

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

June 30, 2016  
9:03 a.m.

MEMBERS:

J. PAUL OXER, Chair  
JUAN MUÑOZ, Vice-Chair  
LESLIE BINGHAM ESCAREÑO, Member  
T. TOLBERT CHISUM, Member  
TOM H. GANN, Member  
J.B. GOODWIN, Member

TIMOTHY K. IRVINE, Executive Director

I N D E X

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CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	8
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b) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Dale Meadows f/k/a St. Johns Colony (HOME 530200 / CMTS 4001)	
c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Champions at North Dallas f/k/a Brighton's Mark (BOND 91009 / CMTS 2559)	
d) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Milan Senior Estates (HTC 91009 / CMTS 941)	
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f) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")	
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00133 Cameron Village Apartments Alice	
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- g) Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit Application  
13187 Barron's Branch Waco  
14069 Live Oak Trails Austin  
15306 Altura Heights Houston
- h) Presentation, Discussion, and Possible Action regarding an additional Placed in Service deadline extension for a Development located in a major disaster area as allowed under Section 6 of IRS Revenue Procedure 2014-49  
13042 The Cottages of South Acres Houston

#### HOME PROGRAM

- I) Presentation, Discussion, and Possible Action to authorize the issuance of the 2016 HOME Investment Partnerships Program ("HOME") Notice of Funding Availability ("NOFA") for Single Family Non-Development Programs, and the notification of the posting of the NOFA to the Departments website and in the *Texas Register*

#### COMMUNITY AFFAIRS

- j) Presentation, Discussion, and Possible Action on the Section 8 Program 2017 Annual Public Housing Agency ("PHA") Plan for the Housing Choice Voucher Program

#### RULES

- k) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions, and directing that they be published in the *Texas Register*
- l) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19 Income Eligibility, and directing that they be published in the *Texas Register*
- m) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 20 Single Family

Programs Umbrella Rule, §20.15 Compliance and Monitoring, and 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101 Purpose and Overview, and directing that they be published in the *Texas Register*

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P R O C E E D I N G S

1  
2 MR. OXER: Good morning, everybody. I'd like  
3 to welcome you to the June 30 meeting of the Texas  
4 Department of Housing and Community Affairs Governing  
5 Board.

6 We will begin with roll call. Mr. Chisum is  
7 not here today.

8 Ms. Bingham?

9 MS. BINGHAM ESCAREÑO: Here.

10 MR. OXER: Mr. Gann?

11 MR. GANN: Here.

12 MR. OXER: Mr. Goodwin?

13 MR. GOODWIN: Here.

14 MR. OXER: Dr. Muñoz will be with us in a  
15 minute.

16 I'm here, we have four to start, that gives us  
17 a quorum, so we're in business.

18 Tim, lead us in the salutes to the flags.

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

21 MR. OXER: Michael, do we have any guests to  
22 recognize today? Is Bobby here today, Bobby Wilkinson?

23 MR. GOODWIN: No.

24 MR. OXER: Not here. It's summertime.

25 MR. LYTTLE: They're watching from home.

1 MR. OXER: All right. Hello to everybody  
2 watching on our internet cable connection this morning.

3 Let's get down to work here. With respect to  
4 the consent agenda, does any Board member wish to pull any  
5 item from the consent agenda?

6 MS. BINGHAM ESCAREÑO: No.

7 MR. OXER: Can I have a motion to consider?

8 MR. GOODWIN: So moved.

9 MR. OXER: Motion by Mr. Goodwin.

10 MR. GANN: Second.

11 MR. OXER: Second by Mr. Gann to approve the  
12 consent agenda as shown. There's no request for public  
13 comment.

14 Let the record reflect that Dr. Muñoz has now  
15 joined us.

16 MS. BINGHAM ESCAREÑO: Discreetly.

17 MR. OXER: Discreetly would have been coming in  
18 the back door. We figured you were just finishing signing  
19 up autographs over at the hotel.

20 DR. MUÑOZ: It took me time to get the bow tie  
21 right.

22 MS. BINGHAM ESCAREÑO: Oh, I guessed it. You  
23 owe me lunch.

24 MR. OXER: As everybody will recognize, we're  
25 in summer casual. Casual for Dr. Muñoz means a bow tie

1 instead of the full three-piece.

2 (General laughter.)

3 MR. OXER: At any rate, glad you could make it.

4 All right. Motion by Mr. Goodwin, second by

5 Mr. Gann to approve the consent agenda as presented.

6 Those in favor?

7 (A chorus of ayes.)

8 MR. OXER: Those opposed?

9 (No response.)

10 MR. OXER: There are none.

11 Okay. Let's jump right in on it. Let's see,  
12 number 3(a). Ernie, it looks like you're up first. Good  
13 morning.

14 MR. PALACIOS: Good morning.

15 MR. OXER: So far.

16 MR. PALACIOS: Mr. Chairman, members of the  
17 Board, Mr. Irvine. For the record, I'm Ernie Palacios,  
18 director of Financial Administration for the Department.

19 Over the last four months we've been meeting  
20 with division directors and managers to develop the  
21 internal operating budget for fiscal year 2017. Behind  
22 item 3(a) is internal operating budget which includes the  
23 comparison report for the 2016 operating budget. I would  
24 like to provide you information related to the amount of  
25 the budget, the expenditure categories of where the money

1 will be used, and lastly, the financing associated with  
2 recommending this budget for the upcoming fiscal year.

3 The proposed budget is \$26.3 million. This  
4 represents a \$543,000, or 2 percent decrease from the  
5 current budget. The decrease is primarily attributed to a  
6 2016 proposed community affairs weatherization training  
7 academy contract that was not cost-effective to implement,  
8 and the continued ramp down of our NSP program. In  
9 addition, the capital budget for the second year of the  
10 biennium is \$114,000 less than the first year, as  
11 requested in our LAR.

12 Also included in the budget is a one percent  
13 line item that we put in for potential salary increases  
14 for employees, such as merits, reclasses and other items  
15 the Department may want to consider throughout the fiscal  
16 year.

17 The Department's cap FTEs is 313, the budget  
18 has 306 FTEs; 242 are TDHCA personnel and 64 are  
19 Manufactured Housing staff. That's seven less than  
20 appropriated.

21 The method of finance was affected as follows:  
22 general revenue and federal funds decreased 7-1/2 percent  
23 and 9.6 percent, respectively; appropriated receipts had  
24 an increase of \$245,000, or 1.5 percent increase; and  
25 finally, our interagency contracts increased 41 percent

1 due to a new contract with the Texas Department of State  
2 Health Services, this is an interagency contract for a  
3 home and community-based services adult mental health  
4 program that helps support individuals with mental  
5 illnesses.

6 Also, I would like to note for the record, in  
7 accordance with the Internal Auditing Standards and the  
8 Board's Internal Audit Charter, the budget includes the  
9 Internal Audit Division's annual operating budget.

10 This concludes my remarks on this item, and I'm  
11 available for any questions you may have.

12 MR. OXER: Any questions from the Board?  
13 Ernie, you point out that this includes the cost of the  
14 internal auditing group. Did the former budgets not  
15 include those?

16 MR. PALACIOS: It's just a statement. They  
17 need to have their budget approved at a formal Board  
18 meeting.

19 MR. OXER: Okay. So we're basically formally  
20 approving two budgets at once, more or less.

21 MR. PALACIOS: Theirs is included within ours.

22 MR. IRVINE: I think the point there is that  
23 Internal Audit and the Audit Committee have some high  
24 level autonomy in developing their budget.

25 MR. OXER: Okay. Any questions?

1 (No response.)

2 MR. OXER: Motion to consider?

3 MR. GANN: I'll make a motion to approve the  
4 2017 operating budget.

5 MR. OXER: Motion by Mr. Gann to approve staff  
6 recommendation on item 3(a) with respect to the 2017  
7 operating budget.

8 MS. BINGHAM ESCAREÑO: I'll second.

9 MR. OXER: Second by Ms. Bingham. No request  
10 for public comment. Motion by Mr. Gann, second by Ms.  
11 Bingham to approve staff recommendation on item 3(a).  
12 Those in favor?

13 (A chorus of ayes.)

14 MR. OXER: And opposed?

15 (No response.)

16 MR. OXER: There are none.

17 MR. IRVINE: May I offer a comment? It's been  
18 an incredibly productive budget process. I'd really like  
19 to thank Ernie for leading the effort, and David  
20 Cervantes, Joe Guevara, and our new planner in chief,  
21 Krissy Vavra. You guys have been just wonderful to work  
22 with. I've heard kudos from top to bottom and side to  
23 side in the agency.

24 MR. PALACIOS: Thank you.

25 MR. OXER: Good. Glad you got it right, Ernie.

1 MR. PALACIOS: Thank you.

2 One more item. Now I would like to turn your  
3 attention to item 3(b), the Housing Finance Division  
4 budget. This particular item is a subset of the larger  
5 budget that is in relation to the Housing Finance budget  
6 that we are required to submit under Texas Government Code  
7 and in compliance with the General Appropriations Act.  
8 This subset of the budget is specific to the fees that we  
9 generate, typically referred to as the Housing Finance  
10 budget of the Department, and at this time we're also  
11 prepared to certify this budget.

12 I'm available for questions.

13 MR. OXER: Any questions?

14 MS. BINGHAM ESCAREÑO: Anything unusual?

15 MR. PALACIOS: No. Pretty standard.

16 MR. OXER: Pretty 500 yards straight down the  
17 fairway. Huh?

18 MR. PALACIOS: Exactly.

19 DR. MUÑOZ: Five hundred?

20 MR. OXER: That would be unusual for you  
21 anyway.

22 (General laughter.)

23 MR. OXER: Motion to consider?

24 MS. BINGHAM ESCAREÑO: So moved.

25 MR. OXER: Motion by Ms. Bingham to approve

1 staff recommendation on item 3(b).

2 DR. MUÑOZ: Second.

3 MR. OXER: And second by Dr. Muñoz. There's no  
4 request for public comment. Those in favor?

5 (A chorus of ayes.)

6 MR. OXER: And opposed?

7 (No response.)

8 MR. OXER: There are none.

9 MR. PALACIOS: Thank you for your time.

10 MR. OXER: Thanks, Ernie.

11 Teresa.

12 MS. MORALES: Good morning.

13 MR. OXER: It's a wonderful morning.

14 MS. MORALES: It's a wonderful morning.

15 Item 4(a) has been pulled from the agenda with  
16 respect to the inducement for Piney Woods Village. That  
17 particular item will be brought before you at a subsequent  
18 Board meeting.

19 MR. OXER: Okay.

20 MS. MORALES: So we're on to 4(b). Item 4(b)  
21 involves an award of 4 percent Housing Tax Credits and a  
22 direct loan from the 2016-1 NOFA. New Hope Housing at  
23 Reed involves the new construction of 187 units in Houston  
24 and will be a supportive housing development serving  
25 families that are homeless or at risk of homelessness.

1           What makes this development unique is that it  
2 is part of a 48-acre tract that includes the Star of  
3 Hope's Family Place complex. The Start of Hope facility  
4 will consist of a campus model, including housing and  
5 access to services in one location within walking  
6 distance. It is anticipated that many clients will  
7 initially enter and live in sectors of the Star of Hope's  
8 Family Place, and then as they receive services,  
9 participate in programs offered and stabilize. Once  
10 stabilized, they would move into New Hope Housing at Reed,  
11 while still having access to those programs and services  
12 from Star of Hope.

13           There are undesirable neighborhood  
14 characteristics associated with this application, which  
15 include crime, school ratings and environmental findings.

16           With respect to crime, the rule states that if  
17 a development is in a census tract or within 1,000 feet of  
18 a census tract where the rate of violent crime exceeds the  
19 threshold of 18 per 1,000 persons annually, then  
20 disclosure is required. This development is located  
21 within 1,000 feet of two other census tracts that exceed  
22 the crime rate threshold. The application included local  
23 police beat data for these adjacent tracts which indicated  
24 that over the past 21 months the average violent crime  
25 rate per 1,000 persons was 9.78. Staff considered this

1 information to be acceptable mitigation under the rule.

2 As it relates to environmental concerns, this  
3 involves the presence of facilities within a one-mile  
4 radius that involve the treatment, storage and disposal of  
5 hazardous materials. However, in the professional opinion  
6 of the environmental site assessment provider, the  
7 facility does not appear to present an environmental  
8 concern to the proposed development and no further testing  
9 was recommended.

10 Now on to the school issue. I have frequently  
11 been before you talking about schools for various  
12 development sites that don't have the Met Standard rating,  
13 and in all of those instances it's been the case where the  
14 performance of the school in question has been up and down  
15 over several years. New Hope Housing at Reed is proposed  
16 in an attendance zone where the elementary school, Young  
17 Elementary, follows this same pattern in that it did not  
18 meet standard in 2013, met standard in 2014 and even  
19 exceeded the target score on all four performance index  
20 indicators and earned four distinctions, and then went  
21 back to Improvement Required in 2015.

22 Schools that are identified as Improvement  
23 Required get assigned a transformation team by the  
24 district that have oversight responsibilities and regular  
25 contact with the administrators at the school. A letter

1 from the chief school officer assigned to Young indicated  
2 that based on her familiarity with the school improvement  
3 plan currently in place and performance throughout this  
4 school year, she fully expects Young Elementary to return  
5 to Met Standard by the time New Hope Housing at Reed  
6 places in service in 2018.

7 The high school, Worthing High School, is a  
8 little different. Worthing has failed to achieve Met  
9 Standard for 2013, 2014 and 2015. As you might imagine,  
10 this took quite a bit of staff time to work through, and I  
11 would like to extend staff's appreciation to the applicant  
12 for being patient and working with staff as we worked  
13 through the issues and concerns that this presented.

14 A letter from Houston ISD First Vice President  
15 of the Board of Education Wanda Adams was submitted that  
16 explained the transformation process underway by Houston  
17 ISD in an effort to mitigate the school's prior  
18 performance. Ms. Adams notes that along with the  
19 experienced and well developed team of educators and  
20 administrators now on board to ensure Worthing's success,  
21 she has confidence and every expectation that Worthing  
22 will make consistent and sustained improvements that will  
23 result in a Met Standard rating by the time New Hope  
24 Housing at Reed is placed into service. It is documented  
25 that Houston ISD is putting all of its appreciable

1 resources into Worthing High School in hopes of returning  
2 the school to a Met Standard status.

3 The letter from Ms. Adams indicates that the  
4 efforts Houston ISD is taking, as indicated under the  
5 rule, there is a reasonable expectation that Worthing High  
6 School will achieve Met Standard by the time the proposed  
7 development places into service, and the letter submitted  
8 for Young Elementary states the same.

9 A letter from the City of Houston Housing and  
10 Community Development Department was also submitted that  
11 affirmed the City of Houston's support for New Hope  
12 Housing at Reed, and also indicated that the proposed  
13 development directly addresses several of the city's  
14 initiatives, including reducing homelessness and  
15 affirmatively furthering fair housing. The City of  
16 Houston states that low educational attainment among  
17 minorities is identified in their analysis of impediments,  
18 and that New Hope Housing at Reed addresses this  
19 impediment such that the tenants will have access to the  
20 services offered at the Start of Hope's campus. These  
21 will include educational advancement, after school  
22 programs for youth, daycare, and early childhood  
23 education.

24 Staff believes that based on the confluence of  
25 all of these mitigation efforts, the proposed development

1 should not be considered ineligible under the rule, and  
2 further recommends approval of 4 percent Housing Tax  
3 Credits in the amount of \$1,037,535, and an award of  
4 direct loan funds in the amount of \$660,000, with the  
5 conditions as noted in your writeup.

6 MR. OXER: Any questions from the Board?

7 (No response.)

8 MR. OXER: Was there any opposition to this?

9 MS. MORALES: No, there was not.

10 MR. OXER: Joy, I assume you're here just to  
11 answer questions?

12 MS. HORAK BROWN: (Speaking from audience.) I  
13 am.

14 DR. MUÑOZ: Move staff's recommendation.

15 MR. GOODWIN: Second.

16 MR. OXER: Motion by Dr. Muñoz, second by Mr.  
17 Goodwin to approve staff recommendation on item 4(b).

18 MS. BINGHAM ESCAREÑO: Mr. Chair, I have a  
19 question.

20 MR. OXER: Okay.

21 MS. BINGHAM ESCAREÑO: The 120 days and part of  
22 our resolution will be to allow EARAC to make the decision  
23 whether to extend or not. Do you feel like the 120 days  
24 is reasonable?

25 MS. MORALES: I do.

1 MS. BINGHAM ESCAREÑO: Joy, the 120 days?

2 Good.

3 I don't have any other questions.

4 DR. MUÑOZ: I made the motion, but just a  
5 question. You know, some of those after school programs,  
6 enrichment programs, like once in service, do we go back  
7 and ensure, like we do sort of other physical attributes  
8 of the development?

9 MS. MORALES: One of the threshold requirements  
10 is the provision for tenant supportive services. There's  
11 a list of those tenant supportive services that the  
12 applicant can select and implement at the property. When  
13 compliance goes out they do ensure that those supportive  
14 services are being provided.

15 DR. MUÑOZ: The way we do air conditioning and  
16 fans.

17 MS. MORALES: Correct.

18 DR. MUÑOZ: I was just curious.

19 You know, those kinds of programs can be  
20 disrupted and maybe you hire somebody to come in and  
21 facilitate those and they relocate, and so it's different  
22 from sort of a fixed sort of amenity. Right? Sometimes  
23 you've got to continue to sort of monitor.

24 MS. MORALES: And then also, it depends on the  
25 tenant profile. So often after a development places into

1 service, the figure out what types of services the tenants  
2 would like, and then they implement those. So it does  
3 come and go.

4 DR. MUÑOZ: And then we're updated on those  
5 services and you check those?

6 MS. MORALES: When we go out we make sure that  
7 they're providing the tenant services that they're  
8 required to under the tax credit LURA.

9 MR. IRVINE: Services they select are  
10 memorialized in their LURA and we go out and monitor to  
11 the LURA.

12 MR. OXER: So we send Chief Murphy out.

13 MS. MORALES: Chief Murphy.

14 (General laughter.)

