

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

July 14, 2016
9:02 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

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER	5
ROLL CALL	
CERTIFICATION OF QUORUM	
CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	6
811 PROGRAM	
a) Presentation, Discussion, and Possible Action Authorizing the Department To Enter into a contract with the Department of State Health Services ("DSHS") to Assist DSHS in the Operation of a Program that Provides Housing Assistance to Certain Clients who Participate in DSHS' Home and Community-Based Services-Adult Mental Health ("HCBS-AMH") Program	
COMMUNITY AFFAIRS	
b) Presentation, Discussion, and Possible Action Authorizing the Department to Issue a Request for Proposals for one or more entities to Provide Organizational Assessments and Possible Associated Technical Assistance to awardees of programs funded through the Community Affairs Division programs	
MULTIFAMILY FINANCE	
c) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer 16409 Sansom Ridge Apartments Sansom Park 16415 Songhai at Westgate Apartments Austin 16416 Fairway Landings at Plum Creek Kyle	
d) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-019 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Sunrise Orchard Apartments	

CONSENT AGENDA REPORT ITEMS

ITEM 2:	THE BOARD ACCEPTS THE FOLLOWING REPORTS:	6
	a) Report on the Department's Swap Portfolio and recent activities with respect thereto	
	b) Report on recent Bond Finance activity	
	c) TDHCA Outreach Activities, June 2016	

ACTION ITEMS

ITEM 3:	POLICY & PUBLIC AFFAIRS Presentation, Discussion, and Possible Action regarding the Legislative Appropriations Request for State Fiscal Years 2018-19	8
ITEM 4:	ASSET MANAGEMENT Presentation, Discussion and Possible Action regarding Waiver and Material Amendment to Housing Tax Credit Application 15306 Altura Heights Houston	32
ITEM 5:	COMMUNITY AFFAIRS Presentation, Discussion, and Possible Action on Timely Filed Scoring Appeals under the Department's 2016 Emergency Solutions Grant ("ESG") Program Notice of Funding Availability ("NOFA") TX-607COD City of Denton	46
	TX-607SCL Lubbock Regional MHMR Center DBA StarCare Specialty Health System-VetStar Program (PULLED)	215
ITEM 6:	MULTIFAMILY FINANCE	
	a) Report and Possible Action regarding Third Party Requests for Administrative Deficiency 16118 The Standard on the Creek Houston	54 56
	16380 Sierra Vista Lopezville CDP	99
	b) Presentation, Discussion, and Possible Action on Timely Filed Scoring Notice Appeals under the Department's	136

Multifamily Program Rules
 16387 Cantabria Estates Apartments
 Brownsville

c)	Presentation, Discussion and Possible Action on Staff Determinations regarding 10 TAC §10.101(a)(3) related to Undesirable Site Features and 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics	146
	16200 Kirby Park Villas San Angelo	149
	16274 Rockview Manor Fort Hancock	179
d)	Presentation, Discussion and Possible Action on Staff Determinations regarding Application Disclosures under 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics	207
	16108 Timber Ridge Apartments Chandler	
	16214 Heritage Pines Texarkana	
	16237 Hawks Landing Iowa Park	
	16246 Gala at Four Corners Four Corners	
	16251 Provision at Clodine Road Houston	
	16317 Blue Line Lofts Rowlett	
e)	Staff will present a summary of Determinations under 10 TAC §11.10 of the 2016 Qualified Allocation Plan related to	209
	16130 Cottages at San Saba San Saba	
	16168 Stonebridge of Whitehouse Whitehouse	
f)	Presentation, Discussion and Possible Action on the draft 2016 State of Texas National Housing Trust Fund Allocation Plan and directing that it be published in the <i>Texas Register</i>	131
	PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS	210
	EXECUTIVE SESSION	131
	OPEN SESSION	131
	ADJOURN	216

P R O C E E D I N G S

1
2 MR. OXER: Good morning, everyone. I'd like to
3 welcome you to the July 14 meeting of the Texas Department
4 of Housing and Community Affairs Governing Board.

5 We'll begin, as we do, with roll call. Ms.
6 Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. OXER: Mr. Chisum is not with us today; Mr.
9 Gann is not with us either.

10 Mr. Goodwin?

11 MR. GOODWIN: Here.

12 MR. OXER: Dr. Muñoz?

13 DR. MUÑOZ: Present.

14 MR. OXER: And I am here. That gives us a
15 quorum, so we're in business.

16 Tim, lead us in the pledge to the flags.

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

19 MR. OXER: We have a few guests to recognize.
20 Bobby Wilkinson, is Bobby here? Hey, Bobby. Glad to see
21 the Governor's Office interested in what we're doing. For
22 some reason this time of year tends to attract a lot of
23 attention. I don't know what it is, it's something about
24 money, isn't it, Counselor?

25 Anybody else we have here that I haven't seen

1 and recognized?

2 (No response.)

3 MR. OXER: All right. Let's get to work. With
4 respect to the consent agenda, Marni, did you have a
5 modification, a correction/modification/amendment to make?

6 MS. HOLLOWAY: Good morning, Chairman Oxer,
7 members of the Board. My name is Marni Holloway. I'm the
8 director of the Multifamily Finance Division.

9 Item 1(c) on your consent agenda regarding
10 application 16415, Songhai at Westgate Apartments, this
11 is: Presentation, discussion and possible action on
12 determination notices for housing tax credits with another
13 issuer. We'd like to make a correction to the amount
14 that's listed in your Board book. Your book appears at
15 \$742,439; we are correcting that amount to \$781,526.

16 MR. OXER: So added another 5 or 6 percent on
17 it.

18 MS. HOLLOWAY: Right. In final underwriting,
19 that's where it came out.

20 We are also removing from the agenda item 1(d).
21 That's the inducement for the Sunrise Orchard Apartments.

22 We have a little bit more work to do with this applicant
23 regarding the neighborhood, so we're going to continue
24 with that and hopefully bring it back to you shortly.

25 MR. OXER: So on 1(d) you've essentially pulled

1 that until the next meeting.

2 MS. HOLLOWAY: Yes.

3 MR. IRVINE: A future meeting.

4 MS. HOLLOWAY: For a future meeting.

5 MR. OXER: A future meeting. Okay.

6 With modifications as Marni has listed, need a
7 motion to consider on the consent agenda.

8 MS. BINGHAM ESCAREÑO: Move approval.

9 MR. OXER: Motion by Ms. Bingham to approve the
10 consent agenda as modified.

11 MR. GOODWIN: Second.

12 MR. OXER: Second by Mr. Goodwin.

13 Is there a request for comment?

14 And one more note for housekeeping for anybody
15 who hasn't been here, if there's an item you wish to speak
16 on and that item is being considered, sit in the front row
17 up here. When we're considering an item and you're
18 sitting in the front row, I expect you to want to talk on
19 that item, but that's okay if you don't on this. So you
20 don't want to speak no this?

21 SPEAKER: Not on this item.

22 MR. OXER: Okay. Just trying to be clear and
23 make sure everybody gets heard here.

24 Motion by Ms. Bingham, second by Mr. Goodwin to
25 approve staff recommendation on the consent agenda as

1 modified. There's been no request for public comment.

2 Those in favor?

3 (A chorus of ayes.)

4 MR. OXER: And opposed?

5 (No response.)

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

7 Okay. Michael.

8 MR. LYTTLE: Yes, sir. Chairman and Board, I'm
9 Michael Lyttle, TDHCA chief of external affairs,
10 presenting action item 3 which is: Presentation,
11 discussion and possible action regarding the legislative
12 appropriations request for state fiscal years 2018 and
13 '19.

14 Every two years state agencies are asked to
15 submit a legislative appropriations request, or what we
16 call an LAR, to the Office of the Governor and the
17 Legislative Budget Board. This document reflects each
18 agency's anticipated needs for the next biennium. Several
19 weeks ago, on June 30, the Office of the Governor and the
20 LBB released a policy letter asking state agencies to
21 include a 40 percent general revenue reduction in their
22 base budget. In that letter we also received our LAR
23 instructions which included the submittal deadline of
24 August 5.

25 Today as part of the agenda item we're bringing

1 policy related LAR items to you for your approval.
2 Specifically, we're bringing the required 4 percent GR
3 reduction, our proposed approach for a schedule showing an
4 additional 10 percent general revenue reduction, the
5 administrator's statement which is essentially the
6 introduction to the LAR and communicates our agency
7 policies, and recommendations for requested changes to our
8 appropriations riders, including the capital budget rider
9 which identifies our major information system needs.

10 With respect to the 4 percent reduction, we do
11 not yet have a specific reduction target as this is
12 pending certification of our base reconciliation, but
13 right now we're estimating it will be on the order of \$1
14 million. Our recommendations are including taking the
15 approach of reducing the impact on families and
16 individuals that we serve through our programs and instead
17 making the reductions to indirect administration and all
18 but essential support for the Housing and Health Services
19 Coordination Council. We're also recommending eliminating
20 the affordable housing research and information program
21 and the Balance of State technical assistance for rural
22 Continua of Care.

23 The Housing Trust Fund and the Homeless Housing
24 and Services Program would each be reduced by an estimated
25 \$63,000 over the biennium. Additional reductions include

1 in the 10 percent reduction schedule our further reducing
2 the funding for the Trust Fund and for HHSP on the order
3 of \$1.2 million each over the biennium.

4 Recommended items in our capital budget, just
5 so you know, include an update of our legacy systems, an
6 upgrade of our PeopleSoft financial systems,
7 implementation of recommendations that were made to us
8 from the Department of Information Resources regarding
9 information security assessment, as well as a new system
10 for the Community Affairs programs that's going to help us
11 meet federal reporting requirements. We propose to fund
12 these projects through appropriated receipts and federal
13 funds.

14 Additionally, we're recommending some technical
15 changes to our riders, and we're seeking your approval
16 today to submit this LAR to the appropriate offices by the
17 August 5 deadline.

18 MR. OXER: Any questions from the Board?

19 It sounds like with respect to Curtis's shop,
20 we've been running on an '86 GMC short bed for far longer
21 than its useful life. Huh?

22 MR. LYTTLE: That and duct tape, yes, sir.

23 (General laughter.)

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

1 (No response.)

2 MR. OXER: Then we'll need a motion to consider
3 the resolution.

4 MS. BINGHAM ESCAREÑO: I'll move approval.

5 MR. OXER: Motion by Ms. Bingham to approve
6 staff recommendation on item 3. Is there a second?

7 MR. GOODWIN:

8 MR. OXER: Second by Mr. Goodwin.

9 You gentlemen wish to speak on this item?

10 MR. SAMUELS: Yes, sir.

11 MR. OXER: For the record, for everybody else,
12 we'll start from the aisle and work out on the
13 conversation here.

14 MR. SAMUELS: I want to thank you for allowing
15 me to speak today. My name is Eric Samuels, president and
16 CEO of Texas Homeless Network.

17 Texas Homeless Network is an agency that works
18 across the state with communities large and small, but one
19 of the major projects we have right now is working with
20 rural communities through the rural Continuum of Care
21 technical assistance grant that is offered through TDHCA.

22 So today I'm speaking in opposition of the recommendation
23 to eliminate funding under item 3 for the Balance of State
24 technical assistance for the rural Continua of Care
25 project which is under the earned federal funds category

1 with the base revenue budget.

2 This is one of the few funding sources that
3 helps communities in the Balance of State which extends
4 from the Panhandle, up to Lubbock, down to Brownsville,
5 over to Midland, over to Beaumont. This is something that
6 we try to work with in communities. Homelessness is not
7 different in our smaller communities than it is in our
8 larger communities. What is different is that technical
9 assistance and support is not offered. This is one way
10 that we can offer that.

11 This is a \$50,000 grant and we feel that with
12 this money we are giving the State of Texas a large
13 return. With this \$50,000 we've grown the Balance of
14 State Continuum of Care by \$7 million. It's gone from
15 \$350,000 to \$7.6 million. This funding also help us to
16 provide technical assistance and training to around 400
17 people per month. This funding has allowed us to draw up
18 to \$200,000 in other federal funds. Without it we may not
19 be able to draw those funds because we use the \$50,000 as
20 match.

21 This also helps us to assist the Texas
22 Interagency Council for the Homeless to meet some of the
23 required items by statute which specifically would be
24 under duty number three, assist and coordinate for
25 providing statewide services for all homeless individuals

1 in the state.

2 So we feel that this money is a good investment
3 for the State of Texas and we're getting a good return on
4 that investment, and without it, we may not be able to
5 continue at the rate we are. We also feel that while we
6 have done a lot better over the years, we've reduced
7 homelessness greatly, we still have 6,000 homeless in
8 these communities, and of those there are nearly 700
9 families and over 1,200 children, so there's a lot of work
10 still to be done and there's still some strategic planning
11 going on in our communities that have not had that in the
12 past. We're working with HUD on a TA project that is
13 underway right now, and this funding helps us to continue
14 that.

15 HUD's requirements for Continuums of Care grows
16 every year so any loss in funding would just curtail our
17 efforts in meeting those requirements. So we urge you to
18 reject this recommendation and keep this funding going
19 forward.

20 And I will say one more thing. I think with
21 this funding we've really shown that we can help agencies
22 improve and become more efficient with the dollars they
23 use. The Emergency Solutions Grant funding that is
24 received every year, there's an application process, and
25 in the Balance of State, the applications that were

1 submitted scored among the highest in the entire state,
2 and I think that is in large part due to our staff's
3 efforts, and this funding helps with those staff efforts.

4 So we'd like to thank you for the opportunity
5 to serve Texas and we'd like to continue that and urge you
6 to reject this recommendation to eliminate funding.

7 MR. OXER: Good. Thanks for your comments, Mr.
8 Samuels.

9 Next.

10 MR. FLOYD: Hi. My name is Beaman Floyd. I'm
11 appearing on behalf of Texas Habitat for Humanity of which
12 I'm a board member.

13 We wanted to bring to your attention the
14 Bootstrap Program. This is the owner-build program that
15 you all administer under Section 2306.753. Frankly, we're
16 very understanding of and sympathetic to the budget
17 pressure you are under. We live in the state and we know
18 what's going on with the budget and with the revenue
19 estimates as we move toward the legislative session. We
20 think that the Bootstrap Program is an excellent program
21 and we think it should be supported. Frankly, we'd like
22 more money to go into it. It's really not an expenditure,
23 it's a true investment program because once the money goes
24 into it, it stays in it and comes back with interest.

25 Our best world would be for you all to ask for

1 additional funding into the Bootstrap Program. We haven't
2 had additional funding for quite some time, and the world,
3 as all of you all know very well, has moved on in terms of
4 housing values and the price of land, et cetera. However,
5 we also understand the constraints under which you
6 operate. We just wanted to let you know where we are on
7 this, urge you to consider this thing, and let you know
8 that we will continue to work directly with the
9 legislature to educate them on the Bootstrap Program, and
10 look forward to working with you in partnership on that as
11 we move toward the appropriation process.

12 I have a letter that says essentially that
13 thing here that I'd like to enter into the record, if
14 that's all right. And that is that.

15 MR. OXER: We can't enter the letter into the
16 record, as chair I can't allow you to do that, but you're
17 welcome to send that to the agency.

18 MR. FLOYD: I will provide the letter to the
19 agency.

20 MR. OXER: That will be fine. Thanks for your
21 comments.

22 MR. FLOYD: Perfect. Thank you very much.
23 Appreciate it.

24 MR. OXER: And I would remind everybody to make
25 sure that you sign in, so that Nancy can identify you.

1 MR. DUNCAN: Good morning, Board. Good
2 morning, Tim. My name is Charlie Duncan. I'm with the
3 Texas Low Income Housing Information Service.

4 I heard Mr. Lyttle recommend the complete
5 dissolution of the affordable housing information program.

6 I find this is troubling, given the pressures and
7 opposition that affordable housing is facing today. That
8 opposition is growing, it is based on misperceptions and I
9 think a lack of understanding and education about what
10 affordable housing is. This program should definitely not
11 be cut but should be funded and utilized by this agency.
12 Without the public understanding what affordable housing
13 is, what it means to their communities, what it means to
14 the state, this problem is not going to get any better.

15 I oppose this recommendation and I hope that
16 the Board and the agency will reconsider ways in which to
17 meet the governor's request of a 4 percent budget cut.
18 Thank you.

19 MR. OXER: Thanks for your comments, Charlie.

20 Are there any questions from the Board?

21 DR. MUÑOZ: Michael, I have a question. In our
22 administrator's statement, just so I'm understanding this
23 correctly, it says \$63,000 for HTF and HHSP over the
24 biennium. Is that \$63,000 per program or \$63,000 divided
25 by two?

1 MR. LYTTLE: Per program.

2 DR. MUÑOZ: So about \$30,000 per program
3 annually reduction?

4 MR. LYTTLE: It's \$63,000 per program over the
5 biennium.

6 MR. OXER: Over the biennium.

7 MR. LYTTLE: So technically \$30,000 per year.

8 DR. MUÑOZ: That's what I said.

9 MR. LYTTLE: Sorry. Yes.

10 DR. MUÑOZ: And then explain to me the 10
11 percent scheduled reduction. I read the June 30 letter
12 from the governor, lieutenant governor and speaker. I
13 don't see that referenced.

