education program within our school district for the past 24 years.

These parents and students are usually large amount of families that are mobile due to their means of livelihood and their economic necessities. Due to their mobility, these families are always seeking single-family rentals.

This project will considerably help their need for safe shelter. I am here on behalf of the Sunrise Terrace, application 12379. And we are asking that you favorably consider this application. Thank you.

MS. DUNLAP: Good afternoon. My name is Betty Jo Dunlap. I am here representing as President of the La Feria Economic Development Corporation. Our entity mission of economic development and affordable

housing is important to our area.

Our Board approved a grant to Sunrise Terrace project. There is a tremendous need for affordable housing in our community. Your support for project 12379 will be greatly appreciated.

MS. WEAVER: Good afternoon. My name is Lori Weaver. And I am from La Feria. I have lived there over 20 years.

And I have had the privilege of being part of our PTO committee, in the individual campuses, as well as the whole district campus, as President. I also have been very involved with Boy Scouts and Girl Scouts. So I have worked a lot with our community. Gotten to know a lot of people, a lot of the parents.

During my interaction with them, there has always been a need again, for rental housing, affordable rental housing, especially for those of our almost 40 percent poverty population there. So I am here in support of Sunrise Terrace, single-family development, TDHCA 12379. Thank you.

MR. OXER: You all are doing great.

MR. BREWER: Mr. Chairman, Board members, my name is Steve Brewer, and I'm a lifelong La Feria resident. I have been the mayor of La Feria since 2007.

And after my -- just barely my first year in office, we had the disaster from Hurricane Dolly. And as you campaign, and learn to go and try to get elected, you get to know your community much better. And I knew one of the mantras of serving for my city would be to work on housing. I knew it was a big problem.

I didn't want to be too heavy handed in code enforcement in the beginning, because I knew that even though all of these homes didn't have windows or doors, they had heat, they had water. And if I code them out, I'm making them homeless or I'm shipping them off to another town. So we knew it was going to be a priority.

After Hurricane Dolly hit, we are just now starting to work in getting recovery dollars. A lot of the monies that this nonprofit, which is a grassroots, you can see the community support is applying for, is for Hurricane Dolly relief. We have got many families that have doubled and tripled up in town, that are living in terrible conditions.

But FEMA came out there and gave people pittance of monies to move them out. And you have got a lot of empty homes in the area, that reconstruction is not going to happen. In our community, we are almost at 4 percent below the poverty level. It is very critical for us to have this single-family housing. It will be a huge asset to our community. The City of La Feria is behind it 100 percent. This is a true grassroots nonprofit who is the instigator of this program. It came to light after the hurricane, where cities that are very small and very -- don't have huge sales tax bases, don't have a lot of leverage to get -- we don't have housing authorities. We don't have leverage to get the monies brought in. It is very difficult. And that was where the idea of forming a nonprofit for housing in the community came from. And they are the co-applicant in this process. I didn't mean to speak up all my time for my cohorts down the line here. But we certainly appreciate you considering our application 12379.

The City of La Feria certainly can use this project. This project is inside our city limits, on our western part of Cameron County, down in the Rio Grande Valley. Thank you so much for your time, guys.

MR. OXER: Great. And we appreciate your comments. We are glad to see you here today.

MS. BINGHAM ESCAREÑO: Can I just ask, Mr. Mayor?

MR. OXER: Sure.

MS. BINGHAM ESCAREÑO: Where are you on the regional allocation? Where does the development stand competitively?

MR. BREWER: As far as --

MS. BINGHAM ESCAREÑO: Competitively? Like, where are you in the running?

MR. BREWER: I think we are number one, or right close. I think we are number one. I was thinking you were talking about the drainage money, because we are working on that, the drainage money.

(Simultaneous discussion.)

MR. BREWER: I am the President of the COG down in the Rio Grande Valley, and we are working on drainage dollars. We are working on them right now, very actively.

MR. OXER: So you have high expectations here soon.

MR. BREWER: You know, I have become an expert on Section Three that I never knew about. It has been a real good education for me. But as we have got some housing dollars that are coming through the COG as well. But thank you for your time. I know you all are busy.

MR. OXER: We are glad to see you here. Thank you for waiting. Thank you for being patient. To wait all afternoon to speak.

VOICE: Thank you for your time.

MR. OXER: Certainly.

MS. ANDRE: Howdy.

MR. OXER: Hey. Boy, what a tag team we have got here. Right. All right. Let's have it, ladies.

MS. ANDRE: Sure. For the record, my name is Sara Andre. I am here to speak on application 12066, Barrons Branch in Waco. You may be familiar with that one.

We want to basically just follow up from our last meeting. At the last meeting you all asked us to seek guidance from HUD. And if you recall, this was about our unit mix. We asked for a waiver on the unit mix. We were denied that waiver. And therefore, our project was non-compliant with rules, and was -- were we terminated?

We were terminated. Anyway, we are not maligning one or the other. So you asked us to seek guidance from HUD, on whether or not this unit mix issue was going to be a Fair Housing issue. We then talked to HUD.