15 MR. OXER: All right. Any other questions?

16 (No response.)

17 MR. OXER: With respect to item 4(b), motion by  
18 Dr. Muñoz, second by Mr. Goodwin to approve staff  
19 recommendation. Those in favor?

20 (A chorus of ayes.)

21 MR. OXER: And opposed?

22 (No response.)

23 MR. OXER: There are none.

24 Do you have a question, Counselor?

25 MR. ECCLES: I was just going to ask if public

1 comment was needed.

2 MR. OXER: I asked. Joy was the only one and  
3 she was here to answer questions.

4 Okay. You've got 4(c).

5 MS. MORALES: Item 4(c) involves an award of 4  
6 percent Housing Tax Credits and a direct loan from the  
7 2016-1 NOFA. Acme Road Apartments involves the new  
8 construction of 324 units in San Antonio and will serve  
9 the general population. The applicant properly disclosed  
10 that one of the schools in the attendance zone did not  
11 achieve Met Standard ratings based in the 2015 TEA  
12 ratings. While the elementary school for the attendance  
13 zone met the standard the prior year, they fell one point  
14 shy of meeting the target score on one of the performance  
15 index indicators in 2015, and therefore, did not achieve  
16 the required rating.

17 The Department received a letter from Edgewood  
18 ISD that provided additional information on the school's  
19 performance, including upward trends in student progress  
20 and closing performance gaps, as well as increased  
21 parental involvement this year. Staff believes the letter  
22 adequately addresses the concerns such that staff  
23 recommends the site be considered eligible. It is also  
24 important to note that in the letter, Edgewood ISD  
25 expresses their support for this development.

1           The previous participation review revealed a  
2           Category 3 designation for this applicant's portfolio.  
3           While this category under the rule is not required to  
4           propose conditions on the award that would address the  
5           concerns with their compliance history, EARAC expressed  
6           concern over communication problems between the applicant  
7           and its partners that have persisted since a similar  
8           condition was place on one of their prior awards a few  
9           months ago. This condition required action by June 27,  
10          2016 and staff can confirm that the documentation was  
11          submitted as required.

12                 Staff recommends approval of a 4 percent  
13          Housing Tax Credit award in the amount of \$1,553,716 and  
14          direct loan funds of \$2 million, subject to the conditions  
15          listed in the Board writeup.

16                 MR. OXER: So we're exercising the 4 percent  
17          pretty well then.

18                 MS. MORALES: Yes.

19                 MR. OXER: That's good, that's a good thing.

20                 MS. MORALES: Yes.

21                 MR. IRVINE: Teresa's busy.

22                 MR. OXER: Teresa's been busy.

23                 Any questions from the Board? Motion to  
24          consider?

25                 MS. BINGHAM ESCAREÑO: So moved.

1 MR. OXER: Motion by Ms. Bingham.

2 MR. GANN: Second.

3 MR. OXER: And a second by Mr. Gann to approve  
4 staff recommendation on item 4(c). There's no request for  
5 public comment. Motion by Ms. Bingham, second by Mr. Gann  
6 with respect to item 4(c) to approve staff recommendation  
7 on item 4(c). Those in favor?

8 (A chorus of ayes.)

9 MR. OXER: And opposed?

10 (No response.)

11 MR. OXER: There are none.

12 And with respect to 4(d), I understand that one  
13 has been pulled, Teresa.

14 MS. MORALES: That's correct.

15 MR. OXER: Is that all four of those items?

16 MS. MORALES: Yes. They're all related.

17 MR. OXER: Common. Okay. Thanks.

18 Okay, Sharon.

19 MS. GAMBLE: Good morning, Board, Mr. Chairman.

20 My name is Sharon Gamble and I am the administrator for  
21 the competitive 9 Percent Housing Tax Credit Program.

22 Item 4(e) is a presentation, discussion and  
23 possible action on timely filed scoring appeals under the  
24 Department's Multifamily rules. 10 TAC, Section 11.9  
25 related to competitive HTC selection criteria identifies

1 the scoring criteria used in evaluating and ranking  
2 applications. For each application that remains  
3 competitive, our staff completes a first and second review  
4 of the scoring criteria and then I complete an  
5 administrative review. After the administrative review, a  
6 scoring notice is sent to the applicant. This notice  
7 indicates points that the application may have lost during  
8 the review process, and the scoring notice offers the  
9 applicant an opportunity to appeal the loss of points, and  
10 that's what brings us here today.

11 In order for an application to receive one  
12 point under Subsection 11.9(c)(6)(E) of the Qualified  
13 Allocation Plan regarding underserved areas, the  
14 development site must be located in a census tract that  
15 has not received a competitive tax credit allocation or a  
16 4 percent non-competitive tax credit allocation for  
17 developments serving the same target population that  
18 remains an active tax credit development, or if it is  
19 serving the same target population, that has not received  
20 the allocation within the last ten years.

21 Now, in testing for this, staff reviewed the  
22 Housing Tax Credit property inventory which is updated as  
23 of January 6, 2016, that Board meeting. The inventory  
24 includes the census tracts that each of the developments  
25 is located in and so staff can sort the inventory by

1 census tract and then we look at all of the developments  
2 in that census tract to see if any of them violate this  
3 rule. Staff found that the census tract in which  
4 application 16001 is proposed includes the existing  
5 Friendship Place which was first awarded in 2004 and  
6 received a supplemental allocation of credits from the  
7 2007 credit ceiling.

8 The appeal asserts that the 2007 supplemental  
9 allocation of tax credits should not be considered for the  
10 analysis of whether the census tract includes a  
11 development that has received a competitive allocation in  
12 the last ten years. The supplemental allocation was  
13 awarded to 2004, '05 and '06 applications that were not  
14 placed in service yet or that did not complete cost  
15 certification before January 1 of 2006, and that evidenced  
16 increased direct construction costs that were attributed  
17 to Hurricane Katrina and Hurricane Rita that blew through.

18 The supplemental allocations were funded with four  
19 commitments from the 2007 and 2008 competitive Housing Tax  
20 Credit ceiling.

21 Staff's determination in this matter is based  
22 on the definition of competitive, as the rules require  
23 that the development site be located in a census tract  
24 that has not received a competitive Tax Credit allocation  
25 within ten years. 10 TAC 11.9(c)(6) refers to competitive

1 tax credit allocations and to 4 percent non-competitive  
2 tax credit allocations to incorporate all of the prior  
3 allocations that have been funded by the Department, and  
4 there are no other forms of tax credits described in the  
5 rules. The rule definition of competitive focuses on the  
6 source of the credits, it doesn't focus on the process of  
7 the application and the process of the award.

8 Subsection 10.3(a)(23) defines competitive  
9 Housing Tax Credits as tax credits available from the  
10 state housing credit ceiling, and as I said before, these  
11 awards were made from the housing credit ceiling from 2007  
12 and 2008, so because the credits came from the credit  
13 ceiling, they do meet the rule definition of competitive,  
14 and because of that, we ask you to find that Friendship  
15 Place should be counted and that you deny this appeal.

16 If you have any questions, I can answer them.

17 MR. OXER: Any questions from the Board?

18 Ms. Bingham, go ahead. Me too, I'm behind you.

19 Go ahead.

20 MS. BINGHAM ESCAREÑO: This is a good lay  
21 question. I was with you all the way up until like the  
22 second definition of competitive, about the credits coming  
23 from the state housing credit ceiling, and for that  
24 reason, right, you're looking at the 2007 supplemental as  
25 being the reason that we would deny the appeal.

1 MS. GAMBLE: That's correct.

2 MS. BINGHAM ESCAREÑO: So do you guys think  
3 that's the spirit of the intent, that that's the intent of  
4 that?

5 MS. GAMBLE: I do, and I guess another way to  
6 say it is that all of the tax credits that we award pretty  
7 much come from the ceiling. When we get credits returned,  
8 they are returned to the ceiling and then they enter the  
9 competitive process that way. And so I don't know another  
10 way that we award credits that are not from the ceiling.

11 MR. IRVINE: I think the spirit of it is we  
12 have a finite amount of credit that we can award and we  
13 want to provide incentives in areas that have not received  
14 those benefits in the preceding period.

15 MS. BINGHAM ESCAREÑO: Gotcha. And so the  
16 initial award back in '04 was outside of the timeline,  
17 right, but the '07 is the consideration, and it sounded  
18 like to me that supplemental funding, or whatever you want  
19 to call it, award went to any of the '04s and '05s that  
20 weren't in service yet -- any of the '04s and '05s that  
21 hadn't already been placed in service. Is that part of  
22 it?

23 MS. GAMBLE: That's correct.

24 MR. OXER: So were we in the process of having  
25 to get rid of tax credits back then?

1 MS. GAMBLE: No, it wasn't getting rid of tax  
2 credits. There were construction cost increases as a  
3 result of hurricanes, everything became more expensive,  
4 and so that's what happened.

5 MS. BINGHAM ESCAREÑO: Okay. I mean, I'm sure  
6 we'll hear more about the appeal.

7 MR. IRVINE: People who lived through it will  
8 recall that those were extraordinary times. In addition  
9 to dealing with disasters and rising costs, we also  
10 eventually encountered the financial collapse. There was  
11 a lot of stuff going on that really made it hard to get  
12 deals done, and there was a pretty bold initiative taken  
13 by the Board to make sure that these deals that otherwise  
14 would be unable to move forward got some additional  
15 assistance, and that assistance came out of a later  
16 ceiling.

17 MR. OXER: Okay. So what this really gets down  
18 to is there's two pots, the competitive and the non-  
19 competitive.

20 MS. GAMBLE: Correct.

21 MR. OXER: And these came out of the  
22 competitive pot.

23 MS. GAMBLE: Correct.

24 MR. OXER: Any other questions?

25 MS. BINGHAM ESCAREÑO: And that it was the

1 intent of the supplemental awards was to get projects done  
2 that had initially been awarded but were going to struggle  
3 because of these hardships that came up because of  
4 constructions costs around the hurricanes.

5 MR. OXER: So it's bad timing.

6 MS. GAMBLE: Yes.

7 MR. IRVINE: But in terms of timing, it's  
8 important, I think, also to remember that regardless of  
9 when the award determinations were made, the credits  
10 themselves could not actually go to the development until  
11 they came into existence under the '07 cap.

12 MR. OXER: So these are not 2004 that were left  
13 over, these were 2007. They essentially said, We can tell  
14 that you're in trouble so here's some more.

15 MS. GAMBLE: Exactly.

16 MR. GANN: And that's the placed in service  
17 date, really, is it not?

18 MR. OXER: No.

19 MR. GANN: When the credits go out it's the  
20 placed in service date, is it not?

21 MR. IRVINE: It triggers the starting of the  
22 placed in service date.

23 MR. OXER: When the credits go out, but the  
24 credits came out from the 2007 allocation.

25 MR. IRVINE: And before that allocation was in

1 place, they didn't exist.

2 MR. OXER: Okay. So these were new credits  
3 form 2007 that were offered to three-year-old projects  
4 that were sort of limping along that were going to be  
5 having a problem, they needed these to get through those  
6 times, and so they got them. So now the question is does  
7 that 2007 trigger that ten-year window.

8 MS. GAMBLE: Correct.

9 MR. OXER: Everybody got it? Any other  
10 questions?

11 (No response.)

12 MR. OXER: Motion to consider?

13 MR. GOODWIN: So moved.

14 MR. GANN: Second.

15 MR. OXER: Motion by Mr. Goodwin, second by Mr.  
16 Gann to approve staff recommendation. There is request  
17 for public comment.

18 MS. BAST: Good morning. Cynthia Bast of Locke  
19 Lord, representing the applicant here.

20 And I think that you've got all of the basics  
21 of the issue. It's been a little bit of a blast from the  
22 past for me as I go back and actually look at transcripts  
23 where I was testifying thirteen years ago.

24 MR. OXER: Is that as frightful to you as it  
25 would seem to be to me?

1 MS. BAST: It is.

2 I think what we have here is a difference of  
3 interpretation focusing on this phrase "competitive tax  
4 credit allocation." You've heard from the staff that they  
5 believe that the use of this phrase "competitive tax  
6 credit allocation" refers to a credit ceiling, but as I  
7 noted in my appeal letter, this phrase "competitive tax  
8 credit allocation" is really only used once in the QAP,  
9 whereas, the phrase "application round" which refers to a  
10 ceiling is used throughout the QAP. And I believe,  
11 therefore, that the word "competitive" does have meaning  
12 here and it goes to exactly what you were mentioning, Ms.  
13 Bingham, which is the spirit of this rule.

14 This is a rule about an underserved area, and  
15 the question is when is the last time that this census  
16 tract got a deal. That's what we want to know. They got  
17 a deal in 2004, and that's when the award of tax credits  
18 was made. A supplemental additional award was made in  
19 2007 to assist with cost overruns due to this unforeseen  
20 circumstance. But they didn't get another deal in 2007,  
21 they didn't get any more units on the ground, that was  
22 just to supplement the deal that they got in 2004.

23 And that's why I believe that the word  
24 "competitive" is meaningful in this context. The credits  
25 awarded in 2007 were not competitive, they were awarded to

1 everyone based upon a formula, if you look back at the  
2 policy of how that was done. And so by referring to  
3 competitive credits in this particular rule, I believe  
4 that we can exclude non-competitive credits that were  
5 awarded as a supplement from consideration, and that that  
6 would be consistent with the concept of this particular  
7 rule for an underserved area.

8 So on that basis, we are asking you to grant  
9 this appeal, and I'm happy to answer any additional  
10 questions.

11 MR. OXER: Any questions from the Board? This  
12 sounds like a definitional issue.

13 Okay. Thanks, Cynthia.

14 MS. BINGHAM ESCAREÑO: Mr. Chair, I was looking  
15 for Cynthia's appeal letter in our Board packet. Did you  
16 happen to see it in our Board packet?

17 MS. BAST: Yes, ma'am, it is in the Board  
18 packet. I do have a hard copy here if you would like the  
19 hard copy in front of you. I don't know the PDF page.

20 MR. GOODWIN: Page 62 of the three-ring  
21 supplemental.

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

23 MR. OXER: It's only 800 pages in the  
24 supplement this time.

25 MS. BINGHAM ESCAREÑO: Maybe it's letter

1 received

2 MR. OXER: Look at it this way, at least we're  
3 not killing trees.

4 MS. BINGHAM ESCAREÑO: And J.B. has it under  
5 4(e)?

6 MR. GOODWIN: Yes.

7 MR. OXER: Sharon, I have another quick  
8 question, since it comes around, if it were to go to next  
9 year, this one wouldn't have this problem in next year's  
10 round because it's been ten years, it will have been ten  
11 years next year.

12 MS. GAMBLE: I think that's correct. I'm not  
13 sure if it matters what date it was. It was in like  
14 October.

15 MR. OXER: That's the question. It's not the  
16 date, it's the year of the allocation.

17 MS. GAMBLE: Right, it's the year.

18 MR. OXER: Okay. Thanks.

19 MS. BINGHAM ESCAREÑO: Thank you. I found it.

20 MR. OXER: Anything else, Ms. Bingham? Are you  
21 good with that?

22 DR. MUÑOZ: If the supplemental funding hadn't  
23 been provided, is there any doubt that the project would  
24 not have continued? Do you know what I'm saying, Tom?

25 MR. GOURIS: Tom Gouris, deputy executive

1 director.

2 Are you referring to the original, the 2004?  
3 That was, in fact, the premise for the additional credits.  
4 One of the premises was those deals were in such dramatic  
5 financial disarray that they needed this additional credit  
6 allocation to be successful. Now, whether or not that was  
7 absolutely the case or just one of the arguments for doing  
8 so certainly was part of the discussion.

9 MR. OXER: How many other deals from 2004-2005  
10 received supplemental credits that year?

11 MR. GOURIS: The vast majority of them did.

12 DR. MUÑOZ: And what percentage are in service?

13 MR. GOURIS: All of them are.

14 DR. MUÑOZ: All of them. So it would seem that  
15 at least in 100 percent of the cases the supplemental  
16 funding resulted in --

17 MR. OXER: It worked.

18 DR. MUÑOZ: It worked.

19 MR. GOURIS: Yes, that's right.

20 MS. BINGHAM ESCAREÑO: Did they have to apply  
21 for it?

22 MR. GOURIS: There was a small application or  
23 ask, a certification and ask that they hadn't already  
24 placed in service. They didn't have to apply under the  
25 2007 rules. In fact, the criteria was that they would be

1 qualified under the 2007 rules based on the fact that they  
2 had received an award in 2004, so they didn't have to  
3 apply the full application. They did have to go through  
4 the cost cert process, though, and that's part of the  
5 application process, if you will.

6 MR. OXER: The cost certification was part of  
7 demonstrating if they were in financial distress.

8 MR. GOURIS: That actually occurred just before  
9 the cost certification, but the cost certification  
10 supported that contention.

11 MS. BINGHAM ESCAREÑO: Can I ask a corollary to  
12 Dr. Munoz's question? So if that project, if Friendship  
13 hadn't gotten the funds and hadn't been able to get it off  
14 the ground, right, without the supplemental funds, then  
15 it wouldn't have counted. Right? In other words, then if  
16 Rolling Hills' application came through, it would get  
17 awarded because the Friendship project never got off the  
18 ground because it didn't get the supplemental funds.  
19 Right?

20 MR. GOURIS: If they hadn't gotten the  
21 supplemental funds, it wouldn't have been counted, and  
22 Rolling Hills would have been able to get the points.  
23 That's correct.

24 MS. BINGHAM ESCAREÑO: I guess I'm just  
25 struggling with to me it sounds like as a board we made a

1 decision to provide some supplemental funds to get '04 and  
2 '05 projects done, whether it was in '06, '07, '08 or  
3 whatever, that the intent was it was to get those '04 and  
4 '05 projects off the ground and that it would count as an  
5 '04 and '05 awarded project and not get in the way of a  
6 2016 application. And I understand the whole funding and  
7 using competitive credits, but it just seems to me that  
8 the intent of the Board back at that time was to get those  
9 '04 and '05 projects done that otherwise wouldn't have  
10 gotten done without the supplemental funds.