14 MR. LYTTLE: In direct communications that
15 we've had with the Legislative Budget Board and with the
16 Governor's Office, actually over the last several
17 sessions, this has sort of been a general practice that
18 agencies have gone through to look at additional 10
19 percent reductions in case it's needed, so it's more of a
20 precautionary measure at this point in time.

21 DR. MUÑOZ: That's what I thought, but \$30,000
22 per program annually is probably survivable, \$1.2 million,
23 is that what would happen, these two programs would be
24 primarily responsible for that 10 percent?

25 MR. LYTTLE: If we had to cut an additional 10

1 percent, yes.

2 MR. OXER: So the 10 percent, there was a
3 mandate to cut the 4 percent and then think about how you
4 would cut another 10 percent if things really went
5 downhill.

6 MR. LYTTLE: That's correct.

7 MR. OXER: Okay.

8 DR. MUÑOZ: And I understand that. The HHSP
9 program, what's the budget for that, all in? Is that it?

10 MR. LYTTLE: I don't remember the exact funding
11 total we get for HHSP. Is it \$3 million, five?

12 DR. MUÑOZ: About five?

13 MR. LYTTLE: Five million a year for HHSP, and
14 it goes to the eight largest cities in the state for
15 homeless programs.

16 DR. MUÑOZ: We just had a presentation about
17 two meetings ago, right, about teen homelessness.
18 Everybody was very compelled.

19 MR. LYTTLE: It's tough. I mean, we're cutting
20 bone here, really.

21 DR. MUÑOZ: And I appreciate you aren't
22 necessarily the one with the cleaver. Right? I'm just
23 asking you.

24 MR. LYTTLE: With Tim and with senior staff and
25 David Cervantes with the financial area, we've all looked

1 at it really, really closely and came up with different
2 options, and we felt like this was the most reasonable
3 one.

4 DR. MUÑOZ: I'm not prepared to sort of
5 filibuster this too much longer, but I mean, \$63,000 over
6 the biennium, I think, with the \$5 million budget, \$30,000
7 a year, right, you could probably still provide a lot of
8 service. \$1.2 million cut out of a \$5 million budget is a
9 different matter. Hopefully the 10 percent contingency is
10 not required, but should it be invoked later on, I suppose
11 this is me telegraphing I might have something to say
12 about it.

13 MR. OXER: Might? We expect you to say things
14 about it, that's okay.

15 Well, anybody that has to deal with the
16 legislature and with state government recognizes that
17 we're not in a period of rising revenue. I think there
18 are plenty of people here today that could help us confirm
19 that, so we've got to be prepared to deal with it. So the
20 question comes down to a matter of the choices that we,
21 the Board, has to make to confirm what the staff has made.

22 Tim, did you have a comment that you want to
23 make?

24 MR. IRVINE: I was just going to say that we
25 all hope that none of these cuts come to pass, and

1 consistent with the gentleman from Habitat, we work to
2 educate our oversight committees and members of the
3 legislature about the impactfulness, and frankly, the
4 benefit to communities of all the programs that we run,
5 but we're faced with the challenge of at least devising
6 potential cuts and we wanted to prioritize basically
7 cutting actual programmatic services as the very last
8 option.

9 MR. GOODWIN: Would we have a chance to revisit
10 this if the 10 percent was mandated?

11 MR. OXER: If that's invoked

12 MR. GOODWIN: If we vote today and the 10
13 percent gets invoked, will it come in front of us again?

14 MR. IRVINE: I think any time you submit
15 anything in the legislative budgeting process, there is
16 the possibility that you've lost control over it, but
17 we're always in dialogue with our LBB folks and our
18 Governor's Office folks, and to the extent that we see
19 ways to improve it, they're always willing to talk with
20 us.

21 MR. OXER: Well, with respect to the concept of
22 control over a budget, I don't think we ever have any real
23 control, it's more like influence. We were hoping
24 somebody would listen to us, but when it gets down to it,
25 somebody else has got to decide how much we get.

1 MR. IRVINE: And I would also say that we do
2 offer other programs that are federally funded that can
3 serve different aspects of some of these hard-to-serve
4 populations, such as the Community Services Block Grant,
5 the Emergency Solutions Grant, and we can look for ways to
6 maximize their ability to complement areas that undergo
7 reductions, but those do have federal limitations.

8 DR. MUÑOZ: And I appreciate the explanation
9 and the clarity. Again, you have to present this possible
10 financial sort of solution if it's required. Should it be
11 required, there may be other programs that help offset or
12 mitigate the impact to those programs that would be
13 materially impacted by what we recommend to the
14 legislature. However, they're looking for reduction,
15 we're the ones identifying the programs, and should it
16 come to pass, and hopefully it won't, maybe some
17 additional discussion could be had.

18 MR. OXER: Any other questions?

19 (No response.)

20 MR. OXER: Motion by Ms. Bingham, second by Mr.
21 Goodwin to approve staff recommendation on item 3, and
22 then public comment. Those in favor?

23 (A chorus of ayes.)

24 MR. OXER: And opposed?

25 (No response.)

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

2 Chairman Dutton, good morning. We'd like to
3 extend to you a courtesy since you're here and I
4 understand you have a comment to make on an item that's
5 sort out of sequence here, but we'd like to offer you the
6 opportunity to speak.

7 MR. DUTTON: Well, good morning, Mr. Chairman
8 and members. Thank you. I do have a plane to catch too.

9 MR. OXER: And I hope you'll forgive me for
10 having to do this, but you have to tell us who you are.

11 MR. DUTTON: I'm State Representative Harold
12 Dutton, from Legislative District 142 which is in
13 Northeast Houston.

14 MR. OXER: Great. Thank you, sir.

15 MR. DUTTON: I am currently serving my 16th
16 term in the legislature, and during that time I've had the
17 pleasure to support affordable housing, and particularly
18 housing financed through the Low Income Housing Tax Credit
19 Program, and I want to thank you all for all of the work
20 that you do to make that possible. And certainly in my
21 district in Houston, where we have probably a population
22 of renters that borders closer to 46-47 percent,
23 affordable housing is always important to us, and we're
24 going through somewhat of a re-gentrification that's
25 taking place now, and so we'll be having some efforts

1 during the next legislative session to try to improve
2 that.

3 I just wanted to appear this morning, though.
4 I'm not sure vilified is the right word --

5 MR. OXER: That's what we usually get, by the
6 way.

7 (General laughter.)

8 MR. DUTTON: And after 16 sessions in the
9 legislature, I'm accustomed.

10 MR. OXER: Your hide has gotten a little tough
11 on that side.

12 MR. DUTTON: Well, you start to recognize that
13 you have to explain to people in my district that beating
14 up on me is nonproductive and that if we can get to the
15 root of the problem perhaps we can solve it, but in no way
16 beating up on me or me beating up on them is going to
17 rectify whatever the problem is.

18 I did want to just share a couple of things in
19 terms of this application I think that's come from the
20 Fall Creek, related to Fall Creek. One of the things I've
21 always done -- and I think this is the first time in my
22 career I the legislature -- we always ask two questions of
23 people who ask us to involve ourselves in writing letters
24 of support. One is we always ask about this idea of
25 whether or not ex-felons are going to be permitted in

1 terms of the application to be a part of the process, and
2 in most cases we've found that to be successful. In fact,
3 on one occasion we had to work with the developer who
4 didn't understand what the law was or what I was even
5 asking, but we were able to resolve that. The other is
6 that we always ask whether or not the applicant has talked
7 to the people within the respective community to be sure
8 that we don't have any upsets down the road.

9 And in the case of Fall Creek, we asked those
10 two questions -- I didn't personally but my staff did --
11 and we were assured that, number one, in terms of the ex-
12 felons they changed their whole policy and said they would
13 agree to look at it on a case-by-case basis. When it came
14 to community support, we were assured that the people in
15 Fall Creek community, which is a little bit outside of
16 where this development is, but certainly that they had
17 been talked to and that they were in support of it.

18 It turns out later that we were advised that
19 that was not the case and as a result of that, what I did
20 is tried to host a meeting with the people in Fall Creek
21 and the developer. Unfortunately, the developer was not
22 able to attend for whatever reason, and so we went ahead
23 with the meeting. But it now has developed into a
24 question of whether or not there was any fraud involved,
25 and I understand the staff's position that they are not

1 convinced that there was any fraud involved, and that's a
2 little bit different than my opinion because I believe
3 that my support for the project was based solely on those
4 two questions that we asked and were answered in the
5 affirmative, at least for us to do.

6 I understand also there's been I this round
7 probably 141 applications that you also have had this
8 time. Six of those applications, I think, are
9 applications that did not meet the financial deadline, for
10 whatever reason, and I think as long as you all are
11 considering how to treat those, I think you ought to apply
12 the same standard to them as you apply to everybody else.

13 If they did not meet the standards, then they shouldn't
14 be allowed to continue.

15 And so I'm just here to suggest that, one, my
16 staff tells me that they feel a little bit maligned, too,
17 themselves because in some cases people have suggested
18 that they were not telling the whole truth or at least not
19 according to some of the people who objected to my wanting
20 to withdraw my letter of support for this project, because
21 as you know, the way it works is that one a legislator
22 submits a letter, we typically don't get an opportunity to
23 withdraw it. I think when there's clearly evidence of
24 fraud, I believe that ought to be a consideration that
25 falls outside of the rule barring the withdrawal of a

1 letter, but in this case there's some other evidence that
2 this applicant obviously didn't meet.

3 There are people who are suggesting that I'm
4 sort of kowtowing to the wills of the people in Fall
5 Creek. I can tell you that while I do consider what these
6 folks have had to say, in no way have I ever stood in the
7 way of an affordable housing project simply because the
8 people have expressed this not in my backyard sort of an
9 approach. And there are people who have suggested that,
10 well, he's doing that so he can make sure he gets elected.

11 Well, after 16 terms, I don't worry too much about
12 getting reelected because I do recognize that I have
13 probably more terms in back of me than I have in front of
14 me, anyway.

15 But again, I just want to thank you all for
16 allowing me to vent a little bit this morning because my
17 staff was a little bit upset because I was upset at them
18 because all these things seemed to get out of kilter. But
19 I'll be happy to answer any questions. I don't want to
20 take any more of your time, but I do think that a
21 consideration ought to be made for when applicants make
22 application that there's a checklist you go down, and if
23 you don't meet all of the things on the checklist, you've
24 got to get out and start over, and I think that's what
25 happened in this case with the Fall Creek development

1 folks.

2 So again, thank you, Mr. Chairman. I got a new
3 flight, that's what it was just telling me. I don't have
4 to worry about it, I do have a new flight.

5 (General laughter.)

6 MR. OXER: We're only laughing because we know
7 what that feels like.

8 MR. DUTTON: I understand.

9 So anyway, I'll be happy to answer any
10 questions, Mr. Chairman, if you all have any for me at
11 this time, but other than that, I'll get out of your way
12 and let you go on and conduct your business. And again,
13 thank you all for what you do for Texas. We still don't
14 have enough in the way of affordable housing and I don't
15 know that we'll ever get to that point, but I do think
16 that we've got to make the effort. And I think people are
17 becoming more and more accessible when it comes to
18 changing their minds and their thoughts about these
19 affordable housing projects, and I'll stand with you to do
20 everything I can to make sure that that happens.

21 So with that, Mr. Chairman, if you have any
22 questions, I'll be happy to answer any of them.

23 MR. OXER: Thank you for your comments, Mr.
24 Chairman. As I commented to several folks like you who
25 have come here, we're going to constantly be in a state of

1 catching up in terms of providing this, so there's always
2 going to be more demand, more need than we'll be able to
3 satisfy each time the opportunity presents itself, but
4 it's a state of evolution, we have to keep chasing that
5 flag even if it's tied to a stick on us

6 Are there any questions from the Board?

7 MR. GOODWIN: I have a question.

8 MR. OXER: Yes, Mr. Goodwin.

9 MR. GOODWIN: Chairman Dutton, you made
10 reference to the fact that your staff asked this developer
11 if he had met with the local community people, and they
12 stated to your staff that they had, and then you attempted
13 to arrange a meeting between that group of people and the
14 developer and the developer didn't show for whatever
15 reason.

16 MR. DUTTON: Well, there was another step that
17 I think you missed in there, and I probably didn't mention
18 it, but one of the reasons we arranged the meeting was
19 because there was this dissension about what was said and
20 who said it and that kind of thing, and so I wanted to get
21 the parties together so that we could sort of ferret out
22 the truth to be sure that we were all on the same page.
23 And that was the reason for the meeting.

24 MR. GOODWIN: And I just want to make sure that
25 I'm clear. I assume this meeting would have taken place

1 after your letter of support for this project had already
2 been submitted to the Department.

3 MR. DUTTON: That's exactly right.

4 MR. OXER: And at what point in the schedule
5 before or after the compliance date? Meaning if you
6 submit a letter, there's a date after which the
7 application is either in or it's out.

8 MR. DUTTON: Well, I'm not sure about the dates
9 on that, I'd have to look back at my notes, but I think it
10 came after. I believe the meeting was after. I believe
11 that, I'm not absolutely 100 percent certain, but I
12 believe that to be the case.

13 But again, my whole point of having a meeting
14 was to get everybody together because I never had this
15 happen before where we had offered a support letter and
16 then somebody said, Well, the basis for your support
17 letter was not absolutely correct. And I thought, Well,
18 wait a minute, why are you saying that? But anyway, let's
19 get everybody together and get the parties together and
20 we'll see. To the developer's credit, they did call and I
21 think the statement was made to my staff that there was
22 bad weather or something and they couldn't come or
23 something. But nonetheless, that was the purpose for the
24 meeting.

25 MR. GOODWIN: And had they told your staff

1 originally that they had not met with the Fall Creek
2 Homeowners Association, you would have said?

3 MR. DUTTON: Go meet with them and come back to
4 us, the same as we did when we talked to them about ex-
5 felons. Apparently they were not quite ready to make the
6 commitment to us to do it on a case-by-case basis, and in
7 fact, what the developer's representative said was: Let
8 me go back and talk to these folks and then we'll come
9 back to you with what our position is. They did that in
10 terms of the ex-felons proposition, and if it had surfaced
11 that they had not met with the people in Fall Creek, we
12 would have simply said, Why don't you meet with them?

13 In fact, I would have been glad to host a
14 meeting for them with these folks so that they understand
15 kind of what's going on, what's going to take place, how
16 potentially it might affect them, if any at all, but just
17 so that people would be talking so that nobody would be
18 afraid of things for reasons that weren't credible reasons
19 to be afraid of. And I think that's what, in part,
20 happened.

21 MR. GOODWIN: Thank you.

22 DR. MUÑOZ: Chairman Dutton, I just want to be
23 clear. So this is the first time that this has happened
24 where you've had to speak about a letter of support in 16
25 sessions?

1 MR. DUTTON: Never happened before, sir. In
2 fact, almost every time we have done it, I think the
3 record will reflect, things have been fine. And there are
4 times when we've actually met with the community to kind
5 of help them understand what was going on, and things tend
6 to work better when we were talking. But this is the
7 first time this particular situation has arisen.

8 DR. MUÑOZ: In my notes I thought I jotted
9 down, did you indicate that they also may have changed
10 their position on the felon?

11 MR. DUTTON: Well, yes. When we first met with
12 them, when my staff first met with them, I was advised
13 that they said, well, they weren't going to consider ex-
14 felons at all. And I said, Well, you can't do that is the
15 way I understand the law. But the gentleman who was
16 representing the developer said, well, he needed to get
17 back to the developers to kind of ferret out what their
18 position might be. And we later got a call saying that
19 they would look at it on a case-by-case basis when it came
20 to ex-felons.

21 DR. MUÑOZ: And knowing what you know now, I
22 just want to be clear, would you have provided that letter
23 of support?

24 MR. DUTTON: Absolutely not.

25 MR. OXER: No other questions? Thank you,

1 Chairman Dutton.

2 MR. DUTTON: Mr. Chairman, thank you all, and
3 thank you again for all of the work that you all do to
4 help Texas get out of this affordable housing crisis.

5 MR. OXER: We appreciate your comments and glad
6 to have you here today.

7 All right. I will remind everybody this was a
8 diversion from the agenda to provide a courtesy to the
9 representative, and that information is on the record from
10 Chairman Dutton to be considered under item 6(a).

11 With respect to item 4 on the action items,
12 Raquel. Good morning.

13 MS. MORALES: Good morning. Raquel Morales,
14 director of Asset Management.

15 Item 4 i: Presentation, discussion and possible
16 action regarding a material amendment and a waiver request
17 for Altura Heights which is Tax Credit number 15306.

18 Altura Heights was awarded last year during the
19 competitive cycle. The applicant was awarded 9 percent
20 housing tax credits and a TCAP direct loan and proposed
21 the new construction of 124 units in Houston. An
22 amendment request was submitted identifying changes to the
23 application which triggered material alterations and
24 requiring Board approval, among those being a change in
25 the site plan, reduction in the number of residential

1 buildings, there's also an increase I the net rentable
2 area due to slightly larger unit sizes and a larger common
3 area. Additionally, the applicant provided revised
4 financial exhibits reflecting increased development costs
5 and a slightly different financing structure than what was
6 originally proposed and approved.