And now you may or may not know that HUD cannot make a ruling one way or the other, until a formal Fair Housing complaint has been filed. They did feel that there was enough merit to encourage us to file a Fair Housing complaint.

Now for a myriad of reasons, we would rather not do that. But we will, if we have to. And so, I would just like to introduce Toni, and let her

talk to you about what exactly the exchange with HUD was.

MS. JACKSON: Good afternoon, Board members. My name is Toni Jackson. I just wanted to update you on my conversation with HUD.

I had the opportunity to speak with Allyssa Wheaton Rodriguez, and Allyssa is a HUD supervisory attorney for Fair Housing in the Fort Worth office. And then I also spoke to her client, Thurman Miles, who is the Regional Director for Fair Housing, who is also in the Fort Worth office.

As Sara has indicated, HUD will not give us written guidance. But he did speak with me for a while. And we also had provided them with our appeal application to you. So that they were able to actually review documents in front of them.

What they indicated to us, is that they see our rule as being neutral on its face. However, having unintended consequences. So our rule as they indicated, has the ability to be seen as having disparate impact under the Fair Housing rules which means that it negatively impacts a certain class. And in our case, that would be the residents that we are asking to come back and who have indicated that they would like to come back to the development.

Mr. Mowes indicated further that he wanted to know, had we worked with anybody but multifamily. And we explained to him, that we had worked with property disposition as we had also indicated to you. And that was the reason for our unit mix.

And he wanted to make certain that they had had the opportunity to weigh in on this issue. He indicated that we did, from based on the facts, that we have provided him, he felt that this did rise to a Fair Housing

complaint.

As Sara has indicated, with the Fair Housing complaints, they do not just take a complaint. You actually file one, and then it is reviewed. But he felt that based on the information that we had provided him, it would be a complaint that would be investigated.

Thank you.

MR. OXER: Uh-huh. Any comments from the Board?

(No response.)

MR. OXER: Okay. Anything else?

(No response.)

MR. OXER: For the record, as the Chair, I think you ought to ask them to investigate this. Don't sit there and threaten us with it. What you ought to do is go ask them.

Make the complaint, have them consider it, and then take a look at whether or not this has an impact, because one of the things that we want to make sure we are doing is not having that impact.

So the sooner we get a resolution, or the sooner there is something indication for them, that they think it is, the sooner we would be in whatever compliance they think is necessary.

MS. JACKSON: Well, I mean, we understand that. The problem with the complaint, in terms of the application round, is HUD has statutory obligations in terms of how much time to review, and that would not allow us to be competitive in this round.

MR. OXER: In this round.

MS. JACKSON: That is why we had not filed any type of formal complaint, nor did we want to. We again only went to HUD based on this Board's request that we do so.

MR. OXER: Okay. I think the good news should be for all of us that next year with no forward commitments being taken out of all of this, there will be more money for everybody. And the line that is going to be in the money is going to be deeper into the list. Okay. So anything else?

MS. JACKSON: TDHCA staff indicated -- I'm sorry. She was asking did HUD ask us -- TDHCA staff and I actually did speak to your counsel, Barbara Deane, and your Executive Director, Tim Irvine, and they had indicated that they would follow up. And I have also put this in writing to them.

MR. OXER: Okay.

MS. JACKSON: Thank you.

MR. OXER: Good. Good to see you back. Professor McWatters.

MR. McWATTERS: Does staff have any comment on this?

MR. IRVINE: No. I think that as Ms. Jackson indicated, the rule is basically neutral. And based on our discussions with HUD staff, they clearly could not resolve this issue in time for us to have clear guidance prior to award.

You know, if a complaint were filed, they would most likely, I can't say for sure, but most likely look at it in terms of disparate impact analysis. They would look at the various protected classes involved.

And the way that the unit mix, and the market all lined up, and see if there is disparate impact. They would potentially look, I think, not only in that particular market, but look at just the general application of the rule.

MR. OXER: Any other comment? General Counsel?

MS. DEANE: No. That pretty much covers it. I think when he said that he would accept the complaint, he meant that it was jurisdictional. It would fall within their jurisdiction.

But here again, he made no comment one way or the other. And he said that he couldn't until the actual information was in front of him.

MR. OXER: Right.

MS. JACKSON: He indicated that he felt, based on the information we had provided, that it would be accepted, based on the fact that it rose to a complaint. It would not be one that got thrown out because it was not ripe.

MS. DEANE: It would be jurisdictional. It would fall within their jurisdiction.

MR. OXER: Right. It would be accepted and considered. Right. Okay. Good. I think every issue like this, for which there is a question should be pressed to the point until we figure it out. Okay.

MR. LANG: Good afternoon, Chairman, members of the Board. My name is Timothy Lang. I am with Tejas Housing Group.

And I would like to speak with you regarding an appeal that was heard at the last Board meeting. And ask the Board to either reconsider the denial of the appeal, or ask staff to issue an administrative deficiency that

would give us an opportunity to cure the item.