11 MR. IRVINE: The way I would characterize it,  
12 keying off of Cynthia's description, was yeah, they went  
13 through the competitive process and they got their deal  
14 several years earlier, there's no doubt about that. And  
15 that deal came and got an award of credits from a limited  
16 finite competitive pool but that wasn't enough to get it  
17 done, so what they really got several years later was the  
18 fulfillment of their earlier deal but it came from the '07  
19 limited finite pool.

20 MS. BINGHAM ESCAREÑO: So you just see it the  
21 other way, that it actually became an '07 project because  
22 it couldn't come to fruition in '04 or '05.

23 MR. GOURIS: A hypothetical situation that  
24 might help you think through it is if there was a bond  
25 transaction for a rehab in this region or in this area

1 that had received an award in 2007 or since 2007 but it  
2 was preexisting tax credit transaction that came back, it  
3 would have, in fact, excluded them from the points as well  
4 because all the competitive 9 percent and all the non-  
5 competitive 4 percent that received an award in the last  
6 ten years. If that makes sense.

7 MS. BINGHAM ESCAREÑO: Thank you.

8 MR. OXER: We're get to blame this one on a  
9 hurricane.

10 MR. GOODWIN: Were there any other situations  
11 like this in the State of Texas on that '07 supplemental  
12 award?

13 MR. GOURIS: Sure. Every development that  
14 received a supplemental award would have caused there to  
15 be a ten-year period to have to follow based on our  
16 current rule.

17 MR. GOODWIN: Well, we're pretty close to the  
18 end of that ten years, and my question to you is is there  
19 any other applications that are filed that are also?

20 MR. GOURIS: No, not that we know of. But  
21 there may be someone looking at a site, they look at that  
22 site and say I won't get those points for that reason. I  
23 guess there was one other but it was not competitive this  
24 year. So it's possible that there are others as well.

25 MR. GOODWIN: Somebody might have looked at a

1 census tract and said, Well, we've got the seven. Why did  
2 they follow through with this one, maybe, Cynthia, is a  
3 question if it was well known that these were going to be  
4 ruled competitive as of 2007?

5 MS. BAST: Mr. Goodwin, I think they followed  
6 through because they read the word "competitive" to mean  
7 competitive and that the 2007 award was not a competitive  
8 award. When the Board chose to award these additional  
9 credits out of the 2007 ceiling, there was a lot of  
10 discussion about how it would impact the existing rules.  
11 There were things like caps on credits per deal, caps on  
12 credits per developer.

13 MR. OXER: They just didn't take into account  
14 how it was going to affect future rules.

15 MS. BAST: Right. So they really were very  
16 careful to say this is how we want this to work with our  
17 existing rules. Unfortunately, this rule was not in play  
18 at the time, and so, again, our applicant looked at this  
19 as 2007 credits, even if they're aware of them, the fact  
20 is they weren't competitive because it was an additional  
21 allocation.

22 DR. MUÑOZ: But Cynthia, I mean, just logically  
23 speaking, it's a stretch for me to conclude that this  
24 supplemental funding which was unequivocally attached to a  
25 competitive application would have been interpreted as

1 outside of a sort of definitional understanding of  
2 competitiveness. It just wasn't arbitrary. I didn't read  
3 the transcript, like you may have from 2007, but I'm  
4 positive that the argument would have been: In order to  
5 make this competitive project move forward. I appreciate  
6 the argument right now, but it just seems to me that the  
7 only reason we're talking about this right now is because  
8 the additional dollars were introduced in order to improve  
9 the viability of the initial award which was a competitive  
10 allocation.

11 MS. BAST: And to me, that goes back to the  
12 issue of when did that census tract get a deal, and  
13 arguably they got the deal in 2004. Yes, they ran into  
14 financial trouble, it may not have been done if the 2007  
15 credits hadn't been awarded, but they got the deal in  
16 2004. And that's the spirit of the underserved area.

17 Tom's example on a rehab, I certainly do  
18 understand that example, but I would say that an old tax  
19 credit deal that is then being rehabbed, that becomes a  
20 new deal because you're renovating something.

21 So that's the crux. You all understand the  
22 arguments and you get paid all these big bucks to make  
23 these hard decisions.

24 (General laughter.)

25 MS. BAST: So I trust you to make a good

1 decision. Thank you.

2 DR. MUÑOZ: I think we pay for our own lunch,  
3 but I'll check on the big bucks, I might have missed that.

4 MR. OXER: Apparently some have taken offense  
5 at the idea that we are paid in tuna fish sandwiches.

6 With respect to item 4(e), any other comment,  
7 Counsel?

8 MR. ECCLES: I have advice that I could give in  
9 executive session on this matter if it is needed by the  
10 Board.

11 MR. OXER: Does anybody feel like they have a  
12 comment? All right. At least one, which would be Ms.  
13 Bingham, she'd like to hear that. So I'm going to  
14 recommend we table this item until we return from lunch,  
15 because I expect we're going to be going fully through  
16 lunch and into the early part of the afternoon today.  
17 We'll receive counsel from our general counsel in  
18 executive session and come back to this.

19 Mr. Goodwin and Mr. Gann, I assume that you'll  
20 approve that we will table.

21 MR. GOODWIN: Move to table.

22 MR. GANN: Second.

23 MR. OXER: Motion to table by Mr. Goodwin, and  
24 second by Mr. Gann. Is everybody in favor to table?

25 (Board members responded yes.)

1           MR. OXER: All right. We'll table that one  
2 until we come back, so everybody just hold your fire on  
3 that one.

4           Okay, Marni.

5           MS. HOLLOWAY: Good morning, Chairman Oxer,  
6 members of the Board.

7           I believe you are aware that item 4(f) is being  
8 pulled from the agenda. We'll be bringing that to our  
9 July 14 meeting.

10          MR. OXER: Right.

11          MS. HOLLOWAY: On to 4(g), we have a lot to  
12 work through on this item and my suggestion is as we're  
13 working through public comment, we just go each  
14 application one at a time. Otherwise, there's going to be  
15 a lot of information to try to sort through.

16          MR. OXER: Hold on just a second. So there are  
17 a summary of each of these items, we'll go through them  
18 one application at a time, the applications are numbered.

19          If we accept the documentation and presentation that you  
20 make, we'll just keep moving on that.

21          And for housekeeping purposes, as we move  
22 through these one application at a time, if there are  
23 requests for public comment on that application, wait  
24 until that application number is called, come up here on  
25 the front row, and we'll take comments on that if there

1 are some. And if we determine that there are comments,  
2 since we have so many of these, I'd like to go through,  
3 get the ones that are less than controversial out of the  
4 way first, and then if we have a few that are going to  
5 generate some interest, then we'll take those at the end.

6 MS. HOLLOWAY: So would you like me to reorder?

7 MR. OXER: Well, let's go through them one at a  
8 time and I'll request for a show of hands of those who  
9 want to make public comment. If there's not any, then  
10 we'll deal with it, dispatch that one and move on. But if  
11 there are requests for public comment, we'll move it to  
12 the end and take those in a batch.

13 MS. HOLLOWAY: Okay, certainly.

14 MR. OXER: Is that clear to everybody? Okay.  
15 Have at it.

16 MS. HOLLOWAY: Item 4(g), staff is presenting a  
17 summary of the determinations made under 10 TAC, Section  
18 11.10 of the 2016 Qualified Allocation Plan. These are  
19 third party requests for administrative deficiencies. This  
20 replaces the challenge process that's been used in years  
21 past, provides a mechanism for unrelated persons or  
22 entities to bring new material information about an  
23 application to staff's attention and request that we  
24 consider whether an application should be subject to an  
25 administrative deficiency. Requesters must provide

1 sufficient credible evidence that if confirmed would  
2 substantiate the deficiency request.

3 So we receive the requests and we proceed as we  
4 deem appropriate under the applicable rules, including  
5 whether or not the application is determined to be a  
6 priority application or not. So if it's not a priority  
7 application, we're not going to address the third party  
8 request.

9 All requests were received and reviewed in  
10 accordance with Section 11.10, and where staff determined  
11 that the request substantiated the issuance of notice of  
12 an administrative deficiency, the applicant was provided  
13 the opportunity to respond to the submitted request.  
14 Staff has reviewed both the request and the response in  
15 making its determinations.

16 The Department has posted each request, along  
17 with any deficiency notice that was released, supporting  
18 documentation, and the staff's determination to each  
19 application on our website. You'll remember that this  
20 year we have all the applications up on our website in  
21 real time, so everything that we're working on is  
22 appearing on our website in real time.

23 Where staff has determined that a request  
24 should result in the loss of points or other action, the  
25 applicants have been notified and they've been given an

1 opportunity to appeal the staff determination. While not  
2 required, the staff has also provided notice of the result  
3 of the request to the requesters.

4 So there isn't a provision in this rule, as  
5 there was with the challenge rule, that we come to you and  
6 provide a report to the Board, so we're doing this just so  
7 that you're aware of our process and what's going on. Of  
8 course, you have final decision-making authority on any of  
9 these issues. As we're working through, if there is a  
10 particular item that you would like us to more fully  
11 develop and bring back to the July 14 meeting, we of  
12 course will do that for you.

13 So the first one is application 16012, Mariposa  
14 at Clear Creek. We have some comment. The request that  
15 we received questioned whether the proper notification had  
16 been provided to all of the required individuals in the  
17 application process. Staff issued a notice of  
18 administrative deficiency to the applicant. The applicant  
19 submitted certified mail receipts evidencing that the  
20 appropriate parties were notified. Staff has reviewed the  
21 response provided and determined that the matter was  
22 resolved.

23 MR. OXER: We're going to modify. Apparently I  
24 wasn't clear on how we want to try to do this. On 16012,  
25 you'd like to comment. Right, Cynthia? So we know that

1 one.

2 Let's go down through these before we get to  
3 the points of each one of them. On 16026, does anybody  
4 want to comment on that one?

5 (No response.)

6 MR. OXER: Okay, so we'll take the report on  
7 that one.

8 With the lack of interest in public comment, is  
9 there any need to go through much detail apart from what  
10 you've presented in the Board book, Marni?

11 MS. HOLLOWAY: Unless there are questions from  
12 the Board.

13 MR. OXER: Okay. How about Baxter Lofts?  
14 16057, Silverleaf at Mason? There's one on  
15 that one.

16 16071, Bluff View Senior Village? That one  
17 looks good.

18 MR. OXER: 16117, Indian Lake Apartments.  
19 Where are we at back there? Okay, got it.

20 The Standard on the Creek in Houston? Okay,  
21 questions on that one.

22 Elysium Park, 16161? It looks like that one is  
23 good.

24 Saralita Senior Village, Kerrville, 16164?  
25 That one is okay.

1 16169, Havens of Hutto? Everybody good? Okay.

2 16263, Starlight? That one is good.

3 Avant Canyon, 16292? That one looks good.

4 16373, Avondale Farms Seniors? All good there.

5 Sierra Vista, 16380? Attracting a little  
6 attention on that one.

7 16387, Cantabria Estates Apartments? That one  
8 looks good.

9 (Inaudible speaker from audience.)

10 MS. HOLLOWAY: If I may address on this  
11 particular issue.

12 MR. OXER: Marni, restate what Toni said so we  
13 can make sure it's on the record.

14 MS. HOLLOWAY: There's a request that 16387,  
15 Cantabria Estates Apartments in Brownsville be pulled from  
16 this report item. The request for administrative  
17 deficiency and working through the process on this  
18 application did result in a scoring notice. The appeal of  
19 that scoring notice was received yesterday, so we're  
20 working through that appeal right now, and if we wind up  
21 there, you will hear that appeal as the Board. This  
22 report item is only about the requests for administrative  
23 deficiency, it's not asking you to take any action on the  
24 scoring notice or the appeal.

25 MR. OXER: Okay. So the action with respect to

1 putting a deal in or out of the round comes in two weeks,  
2 essentially.

3 MS. HOLLOWAY: Essentially, yes.

4 MR. OXER: Okay. So what we're really looking  
5 to do is see if there is enough information that's been  
6 generated so far for us to come to some determination on  
7 the ones that people have an interest in.

8 MS. HOLLOWAY: Yes.

9 MR. ECCLES: Actually, if I may interject,  
10 these are all reports.

11 MS. HOLLOWAY: These are all reports at this  
12 point.

13 DR. MUÑOZ: They don't require any action.

14 MS. HOLLOWAY: They do not require any action  
15 at this point. If you would like us to bring an item back  
16 so that the Board may fully address that issue, we  
17 absolutely will do that and bring it back as a separate  
18 item for the July 14 meeting. This request for  
19 administrative deficiency is new this year. We're working  
20 through it and we want to make sure that you as a Board  
21 are fully informed, and of course, have the opportunity to  
22 say yea or nay as we're working through.

23 MR. OXER: So the point of hearing comment on  
24 this, you would say there was a request for administrative  
25 deficiency, basically the challenge, you'll present some

1 information, and we'll say we either accept the report,  
2 bring us the appeal the next time, or go back and work on  
3 this and bring us some more information.

4 MS. HOLLOWAY: Uh-huh.

5 MR. OXER: Okay. So of those it appears there  
6 are at least nine, maybe ten that the process is underway.  
7 We'll start with the first one here. So Cynthia, knowing  
8 that this is a point of a review, the request for the  
9 comment on this for now would be what?

10 MR. IRVINE: Might I just interject? The  
11 purpose of receiving this testimony, in my belief, is for  
12 you to decide if there are just enough issues in  
13 controversy that you would like to have this re-presented  
14 in detail at the July 14 Board meeting.

15 MR. OXER: Is that how you see it?

16 MS. BAST: Mr. Oxer, that is how I see it for  
17 these in general. I have just one very specific question  
18 for item 16012. Cynthia Bast of Locke Lord, representing  
19 the requester.

20 After seeing the applicant's response to the  
21 administrative deficiency, the requester has submitted an  
22 open records request to the county and does not have that  
23 response yet, and so we just want to make sure that if  
24 additional material information is received that is  
25 meaningful to this analysis, that it can still be

1 presented and considered and that there's nothing that  
2 would foreclose that. That's all we want to ensure.

3 MR. OXER: I don't think that would be the  
4 case. I'll stand corrected if there is any correction to  
5 be made by the E-D or general counsel.

6 Marni, if they brought some more information,  
7 we always have, as the Board, the option to approve or  
8 deny an appeal.

9 MS. HOLLOWAY: Yes, absolutely. A couple of  
10 things. There is not a formal deadline for the third  
11 party request for deficiency. There is an advisory  
12 deadline, I guess we would call it.

13 MR. OXER: More like a warning?

14 MS. HOLLOWAY: Yes, in early June that we may  
15 or may not review requests received after that date, just  
16 as a matter of trying to work through the process. Of  
17 course, if we received material information regarding an  
18 application, that is something that we would discuss very  
19 carefully amongst us and bring to the Board.

20 DR. MUÑOZ: And maybe bring to the Board,  
21 maybe.

22 MS. HOLLOWAY: Maybe.

23 DR. MUÑOZ: As of right now, you're comfortable  
24 with the response you've received on this particular case.

25 MS. HOLLOWAY: As of today, yes, we are.

1 MS. BINGHAM ESCAREÑO: Mr. Chair, I have a  
2 question then. So is there anything that can happen right  
3 now in this agenda item right now that would be of concern  
4 to requesters or applicants that something would be  
5 resolved right now and that they would not continue to  
6 have the opportunity to press on either side?

7 MR. OXER: Does any opportunity foreclose or  
8 does it constitute any limitation on their appeal,  
9 anything that you're going to present today?

10 MS. HOLLOWAY: Not that I know of.

11 MR. OXER: Given that that's the case, I  
12 understand, we're trying to do something different, we're  
13 evolving our program, we're evolving this process, so  
14 we're evolving how we understand it and asking questions  
15 like we're supposed to do. That said, if nothing that we  
16 are going to do today would be more than ask you to get  
17 some more information, or based on this particular rule we  
18 need some more data points to make an informed decision,  
19 if that's the case and there's no foreclosure or  
20 limitation on what the applicants have as options as we go  
21 forward, just a question to everybody out there who raised  
22 their hands to comment on an item, does anybody here still  
23 want to say anything about any of these, knowing that  
24 there's going to be nothing that we'll do today that  
25 limits your options in future meetings? Got some winners

1 out there. Okay.

2 Did you have anything else you wanted to say on  
3 that item, Cynthia?

4 (Inaudible response.)

5 MR. OXER: I've got a recommendation to the  
6 Board as the Chair's direction of what we're going to do.  
7 Let's take a quick executive session break because I want  
8 to hear some guidance from general counsel and the E-D.  
9 It's going to take a few minutes to do this. We'll come  
10 back here, it's 10:04. And everybody knows there's a  
11 script we have to do. This has to be on the record for us  
12 to go formally into executive session.

13 The Governing Board of the Texas Department of  
14 Housing and Community Affairs will go into executive or  
15 closed session at this time. The Board may go into  
16 executive session pursuant to Texas Government Code  
17 551.074 for the purposes of discussing personnel matters,  
18 pursuant to Texas Government Code 551.071 to seek and  
19 receive the legal advice of its attorney, pursuant to  
20 Texas Government Code 551.072 to deliberate the possible  
21 purchase, sale, exchange or lease of real estate, and/or  
22 pursuant to Texas Government Code 2306.039(c) to discuss  
23 issues related to fraud, waste or abuse with the  
24 Department's internal auditor, fraud prevention  
25 coordinator or ethics advisor.

1           This closed session will be held in the  
2 anteroom of this room, JHR Hearing Room 140. The date is  
3 June 30, 2016, the time is 10:05. We'll be back in our  
4 chairs here at 10:30, that's 25 minutes, because we're  
5 going to take a break anyway and that gives us the chance  
6 to do the executive session and take a break and be back  
7 here at 10:30. Is that clear to everybody? See you at  
8 10:30.

9           (Whereupon, at 10:05 a.m., the meeting was  
10 recessed, to reconvene this same day, Thursday, June 30,  
11 2016, following conclusion of the executive session.)