7 The applicant has established that these
8 changes were the result of working with local neighborhood
9 groups in the area to design a project that would fit
10 better within the established neighborhood. As a result
11 of that work with the neighborhoods, as well as some
12 changes to the site related to needing a larger retention
13 pond to service the development, the site plan had to be
14 modified and resulted in needing to reduce the buildings
15 from eleven to ten. The total number of units and the
16 unit mix remain the same, that hasn't changed.

17 The Department's Real Estate Analysis Division
18 has performed a reevaluation of the revised information
19 provided and confirms that the development remains
20 financially feasible. Your Board materials include the
21 REA addendum related to this amendment which continues to
22 recommend the previously awarded tax credit amount and the
23 TCAP direct loan, subject to conditions.

24 So that piece just kind of summarizes the
25 amendments that they're asking approval for and that staff

1 is recommending approval for.

2 The second part of the applicant's request is
3 related to a waiver, and this is specific to a waiver of
4 the Department's definition of unit type under 10 TAC
5 10.3(a)(139). So during staff's review of the revised
6 information which included revised floor plans for the
7 units and the building plans, it was revealed that the
8 development, as it is currently designed and proposed now,
9 does not achieve the required distribution of accessible
10 units among unit types. And this is specific to the two-
11 bedroom, two-and-a-half bath townhome units. The
12 applicant believes that the distribution is achieved as
13 currently designed, if the two-bedroom, two-and-a-half
14 bath townhomes are considered the same unit type as a two-
15 bedroom, two-bath townhome.

16 The Department's definition of unit type
17 considers a unit to be a different type if there is any
18 variation in the number of bedrooms, bathrooms or if the
19 square footage difference is equal to more than 120 square
20 feet. Multifamily developments have to comply with the
21 accessibility rules in Chapter 1, Subchapter B, and these
22 rules describe and expand upon the accessibility
23 requirements of the Fair Housing Act and Section 504 of
24 the Rehabilitation Act.

25 Now, 10 TAC 1.207 states that accessible units

1 must be made available in a sufficient range of sizes and
2 amenities so that the choice of living arrangements of
3 qualified persons with disabilities as, as a whole,
4 comparable to that of other persons eligible for housing
5 assistance under the same program. 10 TAC 1.207 goes on to
6 give examples of distribution requirements based on
7 bedroom and bathroom, as does the definition of unit type
8 in our rules.

9 As the Board writeup states, this is a new
10 construction project that has not yet started
11 construction, it's still within the design phase, and
12 throughout the process of reviewing the amendments, staff
13 has discussed with the applicant alternative ways to fix
14 the problem, in essence, to meet the accessibility, the
15 distribution requirements for these units. However, the
16 applicant has indicated that those alternatives are either
17 not feasible financially, it would be too costly, or they
18 were impractical for the plans the way they're designed
19 now.

20 The rule requires a sufficient range of sizes
21 and amenities and so ultimately the Board's decision or
22 question here is whether the lack of a half bathroom is
23 limiting a person's choices. Is a two-bedroom, two-and-a-
24 half bath unit the same unit type as a two-bedroom, two-
25 bath unit?

1 Staff, again, is recommending approval of the
2 amendment with respect to the changes to the site plan and
3 all the other stuff, but as it relates to the waiver,
4 staff is not recommending approval of the waiver.

5 MR. OXER: Any questions? So a half bathroom
6 makes that much difference?

7 MS. MORALES: Yes. Apparently it does, yes.
8 Our Compliance Division has traditionally applied and
9 interpreted as constituting a different unit type, and
10 that's the question: does the half bathroom make it a
11 different unit type?

12 MR. ECCLES: Question, Raquel. The facts in
13 this application, though, is the difference between a half
14 bathroom on the ground floor of a townhouse, a two-story
15 townhouse, versus a two/two flat for the accessible units.
16 So the question then also becomes whether a half bathroom
17 is an amenity both in the flat and in the townhouse.

18 MS. MORALES: And in the townhome.

19 MR. OXER: So essentially, the townhomes had
20 two and two upstairs, two bedrooms, two baths upstairs,
21 and whatever, the kitchen and the rest of the place is on
22 the bottom, plus the half bath on the bottom.

23 MS. MORALES: Right.

24 MR. OXER: And then the flat has got the two
25 and two all on the same level. So essentially the half

1 bathroom on the ground floor makes it more accessible for
2 somebody who might need that accessibility to keep from
3 having to go up and down the stairs.

4 MS. MORALES: That's the question. Right now
5 the two-bedroom, two-and-a-half-bath townhome units, none
6 of those are accessible, and that's the question. That's
7 what staff has gone back to the applicant and said is, you
8 that don't have an accessible unit for that floor plan.

9 MR. OXER: Hold on a second. A two-bedroom,
10 2-1/2-bath townhome is not accessible. What was the
11 thinking in terms of what would make it accessible?

12 MS. MORALES: Well, there were several
13 different options that we presented to the applicant, and
14 they're included in the Board writeup. One of them would
15 be for the two-bedroom, two-bath flat that is of
16 comparable size to add a half bath in that unit. Another
17 would have been to include a lift in one of the two-
18 bedroom, two-and-a-half-bath townhomes to make it
19 accessible. That was another option that was thrown out.

20 MR. OXER: So essentially put in an elevator.
21 Yes or no?

22 MS. MORALES: Yes. Not an elevator, it's a
23 chair lift.

24 MR. OXER: Okay. It's a rail lift up the
25 stairs.

1 MS. MORALES: Yes.

2 MR. OXER: Okay.

3 MS. MORALES: The other option was to remove
4 the half bath from those units and essentially make them
5 two-bedroom, two-bath townhome units, which they already
6 have and just removing the half-bath floor plan.

7 MR. OXER: Which seems like sort of a courteous
8 amenity to have on the first floor.

9 MS. MORALES: That's what the applicant is
10 saying, is that it's there for visitors who don't have to
11 go upstairs to use the bathroom.

12 MR. OXER: Okay.

13 MR. ECCLES: Just for clarification purposes,
14 for the development, the accessibility element is managed
15 by having the flats. Correct?

16 MS. MORALES: Yes.

17 MR. ECCLES: And then it's not about making the
18 townhomes accessible, the powder room in the townhomes on
19 the first floor is more an issue of visibility rather than
20 accessibility.

21 MS. MORALES: Yes.

22 MR. ECCLES: Okay. Thank you.

23 MR. OXER: Hold on. Clarify that for me. I
24 admit I'm having some trouble with this one.

25 MR. IRVINE: A person with a mobility

1 impairment who visits can use the restroom on the ground
2 floor and doesn't need to be able to access the second
3 floor; however, if a person were mobility impaired and
4 living in the unit, they would not have access to a full
5 bathroom on the ground floor.

6 MR. OXER: Right. And that seems to make
7 sense. But the accessibility argument in terms of making
8 those arguments, wouldn't you offer them the ones in the
9 two-bedroom flats?

10 MR. GOODWIN: Do you have an accessible number
11 of units we're trying to get to and that they need to
12 count these to get to that number of units within the
13 entire development?

14 MS. MORALES: They already do, so there's 124
15 units, they need 5 percent overall, so they need, I think,
16 it's about seven units, and they do have that number of
17 accessible units. The question is the distribution among
18 each unit type. So you have to have the seven spread out
19 among the one-bedrooms, the two-bedrooms and the three-
20 bedrooms, and the issue here is that there are two-
21 bedrooms with 2-1/2 baths that are considered different
22 than a two-bedroom, two-bath. The applicant is saying
23 those are the same unit type and should be counted as one
24 unit type, and that is the question that's before you to
25 decide.

1 MR. GOODWIN: So if you took this powder room
2 and just made it into a closet within this development.

3 MS. MORALES: Then it would just be a two-
4 bedroom, two-bath.

5 MR. GOODWIN: And everything else about the
6 application is approved.

7 MS. MORALES: Yes.

8 MR. OXER: Well, the question is for the
9 accessible units within the development they've met what
10 the required standard is in terms of number. Now it's a
11 question of the two-bedroom townhouse and the two-bedroom
12 flats.

13 MS. MORALES: It's a question of distribution.
14 Again, we can't have all the accessible units being just
15 the one-bedroom units. Right? If they offering ones,
16 twos and threes, we want them equally distributed among
17 the development.

18 MR. OXER: And the critical part you just said
19 was it has to be distributed between the one-, two- and
20 three-bedrooms, not the one-bedroom; two-bedroom, two-
21 bath; two-bedroom, two-and-a-half bath; and three-bedroom.

22 MS. MORALES: Well, right, there's the
23 question, because our rule, our definition of unit type is
24 specific. It doesn't address the half bathroom.

25 MR. OXER: It's a difference without a

1 distinction, as far as I can tell.

2 DR. MUÑOZ: So if they are required
3 approximately seven of these units across the entire
4 development and they have three model types, one-bedroom,
5 two-bedroom, three-bedroom?

6 MS. MORALES: Yes, I think so.

7 DR. MUÑOZ: So they should have two of each,
8 about.

9 MS. MORALES: They have ones, twos and threes,
10 and they have right now three of the one-bedrooms proposed
11 as accessible, they have one of the smaller two-bedroom,
12 two-bath flats proposed as accessible, and they have two
13 of the two-bedroom, two-bath flats accessible, and then
14 they have one three-bedroom as accessible. So again, the
15 question being the two-and-a-half bath, is that limiting
16 choice. If we're saying the two-bedroom, two-and-a-half
17 bath is the same unit type and they don't have one of
18 those as accessible, is that limiting somebody's choice as
19 far as the half bathroom goes.

20 MR. OXER: The real question is is a two-
21 bedroom different from a two-bedroom with a half bath; a
22 two/two and half, different from a two/two.

23 Any other questions from the Board?

24 MS. BINGHAM ESCAREÑO: Just a point of
25 clarification because I didn't hear an answer.

1 MS. MORALES: Yes.

2 MR. OXER: Thank you, Ms. Bingham.

3 Okay. So restate for us, you've taken care of
4 all of the changes in the number and that sort of thing,
5 and it's down to whether they need -- I gather that they
6 think they don't need an appeal and you think that they
7 do.

8 MS. MORALES: Well, they did submit a request
9 for a waiver. After discussion with staff, they thought,
10 okay, let's take this and ask the Board to waive the
11 definition of unit type. Now, whether a waiver is what's
12 really needed or if it's a clarification.

13 MR. OXER: So what we would be waiving is
14 whether we think a two-bedroom, two-bath flat is a
15 different type of unit from a two-bedroom, two-and-a-half
16 bath townhome.

17 MS. MORALES: Yes.

18 MR. OXER: Space is essentially the same on
19 each one of them, one has just got another half bath in it
20 and they've got the bedrooms on top. And the number of
21 units that are accessible within the whole complex is
22 still the same.

23 MS. MORALES: Yes.

24 MS. BINGHAM ESCAREÑO: Can I just ask one more
25 question just for clarification?

1 MR. OXER: You can ask as many as you like

2 MS. BINGHAM ESCAREÑO: The waiver is actually
3 to allow the two-bedroom, two-bath flat to satisfy the
4 distribution requirement.

5 MR. OXER: I'm sorry. The way I read it is
6 you're saying the waiver is to say that the two-bedroom,
7 two-bath flat is essentially the same as a two-bedroom,
8 two-and-a-half bath.

9 MS. MORALES: Yes.

10 MS. BINGHAM ESCAREÑO: I can live with that.

11 MS. MORALES: And that what they've proposed is
12 good and they can move forward.

13 DR. MUÑOZ: That they're equivalent.

14 MS. MORALES: That they're same unit type.

15 MR. OXER: And you're saying that it's not, and
16 what we would have to do is say that it is.

17 MS. MORALES: Yes.

18 MR. OXER: Is that clear to everybody? Do we
19 need to take this in two parts, Counselor, to approve the
20 recommendation on the changes? Well, they didn't request
21 an appeal on that, so the real question on this is this is
22 the only item.

23 MS. MORALES: Right. It's just that in
24 conjunction with this whole amendment, the changes that
25 they presented, this was identified as an additional issue

1 that staff couldn't get comfortable with based on how
2 we've interpreted historically.

3 MR. OXER: So staff is saying that?

4 MS. MORALES: So staff is saying we approve the
5 material changes that have been presented and believe that
6 the development needs to meet our accessibility
7 requirements, and as it relates to this one piece, the two
8 and a half bathroom townhome issue, we don't recommend the
9 waiver on that. We're saying move forward, make the
10 development accessible; you're at a stage where you can,
11 you haven't started construction, you're still in design
12 phase.

13 MR. OXER: Do you want to take a stab at that
14 one?

15 MS. BINGHAM ESCAREÑO: I would, I'd like to
16 take a stab at it.

17 MR. OXER: Please.

18 MS. BINGHAM ESCAREÑO: I'd like to recommend
19 approval of staff recommendation with the exception of the
20 denial of the waiver for which I would like to move to
21 approve the waiver request.

22 MR. GOODWIN: Second.

23 MR. OXER: Okay. Motion by Ms. Bingham, second
24 by Mr. Goodwin to as stated approve staff recommendations
25 with the exception of the waiver.

1 MR. ECCLES: If I could make a suggestion on
2 the motion.

3 MR. OXER: Please.

4 MR. ECCLES: Waiver of 10 TAC 10.3(a)(139),
5 Unit Type, as it relates specifically to the facts in this
6 application that is before the Board. This is not a
7 general waiver of unit type as might be applied under
8 other circumstances.

9 MR. OXER: Correct. Ms. Bingham, I assume
10 you're okay?

11 MS. BINGHAM ESCAREÑO: Incorporate Legal's
12 suggestion.

13 MR. OXER: Okay. Mr. Goodwin, I assume that's
14 okay?

15 MR. GOODWIN: Acceptable.

16 MR. OXER: All right. We appear to have public
17 comment. You sure you want to say anything?

18 MS. McIVER: I'm Diana McIver, DMA Development.
19 I think you have a busy day.

20 MR. OXER: Welcome back. We haven't seen you
21 for a while.

22 MS. McIVER: I know. And we're here to answer
23 any questions but it sounds like staff sufficiently
24 answered those questions. And yes, we just believe that
25 what we're proposing, the two-bedroom, two-bath flat is a

1 more usable unit type for a person with a disability and
2 that the extra powder room simply complicates the
3 usability of that space. And we did a little diagram for
4 you, but it sounds like we're all on the same page, so I
5 really don't want to take any more of your time. And I
6 thank you, though, for your support.

7 MR. OXER: Good thinking, Diana.

8 (General laughter.)

9 MR. OXER: With respect to item 4 of the
10 agenda, there's been a motion by Ms. Bingham, second by
11 Mr. Goodwin to approve staff recommendation on this item
12 with the exception of the waiver as defined by counsel.
13 Is that sufficiently stated, Counsel? Let the motion
14 reflect what was stated in the record. Is that clear to
15 the Board? Those in favor?

16 (A chorus of ayes.)

17 MR. OXER: And opposed?

18 (No response.)

19 MR. OXER: There are none.

20 MS. MORALES: Thank you.

21 MR. OXER: Thanks, Raquel.

22 Michael.

23 MS. TREJO: Good morning. I'm standing in for
24 Michael today. Good morning, Board and Chairman Oxer. My
25 name is Naomi Trejo, coordinator for Homelessness Programs

1 and Policy, and I'm presenting on agenda item 5:
2 Presentation, discussion and possible action on timely
3 filed scoring appeals under the Department's 2016 ESG
4 Program NOFA. It should be noted that yesterday Mayor
5 Chris Watts of Denton submitted a letter of support for
6 the city of Denton's ESG application.

7 ESG funds are used for street outreach,
8 services, shelter and financial and mental assistance for
9 persons who are experiencing or at risk of homelessness.
10 In February 2016, the Department released an ESG NOFA for
11 \$8.4 million. In the NOFA the Department funds by
12 Continuum of Care, or CoC regions, for competition by
13 local applicants.

14 As background, the CoC program is a HUD program
15 which provides funding for a system of community
16 homelessness providers. By statute, CoCs are responsible
17 for establishing a coordinated access system and ESG
18 subrecipients must interact with the CoC in its region.
19 The City of Denton is in the Balance of State CoC. For
20 the Balance of State CoC, the lead agency is the Texas
21 Homeless network.

22 This appeal concentrates on a scoring item in
23 the 2016 ESG competition. The Department asked CoC lead
24 agencies to verify participation of applicants in a
25 coordinated access system. The Department staff reached

1 out to the Texas Homeless Network this week and asked if
2 they would reconsider their assessment of what constituted
3 participation in the coordinated access system. The Texas
4 Homeless Network declined reconsideration, therefore,
5 staff recommends that the appeal be denied as this would
6 be consistent with the treatment given other applicants.

7 Any questions?

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

9 (No response.)