I think one thing that got lost at the last Board meeting was how easy it is, this item would have been to cure through an administrative deficiency. To recap, we had a cost per square foot issue where we have 70 single-family homes and we have five duplexes.

We calculated the costs of these single-family homes at \$95. The duplexes at the \$85 rate. And through a different interpretation of what single-family design meant, it was determined that a development needed to be 100 percent single-family homes.

We feel that if we had received an administrative deficiency, the right to cure that would have entailed simply splitting apart those duplexes, making them one- and two-bedroom cottages, as opposed to duplexes. This would not affect the cost schedule, the credits requested.

It wouldn't cause a disadvantage to any other developer. Nor would it give us any kind of competitive edge. It really would have given us the right to cure, to meet the definition that staff had determined single-family design to be, which at the time was unbeknownst to us.

We were simply going off of the language that was there in the QAP, and interpreted that to mean any unit of single-family design was entitled to that cost per square foot. There were some other issues where administrative deficiencies were given out in that instance, on that item of cost per square foot.

One of them was a development that we had built two years ago. Another one was the application last year from, I believe it was The

Tuscany. In both instances, the administrative deficiencies were given out. And the right to cure. And in both cases, they were settled.

We just wanted to have that same opportunity. We wanted the same right to cure, through that deficiency process, which we weren't giving. We were given a final scoring notice, with our point total on there. And then we appealed to the Executive Director and then subsequently to the Board after that.

I guess the only other thing to state would be, why the staff would have used that term "design," as opposed to development. I think that's where -- I know that is where our interpretation came in, which differed from what theirs was.

I know, if we are tearing down the QAP, and starting fresh again, we have the opportunity to cure that. I would just hate for us to lose a competitive development to a city that needs it, because of a gray area, and an ambiguous interpretation.

We simply just want the right to compete. To have our regular place in the end scoring, wherever that hashes us out to be, and move on from there. So respectfully, we ask the Board to either reconsider the denial of the appeal, or ask staff to administrate a deficiency to where we have an opportunity to cure that, and meet staff's interpretation of the rule as it is written.

MR. OXER: Okay. You understand, this is public comment. We can only defer for items to be considered for the next Board meeting.

MR. LANG: That is correct.

MR. OXER: Okay. Eric. Have you got anything you want to add to it?

MR. OPIELA: One of the items --

MR. OXER: State your name.

MR. OPIELA: Eric Opiela for Tejas Housing.

MR. OXER: All right.

MR. OPIELA: One of the things that wasn't addressed at the last Board meeting that I think would be important, especially for the members of the Board that weren't here at that point in the last Board meeting is, it was very reasonable for Tejas to believe that that single-family design meant just that; single-family design. Even when you look at HUD's definition of single-family design, it says that a residence with one to four dwelling units would be single-family design.

And so it would be reasonable for them to think that a development consisting of 70 freestanding houses, and ten duplexes would be a single-family design that would meet that requirement, especially since in prior years, it had met that requirement.

And I know there was some debate about, well, there were differences between those developments in prior years, and the way the QAP is written this time. But we feel real strongly that the staff's interpretation of the single-family design contradicts the pure language of the QAP. And we really think that in that instance, we should have been allowed an opportunity to meet their definition through an administrative deficiency.

Or in the alternative, say you know what, it was a reasonable

interpretation by the Applicant. They had a development which they thought met that design. They should be awarded the points. And so that is why we are coming back to you, and asking that we have that opportunity, either through a motion to reconsider, or through an administrative deficiency, as has been provided in the past by the Agency.

MR. OXER: Okay. We have -- you understand we can only receive your comment at this point.

MR. OPIELA: There was one other thing that I wanted to add in -- that was Mr. McWatters had asked why we hadn't sought clarification on that item. And it was basically -- I didn't get a chance to answer it at the last meeting. But we didn't -- we thought it was very clear to us. So we didn't see that need.

But I did want mention that there were four other instances between December of 2011, and February, where I had contacted staff for clarification on QAP items to make sure. It was simply a case in this instance, I didn't, we didn't see any ambiguity, and we figured single-family design, [inaudible] units of single-family design were allowed that cost.

So it is not that we were -- not thorough or lazy, or anything to that effect. We did see clarification, but we needed to be sought out. And we didn't do that. So I just wanted to point out that on four separate occasions, for this particular application cycle, we did go that route.

MR. OXER: Okay. Thank you.

MR. OPIELA: Thank you very much.

MR. OXER: All right. Is there any other public comment?

(No response.)

MR. OXER: Okay. Our Board members constitute an important public in this meeting. Is there any other comments from the Board about anything that has been done, or anything that needs to be considered?

(No response.)

MR. OXER: That said, the Chair will entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Okay. Motion by Ms. Bingham to adjourn.

MR. GANN: Second.

MR. OXER: Second by Vice-Chairman Gann. All in favor?

(A chorus of ayes.)

MR. OXER: It is unanimous. We will see you in two weeks.

(Whereupon, at 3:25 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: July 10, 2012

I do hereby certify that the foregoing pages, numbers 1 through 193, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

07/16/2012
(Transcriber) (Date)

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