12           MR. OXER: We'll be in order. The Board is now  
13 reconvened in open session at 10:38.

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

17           So we have an open item, item 4(e).

18           MS. HOLLOWAY: This will be item 4(g).

19           MR. OXER: Actually, 4(e) is open.

20           MS. HOLLOWAY: Oh, I'm sorry.

21           MR. OXER: That's all right. Just sit still,  
22 we'll get to you, trust me.

23           With respect to item 4(e), motion by Mr.  
24 Goodwin, second by Mr. Gann to approve staff  
25 recommendation on item 4(e). Is there any other request

1 for public comment? Is there any Board member that has a  
2 question?

3 (No response.)

4 MR. OXER: All right. With respect to item  
5 4(e), motion by Mr. Goodwin, second by Mr. Gann. Those in  
6 favor?

7 (A chorus of ayes.)

8 MR. OXER: And opposed?

9 (No response.)

10 MR. OXER: There are none. It's unanimous.

11 With respect to item 4(g), now you get to play,  
12 Marni. And I'm going to make a layman's attempt at  
13 summarizing what I think is going , at any rate. In our  
14 effort this year to use this process to replace the  
15 challenge process, this is the requests of third party  
16 administrative deficiency. Right?

17 MS. HOLLOWAY: Correct.

18 MR. OXER: Okay. For those items for which  
19 there are issues, we're going to go through each one of  
20 these, you can do a quick summary of each one of them. We  
21 know that there are questions regarding five of them, I've  
22 got those marked, we'll take those. But with respect to  
23 each one of the others, we'll just kind of mark through  
24 those, and then at the end we'll take our request for  
25 public comment on a number of these, I'll make the

1 suggestion or the request of the staff to explore these  
2 some more and gather some more information.

3 I think we've heard comment on application  
4 16012 and you've made a summary of it.

5 MS. HOLLOWAY: Yes.

6 MR. OXER: Why don't we run through them one at  
7 a time in order, as they are here, knowing we'll take the  
8 four that remain that have requests for comment which is  
9 16057, 16117, 16118 and 16380. 16387 we're going to  
10 return as an appeal that Toni mentioned.

11 MS. HOLLOWAY: Yes.

12 MR. OXER: So that one is essentially taken  
13 care of but you'll identify the information, the point of  
14 question or the point of challenge on it.

15 MS. BINGHAM ESCAREÑO: Mr. Chair, thank you.  
16 Was there anybody for 16026?

17 MR. OXER: Nobody raised their hand.

18 MS. BINGHAM ESCAREÑO: Okay, very good.

19 MR. OXER: Particularly for 16057 and those I  
20 just listed, there will be issues.

21 MS. HOLLOWAY: Move those to the end?

22 MR. OXER: We're going to move those to the end  
23 and we'll hear your comments on those one at a time as we  
24 get those in. So we've dealt with 16012. Let's go to  
25 16026, what was the issue? Are you summaries like 30 to

1 60 seconds on each one of them?

2 MS. HOLLOWAY: I can do them very quickly.

3 Application number 16026, Laguna Hotel Lofts.

4 The request actually falls into three categories.

5 MR. OXER: And to make just an advice of the  
6 Board here, our intent is not to limit anybody's  
7 opportunity to speak, we're trying to be efficient with  
8 everybody's time here if these issues have been dealt  
9 with. All I want is a summary of the issue that was dealt  
10 with and what the nature of the appeal was. Okay? And if  
11 any of the Board members have other interests, we can  
12 certainly add to that. All right, you're on, number  
13 16026.

14 MS. HOLLOWAY: 16026, Laguna Hotel Lofts. This  
15 request actually falls into three categories. One of them  
16 on mandatory development requirements questioned parking  
17 that was available on site and also questioned accessible  
18 units. Staff has issued an administrative deficiency  
19 regarding the parking. The applicant responded and staff  
20 has closed that item.

21 The next issue was on development cost  
22 schedule. Those items will be addressed during the  
23 underwriting process by the Real Estate Analysis Division,  
24 so staff has determined that those issues should not be  
25 part of an administrative deficiency at this time. REA

1 may issue a deficiency as they work through the  
2 development cost and market analysis questions.

3           There was a question regarding undesirable site  
4 and neighborhood characteristics, and the requester  
5 suggested that there was blight in the neighborhood.  
6 Staff performed a site inspection, went to Cisco and  
7 looked at the site, and determined that the area  
8 surrounding the proposed development is not blighted.  
9 Staff has reviewed the request, response and site  
10 inspection results and determined that this matter has  
11 been resolved.

12           Application 16029, Baxter Lofts. You'll  
13 remember this is the item that you've addressed in past  
14 Board meetings regarding the early college high school in  
15 Harlingen. The applicant had appealed, the Board denied  
16 their appeal, this matter is now closed.

17           16057 is one that we're going to take to the  
18 end.

19           16071 Bluff View Senior Village. The requester  
20 questioned whether the site design and development  
21 feasibility report contains sufficient information  
22 regarding fire protection and asked us to independently  
23 verify the applicant's market analysis. The information  
24 included with the request didn't provide confirmable  
25 evidence that allowed staff to determine whether an

1 administrative deficiency request is substantiated, and  
2 did not point to a misapplication or violation of a rule.

3 The market analysis review will be performed by the Real  
4 Estate Analysis Division during the underwriting process,  
5 and any deficiencies related to that market analysis will  
6 be addressed at that time.

7 16117 is one that we're taking to the end;  
8 16118 is also going to the end.

9 16161 Elysium Park. The request asked the  
10 Department to investigate whether a letter of support from  
11 a nonprofit could count for points under input from  
12 community organizations. Because this was not a priority  
13 application, staff did not address this request.

14 16164, Saralita Senior Village. The request  
15 asked the Department to review the proposed acquisition  
16 price for the land for the development. Apparently  
17 there's a purchase agreement for a larger property that is  
18 tied to the proposed development site. The request also  
19 asked the Department to review financial support from the  
20 lender and whether the applicant had stated that they  
21 would conform to requirements of the Davis-Bacon Labor  
22 Standards for the direct loan funds.

23 Regarding the acquisition price, review of this  
24 issue will be performed by the Real Estate Analysis  
25 Division during formal underwriting of the application.

1 If there is a deficiency there, that will be issued by  
2 REA.

3           Regarding the presence in the application of an  
4 operating pro forma from the lender, we did find that  
5 document in the application form. And we did issue a  
6 notice of administrative deficiency regarding the form  
7 certification for Davis-Bacon Labor Standards. In  
8 response to that notice, the applicant provided a revised  
9 form indicating that they would, in fact, comply with  
10 those requirements. Staff is considering that matter  
11 closed.

12           16169, Havens of Hutt. The requester  
13 questioned whether the application qualified for a point  
14 under proximity to important services, claiming that  
15 neither the Hutto Westphalia Market nor the H.E.B. grocery  
16 store listed in the application meets the Department's  
17 definition of a grocery store. Staff issued an  
18 administrative deficiency on this item. The applicant  
19 conceded that the H.E.B. does not qualify at this point  
20 because construction of that grocery store has not  
21 proceeded to the point that it qualifies under our rule,  
22 but did provide a good deal of information regarding the  
23 Westphalia Market, the items that they carry within that  
24 store. Staff went to Hutto to verify and has determined  
25 that it is eligible as a full service grocery store, and

1 we're considering he matter resolved.

2 16263, Starlight. The question is whether the  
3 application meets the requirements under 11.3(b) regarding  
4 twice the state average per capita. The request provides  
5 evidence of annexations by the City of Edinburgh in  
6 December 2013 and March 2015 and they included portions of  
7 the Murillo census designated place. The requester  
8 claimed that those annexations and the resulting loss of  
9 population by the Murillo CDP raises a per capita count of  
10 units to more than twice the state average.

11 In examining this issue and looking at the  
12 rule, it says that the proposed development is located in  
13 a municipality, or if located completely outside a  
14 municipality, a county. If those areas have more than  
15 twice the state average per capita of units, then  
16 resolutions are required by either the municipality or the  
17 county. This particular rule does not recognize census  
18 designated place in any way.

19 Because the development site is located in  
20 Hidalgo County, the resolution regarding twice the average  
21 per capita is not required, and staff is considering this  
22 matter closed.

23 16292, Avant Canyon. The requester questioned  
24 whether the application identified the minimum six  
25 community assets within one mile of the development site.

1 Staff reviewed the application and determined that a  
2 minimum number of community assets are valid and the issue  
3 should not be the subject of a deficiency, and we are  
4 considering that matter closed.

5 16373, Avondale Farms. Questioned whether the  
6 application meets the requirements under 11.9(e)(3)  
7 regarding pre-application participation because the  
8 application changed from elderly limitation at pre-  
9 application to elderly preference at full application.  
10 The pre-application points require that the proposed  
11 development serve the same target population from pre-app  
12 to full app. When looking at the definition of target  
13 population, it says the designation of types of housing  
14 populations shall include elderly developments and those  
15 that are entirely supportive housing. All others will be  
16 considered to serve general populations without regard to  
17 any sub-population. The definition of elderly development  
18 includes both elderly limitation and elderly preference,  
19 so the operative there is elderly.

20 Staff has made a determination that this should  
21 not be the subject of an administrative deficiency, and  
22 we're considering the matter closed.

23 That's all the quick ones. Are there any  
24 questions at all? I kind of ran through them.

25 MR. OXER: And I would point out to put onto

1 the record, this is in an effort to make essentially the  
2 former challenge process, which is now the request for  
3 administrative deficiency, as transparent as possible, and  
4 to give some indication to those who are making those  
5 requests that that information has been evaluated by the  
6 staff and heard by the Board.

7 MS. HOLLOWAY: Evaluated by staff and  
8 absolutely discussed internally, thoroughly vetted, and of  
9 course, as I mentioned earlier, all of that information is  
10 included in the application that's posted online.

11 MR. OXER: Now, one of the other collateral  
12 benefits that accrues from doing it in this fashion, it  
13 gives us an opportunity to identify further quirks. We've  
14 been stomping out those little critters for a couple of  
15 years now, but there are always those, and issues where  
16 the QAP is unclear or requires more specificity to make it  
17 clear to applicants which side of the line they come down  
18 on on those.

19 So from my count, we've got four of these  
20 applications: 16057, 16118, 16117, and 16380. Anybody  
21 else got anything they want?

22 (No response.)

23 MR. OXER: Let's go through this one at a time.  
24 Let's go do Silverleaf at Mason. Everybody who wants to  
25 speak on these four items, get up here in the first two

1 rows on our left.

2 Get started on that one, Marni, while they're  
3 coming up. Those of you who are speaking on 16057, get in  
4 the first row.

5 MS. HOLLOWAY: Application 16057, Silverleaf at  
6 Mason. The requester questioned whether the primary  
7 market area included in the market analysis reports  
8 accurately the draw demand for the proposed project. The  
9 information provided with the request does not allow staff  
10 to determine whether an administrative deficiency request  
11 is substantiated, and did not point to a misapplication or  
12 violation of a rule. The market analysis review will be  
13 performed by Real Estate Analysis upon the formal  
14 underwriting of the application. Administrative  
15 deficiencies related to the market analysis may be  
16 generated by REA during that process.

17 MR. OXER: So from our standpoint, from the  
18 agency's standpoint, this is just processing through and  
19 there's going to be another sieve it has to get through.

20 MS. HOLLOWAY: Yes.

21 MR. OXER: Were this to be the case, were the  
22 challenger to be accurate in their request, it would get  
23 caught at a later date down the process.

24 MS. HOLLOWAY: Yes, it would.

25 MR. OXER: Okay. All right. With regard to

1 this item, application 16057, do you have a request to  
2 speak? I remind everybody we're on a short clock, we'll  
3 do three minutes.

4 MR. KROCHTENGEL: My name is Zachary  
5 Krochtengel from State Street Housing.

6 And the first question I would have is actually  
7 something that might be resolved by Marni or Brent. If it  
8 goes through REA and there is no deficiency from REA, do  
9 we still have the right to ask for a deficiency and to  
10 have our case be heard after the Real Estate Analysis  
11 Division is done with their analysis?

12 MS. HOLLOWAY: I would imagine that the next  
13 opportunity to address a question with this application,  
14 if it makes it through the process, would be at the late  
15 July meeting when we're coming forward with awards.

16 MR. OXER: Does that answer your question?

17 MR. KROCHTENGEL: I'm not sure if it does or  
18 not, but we could bring it up.

19 MR. OXER: I would reiterate for everybody that  
20 what we're doing today is informing in an abundance of  
21 effort to provide transparency to the process we're using  
22 to go through since it's at least modestly modified this  
23 year. In an abundance of effort to provide that  
24 transparency, we're doing this as a report item, and I  
25 would reiterate, nothing we're doing today limits your

1 option to come forward as an applicant to appeal.

2 Tim, have you got a comment?

3 MR. IRVINE: They don't have a right to appeal.

4 I would say as the underwriting reports are posted, if  
5 anybody wants to make public comment on an item that pulls  
6 that in by reference, you can certainly always make public  
7 comment. I think if the Board has questions about the  
8 correctness of the underwriting, you can always ask  
9 questions. So I would say that would be really the only  
10 process that would be left in that regard.

11 MR. OXER: We'd point out this creates no new  
12 rights of appeal, no new rights to challenge, no new  
13 rights of appeal.

14 MR. KROCHTENGEL: So then we would like to  
15 bring it to the next Board meeting.

16 MR. OXER: Okay. And the issue you wish to  
17 bring?

18 MR. KROCHTENGEL: We would like to challenge  
19 that our deficiency is a valid deficiency and that we do  
20 have information that would lead to a deficiency in their  
21 market study.

22 MR. OXER: Okay. So that's the market study  
23 and the products of the real estate analysis. Is that  
24 right, Marni? Brent, up or down? Okay. I gather that's  
25 when things come along. Can you tell me? Explore this a

1 bit.

2 MR. ECCLES: Let me just ask for purposes of  
3 the process, what was the substance that you've already  
4 brought forward and what was the evidence and documents  
5 that you brought forward in your initial request for  
6 administrative deficiency.

7 MR. KROCHTENGEL: Absolutely. I'll just give  
8 you a brief overview. I'm not a market study expert. We  
9 would bring in a third party market study expert to do a  
10 formal review, however, looking at their application,  
11 their primary market area is 2,900 square miles and  
12 stretches 57 miles away from their site. They had to take  
13 in three different counties and their demand from three  
14 different counties to create the correct demand for these  
15 units.

16 The way that I would kind of describe it is  
17 almost as a gerrymandering by pulling in as much demand as  
18 possible until you get to the correct underwriting for the  
19 amount of units. If you were to only use the county that  
20 they're in, and their site is pretty close to the middle  
21 of the county and there's 24 miles to the county border  
22 from their site, the demand does not meet for the  
23 application that they put in. They brought in Brady, they  
24 brought in Mason County, McCulloch County, and Menard  
25 County. Had they only used Mason County where their

1 project is, the demand would have been 12.5 percent which  
2 is well over the 10 percent threshold and the Mason County  
3 population is only 4,000 people in the entire county.

4 So we brought forth that information, using a  
5 third party market study to show how a correct PMA would  
6 have been drawn for this application and challenged that,  
7 and that's why we feel that we have a valid deficiency  
8 challenge.

9 MR. OXER: That would essentially come out in  
10 the real estate analysis. Is that correct?

11 MR. KROCHTENGEL: Which is why I was asking if  
12 we still are reserving our right to challenge.

13 MR. OXER: Very valid point. That's why I'm  
14 trying to be clear on it.

15 MR. IRVINE: And Brent is the guru on this, but  
16 my layman's take is that REA always looks at the  
17 reasonableness and the appropriateness of these types of  
18 things, and I don't really view it as per se an  
19 administrative deficiency. It's simply a bunch of  
20 relevant information that are factors that the pros  
21 consider.

22 MR. OXER: A lot of this, as these applications  
23 go through this process, they'll get sieved out, and  
24 you're anticipating, based on information that you have it  
25 making it through a sieve that it hasn't reached yet.

1                   MR. KROCHTENGEL: The issue we have is that the  
2 QAP has a certain challenge period and if that challenge  
3 period weren't extended beyond -- I know that the Real  
4 Estate Analysis Division is busy, they're going to keep  
5 doing this, and if we don't have any recourse after the  
6 Real Estate Analysis Division, because I don't know what  
7 Brent is going to do, I assume that he does the right  
8 thing, but if we have a disagreement with Brent, I just  
9 want to have that reserved right.

10                   MR. OXER: It's on the record now, it's on the  
11 record now.

12                   Brent, get up here.

13                   MR. STEWART: Brent Stewart, Real Estate  
14 Analysis.

15                   A couple of points. One is the administrative  
16 deficiency process says that you point to something in the  
17 application that is of error, doesn't meet some rule,  
18 what-have-you. A market study is a third party market  
19 analyst's opinion about what the market should be, what  
20 the market area should be, the analysis supporting the  
21 deal pursuant to the Real Estate Analysis rules. It's  
22 very difficult for there to be an administrative  
23 deficiency in that process because it's an opinion. Now,  
24 if they have calculated something incorrectly or they have  
25 specifically done something against the rule, that part

1 would be an administrative deficiency, a request for  
2 administrative deficiency that we would deal with.

3 REA has an ability when we review market  
4 studies, we review all kinds of market information,  
5 including market information that we go get independently  
6 of the market study. The REA rules specifically says that  
7 we're able to do that and that that's the information that  
8 we will use in our analysis. So we do take in a lot of  
9 information regardless of whether it's in the market study  
10 or not, but it's not an administrative deficiency.

11 MR. OXER: So essentially -- this is going to  
12 be a cold review of your point here, Zachary, but bear  
13 with me for a second. Okay?

14 What you're saying is the market assessment is  
15 an opinion, staff generates an opinion, and Zachary has  
16 got an opinion.

17 MR. STEWART: That's correct.

18 MR. OXER: Okay. But we get to say who we're  
19 going to live with.

20 MR. STEWART: The REA is going to say who we  
21 live with, and another applicant cannot appeal an REA  
22 report. That's also stated in the rules. If they bring  
23 to you their opinion and convince you that it's different  
24 or that their opinion should be used, that's up to you.  
25 Does that make sense?