10 MR. OXER: Then we'll need a motion to
11 consider.

12 MR. GOODWIN: So moved.

13 MR. OXER: Motion by Mr. Goodwin to approve
14 staff recommendation on item 5.

15 DR. MUÑOZ: Second.

16 MR. OXER: And second by Dr. Muñoz.

17 Do you wish to speak, sir?

18 DR. PETERSON: My name is Dr. Alonso Peterson.
19 I'm the executive director of Giving Hope, Incorporated.
20 We provide a lot of the Emergency Solutions Grant support
21 in the City of Denton. Each year we have been providing
22 of the City of Denton about 1,500 people are served
23 through ESG services, so those are seniors, domestic
24 violence victims and clients with HIV or AIDS. Those are
25 clients who are either assisted through street outreach,

1 the shelter operations or direct rental assistance. Each
2 year we're looking at over \$100,000 of rental assistance
3 going to those clients. We then match those funds or
4 leverage those funds through United Way to help out even
5 further, so there's a lot of assistance being provided.

6 I'm speaking in support of our appeal because
7 it comes down to about three points which we are lacking
8 in the application and it's related to this coordinated
9 entry process. Initially in Denton I was the original
10 chair of the coordinated entry process in the city, and we
11 have one partner in the community that's a domestic
12 violence partner. That agency cannot participate in HMIS,
13 so agency can't participate in that system based on
14 federal law and that is a part of our appeal. That is two
15 points alone in the application that we're missing.

16 Another city in our application is in the City
17 of Lewisville, they're about 30 minutes away. So
18 coordinated entry is about getting all the agencies
19 together to refer clients back and forth to what's
20 considered front doors. The City of Lewisville, they
21 serve clients south of the lake, we serve clients north of
22 the lake. Clients that are in Lewisville can't be
23 referred to the City of Denton for services, so there's no
24 way for those clients to access services in the City of
25 Denton, thus they can't participate at this time in the

1 coordinated entry system.

2 So it really comes down to those two issues and
3 those two issues make a difference in the lives of about
4 1,500 people in our community. So we're asking that the
5 appeal be considered so that those clients can get the
6 services they need.

7 MR. OXER: Thanks for your comments, Dr.
8 Peterson.

9 Any questions?

10 MS. BINGHAM ESCAREÑO: Dr. Peterson, do those
11 clients have any other alternatives for services other
12 than what you've put together?

13 DR. PETERSON: Not at this time. Giving Hope in
14 the City of Denton provides the majority of the rental
15 assistance services in this county. So what's going to
16 happen is if we lose these services, those clients will
17 then have to call churches and other people in the
18 community to get assistance, and our faith-based community
19 just can't handle 1,500 people needing \$100,000 in rental
20 assistance, domestic violence clients needing counseling,
21 and the shelters needing food and a place for the clients
22 to speak.

23 MS. BINGHAM ESCAREÑO: I'm not asking you to
24 speak, you're speaking on behalf of the City of Denton,
25 but would your assumption be that the Lewisville clients

1 would have the same dilemma?

2 DR. PETERSON: The exact same dilemma.

3 DR. MUÑOZ: Dr. Peterson, when did you discover
4 that the nature of some of your partners would be excluded
5 by federal law? How wasn't that discovered in you due
6 diligence up front? Now at this point you've submitted
7 this app and have discovered that by virtue of some other
8 statute it precludes you from receiving these points which
9 we may not be in a position to change on our end.

10 DR. PETERSON: The way we considered it, when
11 we have been working through the coordinated entry process
12 was the fact because the domestic violence partner is
13 aware of what is going on in the community and by federal
14 statute they can't participate in HMIS, that that was
15 participation. They're aware of what is going on in the
16 community with the services. If any of their clients are
17 needing services, we still service those clients, they
18 just can't go into the HMIS system, so we saw that as
19 participation.

20 Also, when we set up the original coordinated
21 entry system in the community, we were advised to focus
22 first on the City of Denton to establish that front door
23 system where there are agencies in the community that
24 everybody sends clients to, so some agencies refer clients
25 and some agencies are the front doors that service the

1 clients. We were advised that because Lewisville is about
2 30 minutes away that Lewisville not be a part of that
3 system at this time.

4 DR. MUÑOZ: Who advised you?

5 DR. PETERSON: The Texas Homeless Network, the
6 staff member who came out to provide the original training
7 on how to set up coordinated entry.

8 MR. OXER: Any other questions?

9 MS. BINGHAM ESCAREÑO: I have questions for
10 staff.

11 MR. OXER: Ms. Bingham.

12 MS. BINGHAM ESCAREÑO: And maybe for legal
13 counsel.

14 Thank you, Doctor.

15 Are there statutory implications if we consider
16 the appeal? I'll do Naomi first.

17 MS. TREJO: I'm looking for legal counsel. I'm
18 not aware of any statutory limitations of considering the
19 appeal. I will let you know that there are other domestic
20 violence providers that are facing the similar issue and
21 some of them have dealt with it in different ways in order
22 to integrate them into coordinated access.

23 MR. OXER: How have they dealt with it, Naomi?
24 Give us an example.

25 MS. TREJO: City of Houston, they weren't part

1 of this competition but they are working on creating some
2 sort of referral system through their HMIS system, which
3 is Homeless Management Information System., that would
4 provide that referral. So they're actively working on
5 that now, even though the DV provider can't enter
6 information into the HMIS system.

7 MR. OXER: Okay. Any other questions? Leslie?

8 MS. BINGHAM ESCAREÑO: I'd like to hear from
9 Megan.

10 Thank you, Naomi.

11 MS. SYLVESTER: Megan Sylvester, Legal
12 Division.

13 I just want to make a point of clarification.
14 The person appealing is absolutely right, the DV providers
15 are barred from participating in HMIS, however,
16 coordinated access is not required to be done through
17 HMIS. That's a choice that the City of Denton and their
18 local Continuum of Care, and they're part of a larger
19 Balance of State Continuum of Care for HUD purposes, but
20 their local referral, that's a choice that they made to
21 put that system in HMIS. So I just wanted to clarify
22 that.

23 MR. OXER: Is that clear? Good.

24 Is there any other public comment?

25 (No response.)

1 MR. OXER: All right. With respect to item 5,
2 motion by Mr. Goodwin, second by Dr. Muñoz to approve
3 staff recommendation on item 5. Those in favor?

4 (A chorus of ayes.)

5 MR. OXER: And opposed?

6 (No response.)

7 MR. OXER: There are none.

8 MR. OXER: I'm going to recommend right now
9 that we take a brief break. We're getting ready to have
10 some intense conversation, so it's 10:07, let's be back in
11 our chairs here at 10:20, a brief little pit stop break,
12 and we'll be right back.

13 (Whereupon, at 10:07 a.m., a brief recess was
14 taken.)

15 MR. OXER: All right. Let's come to order,
16 please.

17 Regarding item 6, Marni, I think you're up
18 first.

19 MS. HOLLOWAY: Good morning, Chairman Oxer,
20 members of the Board. My name is Marni Holloway. I'm the
21 director of the Multifamily Finance Division.

22 Item 6(a) is: Report and possible action
23 regarding third party requests for administrative
24 deficiency. In this item staff is presenting, as directed
25 by the Board during the June 30 meeting, a more in-depth

1 analysis of two specific applications in a manner that
2 allows the Board to provide policy direction to staff
3 regarding these matters.

4 You'll recall that Section 11.1(o) of the QAP
5 allows unrelated persons or entities to bring new material
6 information about an application to staff's attention a
7 third party request for administrative deficiency. Staff
8 examines those requests and considers whether they should
9 be the subject of an administrative deficiency on that
10 specific matter. Requesters must provide documentation of
11 sufficient evidence that will substantiate the deficiency
12 request.

13 To the extent that staff has addressed certain
14 scoring matters through the administrative deficiency
15 process, statute at 2306.6715(b) provides that a decision
16 under 2306.6710, which is scoring, may not be appealed by
17 another applicant. Staff believes that issues relating to
18 financial feasibility points are such matters.

19 As regards the way staff has utilized the
20 administrative deficiency process to address other issues,
21 we believe we have acted in accordance with both the
22 letter and the spirit of the administrative deficiency
23 rules. If the Board has any concerns over any of these
24 practices, staff would appreciate your direction as we're
25 developing the 2017 rules if we need to make any changes.

1 This item is posted on the agenda as a report
2 with possible action. The Board may make the
3 determination that staff has erred in application of the
4 rule with regard to specific elements addressed in the
5 report, and may take action by moving to revise or
6 overrule staff's determination, or direct staff to adjust
7 scoring or eligibility in a consistent manner for all
8 applications with similar conditions.

9 So the first application, number 16118 The
10 Standard on the Creek, we have four questions regarding
11 this application. One of them regards payment of the full
12 correct application fee at the time of application. When
13 staff identified that there was a concern regarding the
14 application fee that was paid, we contacted the applicant.

15 They immediately the next day paid the \$100 balance under
16 protest. They believed that that amount was not due. And
17 in past years, minor errors in fee calculations were
18 accommodated in a similar fashion. No extensive review or
19 reevaluation was necessary and staff believes that this
20 error was appropriately handled.

21 The Board should be aware that a reversal of
22 staff determination on this matter would result in the
23 termination of the application and will impact five
24 additional applications in the current round with similar
25 issues.

1 The second question is whether the letter from
2 the applicant's lender contained the required elements to
3 support the full amount of points awarded under financial
4 feasibility. This is a scoring item under 2306.710. The
5 financial feasibility rule provides 16 points if the
6 lender confirms they have reviewed the development and 18
7 points if they confirm they have also reviewed the
8 principals. The applicant claimed 18 points in the
9 application but the letter did not address the review of
10 the principals. Staff believes that this indicated an
11 inconsistency in the application that required
12 clarification. This is precisely the kind of situation
13 that the administrative deficiency process addresses.

14 MR. OXER: Take your time.

15 MS. HOLLOWAY: I'm sorry?

16 MR. OXER: Take your time. Deep breath.

17 MS. HOLLOWAY: I'm like wow. I'm feeling it,
18 my ears are burning.

19 MR. OXER: Can you feel the heat over there on
20 the side?

21 (General laughter.)

22 MS. HOLLOWAY: Staff has received additional
23 information from the requester.

24 MR. OXER: Are you getting blistered over on
25 that side?

1 MS. HOLLOWAY: I am.

2 Staff has received additional information from
3 the requester regarding this issue which has been added to
4 the documentation for this meeting out of an abundance of
5 caution. We had requested the basis for inclusion given
6 that the applicant may not appeal a competitor's
7 application. That question was not answered. We've gone
8 ahead and included it in your book just to make sure that
9 it's there for you. This new letter did not provide any
10 new information, it reiterated the former position, and
11 has not changed staff's determination that no further
12 action is recommended on this item.

13 The third question is whether the applicant
14 made intentional material misstatements or omissions to
15 the office of Chairman Dutton in securing his letter of
16 support. Chairman Dutton addressed you earlier today and
17 provided his position and his thoughts on the matter. We
18 have spoken with Chairman Dutton's staff and with the
19 applicant regarding the meeting in question and have not
20 been able to come to a determination on this matter. So
21 staff in our considerations and our conversations have not
22 come to a different conclusion.

23 Since the last Board meeting, a member of the
24 Fall Creek Homeowners Association has raised a question
25 regarding pipelines on or near the proposed site. We have

1 determined that the pipelines in the easement to the south
2 of the property are not a violation of Department rules.
3 The mapping indicates there may be a pipeline going
4 through the property. The development to the west of this
5 site does not indicate that there's an easement there, so
6 we don't know if it's an inactive pipeline or if the
7 mapping is in error. This is something that we've asked
8 the environmental site assessment provider to review to
9 make sure that that pipeline is not an issue.

10 Do you have any questions?

11 MR. OXER: Is there any questions from the
12 Board?

13 MS. BINGHAM ESCAREÑO: Yes. I have a question.

14 MR. OXER: Ms. Bingham.

15 MS. BINGHAM ESCAREÑO: Let's go back to point
16 one. So you mentioned this is the question about the
17 application fee and the \$100.

18 MS. HOLLOWAY: Yes.

19 MS. BINGHAM ESCAREÑO: You said that staff has
20 handled similar issues in the past the same way.

21 MS. HOLLOWAY: It's my understanding -- and of
22 course, I wasn't there for it -- the example that I was
23 made aware of is that last year an applicant paid less on
24 one application than they should have and more on another
25 and they were allowed just to move the funds from one

1 application to another. So that was the example that I
2 was provided with from the past.

3 MS. BINGHAM ESCAREÑO: And is that the similar
4 situation for this one?

5 MS. HOLLOWAY: In this situation, the applicant
6 calculated fees at \$30 per unit and then subtracted what
7 they had paid at pre-application which is a \$10 per unit
8 charge, but their unit count changed. So rather than
9 paying \$20 per unit on the full application, they were
10 paying \$30 less what had been paid at pre-app, so they
11 wound up with this \$100 shortage.

12 MS. BINGHAM ESCAREÑO: And then you also
13 mentioned that there were a handful of other applications
14 that you treated similarly in this round where there were
15 what staff would defined as minor?

16 MS. HOLLOWAY: There are six applications in
17 this round that had that very same issue.

18 MS. BINGHAM ESCAREÑO: That very same issue.

19 MS. HOLLOWAY: Very same issue.

20 MS. BINGHAM ESCAREÑO: And we treated it the
21 same?

22 MS. HOLLOWAY: Exactly the same for all of
23 them.

24 MR. OXER: So it was \$100 out of a total of
25 what?

1 MS. HOLLOWAY: A couple thousand.

2 MR. OXER: So incremental at best.

3 MS. HOLLOWAY: Yes.

4 MS. BINGHAM ESCAREÑO: Mr. Chair, just another
5 question just for clarification. So on point 2, the 16 or
6 18, just remind me where did staff end up resting on that.
7 They handled through administrative deficiency.

8 MS. HOLLOWAY: So that one is kind of
9 interesting. We had already identified the issue with the
10 application and had issued an administrative deficiency to
11 the applicant saying all these parts and pieces are here
12 but this isn't making sense. This is how we generally
13 deal with missing parts that we need in order to fully
14 evaluate that don't trigger a complete reevaluation. So
15 we had already handled that issue.

16 Because all of the applications this year are
17 online real time, everyone out there is watching what
18 we're doing with deficiencies. The third party
19 administrative deficiency request we received for this
20 issue was about how we handled it. It was not bringing
21 new information to our attention, it was about how we
22 handled the issue. We actually received that request and
23 the first time around said, Wait a minute, this isn't a
24 third party. The requester said, No, I believe it is, go
25 ahead and put it through the process.

1 MS. BINGHAM ESCAREÑO: And so aside from the
2 third party requester, the applicant satisfied staff's
3 questions relative to the original administrative
4 deficiency.

5 MS. HOLLOWAY: Yes. We had, in fact, accepted
6 their response to the administrative deficiency.

7 MS. BINGHAM ESCAREÑO: I don't have any other
8 questions.

9 MR. OXER: Okay. Thank you, Ms. Bingham.
10 Any questions from you guys?

11 (No response.)

12 MR. OXER: Okay. Essentially, this matter has
13 been received by staff, dealt with, and because there were
14 some questions associated with it last time, we asked for
15 further information.

16 MS. HOLLOWAY: Yes.

17 MR. OXER: Sounds like it's an opportunity for
18 the Board to exercise its prerogative to perhaps confirm
19 or reopen the decision that was made by staff, but at this
20 point staff asks for no action.

21 MS. HOLLOWAY: Staff recommends no further
22 action on these items. Of course, the Board has the
23 option to direct us to handle these items differently or to
24 provide us with policy guidance moving forward. If we how
25 we are handling these matters is not the way that the

1 Board thinks it should be done in the future, if we're
2 looking at a rule change, we certainly would welcome that
3 direction and assistance.

4 MR. OXER: Well, we're always looking for
5 opportunities to iron out quirks and chase these little
6 rascals away from our QAP, but that's part of the process.

7 MS. HOLLOWAY: Yes.

8 MR. OXER: Dr. Muñoz.

9 DR. MUÑOZ: Just on the point three about the
10 material misstatement and omissions, you were here
11 earlier.

12 MS. HOLLOWAY: Yes.

13 DR. MUÑOZ: You heard the chairman.

14 MS. HOLLOWAY: Yes.

15 DR. MUÑOZ: Anything that he said changes your
16 position on some of what's represented under item three?

17 MS. HOLLOWAY: So the information that Chairman
18 Dutton shared with you was not new to the questions that
19 have come up on this application, and in fact, echo
20 communications we've received in letters from Chairman
21 Dutton. There are several of them, and then, of course,
22 there was the letter that was read into the record at the
23 last meeting.

24 In the interim between the June 30 meeting and
25 today, actually, it was Michael and I sat down and called

1 Chairman Dutton's staff and asked them a series of
2 questions. We also talked with the applicant, called the
3 applicant and asked them a series of questions regarding
4 that meeting in question and regarding the support issue.

5 And based on those conversations, information that we've
6 received from Chairman Dutton, information we've received
7 from the applicant, there's even in your book a copy of
8 Chairman Dutton's chief of staff's notes from that
9 meeting, we haven't been able to come to a conclusion that
10 we can point either way on this issue. We're not finding
11 a material omission. We certain are not saying that
12 anyone is misspeaking to us now. We just have not been
13 able to get to that certainty on this question.

14 MR. GOODWIN: Is that a roundabout way of
15 saying the applicant said we talked the homeowners and the
16 chairman's group saying, so who do we believe?

17 MS. HOLLOWAY: And in kind of stepping back and
18 looking at --

19 MR. OXER: Roundabout way of saying there are
20 multiple perspectives on this.

21 MS. HOLLOWAY: Yes. And I think that in some
22 of the information we've received, it's really easy to see
23 how someone could say this and someone else could hear
24 that, which creates a problem for us because we weren't
25 there.

1 DR. MUÑOZ: It creates a problem for us too.

2 MS. HOLLOWAY: I understand. So the question
3 really on that item, Chairman Dutton had requested that he
4 be allowed to withdraw his letter based on his concerns
5 that fraud occurred in gaining that support from him. If
6 the Board were to decide that there is sufficient concern
7 regarding how that letter was procured, then the next
8 question would be can Chairman Dutton withdraw his letter
9 or would it be a nullity -- it's a legal term, I'm not an
10 attorney, I just play one on TV.

11 MR. OXER: You should see what we play.

12 (General laughter.)

13 MS. HOLLOWAY: So if in fact, after you hear
14 from everyone today, if you think yes, there is something
15 there, then the next question is can the chairman withdraw
16 his letter when our rule basically says no, he can't, so
17 that would be a waiver of the rule.

18 MS. HOLLOWAY: Okay. Thanks, Marni.

19 Leslie, do you have something?

20 MS. BINGHAM ESCAREÑO: Just clarification. A
21 waiver of the rule?

22 MS. HOLLOWAY: Regarding the representative's
23 support letter.

24 MR. OXER: Our rule states that they cannot
25 withdraw after the specific deadline.

1 MS. HOLLOWAY: After the application deadline
2 which was March 1.

3 MR. OXER: So the rules say that, so they're
4 asking for a waiver. It would require us to offer a
5 waiver for that to occur.

6 MR. ECCLES: There's no waiver that's
7 available.

8 MR. OXER: Right.

9 MS. HOLLOWAY: I'm sorry. So it's not a
10 waiver?

11 MR. OXER: There's not a waiver.

12 MR. ECCLES: The waiver rule is not applicable
13 to these matters between application and award.

14 MS. HOLLOWAY: Okay.

15 MR. OXER: All right. So this would be an
16 independent action by the Board.

17 Thanks for the summary on that, Marni. Deep
18 breath and hold on.

19 DR. MUÑOZ: Hey, Beau, can I ask a question?
20 So is there a rule in place that prevents withdrawing or
21 not?

22 MR. ECCLES: Yes, there is. The state
23 representative's support letter specifically says that it
24 cannot be withdrawn.

25 DR. MUÑOZ: Thank you.

1 MR. OXER: We've taken a unique position on
2 this or one that's evolving, a unique approach to this.
3 This is a report item, there will be no formal motion by
4 the Board to consider staff recommendation on this. Staff
5 is offering a report item. The question is: Is there
6 sufficient information in that and in what will be
7 presented in public comment to cause us to override staff
8 decision and make an independent decision regarding this
9 particular issue. So we'll have public comment. We don't
10 have to have a formal Board motion to do this.

11 Do you have a comment?

12 DR. MUÑOZ: Just to underscore your summary,
13 Mr. Chairman. This point that the staff is making, staff
14 is not at this time prepared to make a definitive
15 recommendation.

16 MS. HOLLOWAY: Regarding Representative
17 Dutton's letter. Correct.

18 MR. OXER: Tim, you have a comment?

19 MR. IRVINE: I would say staff believes that it
20 has acted appropriately in accordance with the rules.
21 We've tried to bring out all of the facts, pro and con,
22 allow for public comment, pro and con, and I think that
23 this is the Board's reserved right under the
24 administrative deficiency rule to make the ultimate
25 determination. If you find either that someone did not

1 adequately address an administrative deficiency or staff
2 had determined it had been adequately addressed, or if you
3 believe that staff has characterized something as an
4 administrative deficiency when you believe it should have
5 been treated as a material deficiency, then you may go
6 there.

7 MR. GOODWIN: This is a question for Beau. Do
8 we have any capability at the end of this discussion to
9 agree with Chairman Dutton and withdraw his letter, or are
10 our hands tied as well on the fact that his letter, by our
11 rules, cannot be withdrawn?

12 MR. OXER: Let me jump in and protect you for a
13 change. Most of you don't see the 48-inch cattle prod
14 that he's got over here stuck in my ribs.

15 (General laughter.)

16 MR. OXER: I'll offer up that we're going to
17 hear some thoughts on this, see if there's any new
18 information, then we're going to receive some counsel in a
19 quick exec session on this. We're going to actually take
20 it -- and we'll have to hold on here for a second since
21 we're now short of a quorum. So everybody hold your
22 breath till Juan gets back.

23 DR. MUÑOZ: Juan's back.

24 MR. OXER: Okay. Juan's back. The return of
25 Dr. J.

1 All right. We're going to have some comments
2 on this, see if there's anything new, then we'll take a
3 fresh look at this or a continued look to see if there's
4 any modifications to our perspective on it, and then we'll
5 have some thoughts. We'll have the exec session to
6 receive counsel because there's some legal aspects that we
7 want to consider on this.

8 So what I'm going to ask you to do because
9 there's considerations on each of these, we're going to
10 take this item and public comment on this item, and then
11 the second item and have public comment on that item, and
12 we're going to retire to exec session and come back and
13 act or not with respect to this item. So is that clear to
14 everybody? Got where we're going?

15 All right. I would remind everybody -- there
16 seems to be a lot of people that want to talk and we'll
17 give you an opportunity to present your position and
18 information, and anybody that's going to be taking the
19 same side or reinforcing an argument, I would offer that
20 your argument is not made stronger by being made louder or
21 by being made again. So you have an opportunity to simply
22 say ditto and keep your comments short, because we have
23 apparently plenty of people that want to speak today.

24 This is not an appeal so I'm not going to
25 present an opportunity for rebuttal or argument, so

1 whatever you've got to say, get up and say it in your
2 three minutes, and what we're going to be looking for is
3 any new information. I would point out to everybody that
4 there was extensive commentary made on this item at the
5 last meeting. We requested for more information, more
6 background from the staff, they've provided it. There
7 seems to be voluminous materials in the Board book on each
8 one of these matters, so if anybody wants to have more
9 details or has questions about those, I refer you to the
10 Board book of this meeting and the one from our prior
11 meeting.

12 So the first question is: Is there anybody
13 here representing any other representative's office? We
14 will incorporate Chairman Dutton's information into this
15 first. I would point out, just as a courtesy to our
16 legislature, we provide them an opportunity to speak
17 first. Now, sir, if you wish to speak on this one as
18 opposed to the second item. Is it this one? Okay. We'll
19 have you speak first.

20 MR. RANKIN: Thank you, Mr. Chairman. Thank
21 you, Mr. Irvine. My name is Guy Rankin and I'm speaking
22 with Representative Coleman's office. He was going to
23 provide you a letter; I don't know if you've gotten your
24 letter yet.

25 MR. OXER: Certainly not in time to go into the

1 Board book.

2 MR. RANKIN: His main concern was a project
3 called Palm Park that was treated a little differently
4 than this one is being treated. There was a letter, I
5 think Marti remembers that one, it was 30 housing units
6 that had something similar, and at that time staff
7 recommended that that project not go forward. It was less
8 than two years ago and it was in Representative Coleman's
9 area, and that project was kicked out for not having the
10 correct letter on the letterhead. Even though it was a
11 TRZ project with Midtown TRZ and Midtown Redevelopment
12 Authority, the letter was on the wrong letterhead.

13 MR. OXER: And what was the date on this, Mr.
14 Rankin?

15 MR. RANKIN: I believe it was 2014.

16 MR. OXER: So recently.

17 MR. RANKIN: Yes, very recently, and I think
18 Marni handled that one. And that whole project got kicked
19 out, and the pastor was here last time, and that was his
20 concern with Representative Coleman that that project got
21 kicked out for not having one letter being switched and
22 the whole project got kicked out. So Representative
23 Coleman wanted to bring that to your attention if we're
24 going to be consistent in our actions. But he totally
25 supports affordable housing. He's a big advocate of Mr.

1 Irvine and your Board, but if we're going to keep things
2 the same, we've got to keep things the same way.

3 MR. OXER: This is a very competitive process
4 and it draws support from everybody that wants their
5 project taken care of. We recognize that.

6 MR. RANKIN: But that one project was kicked
7 out because a paper didn't match.

8 That's it. Thank you.

9 MR. OXER: Okay. Are there any questions for
10 Mr. Rankin?

11 (No response.)

12 MR. OXER: Okay. Thank you, sir.

13 Okay. We'll start here, and don't forget to
14 sign in. One more reminder, everybody sign in so Nancy
15 can identify you on the record here because what you tell
16 us we're going to write down and hold it for a while.

17 Okay, Donna.

18 MS. RICKENBACKER: Good morning, Chairman Oxer.
19 I assume, based on what you're saying, you're taking this
20 one by one?

21 MR. OXER: One by one in order of the projects,
22 but we're going to do all of the discussion.

23 MS. RICKENBACKER: Yes, sir. With respect to
24 the issues pertaining to The Standard on the Creek, you're
25 taking those issues one by one.

1 MR. OXER: No. We're going to take everything
2 on that. We're going to take the applications one by one.

3 MS. RICKENBACKER: Okay. So the first issue
4 with respect to The Standard on the Creek has to do with
5 the fees. First of all, I represent two competing
6 applications behind The Standard on the Creek. I'm not
7 involved in the neighborhood opposition, don't want to be
8 involved in that, obviously. I was involved in something
9 similar to this last night in a zoning case and not very
10 comfortable with it.

11 The two applications behind The Standard on the
12 Creek are both being represented by Cynthia Bast, so I'm
13 kind of up here on my own with respect to those
14 applications, and by the way, one of those applications is
15 in a high opportunity area of Harris County, northeast
16 Harris County, that is behind The Standard on the Creek
17 for no other reason than it didn't receive support from
18 the state rep who doesn't support family developments in
19 his district.

20 So with that being said and with respect to the
21 fee issue, there are just errors in this application, in
22 particular this fee issue. So I want to point out that
23 our rules are very clear with respect to how much an
24 applicant is supposed to pay at pre-application and how
25 much an applicant is supposed to pay at full application,

1 and the rules specifically say an application must be
2 complete and submitted by the required program deadline.
3 It goes on to say in our manual that an application and
4 fee payment must be received by the agency on Tuesday,
5 March 1, or the application will not be accepted. And it
6 goes on from there to speak to if the application chooses
7 to use postal delivery and they don't receive that, then
8 obviously the application will be terminated because it
9 doesn't receive its fee amount.

10 So they didn't pay the right amount of fee and
11 they're represented by a consultant that's been in this
12 program longer than I have. So I just think that if we're
13 going to apply the rules consistently, then we need to
14 recognize that that fee was not paid in a timely manner
15 and the application should be terminated.

16 I'll also point out that there were 141
17 applications filed this year and so the staff is
18 representing that six didn't pay the right amount of fee,
19 so that means that 135 applicants did file applications
20 and did pay the right amount of fee in a timely manner.
21 So I'm not fully understanding why we're kind of putting
22 those at a disadvantage when these other applicants, total
23 of six, did not pay the right amount of fee. And if the
24 concern of this Board is, well, that's six applications,
25 what does this mean.

1 Well, last year, I want to remind the Board,
2 you all denied Colonia points to six applications and that
3 reallocated all the credits in Region XI last year. That,
4 coupled with the fact that on any number of occasions I've
5 seen this Board terminate applications because they
6 weren't properly bookmarked, including, I might add, a
7 veterans community that came before you all three years
8 ago. It broke everybody's heart to watch that happen.

9 I just ask that the Board recognize that and
10 follow the rules, that rules that clearly need to apply to
11 everybody with respect to the fee payment.

12 Thank you, sir.

13 MR. OXER: Thank you.

14 MR. FORSLUND: Good morning. My name is Brad
15 Forslund with Churchill Residential. I will try not to
16 repeat anything that Donna said, but I'm here in
17 opposition to The Standard on the Creek and feel that this
18 application should be terminated as well for the fee
19 issue.

20 Not to get into the rules, but Subchapter G,
21 Section 10.901 says each application must -- and I repeat
22 must -- be accompanied by the application fee. And it
23 says the application fee will be \$20 per unit based on the
24 number of units in the full application. The pre-app and
25 the app stand alone, you cannot tie those two together in

1 terms of the fees.

2 In the research that was presented to the
3 Board, it appears that TDHCA staff agreed with this, based
4 on what I saw. According to Cynthia Bast's email of May
5 5, TDHCA staff raised a concern that the application fees
6 paid for application 16015 and application 16118 were
7 insufficient. Specifically, TDHCA staff indicated that
8 they application fees were underpaid by \$20 and \$100,
9 respectively.

10 And then in Representative Dutton's letter,
11 dated June 29, 2016, addressed to Mr. Irvine, which
12 states: "The documentation provided to the neighborhood
13 also shows that your staff recommended that the
14 application be terminated based on the fee error."

15 As you may recall, on May 26, we had an
16 application, Churchill at Golden Triangle, TDHCA 16260,
17 received a five point penalty as a result of the
18 administrative deficiency process, making it
19 noncompetitive in Region III. The reasons for the penalty
20 were extremely minor, in my opinion, compared to the
21 current issue of nonpayment of fees. Our appeal was
22 declined for a reason of a minimal documentation issue,
23 when in fact all the information was in the application
24 and could have been evaluated.

25 I think it's fair to say at the core of that

1 decision by the Board on May 26 was that TDHCA was going
2 to use a policy of strict interpretation of deadlines in
3 rules. You can read the transcript and this policy was
4 clearly demonstrated in the decision to enforce the five
5 point penalty.

6 I'm not asking for the Board to reinstate our
7 five points, though that would be nice, but I'm asking
8 that the Board administer their decisions fairly and
9 consistently and apply the same standard that was applied
10 to us be applied to The Standard on the Creek and these
11 other five applications.

12 Thank you for your time.

13 MR. OXER: Okay. Thanks, Brad.

14 DR. MUÑOZ: I have a question.

15 MR. OXER: Yes, sir.

16 DR. MUÑOZ: You mentioned some letter from the
17 representative's office that attributed some statement
18 from our staff that this project should be disqualified
19 because of the fee. Do you recall the date of that
20 letter?

21 MR. FORSLUND: Yes. June 29, 2016.

22 DR. MUÑOZ: I don't recall that statement
23 offhand.

24 MR. OXER: Marni, are you familiar with it? I
25 get to ask her, but anything else for Mr. Brad?

1 DR. MUÑOZ: No.

2 MR. OXER: Thank you, sir.

3 Can you air that out any?

4 MS. HOLLOWAY: Chairman Dutton's letter that
5 was read into the record at the June 30 meeting, which is
6 in your Board book, that's the letter dated June 29,
7 speaks to information that the homeowners association
8 received as the result of a public information request.
9 That's what brought the application fee issue up to the
10 surface.

11 Staff had originally, when we realized there
12 was an issue with the fee, headed down the road of
13 termination. And as has happened with several other
14 issues, as things work through the process and through
15 routing and before they get out, sometimes that changes,
16 but that original letter that we had drafted that never
17 went out was still part of the record for the application
18 that the homeowners association received as part of their
19 information request.

20 DR. MUÑOZ: Clarify it never went out.

21 MS. HOLLOWAY: It was never sent; the
22 termination letter was never sent out to the applicant.

23 MR. OXER: So essentially, there was a process,
24 staff evaluates these, you recommend something, and it
25 goes through the process.

1 MS. HOLLOWAY: It goes through multiple routing
2 and sometimes it comes back exactly as we sent it in and
3 sometimes it comes back very different.

4 MR. OXER: Right. And ultimately it goes from
5 there to Tim because he signs it as the E-D.

6 MS. HOLLOWAY: Or signs off on it.

7 MR. OXER: Right, signs off, or would, but
8 ultimately the decision on this essentially comes up
9 through the process on appeal and gets to him, and then he
10 makes a decision and then if somebody wants to appeal
11 that, it comes to us.

12 MS. HOLLOWAY: Right. This letter never even
13 got to the appeal stage.

14 MR. OXER: Okay. So the point that Brad refers
15 to is that this stated in that letter that was not sent,
16 and it's just part of the record as part of the record.

17 MS. HOLLOWAY: Yes. It's part of the record
18 for the application.

19 MR. OXER: Basically the completeness of the
20 file for the application.

21 MS. HOLLOWAY: Right. So of course, if there's
22 a public information request and someone asks for all
23 information, we have to provide them with all information.

24 MR. OXER: It's not a question of whether or
25 not it was appropriate to provide, it was just trying to

1 understand the context.

2 DR. MUÑOZ: And that letter that didn't go out,
3 Marni, did it say -- was it phrased, for example, that
4 there would be a possibility of termination or termination
5 based on further research related to the fee, it could be
6 an outcome line that. Or did it stated like at this point
7 in time we would recommend termination/disqualification.
8 What was the tone of it? Was it exploratory or was it
9 definitive?