1 MR. OXER: Yes, makes sense.

2 All right. I know you want to finalize. I'll  
3 give you 30 seconds to finish up if you've got anything  
4 else you want to say, Zachary.

5 MR. KROCHTENGEL: I guess that we would  
6 probably like to think it over for the next two weeks and  
7 have the possibility of bringing our opinion to you in two  
8 weeks.

9 MR. OXER: I believe that's certainly -- or is  
10 it? What's the story here?

11 MR. ECCLES: I don't think that that's a  
12 problem, but I think that we're using different terms to  
13 describe what has always existed, and that is what you  
14 would essentially be bringing is a third party opinion  
15 that you have procured that might disagree with what comes  
16 from Brent's shop and already exists in the application,  
17 but REA is going to do its analysis. You don't have any  
18 appeal right either of REA's analysis or a special new  
19 appellate right that comes off of Section 11.10 of the  
20 QAP, it's just that next week, if REA is done with its  
21 analysis, or perhaps even before, you could bring before  
22 the Board: Here is a different market analysis for  
23 consideration. That doesn't mean that there's going to be  
24 an action item to accept one market study or another  
25 because that's not an appealable thing. As long as you

1 understand that that's the process that's going. It's  
2 essentially another instance where you can provide public  
3 comment that will include some things that you're bringing  
4 forward, but you don't have any right of appeal of a  
5 market analysis.

6 MR. KROCHTENGEL: Okay. Thank you.

7 DR. MUÑOZ: So Beau, we would listen to that  
8 content for the purpose of listening?

9 MR. IRVINE: I think that REA is aware of the  
10 issue, it's one among a zillion factors that they'll think  
11 about as they go through their analysis, they will form  
12 their conclusions and those are the conclusions that the  
13 Board will act upon. That will be the record that  
14 supports how you deal with whether this deal is  
15 financially feasible.

16 DR. MUÑOZ: And so Tim, just for my clarity, we  
17 hear that report.

18 MR. IRVINE: They're posted online and they're  
19 available all the time.

20 DR. MUÑOZ: And someone would then say here's  
21 additional information that can't bear on?

22 MR. OXER: It's not that it can't bear. To be  
23 clear, as a member of the public, Zachary, you have the  
24 right to present information that you think we should  
25 consider. You opinion that we should consider does not

1       constitute a writ of mandamus that we include it, but we  
2       have the option to do that. Okay? If it's compelling  
3       evidence, we certainly could consider that.

4               I have to tell you we're fairly strong on REA,  
5       as you might guess, but your point is made. I wouldn't  
6       suggest to offer guidance, but maybe a few intimate  
7       conversations with Brent might be in order.

8               MR. IRVINE: And I would say that the way that  
9       this particular item is framed, there really isn't  
10       anything to bring back to this Board by way of a more in-  
11       depth report. REA generates its underwriting report and  
12       that's the only issue that's out there.

13              MR. OXER: We have our real estate group so  
14       that's who we have to deal with.

15              MR. KROCHTENGEL: Absolutely.

16              MR. OXER: We appreciate your comments.

17              MR. KROCHTENGEL: Thank you.

18              MR. OXER: Mike, do you have a comment you want  
19       to make on this one?

20              MR. SUGRUE: Mike Sugrue, Stoneleaf Companies.  
21              Since it's my deal, we are working with REA to  
22       straighten this out and the numbers are going to be what  
23       the numbers are.

24              MR. OXER: It's either going to work or not.

25              MR. SUGRUE: Exactly. And as I've told my

1 market analyst, I don't ever want to do a deal I have to  
2 feed, it has to be economically feasible, so we're working  
3 down the right path also. I don't want anyone to think  
4 that we're not doing our job.

5 MR. OXER: This is an interpretation of the  
6 situation out there which I like opinions. I could tell  
7 you a really off-color joke about everybody's got one and  
8 nobody wants anybody else's either.

9 MR. SUGRUE: Exactly.

10 MR. OXER: Thanks for your comments, Mike.  
11 Mike, you've got to sign in.

12 Okay. Does that cover that one? Marni, let's  
13 go to the next one, 16117. Who's going to speak on this  
14 one?

15 MS. HOLLOWAY: If I may sort of join in the  
16 fray a little bit before we go on to the next one.

17 MR. OXER: Gee, why not?

18 (General laughter.)

19 MS. HOLLOWAY: Why not.

20 The third party request for administrative  
21 deficiency is an opportunity for people or entities to  
22 bring new information into the mix. It is not designed to  
23 create an opportunity to comment on our scoring process,  
24 to have that discussion. That's the reason that it  
25 exists. As Brent mentioned, other applicants do not have

1 appeal rights for applications, and there's also a section  
2 on the rule regarding applicant eligibility that's about  
3 fomenting opposition to other applications, and there is  
4 the possibility that if someone goes too far with this  
5 that we're going to be having a conversation about is this  
6 person creating opposition to this application. So I just  
7 wanted to make those points as we're moving forward.

8 MR. OXER: I think it bears restating that this  
9 is a new approach to this aspect of the round of this  
10 process and we're trying to make sure we get our stance on  
11 it proper and we're taking the right approach in making  
12 that deliberation as open and transparent as possible.

13 All right, 117.

14 MS. HOLLOWAY: Okay. 117, Indian Lake  
15 Apartment Homes. The requester questioned whether the  
16 applicant had failed to properly notify all required  
17 individuals which would render the application ineligible  
18 for pre-application participation points. Staff reviewed  
19 the request and issued an administrative deficiency to the  
20 applicant. The applicant submitted a fully processed  
21 certified mail receipt indicating that notifications were  
22 delivered. Staff has reviewed the response provided and  
23 determined that the matter was resolved.

24 MR. OXER: Until it's resolved, but I gather  
25 you don't think it's been resolved.

1 MR. HARTMAN: Mr. Chairman, members of the  
2 Board, Michael Hartman from Roundstone Development.

3 I think more than anything else I'd like to  
4 bring to you the potential ramifications of the resolution  
5 of this matter. Based upon the way this was resolved, if  
6 I file an application next year in Dallas, now the rules  
7 say I have to notify the city council, that's 15 members,  
8 the county commission is five members, the ISD is ten  
9 members, but based upon --

10 MR. OXER: A lot of stamps. Huh?

11 MR. HARTMAN: -- based upon what has been  
12 determined, I don't have to notify all 30 of them anymore.

13 I can send one letter to the mayor of Dallas, ask the  
14 mayor to distribute it to all the other city council  
15 members and if I get a letter back saying that he or she  
16 has done that, I'm done, I've met my notification  
17 requirements. Same thing for the ISD, same thing for the  
18 county commission. So instead of sending out 30  
19 notifications, I'm sending out three because that's what  
20 was ruled on here, that the only person, according to what  
21 was sent back from the deficiency, the only person that  
22 they actually showed a mail receipt from was the mayor,  
23 along with a letter addressed to the mayor, sent with the  
24 notification saying that mayor, please distribute this to  
25 all the other city council members, and the mayor sent

1 back a letter saying yes, I confirm that I distributed  
2 this to all the other city council members. So there were  
3 no receipts showing that the individual city council  
4 members acknowledged getting it but that the mayor had  
5 distributed it.

6 So I just want you to understand that that's  
7 the new standard that we have for public notification now.  
8 That's all.

9 MR. OXER: Okay. Point made, Michael.

10 Any questions from the Board?

11 (No response.)

12 MR. OXER: Marni, did you have a follow up on  
13 that?

14 MS. HOLLOWAY: No.

15 MR. OXER: Okay. And what's you're saying is,  
16 Michael, do you feel like that needs a clarification in  
17 the QAP?

18 MR. HARTMAN: I think it does, because I would  
19 say if you took a survey around this room, other than the  
20 one person that did it that way, I'll bet you everybody  
21 else would have sent out 30, everybody. Thank you.

22 MR. OXER: Well, it sounds like something we  
23 might put in next year's QAP, if nothing else. And that's  
24 part of the benefit of doing this to see where those edges  
25 are.

1 MS. HOLLOWAY: Absolutely.

2 MR. OXER: All right, 118.

3 MS. HOLLOWAY: 118, The Standard on the Creek.

4 We actually have two groups of requests regarding this  
5 application. I would suggest that we take first the one  
6 regarding the lender letter and then we can move on to the  
7 other group of requests.

8 MR. OXER: Okay. You folks in the front,  
9 there's two items on this application. Everybody that  
10 wants to speak on this item, get up here. Don't be shy,  
11 get in the front row.

12 Okay. Go for it, Marni.

13 MS. HOLLOWAY: Application 16118, The Standard  
14 on the Creek. Two requesters asked the Department to  
15 review its scoring of the application under 11.9(e)(1),  
16 financial feasibility, specifically, that the applicant  
17 did not submit a lender approval letter on its letterhead  
18 containing the required language necessary to be eligible  
19 for either 16 or 18 points, nor was such language  
20 incorporated in a lender term sheet. The request  
21 questioned whether this missing information should be  
22 curable through an administrative deficiency.

23 The request refers to language from 11.9(e)(1)  
24 of the QAP which states: "Due to the highly competitive  
25 nature of the program, applicants that elect points where

1 supporting documentation is required but fail to provide  
2 any supporting documentation will not be allowed to cure  
3 the issue through an administrative deficiency."

4 The application included a lender letter  
5 without the template language. The language in question  
6 is not required to be in a separate letter, so that since  
7 the application had included a letter, it is within the  
8 administrative deficiency rules for staff to request a  
9 clarification. Staff issued an administrative deficiency  
10 and requested that clarification and the applicant cured  
11 the deficiency to the satisfaction of the rule by  
12 providing that language.

13 Clarification of application documents provided  
14 by third parties is fairly common in the review process,  
15 we do it with scoring items, we do it with threshold  
16 items. I would bet everybody here in the room has  
17 received one.

18 MR. OXER: Been down that road at least once.

19 MS. HOLLOWAY: Right. So long as the document  
20 is included with the application, staff has held that it  
21 can be corrected. Completely missing documents are  
22 considered to be material deficiencies that cannot be  
23 cured. Further, the letter and pro forma submitted with  
24 the application meets the requirement in statute for  
25 financial feasibility, and staff has considered this

1 matter closed with receipt of the response to the  
2 administrative deficiency.

3 MR. OXER: Okay. Who on the row wants to speak  
4 to this part of that application? Donna.

5 MS. RICKENBACKER: Good afternoon. Donna  
6 Rickenbacker with Marquis.

7 I'm one of the two challengers, if you will,  
8 that submitted a third party administrative challenge with  
9 respect to the financial feasibility scoring category and  
10 the way staff evaluated the documentation submitted with  
11 that application to support that scoring category. We did  
12 receive a determination from staff, we received it on  
13 Monday in connection with a challenge that we submitted on  
14 May 3. That determination basically implied that we  
15 didn't really have a right under our current third party  
16 administrative provisions this year to have submitted a  
17 challenge on the way that the staff was evaluating an  
18 application. I mean, I know this is a new process this  
19 year, but I don't suspect that the intent was to squash a  
20 challenger's opportunity to question the way an  
21 application was being challenged.

22 Additionally, with respect to the documentation  
23 that was submitted at application, it did not include the  
24 necessary information to support this scoring category,  
25 and that was the intent and the grounds by which we

1 submitted that challenge. I do believe that there are  
2 some issues here that the Board really does need to take a  
3 closer look at and determine for yourselves whether or not  
4 that documentation was submitted, so I just respectfully  
5 request that you do so at your July meeting.

6 MR. OXER: Any questions from the Board?

7 (No response.)

8 MR. OXER: So your point is that Marni says  
9 that the document is included but the information is not  
10 there, you can repair that through an administrative  
11 deficiency, but if the documentation is completely  
12 missing, that's a material deficiency that cannot be  
13 cured.

14 MS. RICKENBACKER: It's a deficiency that  
15 cannot be cured under our rules. Yes, sir.

16 MR. OXER: Right. So you're saying that there  
17 wasn't a document.

18 MS. RICKENBACKER: Yes, sir. Correct. The  
19 necessary documentation to support that scoring category  
20 was not included in the application.

21 MR. OXER: Okay. Thanks for your thoughts on  
22 that.

23 MS. RICKENBACKER: Thank you.

24 MR. OXER: And I'll remind everybody to make  
25 sure you sign in just so we can keep track of the bullet

1 holes.

2 Did you want to speak to this component of this  
3 challenge, the lender letter. We're taking those a piece  
4 at a time.

5 Sarah, did you want to talk to that?

6 MS. ANDRE: Yes.

7 MR. OXER: You know enough not to be shy. Get  
8 up there in the front row where you're supposed to be.

9 (General laughter.)

10 MS. ANDRE: I didn't think I was going to have  
11 to speak to this. My name is Sarah Andre, and I'm a  
12 consultant on this project.

13 I'd just like to say that with regard to the  
14 lender letter, I fully support the staff's decision on  
15 this. I did not bother to go through the 200 applications  
16 I've dealt with in the past to see how many times this  
17 exact issue has come up. This is very clearly a  
18 deficiency item. A letter was submitted by the lender,  
19 it's a lender who has submitted numerous letters through  
20 this program many times, I am certain, and there was one  
21 sentence that was not in the letter. It's very clearly a  
22 deficiency item. It was cured immediately and this exact  
23 type of thing has been cured through the deficiency  
24 process for years at this point.

25 So I would just encourage you to think about

1 that if you want to bring this kind of item to the level  
2 of a challengeable item. I just don't think it is one.

3 MR. OXER: Okay. Good point. Thanks for your  
4 comments.

5 Marni, next component of that application.

6 MS. HOLLOWAY: Okay. So the next set of  
7 questions on this application, 16118, The Standard on the  
8 Creek, didn't really come in as a formal third party  
9 request for administrative deficiency. We have received  
10 correspondence from State Representative Harold Dutton,  
11 and also from a number of community members. In order  
12 that we had sort of a structure around reviewing these  
13 items and asking the developer to respond, we've chosen to  
14 treat these as requests for administrative deficiency.

15 So staff has received two injuries raising  
16 issues about whether application 16118 is ineligible under  
17 10 TAC 10.202(1)(k) because of material misstatements or  
18 omissions in connection with the application. This is an  
19 eligibility question that's been raised. One of the  
20 inquiries came in the form of several letters from State  
21 Representative Harold Dutton which are included in your  
22 Board book. The second inquiry came from a group of  
23 persons living near the proposed development.

24 Since the issues from both Chairman Dutton and  
25 the individuals in the Fall Creek neighborhood overlap and

1 reference each other, they've been considered together.  
2 For purposes of this discussion, though, I think it makes  
3 sense to separate them out just a bit. I believe that we  
4 have a staff member from Representative Dutton's office  
5 here who would like to address the Board, so we can take  
6 care of that.

7 State Representative Dutton asked the  
8 Department to review whether the points awarded to the  
9 application based on a letter of support that he provided  
10 should be withdrawn due to what the chairman describes as  
11 fraud and material misrepresentations engaged in by the  
12 applicant and whether such misrepresentations should  
13 render the applicant ineligible under 10.202. The  
14 chairman asserts that the letter he provided that allowed  
15 the application to qualify for eight points under  
16 community support from a state representative was induced  
17 by the applicant's material misrepresentations as to the  
18 applicant's policy on ex-felons and the declarations that  
19 the residents of Fall Creek were in full support of this  
20 project. As indicated in Chairman Dutton's letter of June  
21 3, these were the two issues on which he predicated his  
22 support of the application.

23 There's a great deal of information in your  
24 Board book about this question going back and forth. When  
25 we sent Chairman Dutton's letters to the applicant, they

1 have confirmed that they will consider ex-felons on a  
2 case-by-case basis, so they will perform background checks  
3 but they will consider on a case-by-case basis, and  
4 accordingly, we have determined that there was no  
5 misrepresentation on that issue.

6 On the second point, while it's clear that  
7 there are a number of people who live near the development  
8 site who are currently opposed to this construction --  
9 you'll remember that a group addressed you previously --  
10 we have not been able to find evidence that the applicant  
11 knew of that lack of support prior to his conversation  
12 with Chairman Dutton. These are really questions about  
13 who said what and it's been very, very difficult for staff  
14 to come to a conclusion. We're not finding the evidence  
15 that says this is what actually happened. Because we have  
16 not been able to come to that conclusion, in fact, on this  
17 question it winds up going by default to the developer.

18 Do we want to stop with that one and then take  
19 on the next one, or do we want to go all the way through  
20 and then talk about both of them?

21 MR. OXER: And who's here from Representative  
22 Dutton's office?

23 MS. HOLLOWAY: There's a representative.

24 MR. OXER: And we're happy to have you, by the  
25 way.

1 MS. DAVIS-WILLIAMS: My name is Helen Davis-  
2 Williams. I'm with the office of Representative Dutton.  
3 This is a letter to Executive Director Timothy Irvine from  
4 my boss, Representative Harold V. Dutton, Jr.

5 "Dear Mr. Irvine, I have communicated with you  
6 in writing and in person opposing The Standard on the  
7 Creek application and gave you specific examples of  
8 deception, fraudulent misrepresentations committed by the  
9 applicant to secure my letter of support. I felt  
10 reasonably assured on several occasions that my letter  
11 would be withdrawn and associated points deducted from  
12 this application. I received a letter from your staff  
13 last night that you have concluded otherwise and intend to  
14 allow my letter of support to stand in spite of assurances  
15 to the contrary.

16 "I am terribly disappointed by your actions. I  
17 strongly believe that this applicant violated the rules by  
18 committing a fraud and my letter of support should be  
19 withdrawn. It has also come to my attention that the Fall  
20 Creek neighborhood brought similar concerns to your  
21 attention. We cannot allow applicants to say whatever is  
22 expedient to his or her audience to get what they want,  
23 including making knowingly false statements to elected  
24 officials, neighborhood organizations and MUD boards.  
25 This type of behavior undermines the program and your

1 leadership and should not be allowed.