10 MS. HOLLOWAY: It was definitive. As I recall,
11 it was "We are terminating your application, you have a
12 right to appeal" would have been how we would have handled
13 that question.

14 MR. OXER: Okay. Thanks.

15 MR. VRUGGINK: Thank you for the opportunity to
16 address the Board this morning. My name is Matthew
17 Vruggink, and I'm a member of the applicant.

18 I want to speak to the misrepresentation item.
19 You know, a lot has been said about me, what I have said
20 or didn't say, and I've thought a lot about how you prove
21 that you did not do something. I think all I can say and
22 all I can do is -- all I can say is that I did not mislead
23 Representative Dutton or his staff, and all I can do is
24 provide letter after letter after letter of detailed
25 communication and correspondence.

1 You know, we submitted a timeline of events
2 into the Board book, and I will not recount all of our
3 efforts, but I do want to provide some context. We
4 started reaching out and communicating with officials in
5 October of last year. This included direct outreach to
6 Councilmember Jerry Davis, Commissioner Jack Cagle and
7 Representative Dutton. I personally met with both
8 Commissioner Cagle in October and multiple times with
9 Councilmember Davis in December and January. But after
10 30-plus emails and 30-plus calls, I was never given the
11 opportunity to meet directly or speak over the phone with
12 Representative Dutton. Instead, I had a 15-minute
13 meeting, maybe less, with a member of his staff in late
14 January, which admittedly the staff cut short.

15 During that 15 minutes I gave an overview of
16 the project and notified the staff that we had met with
17 other officials, with Cagle and Davis, and that I did not
18 foresee opposition from other and that I anticipated their
19 support. The fact is that the only condition that
20 Representative Dutton's staff conveyed to me was that
21 individuals with criminal backgrounds should be given
22 housing opportunities and not automatically be denied, to
23 which we agreed in writing.

24 Representative Dutton has never spoke with me,
25 he's never met with me or any one of the applicants, not

1 before the application, not after the application and not
2 now. A couple of days before the scheduled meeting in
3 Houston, I reached out to Representative Dutton's staff to
4 schedule a call, meeting, anything to discuss, and
5 admittedly in Representative Dutton's staff's notes,
6 Tamoria was advised not to respond to me and not to reach
7 out to me. Yes, that meeting did occur a couple of days
8 later. I reached out to Tamoria the day before advising
9 her of the terrible weather, the fact that planes were
10 being canceled. She acknowledged the bad weather and
11 said, yes, if there's terrible weather the meeting will be
12 canceled. And then she said, Don't worry about attending
13 if that's the case. I responded: I'll be happy to make
14 myself available at any time to discuss in more detail.
15 And that was the end of the conversation. Therefore, the
16 only information Representative Dutton has on this
17 application is from a third party account from a 15-minute
18 meeting, maybe less.

19 Commissioner Cagle asked me to meet with the
20 school district. We did and provided information.
21 Councilmember Davis asked that we include minority and
22 women-owned businesses in the construction process. We
23 agreed. Representative Dutton's staff never asked me if
24 had met with Fall Creek, with the neighborhood, with
25 residents or if we had their support, and I never told

1 them that we did.

2 We've demonstrated a complete willingness to
3 reach out anyone at the request of any politician.
4 Indeed, we did so on the three other applications this
5 cycle. If Representative Dutton's staff asked me to meet
6 with the Fall Creek neighborhood or any neighborhood, I
7 would have done so. It was just not a topic of
8 conversation.

9 I very much appreciate the time that the TDHCA
10 staff has spent reviewing the volume of content and it's
11 unfortunate that we're in this position, but the fact of
12 the matter is I did not mislead Representative Dutton or
13 his staff in any way. And I thank you for your time.

14 MR. OXER: Thanks, Matthew.

15 Juan, go ahead.

16 DR. MUÑOZ: Were you here earlier?

17 MR. VRUGGINK: Yes, I was.

18 DR. MUÑOZ: You listened to the chairman's
19 remarks?

20 MR. VRUGGINK: Yes, I did.

21 DR. MUÑOZ: He represents that that had been
22 part of the request to you to meet with the community, and
23 you're indicating that it was not.

24 MR. VRUGGINK: I understand that that was his
25 impression or his position, but that was not the case.

1 DR. MUÑOZ: Thank you.

2 MR. OXER: Thanks, Matthew.

3 MR. VRUGGINK: Thank you.

4 MR. OXER: Cynthia.

5 MS. BAST: Good morning. Cynthia Bast of Locke
6 Lord, representing the applicant for The Standard on the
7 Creek.

8 We really do appreciate the time that the staff
9 and the Board has taken to listen to everyone who wants to
10 have a voice with regard to this development. The change
11 this year in administrative deficiencies perhaps has been
12 challenging for both the staff and the Board.

13 You previously heard testimony thanking the
14 staff for making it a more transparent process this year,
15 and I think with that transparency comes the opportunity
16 for better understanding and discussion and perhaps
17 changing as we go forward if that's appropriate.

18 There are things that we know and understand
19 now that we might not have known and understood
20 previously. And so as this might be a painful process, I
21 do think it is a helpful process to the agency overall.

22 We have presented three letters on these three
23 different points: the application fee, the financial
24 feasibility points, and the material misrepresentation.
25 And our letters are intended to really be a legal

1 analysis, taking the facts and applying them to the rules
2 that we have in place, because the courts are clear that a
3 state agency must scrupulously follow its rules, and so
4 that's what we always try to do.

5 I will touch on the application fee issue since
6 it has been brought up in other testimony. On this we
7 need to start with the statute. The statute says: A fee
8 charged by the Department for filing an application may
9 not be excessive and must reflect the Department's actual
10 costs in processing the application. So that's where it
11 starts and that's where the rules come from.

12 From there we go to a rule that says the
13 application is \$30 per unit. Then the rule goes on to say
14 but if you split it up between a pre-application and
15 application, it's \$10 at pre-app, \$20 at app. It is
16 silent as to what happens if you change the number of
17 units between pre-app and app, that's not in the rules.
18 But what is in the rules and what is in the statute is
19 that the fee, the overall fee is \$30 per unit and that the
20 fee cannot be excessive and it must be consistent.

21 So I gave you three scenarios, one where
22 there's a pre-app and an app and the number of units go
23 down. When that happens, if you pay the \$10 and then the
24 \$20, you wind up paying more than \$30 per unit, you may
25 pay up to \$35 per unit. In the reverse scenario with a

1 pre-app and an app where the number of units go up, you
2 wind up calculating it less than \$30 per unit and then of
3 course have to round up to meet the rule. In the third
4 scenario where you just file an app, you pay \$30 per unit.

5 So it cannot be that you could file an application for
6 the same development in three different ways and pay three
7 different fees. At the end of the day, an applicant needs
8 to pay \$30 per unit.

9 So we firmly believe that the applicant paid
10 the right fee and complied with the rules because they
11 filed an application fee with their application. And I'm
12 happy to address more on that if you have more questions.

13 I do want to just briefly go --

14 MR. OXER: One minute.

15 MS. BAST: Yes, sir. I'm not going to address
16 the financial feasibility. We do appreciate staff's
17 support on that one. I'm going to address the material
18 misrepresentation.

19 Again, in the context of the rules, the rule
20 says that an applicant or an application can be ineligible
21 if the applicant has provided fraudulent information,
22 knowingly falsified documentation, or other intentional or
23 negligent material misrepresentation or omission. That's
24 our rule. Mere allegations of wrongdoing are not
25 sufficient. We have to find that there's been a material

1 action here, and so for that we need evidence.

2 You'll notice that in your staff writeup this
3 has not been framed as a claim of fraud because fraud has
4 a very high legal standing that requires intent and actual
5 deception, it's been framed as a material
6 misrepresentation. A material misrepresentation standard
7 would be something material is something that forms a
8 substantive part of the decision-making process. But as
9 your staff has testified, they have not found
10 corroborating or uncontroverted evidence that there was a
11 material misrepresentation or a material omission.

12 You have three different people with three
13 different recollections or maybe different ways of
14 describing their recollections, talking about a meeting
15 that occurred in 15 minutes. We do have evidence that
16 says support, support was discussed, but what that is is
17 not clear in any evidence. We have an applicant that says
18 that they talked about the support from Commissioner Cagle
19 and Councilmember Davis.

20 So the last thing I would say is that if this
21 were material, then when the email came out with
22 Representative Dutton's support letter that said, By the
23 way, this letter is conditioned on the fact that you have
24 agreed that you will consider ex-felons on a case-by-case
25 basis, it didn't also say and our other standard is, our

1 other condition is, our other understanding is that you've
2 talked with the neighborhood, you've talked with the Fall
3 Creek HOA. That wasn't reflected in the communication
4 when the office sent that letter out.

5 So I think that if that were a material issue
6 that it would be logical that there would be some evidence
7 of followup, some evidence of can you show me your letter
8 of support or something like that from the neighborhood.
9 And so in the absence of evidence, when human
10 communication is not perfect, we're not required to be
11 perfect under our laws and our rules.

12 MR. OXER: That's a good thing.

13 MS. BAST: And thank God for that. We just
14 need to meet the standards, and in this case with a lack
15 of evidence of wrongdoing, we do not meet the standard to
16 claim that there was a material misrepresentation or
17 omission that should cause this application to be
18 terminated.

19 MR. OXER: Thanks, Cynthia.

20 Any questions from the Board?

21 (No response.)

22 MR. OXER: Is that everybody who wishes to
23 speak on this item? Apparently not. Don't forget, if you
24 want to speak you have to be in the front row so I can
25 find you. Okay?

1 MS. LOTT: I apologize for that.

2 MR. OXER: That's all right.

3 MS. LOTT: Chairman Oxer, members of the Board.
4 My name is Ann Lott. I am the executive director for the
5 Inclusive Communities Housing Development Corporation. I
6 am here in support of the development, The Standard on the
7 Creek.

8 I want to start by saying that I am not here
9 representing the developer. I don't know the developer, I
10 met him for the first time today, he seems like a great
11 guy. I have spoken with him over the phone and via email.

12 I also can't really speak to the administrative fees
13 because you have a process and a policy by which you
14 handle that, you've handled this before. I'm here to talk
15 about what no one else has said, the pink elephant that's
16 in the room. This issue really isn't about admin fees, it
17 really isn't about the character of the development, it is
18 about the people who are going to live in the development,
19 and that's who I'm here to speak on behalf of.

20 I am very concerned about some of the emails
21 and some of the blogs I'm reading from this neighborhood
22 association that this developer is being raked over the
23 coals for not meeting with. I think it's important to
24 recognize that the rules spell out exactly who needs to
25 notify as far as the HOA, and there's been no mention that

1 he's failed to do that. I am concerned that the people
2 who will live at this site are being referred to as ex-
3 felons. Why do we assume that we have to have a
4 conversation that stereotypes the people who will live
5 here? Can we all agree that criminals, ex-felons,
6 thieves, thugs, gang members, these are all the words that
7 have been used to describe the families that will live
8 there? Can we just assume that a lot of times for these
9 particular developments there is a process for which the
10 individuals are going to be screened and the low income
11 families shouldn't have to pass another standard?

12 I'm also very concerned there have been many
13 comments made that this developer will have to take
14 Section 8 and because he will have to Section 8, we don't
15 want them in our community; otherwise, it's going to be
16 another, and I quote, "murder central."

17 It's disheartening that the representative
18 would come and try to pull the support. I heard his
19 comments, I heard him say that he's not under any
20 pressure. It appears that he really is under some
21 pressure, and I hate to see that he doesn't have the
22 political courage to stand and say this is going to be a
23 good development, it's one that I support. And I would
24 like to hope that you will take into account the interests
25 of all of Texas's citizens, not just a few who live in

1 areas where they don't want poor people in their
2 neighborhood.

3 Thank you for the opportunity to address you
4 this morning.

5 MR. OXER: Thank you for your comments, Ms.
6 Lott.

7 Okay Is there anybody else who wants to speak
8 on this item?

9 MR. GOODWIN: I'd like to ask her some
10 questions, if I might.

11 MR. OXER: Sure.

12 MS. LOTT: Me?

13 MR. GOODWIN: Yes. I don't think anyone on
14 this Board or that I've heard on this staff has referred
15 to these people as thugs, criminals, et cetera. If I
16 understand correctly what's happened here is that the
17 developer was requested by Chairman Dutton to not exclude
18 people who were felons, and I think maybe you're
19 addressing this Board about something that has been stated
20 by the homeowners association. I don't remember them ever
21 stating that to us. Am I accurate about that?

22 MS. LOTT: Thank you for your question. You
23 are accurate about that. I've never heard any member of
24 the Board or staff refer to families in that manner,
25 however, I have read the blogs from the homeowners.

1 MR. OXER: I would hasten to point out that
2 none of those blogs come from us.

3 MS. LOTT: As I said before, this is not
4 questioning any member of the Board or the staff feels
5 that way. My concern is that the reason for the
6 opposition to this development has nothing to do with
7 administrative fee, it has nothing to do with the
8 developer, it has everything to do with the people who
9 will live in the community, and I am concerned with the
10 racial overtones for this whole conversation, not from you
11 but from the community. But now you're being put in a
12 situation now where you're having to make a decision that
13 is based really on the opposition of the people in the
14 community.

15 It appears, and you'll correct me if I'm wrong,
16 that the state representative is upset because his
17 constituency doesn't want it in their neighborhood and
18 this developer didn't go knocking on everyone's door to
19 make sure it had support. But just think about this for a
20 minute. What would have happened if he had gone and met
21 with every homeowner within a 20-mile radius? We would be
22 in this same place. Well, maybe not, he wouldn't have
23 written the support letter.

24 But that's really the issue of concern is the
25 undertones, it is the comments about the families who will

1 live here. These are the families that the developers are
2 building housing for, and I certainly hope you will take
3 that under consideration.

4 MR. OXER: We appreciate your thoughts, Ms.
5 Lott. And I would hasten to point out that that's a
6 conversation issue, rightly pointed out, that's going on
7 between the community and the developer and that sort of
8 thing. We are obliged to listen to that conversation to a
9 certain extent. I would also hasten to point out that it
10 would be far beyond my pay grade to determine or even make
11 an inference of why Representative Dutton is upset or not.

12 That's between him and whatever he's got going. We're
13 confident that none of the commentary that you're
14 referring to, while we know that it occurs out there,
15 nobody on the staff produced it, the Board didn't produce
16 it, and I don't think Representative Dutton produced any
17 of it.

18 MS. LOTT: I'm just asking that you take it
19 under consideration, that's all I'm asking.

20 MR. OXER: We understand and we recognize your
21 comments and we appreciate you being here.

22 MR. GOODWIN: I'm a little confused.

23 MS. LOTT: Tell me why you're confused.

24 MR. GOODWIN: Well, you're standing up here
25 saying that Representative Dutton is under pressure from

1 these homeowners who don't want felons living in this
2 community, thugs, criminals, et cetera. But what we've
3 heard from the developer is that he went to Representative
4 Dutton and Representative Dutton's staff, on his behalf,
5 requested that these people be in there. I think you're
6 asking us to draw a conclusion that he's now withdrawing
7 his support because he's under pressure for these people,
8 yet he's the person who has done exactly what you're
9 telling us exactly what these people, residents of Fall
10 Creek, are so upset about.

11 And I've heard nothing to my knowledge, my
12 recollection of all of this is that there's been no
13 mention of the race of any of these people, and you've
14 interjected that we should read into this there's a racial
15 overtone and that he has done this because of political
16 pressure, yet it seems to me he's done exactly what the
17 people in the neighborhood don't want him to do or don't
18 want which is the criminal accepting or at least the
19 review of these applicants on behalf of the developer.

20 MR. OXER: That they would not be dismissed out
21 of hand but at least be considered on case by case.

22 MR. GOODWIN: So I'm a little puzzled at all of
23 your conclusions. It sounds like to me you're distraught
24 about these Facebook postings that I see in our
25 application of neighbors going back and forth about how

1 this project and ultimately their residents are going to
2 devalue their property and in their opinion decrease the
3 enjoyment of their community and their neighborhood.

4 MS. LOTT: Well, you've heard those kind of
5 comments before, so I didn't even interject that.

6 MR. GOODWIN: What kind of comments are you
7 talking about?

8 MS. LOTT: You've heard comments about the
9 impact on the schools, you've heard comments about
10 property values. I think there's enough evidence that
11 would suggest that those comments are true. I think the
12 thing that was the most bothersome is that the homeowners
13 in the community expressed concern that this tax credit
14 developer is going to have to lease to Section 8 families.

15 The Section 8 families are the families that we serve.
16 My concern is the characterization about people on the
17 Section 8 program.

18 And everything I've said to you, ex-felons,
19 criminals, thieves, these are not comments that I made up,
20 this is what I'm reading. They basically requested the
21 state representative to find a way to kill the
22 application. Whether that's his motive or not, that's
23 basically what we're reading, and then all of a sudden
24 because his constituents are upset he's pulling his
25 support. But I'm asking you to look at why they're upset,

1 that is what my comments are meant to speak to.

2 I did not even imply that they were your
3 comments, I certainly didn't imply that they were the
4 staff's comments, but they are the homeowners
5 association's comments and these are the comments they
6 made to the state rep and they said kill the deal, find a
7 way to kill the deal. I did hear Ms. Holloway say that
8 there were open record requests looking for all
9 transactions related to the deal, and that was in an
10 effort to kill the deal. That is something that I would
11 ask that the Board take into consideration.

12 As I stated before, I am not here representing
13 this developer or the development, I don't know him. I am
14 here representing the people who are going to be denied
15 access to the development if the Board decides to
16 terminate this application.

17 MR. OXER: We appreciate your comments, Ms.
18 Lott.

19 MS. LOTT: Thank you so much.

20 MR. OXER: Okay. Are there other comments to
21 be made on this by somebody new who wishes to bring up
22 something new?

23 MR. LIKOVER: Board, thank you for allowing me
24 to speak again. I know you want me to keep it short, so I
25 will, and I know you want to only hear new things.

1 MR. OXER: Clay, you've got to tell us who you
2 are.

3 MR. LIKOVER: I'm sorry. My name is Clay
4 Likover. I'm a member of the applicant.

5 MR. OXER: Otherwise, on the transcript you're
6 Unidentified Citizen.

7 MR. LIKOVER: That might be better.

8 (General laughter.)

9 MR. OXER: My problem is I can't get away with
10 that, my name is up here.

11 MR. LIKOVER: Clearly you have voluminous
12 materials in your book that show that there was no fraud
13 by us. Proving that there was no misrepresentation by us
14 is more difficult. I think I want to reiterate the last
15 thing that Cynthia said which is that -- let me start at a
16 higher level. You know, what we are trying very hard to
17 do is to provide quality housing in high opportunity
18 areas. We see a massive need for it and we think we can
19 do a very good job of bringing our skills to do that.

20 We had four potential project we pre-app'd on.

21 Two of them are not here today because we suspended the
22 efforts of this when politicians asked us to go get
23 neighborhood support, we met with the neighborhoods, they
24 were against it, we dropped those deals. The two that we
25 have here are here because we either got the support the

1 politicians asked us to get, or in this case we honestly
2 didn't even think to meet with this neighborhood. Nobody
3 asked us to. Representative Dutton, through his staff, his
4 one condition for his support was that we would consider
5 people with criminal backgrounds on a case-by-case basis,
6 that was it. You have those emails, it's clear as day.

7 The other thing I want to state because I was
8 here, I heard Representative Dutton's comments, I think
9 it's important to tell you this. Not only has Matt
10 reached out to his staff, called and emailed 30 times, I
11 have as well, I got his personal cell phone number, I've
12 called it, I've never gotten a call back. We would love
13 to talk to him or his staff about this and clear up the
14 misrepresentations of what the neighborhood told him we
15 said. We'd love to be on his team and do more with him.
16 Obviously that's not going to happen now. But honestly,
17 we have called him, we have tried to clear it up, but
18 we've never gotten that opportunity.

19 I think that's all I have to say. Thank you.

20 MR. OXER: Okay. Thanks for your comments,
21 Clay.

22 Is there anything else? You've had your shot,
23 Donna. Anything new on this item?

24 (No response.)

25 MR. OXER: Okay. Those of you in the front who

1 wish to speak on the second are welcome to stay.

2 Marni, let's have the second application.

3 MS. HOLLOWAY: The second application to be
4 considered under this item is number 16380, Sierra Vista.

5 This is the application that we have the
6 question regarding the Lopezville census-designated place.
7 The issue is that the Lopezville census-designated place
8 has been annexed by the City of Edinburg. A scoring
9 notice had been issued denying underserved area points to
10 the applicant based on that annexation. The applicant
11 appealed and that appeal went through the process. So
12 this is another one of those the staff does something and
13 it goes through the process and it comes out looking
14 different, and the applicant appealed.

15 MR. OXER: Yanked through that knothole and
16 it's a little thinner on the other side. Right?

17 MS. HOLLOWAY: The applicant appealed and their
18 appeal was granted based on a couple of things: one is
19 the language that's the definition of place in our rule,
20 and the use of census data in our rule. So because the
21 Census Bureau has not adopted a definition of place by
22 federal rule, the executive director believes the
23 Department was constrained to honor the designation of the
24 census-designated place by the Census Bureau's maps.

25 So the initial requester on this item provided

1 us some additional information and have brought up a kind
2 of similar issue that came up in 2007. In that instance
3 an application was submitted in a census-designated place
4 and they later lost points, or however that worked out,
5 but that was 2007 and that was a different QAP and it was
6 a different rule definition, it was a different definition
7 of place. The requester also provided quite a bit more
8 information from the Census Bureau. None of that is
9 adoption of the definition in a federal rule.

10 MR. OXER: Any questions from the Board?

11 (No response.)

12 MR. OXER: Okay. Barry. And one more
13 reminder, I know you don't need to be reminded, Barry, but
14 sign in.

15 MR. LYTTLE: Mr. Chairman, I'm sorry. We have
16 a legislative staffer here. If you wanted to grant
17 deference like we did in the other item, we have Curtis
18 Smith is here from Representative Canales's office.

19 MR. OXER: Barry, let's extend the courtesy to
20 our staff here.

21 Thank you for that, Michael. You know, we
22 depend on him for our appropriations, so yes, we're happy
23 to have you here. Good catch, Michael.

24 MR. SMITH: Hello. My name is Curtis Smith and
25 I'm chief of staff for State Representative Terry Canales

1 from Edinburg.

2 First of all, he wanted me to thank you all for
3 the work that you do on the commission. He really
4 appreciates it.

5 MR. OXER: It's a thrill a minute up here.

6 MR. SMITH: It's actually pretty interesting.

7 So I have a letter that I believe you have all
8 been distributed but I just wanted to quickly read that.

9 "I was recently made aware that the Department
10 is once again visiting the underserved points item for the
11 Sierra Vista Housing Tax Credit application. As you may
12 know, I've submitted letters in support for Sierra Vista
13 affordable housing community. I want to again reiterate
14 my support for their application for housing tax credits.

15 "According to the annexation documents of the
16 City of Edinburg, many of the current Lopezville residents
17 cannot access city water, and while the existing
18 residential neighborhoods do have limited access to city
19 wastewater services, there are no plans to extend services
20 to many of the vacant parcels located in the area. The
21 developer has indicated that they plan to extend public
22 utilities, water and sewer, along and under Awasa Road.
23 These services will be designed so future development will
24 be able to tap into the new utilities installed.

25 "Sierra Vista will not only provide high

1 quality and safe affordable housing, the added
2 infrastructure will also encourage additional development
3 and growth in an area in need. Sierra Vista will greatly
4 benefit both Lopezville and the City of Edinburg
5 communities by providing high quality affordable housing
6 to those in need. I respectfully request that the Board
7 maintain staff's and the executive director's
8 recommendation to award the points under consideration in
9 the application."

10 Thank you.

11 MR. OXER: Any questions?

12 (No response.)

13 MR. OXER: Okay. Barry.

14 MR. PALMER: Barry Palmer with Coats Rose.

15 So on Sierra Vista, what we're talking about is
16 whether the project should receive underserved area
17 points. That's what the issue is: should this project
18 receive extra points that are designed for an area that
19 has never received a tax credit allocation.

20 The project is in the city of Edinburg which
21 has received twelve tax credit awards and once the units
22 are built from last year's allocations and this year's
23 allocations, there will be 800 tax credit units within a
24 mile of this site. How does that make sense to award
25 underserved points for an area that's never received a tax

1 credit award when you have a virtual sea of tax credit
2 units within a mile of each other? I understand that
3 Edinburg would like to get this award but there are a
4 number of communities in the Valley that have not received
5 an award in many years and yet we're continuing to pile
6 tax credit units on top of each other.

7 The executive director, when he granted the
8 appeal on this, in his appeal letter acknowledged that
9 this is really not the purpose that these points were
10 designed for. So this is really a bad result, and I
11 understand sometimes you have a bad result and you have to
12 live with it, sometimes there is what we like to call a
13 quirk in the QAP.

14 MR. OXER: Actually, we don't like to call it
15 that, but go ahead.

16 MR. PALMER: It's something that ends up with
17 unintended consequences and you figure you've got to live
18 with that and you'll fix it next year, but this is not one
19 of those situations. This is a bad result that in order
20 to get to this bad result you've got to do four things:
21 you've got to ignore a common sense reading of the QAP and
22 the rules; you've got to ignore the direction from the
23 Census Bureau; you've got to come up with a supernatural
24 interpretation of how a place can be two places at once;
25 and you've got to overturn long established precedent of

1 this Board.

2 Now, if you look the rules, these points are to
3 go to a place that has never received a tax credit award,
4 and a place is defined as either an incorporated place or
5 a census-designated place, and the Census Bureau says that
6 you can't be in both. We have a letter that was provided
7 in your Board package from the Census Bureau that we
8 received recently since the last meeting, and I point it
9 out because I know your materials were extensive and you
10 may not have had a chance to see this letter, but the
11 Census Bureau says that CDPs are created for
12 unincorporated areas and by definition CDPs can only exist
13 outside of incorporated places. A single tract of land
14 can only be one or the other, a CDP cannot be incorporated
15 at the same time.

16 So here this site was in a CDP, now it's in
17 Edinburg, and the applicant claims to still be in a CDP
18 but for this point item only. For everything else they're
19 saying they're in Edinburg. For example, you get points
20 for getting a government resolution from the city
21 supporting your deal. They submitted a resolution from
22 Edinburg. There was no resolution from the Lopezville
23 CDP. If they're in the Lopezville CDP, they needed to
24 have that resolution or they shouldn't get the points. So
25 what they're doing is they're claiming points as being in

1 a CDP for one item and then they're claiming points for
2 being in Edinburg on all the other items. But the Census
3 Bureau's definition says that you can't be both places at
4 once.

5 Now, they've pointed to this definition of
6 census data as if that's controlling, but census data is
7 population, it's poverty numbers, it's not determinative
8 of where you are. We have always determined where a
9 location is as of March 1. Otherwise, then this site is
10 not in Edinburg and they can't get any of the points for
11 being in Edinburg. But in fact, the site is in Edinburg
12 and so it can't be in a CDP.

13 So it makes no sense to award underserved area
14 points for an area that has more than its share of tax
15 credits, where it's 800 units of tax credits within a mile
16 of each other, and as I said, we have an issue with this
17 overturning long established Board precedent. I don't
18 have any more time to go into that and that needs to be
19 fully developed, so we have another speaker who will cover
20 that issue.

21 But I ask you to read the rules in some common
22 sense that you can't claim points and say you're in a CDP
23 for one thing and can't claim points and say you're in
24 Edinburg for another thing. Thank you.

25 MR. OXER: Are there any questions for Barry

1 MR. ECCLES: I have one question, actually.
2 You referenced the Census Bureau definition. Is that set
3 out in federal statute or rule?

4 MR. PALMER: It is not set out in federal
5 statute or rule, it is their definition that's on their
6 website as part of their rules, not regulations. But we
7 would expect that this agency would give deference to the
8 Census Bureau's rules the same way that we would think
9 that they would give deference to the TDHCA's rules. I
10 mean, a lot of what we go by are rules, they're not
11 regulations or statutory.

12 MR. ECCLES: Thank you.

13 MR. OXER: Any questions from the rest of the
14 Board?

15 DR. MUÑOZ: Is it set out as a rule? Because
16 in this letter that I'm reading, Barry, it says in that
17 letter CDPs are not statutory, they are statistical
18 entities defined and created by the Census Bureau with
19 occasional input, et cetera.

20 MR. PALMER: So what I'm saying is set out as a
21 rule is the Census Bureau's definition of a place which is
22 you're either in an incorporate place or you're in a CDP
23 and you can't be in both.

24 MR. OXER: At the same time.

25 MR. PALMER: Right. You're in one or the

1 other.

2 MR. IRVINE: I would like to offer at least my
3 understanding of kind of a nuance here. You have statutes
4 at the state level and at the federal level, and when an
5 agency is assigned responsibility for implementing that
6 statute, if it's given authority it may promulgate
7 codified requirements for how that statute is implemented.

8 On the federal level those are referred to as regulations
9 and they are in the CFR; in state law they're referred as
10 rules and they're in 10 TAC, the Texas Administrative
11 Code. So on a state level what we call a rule, on the
12 federal level it's called a regulation. Those things have
13 the force and effect of law, and from my perspective, the
14 definitional provisions on the Census Bureau's website do
15 not have that force and effect of law aspect.

16 MR. PALMER: But we have this letter from the
17 Census Bureau clearly saying you can't be in both, you've
18 got to be in one or the other, you're either in a CDP or
19 you're in the City of Edinburg. So this developer needs
20 to choose which one they're in and only claim points for
21 being in that one and not do what they've done which is
22 claim points for being in both.

23 MR. OXER: Let me ask this. You said the City
24 of Edinburg provided a statutory support letter, or a
25 letter from their management, essentially the governance,

1 to support the project. You said if it was going to be
2 from the CDP, the CDP would have had to provide that
3 letter.

4 MR. PALMER: Right.

5 MR. OXER: Does the CDP have a governance?

6 MR. PALMER: It's the county. It would be the
7 same thing if somebody was in Harris County and then they
8 got annexed into Houston, you could only be in one or the
9 other. If you were outside of the city, you would get a
10 support letter from the county, which they didn't get.

11 MR. IRVINE: Actually, under state law it's a
12 little bit more complex than that. If you are in an
13 extraterritorial jurisdiction, you get a resolution from
14 the municipal government and from the county government.

15 MR. OXER: They got it from the city but they
16 didn't get it from the county, I gather.

17 MR. PALMER: Right, or from the Lopezville CDP.

18 MR. OXER: That's what I was asking.

19 MR. IRVINE: CDPs can't give such letters.

20 MR. OXER: That's what I was asking. There is
21 no Lopezville administrative entity to provide that
22 letter. Is that correct?

23 MR. PALMER: Right. So it would be from the
24 county. If they're not in the city, they're in the county
25 and they would need to get a letter, a resolution from the

1 county in order to get the points, which they did not.

2 MR. OXER: Okay. Hold on a second.

3 Counsel, I have a question, because this seems
4 to hinge on whether or not they are choosing to be in
5 these two locations at the same time, and our rule states
6 that it has to consider a location at the time of the last
7 census. Is that not correct?

8 MR. ECCLES: Census data is contained at 10 TAC
9 10.2(d), and it says that "where this chapter requires the
10 use of census or American Community Survey data, the
11 Department shall use the most current data available as of
12 October 1, 2015, unless specifically otherwise provided in
13 federal or state law or in the rules." It continues from
14 there.

15 MR. OXER: Okay. But essentially, that data --
16 is there an update to that census data as of that date
17 that would put this -- I'm exploring here, Barry, hold
18 fire -- so that essentially the 2000 census says it's a
19 CDP, it goes through some process, there's no update on
20 that with respect to the census data, so even though
21 Edinburg had annexed the location, then even though it's
22 in Edinburg for purposes of its current location, it was
23 considered part of the CDP at the point of the census.
24 And right or wrong about whether or not that's the
25 perspective, is that a fact pattern we can work off of?

1 MR. PALMER: Yes, I think that's right, but
2 what the Census Bureau is telling us is once you are
3 annexed into a city, you are no longer in a CDP. We're
4 not saying that the Lopezville CDP doesn't exist anymore,
5 it's just this site is no longer in it, it is now in the
6 City of Edinburg.

7 MR. OXER: And particularly given the generous
8 availability of affordable units there that we've
9 supported already within a mile of this property you said?

10 MR. PALMER: Right. So I mean, obviously it
11 makes no sense to give these points to this project, it
12 makes no logical sense that you would give two underserved
13 area points for an area that has never received a tax
14 credit allocation to this site that is surrounded by tax
15 credit units. So the question is is there something in
16 the rules that makes you, that forces you into this bad
17 result, and what I'm saying is no, that the Census Bureau
18 is telling us you're either in a CDP or you're in a city,
19 you can't be in both, and so you can only claim the points
20 for being in one or the other. So either you get the
21 resolution points from the city or you get the CDP points,
22 but you don't get them both.

23 MR. OXER: You've got to pick a side in the
24 fight; which side are you on is the question.

25 Okay, thanks.

1 DR. MUÑOZ: Barry, before you sit down, those
2 800 units, I'm assuming that they're in Edinburg?

3 MR. PALMER: Yes, they're all in Edinburg --
4 they're not all in Edinburg, they're just within a mile of
5 this site.

6 MS. DULA: Good morning. Tamea Dula with Coats
7 Rose.

8 MR. OXER: Tamea, hold on just for a second.
9 Anything?

10 MS. BINGHAM ESCAREÑO: I'm good.

11 MR. OXER: All right.

12 MS. DULA: I'd like to follow up on a couple of
13 things that Barry said. Number one, the points are for
14 being in a place, with a capital P. The rules for 2016
15 define a place as being the U.S. Census Bureau's
16 definition, it does not say as federally promulgated, it
17 does not say statutory, it just says the Census Bureau's
18 definition.