2 "I also want you to explain staff's position on  
3 the following matters that relate to specific errors and  
4 omissions in The Standard application and in the manner in  
5 which these items were evaluated by your staff. The first  
6 deals with the financial feasibility of the project and  
7 one that I asked that you address in prior written  
8 communication. The second deals with information obtained  
9 by the neighborhood through an open records request to  
10 TDHCA.

11 "1. Financial Feasibility. The Department  
12 received two separate letters challenging points claimed  
13 by the applicant under the financial feasibility scoring  
14 category, each of which recognizes that the applicant  
15 failed to provide specific documentation in its  
16 application to qualify for these 18 points.

17 "One of the challenges makes the Department  
18 aware of the fact your staff allowed the applicant to  
19 supplement its application and submit the required  
20 financial feasibility information after the applicable  
21 deadline and took exception to this rule violation by  
22 pointing out in bold that submission of documentation to  
23 support scoring criteria after the application submission  
24 deadline is explicitly not allowed under Section 11.9(a)  
25 of the QAP.

1            "If the rules do not allow an applicant to  
2 supplement their application with point-based scoring  
3 information through the administrative deficiency process,  
4 then this applicant should not be given any special  
5 privileges by the Department to do so, and I request that  
6 you re-evaluate these claims and make the necessary  
7 scoring adjustments.

8            "2. Insufficiency payment of application fee.  
9 The Fall Creek community learned through an open records  
10 request to TDHCA that the applicant failed to pay the  
11 required application fee in a timely manner and then when  
12 they were made aware of the error, submitted the missing  
13 fee with a check that was back dated so that it  
14 corresponded with the application submission deadline. It  
15 is my understanding that the rules specifically state that  
16 the full amount of the required application fee must  
17 accompany the application, and if this was not done, which  
18 it appears that it was not, then The Standard application  
19 should have been terminated. The documentation provided  
20 to the neighborhood also shows that your staff recommended  
21 that the application be terminated based on the fee error.

22            Your staff went on to say that the consultant of the  
23 applicant made similar mistakes with other applications.  
24 Why did this termination not take place and what is the  
25 status of the other applications where this similar error

1 occurred?

2 "I am very disappointed to learn about the  
3 matters set forth in this letter. Staff should strictly  
4 interpret and implement the rules that apply to the tax  
5 credit program in a transparent and impartial manner. If  
6 The Standard applicant did not provide the documentation  
7 necessary to support the financial feasibility scoring  
8 category in its application then it should not be eligible  
9 for the 18 points claimed, and if this applicant did not  
10 pay the full amount of the required fee in a timely  
11 manner, then its application should be terminated.

12 "I intend to have my staff read this letter  
13 into the record at the Board meeting of June 30, 2016. I  
14 respectfully request that you review the matters raised in  
15 this letter and explain why TDHCA has chosen to approve  
16 what I believe is a seriously flawed application.

17 "Best Regards, Harold V. Dutton, Jr."

18 CC is to Honorable J. Paul Ozer, PE, Chairman,  
19 via email, and to the TDHCA Board members, the Honorable  
20 Joe Straus, Texas House Speaker, Honorable Carol Alvarado,  
21 and the Fall Creek HOA.

22 And if you have any questions, you are to refer  
23 them to Representative Harold V. Dutton, Jr.

24 MR. OXER: Well, please tell the chairman we  
25 appreciate his best regards, and I think it's fair to say

1 we'd like to get a little more information on this  
2 particular issue.

3 MS. DAVIS-WILLIAMS: Any questions, Ms.  
4 Bingham?

5 MS. BINGHAM ESCAREÑO: Just a question for  
6 staff. So Marni started this by saying that staff  
7 categorized this or recognized this as a third party  
8 request for administrative deficiency. Is that correct?

9 MS. HOLLOWAY: Correct.

10 MS. BINGHAM ESCAREÑO: Okay. That's it.

11 MR. OXER: And while we're not going to make a  
12 decision on this today, obviously there's some timing  
13 questions in here, so we'll have a summary on this towards  
14 the end, but I want to see some dates and numbers on this  
15 one.

16 MS. HOLLOWAY: Okay.

17 DR. MUÑOZ: So Marni, you're going to get into  
18 this further, and I appreciate your statement earlier  
19 about our inability to completely sort of adjudicate this  
20 one way or another, but I guess what you're hearing is  
21 give it another chance. I mean, some of these statements  
22 are strong on both sides. I through I heard some new  
23 comments in this letter that was just read right now, and  
24 I don't think we have a copy of that letter in our Board  
25 book.

1 MS. HOLLOWAY: Of this letter, no.

2 DR. MUÑOZ: Of this letter.

3 MS. HOLLOWAY: You have the other letters.

4 DR. MUÑOZ: Yes. I've read the three letters.

5 But my point is I thought I heard some new information in  
6 this letter here that you will, I presume, include in your  
7 sort of reexamination.

8 MS. HOLLOWAY: Yes, we absolutely can do that.

9 MR. OXER: The reexamination will be something  
10 we'll address, we'll get down to it. My intent in all of  
11 this is to hear each one of these and then come back,  
12 because this one sounds like it's okay, this one doesn't  
13 sound like it's okay, let's go get this, tell you want we  
14 want, some new information or further process on all of  
15 this once we get to the end of these.

16 You have a third point on this particular  
17 application?

18 MS. HOLLOWAY: The other part of this third  
19 party request for administrative deficiency on the Fall  
20 Creek application came from the Fall Creek Homeowners  
21 Association.

22 MR. OXER: And who represents them? A lot of  
23 hands.

24 Hold on just a second.

25 DR. MUÑOZ: Marni, just a quick question. I

1 thought in somebody's letter it said something to the  
2 effect of this homeowners association not being registered  
3 with the Department. Does that sound familiar?

4 MS. HOLLOWAY: Yes.

5 DR. MUÑOZ: But you just recognized it. That's  
6 why I'm asking.

7 MS. HOLLOWAY: That is in fact the case that  
8 it's not registered with the Department as a neighborhood  
9 association that would receive notice if an application is  
10 submitted for a development within their boundaries. So  
11 that's the line there. If this development had been  
12 within the boundaries of the homeowners association and if  
13 the homeowners association had been registered with us,  
14 they would have received notice at pre-application.

15 MR. OXER: Pre-app.

16 MS. HOLLOWAY: Yes.

17 MR. OXER: Okay. Hold it just a second.

18 MR. LIKOVER: I wanted to respond to  
19 Representative Dutton's letter.

20 MR. OXER: Okay.

21 MR. LIKOVER: My name is Clayton Likover. I'm  
22 a representative of the applicant.

23 Board, I appreciate you taking the time. I  
24 also appreciate you taking the time to review all the  
25 materials that we submitted in response to the two

1 challenges that we received. They're lengthy, they're 40-  
2 plus pages each. The truth is, and the written evidence  
3 very clearly shows, that this neighborhood and now  
4 Representative Dutton, due to pressure from the  
5 neighborhood, is willing to say and do anything to try to  
6 kill this project. It's a great project, it should  
7 happen, but they don't want it.

8           They are throwing all kinds of allegations and  
9 hearsay against us which did not happen. The board's  
10 reviewed and certified own meeting minutes back up what we  
11 say happened. The lengthy email, 40 emails with  
12 Representative Dutton's office back up exactly what we say  
13 happened. There is nothing in writing or any other way  
14 that backs up their allegations against us.

15           We've tried to stay out of the mud on this with  
16 them but the truth is, Board, that there is a lot of very  
17 nasty NIMBYism going on. Their own words, they found a  
18 loophole to derail our project. They knew that a letter  
19 of support couldn't be rescinded or if it is rescinded it  
20 doesn't remove the points, that they would then go after  
21 the loophole of alleging fraud and that way surely then  
22 the points couldn't still be awarded to the applicant.  
23 We've held back on releasing some of the nastier stuff  
24 that we have from them, but it's not pretty.

25           To be honest, we're very frustrated because we

1 feel like we've responded in excruciating detail to the  
2 allegations against us, we've done everything that was  
3 asked of us by Representative Dutton's office. The TDHCA  
4 tells representatives make sure you want to give your  
5 letter of support, don't give it too early.

6 Representative Dutton never met with us, we emailed with  
7 his office multiple times, we met with his chief of staff  
8 briefly. His one request to us for support -- no question  
9 about neighborhood support, didn't even ask us -- his only  
10 question of us, the applicant, was will you consider  
11 people or potential residents with criminal backgrounds on  
12 a case-by-case basis. And we talked about it internally  
13 and we said that's reasonable, and we responded yes, we  
14 would. And then when we met with the MUD, they asked us  
15 about the project and Matt told them what we tell  
16 everyone: that we do income and background checks on all  
17 potential residents.

18 So everything we've done is appropriate and our  
19 opposition is trying to find loopholes to submarine a  
20 project, unfortunately, through fraud allegations with  
21 nothing substantiated.

22 MR. OXER: Okay. We appreciate your comments.

23 Let me remind you to sign in. Make sure everybody signs  
24 in.

25 I think it's fair to say on this one there's

1 enough question on both sides that we're going to want  
2 some more exploration of this one, Marni.

3 Is there anybody else that wants to speak? Is  
4 there any other component to this that we need to  
5 consider? There's more speaking, but is there any other  
6 aspect that we need to look at on this one?

7 MS. HOLLOWAY: The information that we received  
8 from the homeowners association in part ties with the  
9 information from Representative Dutton regarding claims  
10 made about ex-criminals being allowed to live at the  
11 development. They have provided meeting minutes -- I  
12 think those were referred to -- for the MUD, the local MUD  
13 board of directors. There is a great deal of detail in  
14 those minutes, but the criminal background question does  
15 not appear in those minutes. And I actually requested  
16 those minutes, I'm the one who got them.

17 One of the issues that the homeowners  
18 association has raised is an applicant claim of support  
19 from the Humble ISD. In the official minutes of that  
20 meeting it says only that the applicant stated that the  
21 developers have met extensively with Humble ISD about  
22 their proposed plan. Staff has determined that we haven't  
23 found any connection between the MUD meeting and the  
24 eligibility rule.

25 In addition, the HOA has raised a concern

1 because the applicant did not contact the HOA or the  
2 developer of Fall Creek. They were not required to do so  
3 by rule, as we discussed earlier about the neighborhood  
4 association.

5 There is an allegation that the application  
6 contains information about access to public transportation  
7 and pedestrian access. In looking at the map, there are a  
8 number of amenities within a mile and a half, so probably  
9 walkable. And also the application does not state that  
10 there will be public transportation services at the  
11 development, only that they will be accessible, and they  
12 are accessible fairly close by.

13 Additionally, the homeowners association is  
14 concerned because the development is in a flood plain. We  
15 are aware of this, the applicant is aware of this. The  
16 site plan that we've received does address flood plain  
17 mitigation issues as required by our rule.

18 MR. OXER: Most of Houston is in a flood plain.

19 MS. HOLLOWAY: Right.

20 MR. OXER: For the record, the Brazos River got  
21 within three-quarters of a mile of my front door here a  
22 couple of weeks ago.

23 MS. HOLLOWAY: And there's one more, there is a  
24 contract amendment to the purchase agreement that was  
25 received later on in the process that increased the

1 purchase price of the property. This is one of those  
2 items that will be dealt with by REA later on in the  
3 underwriting review. We are not finding any new  
4 information in this request from the homeowners  
5 association that leads us to believe that there was a rule  
6 violation or anything that staff would address, and we are  
7 considering this matter resolved at this time, but it  
8 sounds like we're going to be talking about it again.

9 MR. OXER: I suspect we will. Actually, this  
10 is a report item, and our request today would be only to  
11 generate some more information, and I think we need to  
12 further explore this, if only as a courtesy to  
13 Representative Dutton.

14 It's not an action item. Would it be an action  
15 item on the next agenda?

16 MR. IRVINE: It will be.

17 MR. OXER: We might have that as an action item  
18 on the next agenda to further quantify and clarify on the  
19 record what the Board intent is and the position on it,  
20 but I think we need to have some more exploration of it.

21 Given that that's the case, we have some more  
22 comments? I know you want to speak again, Donna. You've  
23 had a shot. Let's go right here.

24 These are a little tense times, so everybody I  
25 hope will recognize and let's keep it a little bit lighter

1 than we have been.

2 MR. RANKIN: I don't think it's going to be  
3 lighter.

4 First of all, my name is Guy Rankin, and I used  
5 to be the executive director of the Harris County Housing  
6 Authority, so I know this area very well, and I had a  
7 project pretty much across the street from it called  
8 Sierra Meadows, so I know this area.

9 Another state rep, State Representative Garnet  
10 Coleman, asked me to speak on this issue. He will be  
11 putting a letter in to you, and it concerns a couple of  
12 things. One is the material deficiency letter, the  
13 banking letter talked about earlier, and that banking  
14 letter, if you look at Region VI, all of the projects in  
15 Region VI this year have that banking letter, except for  
16 this one. When we first started talking about material  
17 deficiencies, and if you want to add letters or look at  
18 letters, all of the other projects had the banking letter,  
19 this one did not have one. So that question is going to  
20 come up from Representative Coleman in his letter to all  
21 the Board members.

22 The second thing I'd like to say about this  
23 project, as recently as two years ago the Board determined  
24 because of an applicant not having a letter appropriately,  
25 that project was not funded. It was Palm Park, it's also

1 in Houston. So the same similar came up two years ago and  
2 that project did not receive the credits. In fact, the  
3 staff recommended opposite, they recommended they not get  
4 the credits from the Board. So that's another project  
5 that's going to be addressed in Representative Coleman's  
6 letter.

7 And the third thing, the critical thing about  
8 no paying the fees on time during the application period,  
9 all of the applications in Region IV paid their fees on  
10 time except this one, and this one paid something and then  
11 paid something later. That is going to be in  
12 Representative Coleman's letter, so the question is going  
13 to be is there a material difference in this application  
14 and why has this one been treated differently than the  
15 other ones.

16 Again, my name is Guy Rankin, and  
17 Representative Coleman asked me to look into this and  
18 he'll be getting a letter to the Board before the next  
19 meeting. Thank you.

20 MR. OXER: Thank you, Mr. Rankin.

21 Are there any questions from the Board?

22 MR. GOODWIN: I've got a question.

23 MR. OXER: J.B.

24 MR. GOODWIN: I thought I understood that we  
25 did have the banking letter, it just didn't have the

1 right --

2 MR. OXER: It was lacking a sentence.

3 MR. GOODWIN: It was lacking a sentence. I  
4 heard you say there was no banking letter.

5 MS. HOLLOWAY: There was in fact a lender  
6 letter; it did not include this operative language. In  
7 some instances lenders will provide a separate letter that  
8 includes this language, but it also can be included in the  
9 terms letter from the lender. There's no requirement that  
10 it be a separate document.

11 MR. RANKIN: I think all of the other  
12 developers would have that separate banking letter. If  
13 you look at the packages, they have a letter with the  
14 bank's name on it. This one does not.

15 MR. OXER: Hold on a second. You'll get your  
16 shot, don't worry.

17 Sixty seconds.

18 MR. RICKENBACKER: Obviously this isn't really  
19 the time to be providing this level of testimony. We've  
20 asked for it to come back to you all as an action item.

21 MR. OXER: For the record, we'll decide that.

22 MS. RICKENBACKER: But that was our request is  
23 what I'm saying. Obviously that is very much your  
24 decision, Chairman Oxer.

25 With respect to this letter, whether it's

1 separate or included within the context of the lenders  
2 term sheet that all lenders provide with the applications  
3 is really not the issue. It's whether or not the  
4 appropriate language was there to support the points, and  
5 it wasn't, at application it wasn't. They were allowed to  
6 provide that necessary information through an  
7 administrative deficiency process which is in violation of  
8 the rules.

9 So I just think that the Board needs to take a  
10 closer look at this scoring category. It is an 18-point  
11 scoring category, it is the highest point category that  
12 we've got, and yes, everybody else within Region VI did  
13 provide the language to support those points. I  
14 respectfully request that it come back to you.

15 Thank you, sir.

16 MR. OXER: Okay. Thanks for your comments.

17 MR. LIKOVER: There is a lot of twisting of  
18 language.

19 MR. OXER: Hold on. Tell them who are you are  
20 first.

21 MR. LIKOVER: Clayton Likover, representative  
22 of the applicant.

23 There absolutely was a letter, it has BBVA  
24 Compass's letterhead on it, you can see it clear as day.  
25 To suggest that that there was not the letter, there was

1 one sentence missing from the letter which staff asked us  
2 to correct and we did. People are trying to find  
3 technicalities to kill it and twist language, totally not  
4 true.

5 DR. MUÑOZ: Let me make a point about at least  
6 your comment. Other situations, other projects have been  
7 adversely affected because of the omission or absence of a  
8 sentence or a word or a submission after a deadline. I'm  
9 just making the point. I'm not necessarily inviting a  
10 comment.

11 MR. OXER: Your point is made, Clayton.

12 Anything else? J.B., are you good?

13 MR. GOODWIN: I'm fine.

14 MR. OXER: Okay. Anybody else?

15 (No response.)

16 MR. OXER: Okay, Marni. Is there anybody else  
17 who wishes to speak on this particular item?

18 (No response.)

19 MR. OXER: All of you who are not speaking on  
20 that application, abandon the bench.

21 By my count, this is the last one.

22 MR. OXER: Yes.

23 MS. HOLLOWAY: Application 16380, Sierra Vista.

24 The requester questioned whether the application  
25 identified the correct place for the location of the

1 proposed development site, as required to score two points  
2 under 11.9(c) (6) (C) underserved area. The application  
3 identified Lopezville census designated place as the place  
4 of the development. The requester provided information  
5 indicating that a portion for the CDP, the census  
6 designated place, containing the development site was  
7 annexed by the City of Edinburg in 2013. When staff  
8 initially reviewed the request, an administrative  
9 deficiency was issued, and on receipt of the applicant's  
10 response, staff issued a scoring notice taking away the  
11 two points for underserved area.

12 The applicant appealed the loss of points to  
13 the Department's executive director. The appeal was  
14 granted based on plain language reading of our rule at  
15 10.2(d) under census data which says: "Where this chapter  
16 requires the use of census or American Community Survey  
17 data, the Department shall use the most current data  
18 available as of October 1, 2015, unless specifically  
19 otherwise provided in federal or state law or in the  
20 rules. The availability of more current data shall  
21 generally be disregarded." The most current data  
22 available as of October 15, 2015 was the census mapping  
23 that indicates that the development site is in the  
24 Lopezville CDP, annexation by the City of Edinburg does  
25 not appear in that mapping.

1 MR. OXER: Does it appear later?

2 MS. HOLLOWAY: It will appear with the next  
3 decennial census.

4 MR. OXER: Okay.

5 MS. HOLLOWAY: From the Census Bureau's  
6 website, their description of census designated places  
7 says CDP boundaries may change from one decennial census  
8 to the next one with changes in the settlement pattern, so  
9 it's something that they decide every ten years. Our rule  
10 says use the most current available data. That's how we  
11 arrived at the decision that the appeal would be granted  
12 and the application would retain those two points.

13 MR. OXER: Okay. So there's the city and  
14 there's the CDP, and the city overlaps that now.

15 MS. HOLLOWAY: Now.

16 MR. OXER: Not before.

17 MS. HOLLOWAY: Not before.

18 MR. OXER: So the data from the decennial  
19 census showed that it did not overlap.

20 MS. HOLLOWAY: Correct.

21 MR. OXER: And now it does overlap.

22 MS. HOLLOWAY: Correct.

23 MR. OXER: Which would mean that it would take  
24 that out.

25 MS. HOLLOWAY: Yes.

1 MR. OXER: But we're saying since the last  
2 census said it was okay and that's the data set you've  
3 instructed everybody to use, even though it's potentially  
4 nine or ten years old at some point in its life.

5 MS. HOLLOWAY: Right. And as I said, the  
6 census data item in the QAP says the availability of more  
7 current data shall generally be disregarded.

8 MR. OXER: Okay. Seems pretty clear.

9 Okay. Barry, good morning.

10 MR. PALMER: Good morning. Barry Palmer with  
11 Coats Rose, speaking on behalf of the two applicants who  
12 have challenged the award of these points.

13 These two points are awarded for being in a  
14 census designated place that has never received a tax  
15 credit allocation. This site was in the Lopezville CDP  
16 until 2013 when it was annexed into Edinburg. Edinburg  
17 has received 14 tax credit allocations, including a couple  
18 right down the street from this project. The rules for  
19 the TDHCA define place for purposes of this point item as  
20 a place as defined by the Census Bureau, and the Census  
21 Bureau's definition of a CDP is that they're the  
22 statistical counterparts of incorporated places but are  
23 not legally incorporated and may not extend into an  
24 incorporated area. So by the definition of the Census  
25 Bureau, you cannot be in both a CDP and an incorporated

1 area.

2 So we contacted the Census Bureau --

3 MR. ECCLES: Mr. Palmer, if I could just ask  
4 since you're reading from something, could you identify?

5 MR. PALMER: Yes. This is from the letter that  
6 I provided that's in the Board's packet, dated June 23,  
7 that lays out some additional information that we provided  
8 that was received after the executive director had made  
9 his ruling on the appeal. And so that's why we're asking  
10 that you designate this as an item for further development  
11 by staff to come back as an action item at the next Board  
12 meeting.

13 And one of the things that we obtained that's  
14 in my letter is we contacted the Census Bureau and asked  
15 them if you could be both in a CDP and in an incorporated  
16 area, and they replied that no, a single tract can only be  
17 one or the other, a CDP or a place, and it cannot be both  
18 at the same time.

19 So we think that this is additional information  
20 that the Department should take into account that the  
21 Census Bureau is saying you can't be in both a place and  
22 in an incorporated are. So if you're in Edinburg, you're  
23 no longer in a CDP and not entitled to the points.

24 MR. OXER: And that sounds like a perfectly  
25 valid point, and the question then is: Is that based on

1 current data or the data under the census that we're  
2 obliged to consider?

3 MR. PALMER: That's the most current  
4 information that you have is what the Census Bureau is  
5 saying now. We don't agree that the rule says you have to  
6 wait ten years before updating your information, and that  
7 hasn't been the practice in the past. In fact, there's an  
8 appeal just like this that came to the Board in 2007 in  
9 the City of Alton. It was substantially the identical  
10 facts, and that's also in my letter dated June 23, where  
11 an applicant was applying as Casa Alton and they were  
12 using the housing needs score for that area, but in fact,  
13 they had been annexed since the previous census, and so  
14 the Board did not grant the full points based on the fact  
15 that they would have been entitled to them under the  
16 previous census.

17 MR. OXER: But we're not into the current  
18 information at the point of application.

19 MR. PALMER: Right.

20 MR. OXER: Okay. So it gets down to, it sounds  
21 like the crux of this one is how do we around the point  
22 where recent information is not considered relevant.

23 MR. PALMER: Right. Well, we don't think that  
24 that recent information is not considered relevant applies  
25 to the situation where it says that there is a rule of the

1 Census Bureau that defines what a census designated place  
2 is, and that rule says that you can't be in a census  
3 designated place and be in an incorporated area.

4 MR. OXER: That's not at issue, that's not the  
5 question, as best I can tell. But your point is made,  
6 Barry, we understand what you're saying.

7 MR. ECCLES: And actually, this is what I was  
8 getting at when you were reading, you've said that the  
9 Census Department has defined something and has a rule on  
10 something, could you give us a citation on that?

11 MR. OXER: And if you don't have it now, at  
12 least get us the citation, because we'll bring this item  
13 back.

14 MR. PALMER: Right. We can get that for you; I  
15 don't have the citation here.

16 MR. OXER: Certainly, please.

17 MR. PALMER: And I'm not sure that staff had  
18 had the opportunity to look at this previous decision on  
19 the Alton case in 2007 to look at the precedent as to how  
20 that affects this situation. So we would ask that this be  
21 something that's further developed by staff, that we look  
22 at the precedent on this issue and bring it back as an  
23 action item at the next meeting.

24 MR. OXER: Okay. All right. Points made.

25 Donna, how nice to see you.

1 MS. RICKENBACKER: I know, it's me again.  
2 Donna Rickenbacker with Marquis. We were one of the  
3 challengers, if you will, with respect to this particular  
4 application.

5 MR. OXER: Is this consistent with what Barry  
6 was just saying, is your point?

7 MS. RICKENBACKER: Well, kind of adding to it,  
8 yes, sir. This really gets to how the rules define a  
9 place for purposes of providing underserved area points,  
10 and how that is defined in our rules. Additionally, with  
11 respect to census data and the general requirements for  
12 the Department's use of census data for purposes of  
13 evaluating applications, those data sources that they use  
14 for determining population, for determining income, things  
15 of that nature, I don't think that the intent of that  
16 provision was meant to determine geographic areas.

17 And it also does specifically say within that  
18 general requirement that it states unless defined  
19 otherwise in the rules. And obviously our rules are  
20 defining a place for purposes of underserved area points  
21 based on its definition by the Census Bureau, so I want  
22 you all to keep that in mind.

23 Also, I want you all to -- I'm somewhat  
24 piggybacking off of what Barry said in that all the tax  
25 credits have been going into this area, if you will, of

1 Edinburg. Our application is in Weslaco who has not seen  
2 a tax credit application in many, many years, a successful  
3 tax credit housing development in many, many years. So  
4 I'm hopeful that you all will keep that in mind in your  
5 decision-making. We personally feel like the rules are  
6 pretty clear on this.

7 Also, I believe Representative Martinez did  
8 provide a letter that I think he was hopeful would be  
9 included in the Board book. I didn't see it, so if at all  
10 possible, I'm hopeful that can be read into the record.

11 Thank you so much.

12 MR. FLORES: Mr. Chairman, members, my name is  
13 Henry Flores and I represent the applicant.

14 Marni made a comment early on that I completely  
15 agree with, that this is actually a very simple matter,  
16 and some of the comments that are being made add a level  
17 of complexity that aren't really relevant. The rule is  
18 very clear and the rule is applied very specifically and  
19 correctly, and Ms. Bast, who represents this transaction  
20 as well, will speak to that.

21 But the correspondence that was provided to the  
22 Board brought into question issues that were raised by the  
23 geographer in the regional Census Bureau office. We too  
24 called the regional Census Bureau in Denver. We were told  
25 that the definitive source of information for census

1 designated places is actually the National Office of  
2 Demographics in Silver Springs, Maryland. We called and  
3 spoke to the demographer there who clarified some of the  
4 things that were being discussed today and actually  
5 indicates exactly the opposite of what the geographer was  
6 saying at the regional office. The phone number for that  
7 person was shared with Mr. Irvine, who I believe shared it  
8 with staff.

9           Some of the assertions that were made by the  
10 geographer were that CDPs are revised annually -- that's a  
11 comment that was made just now -- based on annexations.  
12 That's not correct. Changes based on annexations, because  
13 it does change the status of a location occur on a  
14 decennial basis. So even though it doesn't meet the  
15 definition today, the actual change in that status does  
16 not occur the next decennial period, maybe ten years.  
17 Now, the Census Bureau does change the list of CDPs on an  
18 annual basis, but that is based on a change in the gross  
19 statistical characteristics of that census tracts. A CDP  
20 is a conglomeration of census tracts that have similar  
21 characteristics. If a census tract in that CDP changes  
22 dramatically, then it's removed from the CDP.

23           A list is prepared once a year and included on  
24 the Census Bureau website when those kind of changes have  
25 occurred. We've reviewed the list, we've submitted the

1 list to the agency. From 2010 to 2015, Lopezville is not  
2 on that list. There have been no changes in the gross  
3 statistical characteristics of that census tract. It will  
4 change at the decennial. That area will be removed from  
5 the CDP, but as of the date that is shown in the QAP, it  
6 was part of the CDP.

7 The regional person, this geographer, also  
8 indicated that the boundaries are a CDP are just  
9 immediately after the receipt of the annual boundary  
10 annexation survey by the city. I have confirmed with the  
11 city manager at that point, Ramiro Garza, that a boundary  
12 annexation survey is submitted every year, as they're  
13 supposed to, to the Census Bureau, and that the report  
14 submitted in 2013 did include the annexation at this site.  
15 The maps have not changed in 2013, 2014 or 2015, and  
16 they're still not changed as of today. So the fact that  
17 it's been annexed has not affected whether we're in a CDP  
18 or not; it will in the decennial.

19 The third thing that the geographer said is  
20 that cities and CDPs cannot coexist, that they cannot  
21 overlap. Ms. Bast found a number of communities, and  
22 shared them with staff, in Covedale, Ohio, North Amherst,  
23 Massachusetts, and Lopezville and Edinburg where they do  
24 in fact coexist. So the comment was not accurate and the  
25 demographer verified that.

1 I think staff is correct in their analysis and  
2 that the points should be maintained. Thank you.

3 MR. OXER: Appreciate your comments, Mr.  
4 Flores.

5 MR. FLORES: Yes, sir.

6 MR. OXER: Cynthia, let's get yours in here. I  
7 think you can tell this is headed down the road to get a  
8 little bit more exploration on this one for an action item  
9 on the next agenda, so if you can get it quick, that will  
10 help.

11 MS. BAST: Cynthia Bast of Locke Lord,  
12 representing the applicant.

13 Respectfully, we believe that the executive  
14 director has decided this appeal in accordance with  
15 standard process and that no further inquiry is necessary  
16 because the rule does say, as you heard, that a place is  
17 an area defined as such by the United States Census  
18 Bureau. And TDHCA has a long history of relying upon the  
19 official records of other agencies as to what is or what  
20 isn't, and the official record of the Census Bureau shows  
21 that this is in a CDP.

22 In fact, in Mr. Palmer's letter there's a quote  
23 from Mr. Castanieri at the Census Bureau in the Denver  
24 regional office where he says that very latest official  
25 record of boundaries and CDPs can be used viewing their

1 TIGER mapping tool. That's consistent with our rule in  
2 10.2(d) that says when we're looking at boundaries as it  
3 relates to rural and urban areas for boundary purposes  
4 we're looking at the TIGER mapping tool. So our rules  
5 require us to rely upon what the Census Bureau is telling  
6 us, that this is in a CDP, and that is what they publish,  
7 and we are relying on their official records for that  
8 purpose.

9 This may be one of those quirks, Mr. Oxer, that  
10 you want to work out next year, and I understand that with  
11 the timing of a ten-year period here, but for a rule that  
12 says we look to the Census Bureau's records as of a  
13 certain time with certain parameters, I believe that the  
14 executive director properly granted the appeal, and I  
15 thank you for your time.

16 MR. OXER: Good. Appreciate that.

17 MR. MUSEMECHE: Can I follow up on a few  
18 things?

19 MR. OXER: Sure.

20 MR. MUSEMECHE: Mark Musemeche. We're one of  
21 the other applicants that are affected by this policy  
22 issue. And all I want to point out is I appreciate you  
23 listening to this, and we just want you to come back next  
24 Board meeting and listen to more information about this as  
25 an item. But what's not being said again is this

1 Department has had a history of always determining  
2 certainty as of March 1, it's what's in effect March 1,  
3 and so I don't agree with the comments that we're relying  
4 on some outdated map. My conversations with that  
5 geographer were different, and he clearly says just  
6 because the map shows something doesn't mean it's so, it's  
7 what in effect March 1.

8 So I disagree with those comments and ask you  
9 all to please come back and listen to this in more detail  
10 and revisit other cases and other situations that appealed  
11 before where it's always been determined with certainty  
12 it's what's in effect March 1.

13 Thanks.

14 MR. OXER: Okay. Appreciate your comments.

15 MR. FLORES: May respond to that very quickly?  
16 One sentence really.

17 MR. OXER: It's never one sentence, but come  
18 say it.

19 MR. FLORES: I just want to point out that on  
20 March 1 -- I'm sorry. This is Henry Flores at the podium.

21 MR. OXER: Thank you.

22 MR. FLORES: On March 1, the date referenced,  
23 the maps that are in place on the TIGER website show it in  
24 the CDP. So whether it's March 1 or not, made a comment  
25 about Mando Martinez, the state rep, our state rep, our

1 state senator and the mayor all confirmed independently  
2 that we are in fact in the CDP.

3 MR. OXER: Good. Thanks.

4 MR. FLORES: Thank you, sir.

5 MR. OXER: Those among us up here were counting  
6 your sentences. It wasn't me. Okay?

7 (General laughter.)

8 MR. OXER: All right. Marni, have you got  
9 anything to add in summary?

10 That's right, you've got two letters you want  
11 to read on this particular item. Right?

12 MR. LYTTLE: Right.

13 MR. OXER: Let's do it.

14 MR. LYTTLE: The first letter on this comes  
15 from State Senator Eddie Lucio, Jr.

16 "Dear Chairman Oxer and Members of the Board:  
17 Out of great respect for the Board's diligent efforts to  
18 meet the intent of governing state and federal statutes  
19 and to further the goals of guiding rules, I write you  
20 concerning a matter brought to my attention regarding the  
21 state's Housing Tax Credit Program.

22 I am informed of a challenging and unique  
23 situation currently being addressed by TDHCA staff  
24 pertaining to the possible awarding of the "underserved  
25 area" incentive points to a "project location" that is

1 within the boundaries of a municipality. Constituents  
2 have voiced concerns that awarding these incentive points  
3 in this manner may potentially put into question the  
4 utility of these points. Concerned stakeholders have  
5 asked that this matter be addressed through an agenda  
6 action item at your upcoming July hearing.

7 "Because the awarding of the "underserved area"  
8 points to any "project location" that may be within the  
9 jurisdiction of a municipality that has seen prior Housing  
10 ax Credit awards is outside the norm. Arguably, this  
11 matter could merit review by the Board during your next  
12 public meeting. Affording all sides a forum to publicly  
13 plead their case allows the Board an opportunity to act as  
14 a deliberative body to ensure that the intent and goals of  
15 the HTC statutory framework are met.

16 "In closing, our state and federal governments  
17 are served well by boards and commissions like yours which  
18 carry out the statutory intent of the laws enacted. As  
19 stewards of our HTC Program, you have the necessary  
20 discretion to ensure compliance with the intent and goals  
21 of governing statutes. This discretion serves the Board  
22 well as you address this unique occurrence.

23 "I thank you in advance for working to find an  
24 amicable resolution to this most challenging situation.

25 "Sincerely, Eddie Lucio, Jr., State Senator,

1 District 27."

2 The next letter is going to be from State  
3 Representative Armando Martinez. It reads:

4 "DWR Development Group applied for 2016 nine  
5 percent housing tax credits and submitted TDHCA  
6 application 16104 Villa Verde Estates, in connection with  
7 the development of affordable rental housing at a site  
8 near the northeast corner West Mile 5 North Road and South  
9 Border Avenue in the ETJ of Weslaco in Hidalgo County.  
10 The Villa Verde Estates site is in my district. I gave  
11 this application my full support, as did the Hidalgo  
12 County Commissioners Court and the Weslaco City Council.

13 "I have been contacted by representatives of  
14 DWR Development Group, the mayor of Weslaco, and other  
15 individuals regarding application 16380 Sierra Vista, a  
16 competing application that is proposing to develop a site  
17 in Edinburg, Texas. I have been told TDHCA received two  
18 separate letters from competing applicants including one  
19 from an affiliate of the DWR Development Group challenging  
20 points claimed by the Sierra Vista applicant under the  
21 underserved area category. Based on the challenges, this  
22 scoring category allows an applicant to qualify for two  
23 points if their site is located in a place that has never  
24 received tax credits, and your rules define place as an  
25 area defined as such by the United States Census Bureau

1 that includes unincorporated areas known as census  
2 designated places.

3 "The Sierra Vista applicant claimed that their  
4 site is located in Lopezville, a census designated place  
5 and therefore should qualify for the two points claimed.  
6 DWR provided TDHCA evidence to the contrary, including a  
7 copy of the city ordinance showing that the Sierra Vista  
8 site was annexed into the City of Edinburg in December of  
9 2013. I'm told DWR also provided to TDHCA a copy of the  
10 definition of a place from the Census Bureau's website  
11 that defines a CDP as a statistical counterpart of an  
12 incorporated place, i.e., the City of Edinburg, which  
13 definition further states that a CDP may not extend into  
14 an incorporated place. Therefore, based on the Census  
15 Bureau's definition of a CDP, one can conclude that once  
16 the Sierra Vista site was annexed into the City of  
17 Edinburg, an incorporated place, it no longer extended  
18 into or remained a part of the unincorporated area of  
19 Lopezville.

20 "I bring this matter to your attention because  
21 it appears TDHCA's staff agreed with the challenges,  
22 deeming the Sierra Vista site to be in the City of  
23 Edinburg and deducted the underserved points from their  
24 final score, then as late as June 16, posted a reversal of  
25 their position, gave the points back to this applicant and

1 restored their application. I am being told that TDHCA  
2 staff made no effort to communicate with the challengers,  
3 explain the basis for the change and explain why their  
4 position in the final stages of the 2016 application  
5 cycle. Their actions have effectively eliminated the  
6 Villa Verde Estates development from receiving an award of  
7 tax credits, a housing community that would be located in  
8 my district and serve my constituents.

9 "I believe that DWR provided to TDHCA a  
10 compelling set of arguments for denying the underserved  
11 area points to the Sierra Vista applicant, all of which  
12 should be vetted and given full consideration by the  
13 Board. I also point out that the challenge included  
14 transcripts from several appeals to the Board whereby the  
15 Board had consistently upheld scoring determinations based  
16 on evaluating applications using the current location of  
17 the development site as of March 1, 2016. The Sierra  
18 Vista site is in the City of Edinburg and was as of March  
19 1, 2016. TDHCA staff appears to be disregarding previous  
20 Board conclusions on similar matters and in the process  
21 making decisions that are contrary to the Board's prior  
22 rulings. Any reinterpretation of prior rulings should be  
23 left to the Board based on its full consideration of the  
24 arguments and the merits of the claims made by all  
25 parties.

1           "I strive to do the best job for my  
2 constituents and I'm a proud supporter of high quality  
3 affordable housing which is desperately needed in the  
4 Weslaco area. My district, District 39, has not been the  
5 recipient of tax credit funded housing in many years. I  
6 respect my colleagues and their efforts to support housing  
7 initiatives in their districts, but I believe that if  
8 TDHCA applies the rules in a consistent and transparent  
9 manner, then the disbursement of the state's housing  
10 dollars will be more equitably distributed across more  
11 areas of the Valley.

12           "I respectfully request that the merits of the  
13 challenges and the issues raised in this letter regarding  
14 the definition of a place be placed on the agenda for the  
15 Board's full consideration at your next meeting in July.

16           "Sincerely, Armando "Mando" Martinez, State  
17 Representative, District 39."

18           MR. OXER: Okay. Any other comment on that  
19 item?

20           (No response.)

21           MR. OXER: I think on the last item just run  
22 through that one right quick because Toni said she was  
23 going to bring it up at the next meeting.

24           MS. HOLLOWAY: Oh, 16387?

25           MR. OXER: 387, right. Just blast that one so

1 we can be completed.

2 Is there any other public comment on this?

3 (No response.)

4 MR. OXER: Okay. Thanks, folks.

5 MS. HOLLOWAY: 16387 Cantabria Estates  
6 Apartments. The requester questioned whether the  
7 application is eligible to compete in the at risk set-  
8 aside as it does not meet requirements of 11.5(3)(C)(ii),  
9 specifically that the development is proposing relocation  
10 of existing units in an otherwise qualifying at risk  
11 development. They can only do that if they propose the  
12 same number of restricted units.

13 This was originally submitted as RAD deal in  
14 partnership with the housing authority and proposed to  
15 reconstruct 34 units and add 58 restricted units and ten  
16 unrestricted units. The housing authority has a plan in  
17 the future to demolish 74 units so they're splitting them  
18 up. Because they added the additional restricted units,  
19 staff issued an administrative deficiency saying how do  
20 you still fit in the at risk set-aside. The applicant  
21 sent in their response a reduction -- not a reduction.  
22 No, they can't request a reduction because that's too  
23 large for the administrative deficiency process by  
24 definition in the administrative deficiency process, and  
25 because they don't meet the requirements to participate in

1 the at risk set-aside any longer because of this change in  
2 unit numbers, we have issued a scoring notice taking six  
3 points for pre-application. That is the appeal that we  
4 received yesterday, the appeal of the scoring notice.

5 MR. OXER: So it will wind up being on the  
6 agenda for the next meeting.

7 MS. HOLLOWAY: Yes, I would imagine.

8 MR. OXER: The appeal is under way and in  
9 process.

10 MS. HOLLOWAY: Right.

11 MR. OXER: Are there any questions from the  
12 Board on any of the items?

13 (No response.)

14 MR. OXER: From what I heard there were four  
15 items: 16057, 16117, 118 and 380. I was satisfied that  
16 the data was sufficient that the staff evaluated on 117.  
17 118, I think obviously, I'd like to have some more  
18 background and more exploration on that one, and certainly  
19 on 380. So those are my two requests. Any member of the  
20 Board may request further exploration of the other two if  
21 you'd care for it. We are not obliged to take any action  
22 on this except to request from staff further exploration  
23 and detail on those items that we define here. Those are  
24 the two that I would like to have some more information  
25 on. If any member of the Board would like to have other

1 information, now is the time to say it.

2 DR. MUÑOZ: Which were the two again?

3 MR. OXER: 118 and 380.

4 MS. HOLLOWAY: The Standard on the Creek, so  
5 that's Representative Dutton and the homeowners  
6 association, that one, and then Sierra Vista, which is the  
7 census designated place question.

8 MR. OXER: It all depends on what the  
9 definition of it is.

10 MS. HOLLOWAY: Something like that.

11 MR. OXER: With respect to 057 and 117, your  
12 assessment was?

13 MS. HOLLOWAY: Staff is considering those  
14 matters closed.

15 MR. OXER: Just to be clear. Okay. Let's hear  
16 some more on 118 and 380 for next time.

17 MS. HOLLOWAY: Okay.

18 MR. IRVINE: We'll bring them as an action  
19 item.

20 MR. OXER: So those will come up for a formal  
21 up or down decision by the Board two weeks from today, I  
22 guess.

23 MS. HOLLOWAY: Yes.

24 MR. OXER: Having so much fun this time of  
25 year, we come back more often. Right?

1 DR. MUÑOZ: Marni, for me the 380 may be a  
2 little less complicated once you begin to grind down some  
3 kind of definitional specificity. But the other one, you  
4 know, the representation of facts by one group versus the  
5 other versus emails, that one you're going to have to get  
6 into a little bit more carefully to see if it rises to  
7 sort of the level of whatever statute or law is being  
8 invoked.

9 MR. OXER: Facts are going to be friendly.

10 MS. HOLLOWAY: That's the difficulty we've had  
11 is getting to that.

12 DR. MUÑOZ: Is it omission, is it  
13 misrepresentation, is it this, was the association  
14 notified, did they have to be at the time of.

15 MS. HOLLOWAY: It's very thorny issues that we  
16 have not been able to come to a conclusion on.

17 DR. MUÑOZ: I'm just telling you like here, me  
18 personally -- I can't speak for everyone -- intuitively  
19 you think you could kind of get to some clarity, but I  
20 read and I sense the difficulty.

21 MR. OXER: It this was easy, you'd have already  
22 taken care of it. Right?

23 MS. HOLLOWAY: That's right.

24 MR. OXER: Mr. E-D, do you have a further  
25 comment? Silence is a comment in itself. That's okay.

1 MR. IRVINE: It's a hard thing to articulate.  
2 I mean, when you've got assertions that go to material  
3 misstatements or material omissions, it's not necessarily  
4 the same thing to say that we agree with this or we  
5 disagree with that, it's really what does the developed  
6 record actually substantiate.

7 MR. OXER: Right. What were the facts. That's  
8 why I say facts are friendly. Like what was said and what  
9 was right.

10 DR. MUÑOZ: And to the E-D's sort of comment,  
11 this is what I was trying to amplify in my final remark.  
12 I don't know what the consequence of this sort of sentence  
13 not being present at the time of, but I know that we have  
14 rules for what's required at a specific point in time and  
15 we've taken action because it wasn't there or it wasn't  
16 submitted at this time, even a minute late, whatever. And  
17 so as the chairman always reminds us, we have rules for a  
18 reason, we have sharp edges. Again, I don't know what the  
19 final outcome will be, but the comment of sort of  
20 minimizing or dismissing the absence of a statement may be  
21 inconsequential and in some instances it's not. Our  
22 interpretation is, as the executive director said, what's  
23 there in the record at a specific point in time.

24 MR. IRVINE: I also think it's important to  
25 understand that the administrative deficiency process is

1 that one little area where that hard edge may have a  
2 little bit of latitude, and it's where the applicant  
3 provided something that was responsive to the matter in  
4 question but we needed some small clarification or  
5 whatever to address the exact complete requirements. We  
6 could obtain that in a very prompt process that's fully  
7 resolved within five days that does not require that we  
8 start over reevaluating the application or whatever. You  
9 know, I think that as we sharpen the rules in the future,  
10 we may want to look at whether that administrative  
11 deficiency process is working as intended.

12 MR. OXER: But the record, for this set of  
13 rules it is working as it is working, so we'll deal with  
14 that.

15 Anything else on this item, Marni?

16 MS. HOLLOWAY: No, not from me.

17 MR. OXER: Good. Thanks for your perseverance  
18 and endurance.

19 Sharon, let's get the last one.

20 MS. GAMBLE: Sharon Gamble, administrator for  
21 the Housing Tax Credit Program.

22 The last item that we have for today is the  
23 list, the list. We have the presentation, discussion and  
24 possible action to issue a list of approved applications  
25 for 2016 Housing Tax Credits, and this is brought to you

1 in accordance with Section 2306.6724(e) of the Texas  
2 Government Code, according to which this Board is required  
3 to review the recommendations of Department staff  
4 regarding applications and shall issue a list of approved  
5 applications each year in accordance with the QAP not  
6 later than June 30, so here we are. Moreover, the Board  
7 shall issue final commitments for allocations of Housing  
8 Tax Credits each year in accordance with the Qualified  
9 Allocation Plan not later than July 31, which we will get  
10 to.

11 MR. OXER: We've got a lot more thrashing  
12 around before we get to that.

13 MS. GAMBLE: Don't we. You said it.

14 We received 141 applications. Of those, seven  
15 have been either withdrawn or terminated, and those  
16 applications do not appear on the list that's in the Board  
17 book. There are still some applications that are  
18 undergoing some staff action, and those are indicated on  
19 the list as pending appeal, and those will probably be  
20 heard next Board meeting if they make it that far. There  
21 are also notations on the list of applications that as  
22 they stand in the scoring would violate the \$3 million  
23 awarded.

24 MR. OXER: Composite cap.

25 MS. GAMBLE: Yes. And so those are marked as

1 ineligible at this time. They're not terminated or  
2 withdrawn, they're just ineligible at this time.

3 So on this list the applications are approved  
4 in the sense that they've not yet been identified as  
5 having any material deficiencies or other defect that  
6 would cause them to be ineligible, or if such matters have  
7 been identified, they're still within the period where  
8 such matters may be appealed.

9 MR. OXER: They're still in the race so far.

10 MS. GAMBLE: They're still in the race.

11 Not all applications on the list will be  
12 reviewed as the Department only reviews priority  
13 applications that are most likely to be competitive. The  
14 attached list includes the current score for each active  
15 application, as well as relevant application information.

16 The ones that have received a final scoring notice are  
17 identified in the review status column with a C. The  
18 applications that are currently under review have a UR,  
19 which I don't think any of them do. And if an application  
20 is pending appeal, the list indicates that. Those with an  
21 N have not been prioritized for review.

22 At this time applications remain subject to  
23 underwriting, completion of any remaining program review,  
24 and a previous participation review. Further, the credit  
25 amount reflected on the list is the requested credit

1 amount and may change to reflect the recommended credit  
2 amount and/or may have conditions placed on the allocation  
3 in July. And I might add to that that the credit amounts  
4 indicated do not include anything from the returned  
5 credits and so those amounts might change as well.

6 In addition to applications that may be removed  
7 from the list for issues of financial feasibility,  
8 applications may also be removed from the list of approved  
9 applications as determinations are made on appeals or as  
10 the Board determines under operation of rule or law.

11 So with that, I present to you the list, and  
12 I'll answer any questions about it if you have any.

13 MS. BINGHAM ESCAREÑO: Mr. Chair, it's probably  
14 not material but in our digital copy there's a spreadsheet  
15 error. For where Region VI Rural should be, there's an  
16 error there.

17 MS. GAMBLE: I will fix that, I promise.

18 MR. OXER: The official document which is going  
19 to be on the website and basically tells everybody where  
20 we're at on June 30. Right?

21 MS. GAMBLE: Absolutely.

22 MR. OXER: You'll have that corrected this  
23 afternoon. Right?

24 MS. GAMBLE: That's correct. Actually, it's  
25 already corrected, it just didn't get corrected before the

1 Board got it.

2 MR. OXER: Mike's in the process of correcting  
3 his record over there.

4 MS. GAMBLE: Well, you know, that's a long  
5 process.

6 (General laughter.)

7 MS. BINGHAM ESCAREÑO: No other questions.

8 MR. OXER: Okay. Any other questions from the  
9 Board?

10 (No response.)

11 MR. OXER: I think we are in the process to  
12 resolve to approve this list of applications in accordance  
13 with the 2306 and the QAP.

14 MR. LYTTLE: Chairman, I'm sorry. I have one  
15 letter to attempt to read into the record.

16 MR. OXER: On this item?

17 MR. LYTTLE: On this item.

18 MR. OXER: Okay. That's interesting. Go  
19 ahead.

20 MR. LYTTLE: Hopefully my temporary dyslexia  
21 will be gone.

22 MR. OXER: Technically we have to have a Board  
23 motion to do that.

24 MR. LYTTLE: Oh, should I wait then?

25 MS. BINGHAM ESCAREÑO: I'll move.

1 MR. OXER: Okay. Motion by Ms. Bingham to  
2 approve staff recommendation.

3 MR. GOODWIN: Second.

4 MR. OXER: And second by Mr. Goodwin to approve  
5 staff recommendation on this item 4(h).

6 Now, Michael

7 MR. LYTTLE: It is from State Representative  
8 Abel Herrero. He is State House District 34. He said:

9 "I write today in regard to the Housing Tax  
10 Credit application for the Calallen Apartments project in  
11 Corpus Christi, application number 16343.

12 "While I previously lent my support to the  
13 project, recent concerns that have been brought to my  
14 attention have caused me to withdraw my support. Numerous  
15 constituents have expressed concerns ranging from poor  
16 drainage and flooding to increased traffic congestion. My  
17 strongest concern now is the strain on the neighborhood  
18 infrastructure which could affect public health and safety  
19 throughout the area. I am committed to supporting tax  
20 credit projects that are well thought out and well  
21 planned, however, after hearing from constituents, I  
22 cannot continue to support this development.

23 "I hope that the neighborhood residents'  
24 concern will be weighed heavily in this case and that all  
25 of these concerns will be thoroughly considered before the

1 tax credit award is decided.

2 "Sincerely, Abel Herrero, State Representative,  
3 District 34."

4 MR. OXER: Okay. There's no other request for  
5 public comment regarding item 4(h) on the agenda. Motion  
6 by Ms. Bingham, second by Mr. Goodwin to approve staff  
7 recommendation regarding the list for this year's  
8 competitive Housing Tax Credit round. Those in favor?

9 (A chorus of ayes.)

10 MR. OXER: And opposed?

11 (No response.)

12 MR. OXER: There are none.

13 Okay. We have reached the point in the agenda  
14 where we accept public comment on matters other than for  
15 those items for which there were posted agenda items.  
16 This is for the purpose of building the agenda as we go  
17 forward in the next and future meetings. Is there anybody  
18 in the audience who wishes to speak?

19 MS. RICKENBACKER: There was some comments made  
20 earlier about potential for application fees. Donna  
21 Rickenbacker with Marquis. I apologize. There's the  
22 potential for failure to pay the appropriate amount of  
23 application fees were brought into testimony today and  
24 that potentially it impacts more than just one  
25 application. I respectfully request that staff bring to

1 the Board a list, if there is a list, of what applications  
2 are potentially impacted by those statements. That's my  
3 request, please.

4 MR. OXER: Okay. Thanks, Donna. Appreciate  
5 your comments.

6 Anything else anybody would like to speak to or  
7 address? Any of the staff? Always welcome the staff. You  
8 get enough time in the box where we're shooting at you,  
9 you get to shoot back. Okay? Nothing else?

10 Any member of the staff on the dais here?  
11 Member of the Board?

12 (No response.)

13 MR. OXER: All right. Being the chairman, I  
14 get the last comments here. I really appreciate the work  
15 that goes into all of this. This is a tough business and  
16 it seems like it's tougher this time of year. But it's a  
17 very good process that we do and we try to adhere to our  
18 rules. I appreciate very much all the effort that  
19 everybody in this room puts in, but particularly thanks to  
20 everybody back at 221 East 11th Street for all the work  
21 that they put in because that's what makes us look good  
22 and makes this process go as it does.

23 We remain for the next couple of meetings,  
24 since we have two meetings in July and then one in late  
25 August, we'll remain on summer casual which I think has

1       been comfortable for everybody.

2                       So with that, I'll entertain a motion to  
3 adjourn.

4                       MR. GOODWIN:   So moved.

5                       MS. BINGHAM ESCAREÑO:   Second.

6                       MR. OXER:   Motion by Mr. Goodwin to adjourn for  
7 the day, and second by Ms. Bingham.   Those in favor?

8                       (A chorus of ayes.)

9                       MR. OXER:   And those opposed?

10                      (No response.)

11                      MR. OXER:   See you in two weeks, everybody.

12                      (Whereupon, at 12:30 p.m., the meeting was  
13 adjourned.)

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: June 30, 2016

I do hereby certify that the foregoing pages, numbers 1 through 135, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 07/05/2016  
(Date)

On the Record Reporting  
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