19 You go to the Census Bureau, they publish a
20 glossary that uses their terms.

21 MR. OXER: So we can determine what the
22 definition of "is" is.

23 MS. DULA: So we can get the definition,
24 exactly. I think they do it that way because every ten
25 years they may change and they have more flexibility, but

1 they do not statutorily enact them nor do they publish
2 them in the CFRs. However, because the concept of a
3 census-designated place is a difficult one, they have
4 published that one in the *Federal Register* to explain what
5 they look at, and you have it in your materials as an
6 attachment to Barry's letter with the Census Bureau's
7 letter.

8 So they say a place is either an incorporated
9 area or a census-designated area. There's a confusion
10 here. The maps are not data, the maps are spatial
11 designations of where the Census Bureau acquired the data
12 that it acquired, which are numbers, population, incomes,
13 poverty. The maps are not data, so the rule 10.2(d) which
14 says you use the census data as of October 1, 2015 doesn't
15 come into play. The issue is the definition of place
16 because if you're in a place that qualifies, you can get
17 two points. The definition of place is the Census
18 Bureau's definition which is either an incorporated entity
19 or a census-designated place, never the two at the same
20 time.

21 I'm actually here to tell you about the need
22 for certainty. This is a competitive program, developers
23 need consistency in how the rules are interpreted. We get
24 that consistency through TDHCA's workshops, through
25 questions to the staff, through FAQs, and through the

1 Board's prior decisions. You've already addressed this
2 issue, you just didn't know about it.

3 In 2007 -- and there are few staff members, no
4 general counsel, no executive director and no Board member
5 is here that was here in 2007.

6 MR. OXER: For some of us that's a good thing.

7 MS. DULA: Yes. However, developers and
8 lawyers survive and we have long memories and in 2007 the
9 Board heard a very, very similar case called Casa Alton.
10 In that case, Casa Alton could get six points if it was in
11 the CDP or four points if it was in the City of Alton. In
12 2000 census the maps showed the site in the CDP. So Casa
13 Alton said, I'm in the CDP because I'm on the map here.
14 And the Board said, No, you were annexed before March 1 of
15 2007, you are in the city, you do not get the six points
16 for being in the CDP, you get four points for being in the
17 city.

18 You established a policy. You take a snapshot
19 on March 1 regarding the location of the project for the
20 purpose of location oriented points. You've been
21 following that. The staff followed it, they denied these
22 points. That denial was appealed to the executive
23 director. The executive director granted the appeal, but
24 why? Because he could not find anything that said that
25 you could not be in an incorporated area and in a CDP at

1 the same time. We have provided that information, the
2 missing link, it's the Census Bureau's definition. It's
3 either incorporated or a CDP, you cannot be in both at the
4 same time.

5 Back when Casa Alton was decided, it was
6 slightly different insofar as the term was area, with a
7 capital A. Area has almost the same definition as place,
8 with a capital P. Area in 2007 was defined in the QAP as
9 the geographic area contained within the boundaries of
10 one, an incorporated place, or two, a census-designated
11 place as established by the U.S. Census Bureau for the
12 most recent decennial census. The last words, for the
13 most recent decennial census, are not part of the current
14 definition of place, but otherwise it's identical, the
15 definition with the Census Bureau, which our rules refer
16 to as definitive. So we've accepted back in 2007 that you
17 couldn't be in both at the same time.

18 It's the definition of place that controls this
19 issue, not where you are on a census map from 2010,
20 because that map just shows you where the Census Bureau
21 collected their information, and because in 2010 the site
22 was not in the City of Edinburg, they said this spot here
23 is where we got this information and we're going to call
24 that Lopezville, and that is just a designation for the
25 purposes of those people who use this kind of information.

1 It does not define the CDP. The CDP has its own
2 definition published in the *Federal Register* and that is
3 what should control.

4 So we are just requesting consistency and you
5 following the established policy that you take a snapshot
6 as of March 1. You've been doing this, last year you did
7 it. There's no reason why you should change this policy
8 for this particular application. If you want to change
9 it, then you should do so going forward for the 2017 QAP.

10 I don't see a reason why you should. But by denying the
11 appeal, overturning the E-D's decision, which was made
12 without all of the information, you can continue to follow
13 your established precedent, you can continue to use those
14 underserved points for what they were intended, extra
15 points for projects that really are in the areas that are
16 underserved, and you can go home feeling good that you did
17 well.

18 MR. OXER: That would be a refreshing change.

19 (General laughter.)

20 MS. DULA: Questions from anybody?

21 MR. OXER: Any questions?

22 (No response.)

23 MR. OXER: Thanks, Tamea.

24 MS. DULA: Thank you.

25 MR. OXER: Ms. Bast, would you care to jump in

1 on this one?

2 Mr. Flores.

3 MR. FLORES: Good afternoon, Mr. Chairman,
4 members. My name is Henry Flores. I represent the
5 applicant. I'm here to ask that the Board maintain
6 staff's recommendation to award the underserved points to
7 this application.

8 Staff applied its rules appropriately in this
9 case. The rule is clear and the rules applied very
10 specifically and correctly in this situation. The
11 development site is located in Lopezville CDP. The
12 definition in our rules of place is an area defined by the
13 U.S. Census Bureau. The definition is inclusive of both
14 incorporated and unincorporated areas. There's no
15 distinction in our rule that a development site can only
16 be in one or the other. This is similar to a Colonia.
17 Colonias can be within city limits and they can be within
18 unincorporated areas.

19 The QAP and rules provide a specific date of
20 October 1, 2015 utilizing the census data, and further
21 states that the availability of more current data shall be
22 generally disregarded. CDPs are statistical entities for
23 data users by the census. There's no legal authority for
24 their boundaries. The census also publishes what they
25 call a geographic areas reference manual as its guide for

1 these specific types of entities. In their manual it
2 says: CDPs are created or refined at each decennial
3 census. I think that's an important key here.
4 Effectively, what they are doing is they are creating the
5 boundaries for ten years.

6 A CDP is just a conglomeration of census tracts
7 that have similar characteristics. If there are drastic
8 changes in a census tract, a census tract can be removed
9 from a CDP. There's an annual process, a list that's
10 published once a year. That list is on the Census
11 Bureau's website which lists those types of changes that
12 have occurred. We've reviewed the list, we've provided
13 the list to the Department, and from 2010 to 2015
14 Lopezville is not on that list. There's 31 instances of
15 this occurring, six within Texas. Lopezville, the
16 boundaries have not changed for a CDP.

17 When changes do occur, there's a process. They
18 file annually, the census does, what they call boundary
19 and annexation survey. Those types of changes would be
20 significant changes in the gross statistical
21 characteristics of a census tract and an adjustment of
22 that CDP will be made, it will be filed through their BAS
23 and updated in their TIGER mapping software system.
24 Again, that reference for TIGER mapping in our rules.

25 We've confirmed with the city manager of

1 Edinburg, Mr. Ramiro Garza, that a boundary annexation
2 certification is submitted to the census every year, so
3 the census was aware at our time of app of this annexation
4 in the area. The fact that it's been annexed has not
5 changed that we are located within the CDP. We also found
6 examples of past CDPs overlapping incorporated areas.
7 There was one called Covedale in Ohio and another one
8 called North Amherst in Massachusetts. It's uncommon but
9 it does occur. Even this week we verified again the maps
10 have not changed, Lopezville boundaries remain the same
11 since last year in October, March 1 of this year, and even
12 July of this year. I believe staff is correct in their
13 analysis and the points should be maintained.

14 And I do want to touch base on the case that
15 was put forth as precedent. I think there's some distinct
16 differences that are getting left out here. That year, as
17 my colleagues have stated, it was area, the definition of
18 area. Within that definition it was an either/or
19 situation; those words do not exist in this year's rules.
20 You're either in a municipality, incorporated or
21 unincorporated, or within a CDP.

22 The data that the Department used for their
23 housing needs score was based on state data, not the
24 census data. I think also part of the determination that
25 year was the reference material that was published by the

1 Department which mentioned the state data.

2 I appreciate your consideration, I'm happy to
3 answer any questions, and I appreciate your time. Thank
4 you.

5 MR. OXER: Thank you. Any questions from
6 members of the Board?

7 (No response.)

8 MR. OXER: Okay, Cynthia.

9 MS. BAST: Good afternoon. We've passed the
10 noon hour. Cynthia Bast of Locke Lord representing the
11 applicant.

12 MR. OXER: We've still got 90 seconds before
13 it's afternoon but keep going.

14 MS. BAST: Okay. My watch is fast.

15 You're hearing a lot of good information and I
16 think it's all coming down to the same topic that I spoke
17 on previously is looking at our rules and scrupulously
18 following our rules and what do our rules say. The
19 question has been presented: How can you be in a CDP and
20 in an incorporated area? And the truth is that the rules,
21 as presented, do allow for that. And Mr. Ozer, I think
22 you've got it, it's that difference between being defined
23 by the Census Bureau versus being defined by state laws
24 regarding annexation.

25 At the end of the day, we have to decide how

1 does the United States Census Bureau define a place. In
2 the absence of a regulation, we have to look at where is
3 that definition by the Census Bureau. As it relates to
4 census-designated places, you'll actually find multiple
5 definitions on their website. They're all approximately
6 the same but you will find multiple ones. And they're all
7 given in the context of this is how we look at CDPs for
8 purposes of our decennial census. And as Mr. Flores
9 mentioned, with boundary annexation surveys, new
10 information can be provided to the Census Bureau and a
11 list can come out that says we've made the following
12 changes.

13 But at the end of the day, how do we know what
14 this place is? To know what this place is we go to the
15 TIGER Shapefiles. That is described by the Census Bureau
16 as the most comprehensive database identifying geographic
17 areas. That's what it says on their website. If you go
18 to those Shapefiles, this site is in the Lopezville CDP.
19 It was on October 1, 2015 and it is today. So in the
20 absence of a written definition of place that we can
21 really get our arms around that is living and breathing
22 through the ten years between each census, the Census
23 Bureau is showing us what the place of this development
24 site is, and it's in the Lopezville CDP.

25 I also want to point out that TDHCA's site

1 demographic characteristics report, which is used as a
2 tool by the applicants, identifies the Lopezville CDP as a
3 place for this application round.

4 I think where this comes about is that in your
5 rules the word "place" is used in two contexts. It is
6 used in this location with regard to underserved area
7 points if you're in a place. It's also used with regard
8 to the designation of areas as either rural or urban, and
9 again, when you're looking at a place for purposes of
10 rural or urban, the rules expressly instruct that you go
11 to the TIGER Shapefiles. That's the remaining portion of
12 Section 10.2(d) that Mr. Eccles didn't read.

13 But it's consistent to say if we need to know
14 what place we're in from the United States Census Bureau,
15 we're going to go get on the TIGER Shapefiles, which is
16 their most compressive database identifying geographic
17 areas, to figure out what they say about what this place
18 is. So that's how under these rules that we're trying to
19 apply today this development site can be considered in the
20 Lopezville CDP for purposes of these points.

21 And finally, my last thing I would like to
22 note, with regard to the consistency argument on the 2007
23 application, the language is slightly different, but I
24 also note that that QAP did not contain Section 10.2(d)
25 that said when we're talking about census information.

1 Data is information, and we can parse that and say it
2 should be numbers, it should be population, data is
3 information, that's how it's defined, so yes, that can
4 include boundaries. When we're looking at census data, we
5 look at the data as of October 1, 2015, and more current
6 data is disregarded. That's what the rule says. That
7 rule wasn't in place in 2007.

8 So it may get to a result that people think is
9 not preferable, but we're trying to apply the rules that
10 are in place today to this situation, and this development
11 site is in the Lopezville CDP identified by the Census
12 Bureau.

13 MR. OXER: Good. Thanks. Any questions?

14 (No response.)

15 MR. OXER: Is there anybody else that wants to
16 speak on this item?

17 MR. WILLIAMS: Good morning, chairman and
18 members of the Board. My name is Toby Williams. I'm here
19 representing Sierra Vista, the applicant in this
20 situation.

21 We have maintained from the very beginning that
22 we are in both the Lopezville CDP and the City of
23 Edinburg. There are numerous references throughout the
24 application to both the city and the CDP. It's not like
25 we're trying to do something sneaky here and slip

1 something in there, we're not trying to pull the wool over
2 anybody's eyes. As of this morning, sitting out here in
3 the audience, I pulled up the TIGER maps. As of this
4 morning, we are still located in the Lopezville CDP.

5 Now, Cynthia and Henry both pointed out that
6 the CDPs are statistical entities. They're statistical
7 boundaries that are drawn up by the Census Bureau for the
8 purpose of crunching numbers. So even with the annexation
9 of this particular area, the general characteristics of
10 the Lopezville CDP have not changed. Based on the
11 annexation documents that the city had provided, this is
12 an area that the city provides water and wastewater to the
13 existing neighborhoods but they have no current plans to
14 extend those services to the remaining vacant tracts which
15 make up the vast majority of this area. This is an area
16 that needs a development like Sierra Vista to come in and
17 serve as a catalyst for future growth.

18 I'd also like to talk about Barry mentions that
19 you can't be in a CDP and in a city, and that if we're in
20 the CDP, then we should have got the resolution of support
21 from the county. Well, that's not the case. And in fact,
22 there's a 2016 FAQ that addresses this exact issue. "The
23 City of Houston has a census-designated place within the
24 city. Would that require a city resolution so that no
25 county resolution would be needed?" And staff's response:

1 "The answer to this question is very much specific to the
2 facts of this situation. In the case of a census-
3 designated place, the appropriate entity is the entity
4 that has jurisdiction over the development in the CDP. It
5 could be the city, the county or both. The applicant must
6 ensure that the correct entity provides the resolution and
7 this can often best be corroborated with discussions and
8 documentation with both entities."

9 So that's what we did. You know, we're in the
10 Lopezville CDP, and then we looked to see are we in the
11 county, are we in the ETJ, or are we in the City of
12 Edinburg. We were in the City of Edinburg as well, so
13 that's where we went and got our LPS funding and got our
14 resolution of support.

15 You know, I respectfully request that the Boar
16 uphold staff's decision and grant the Sierra Vista the two
17 points for the underserved item. Thank you.

18 MR. OXER: Thanks, Mr. Williams?

19 Any questions from the Board? Good timing.

20 MS. ANDERSON: My name is Sarah Anderson. I
21 have nothing to do with either of these deals, but Casa
22 Alton was my challenge that I won and set what was
23 precedent seven years ago.

24 When I hear this discussion, it concerns me a
25 lot because we have operated for the last ten years that

1 it's an either/or and people know or should have known or
2 should have asked the question about CDP. The rules on
3 the census are very clear, and I think the best way to
4 look at this is get rid of CDP, let's not even talk about
5 CDP, let's talk about whether it's just the county. And
6 in what world would we ever say that an annex thing, that
7 I could claim, well, the census map two years ago or a
8 year ago has me in the county even though I've been
9 annexed, and when could I ever get away with saying that
10 my site is not within a city? So we have the census
11 saying you can't be both, everything leads back to that
12 definition, and in no world would, except for this weird
13 obfuscation with CDP and statistical, would we be having
14 this conversation if it was just in the county versus the
15 city.

16 We looked this up because I couldn't believe
17 that this had been overturned, and when we looked it up,
18 the maps that you get from the census specifically say:
19 the depiction and designation for statistical purposes
20 does not constitute a determination of jurisdictional
21 authority or rights of ownership or entitlement. The maps
22 tell you this is not what you use to determine what the
23 boundaries are.

24 So I hope that you go back to staff's original
25 determination because I think it was correct.

1 MR. LYTTLE: Mr. Chairman, I have a legislative
2 letter to read about this issue too.

3 MR. OXER: Okay. Let's hear about that. Hold
4 on just for a second.

5 Donna, did you want to say anything on this
6 issue?

7 MS. RICKENBACKER: Yes, sir.

8 MR. OXER: Three minutes, please.

9 MS. RICKENBACKER: Yes, sir.

10 I'm a real simpleminded person -- I'm sure
11 you're going to have fun with that comment, Chairman Oxer.

12 MR. OXER: Let the record reflect that I was
13 quiet on that one.

14 MS. RICKENBACKER: There you go.

15 So there's been a lot of discussion on census
16 data and that verbiage, if you will, is in a subchapter of
17 our Multifamily rules under general information, and it
18 specifically says where the chapter requires the use of
19 census data, the Department shall use the most current
20 data available as of this October 1 deadline that
21 everybody is referencing to. It does specifically say
22 unless otherwise provided in federal or state law or in
23 our rules.

24 I want to point out that this census data
25 general information provision deals with a point in time

1 so that staff understands and can therefore make sure they
2 have the right information at a point in time with respect
3 to population, incomes, rural and urban designation. It
4 was never meant to define geographic areas. And again, I
5 go back to the fact that this provision say, again, unless
6 otherwise provided in our rules. So you go back to what
7 our rules, what do our rules say about how you qualify for
8 underserved area places, and that is being in a place
9 that, as everybody has said, is underserved, and as
10 defined by the U.S. Census Bureau.

11 It doesn't say as defined by the U.S. Census
12 Bureau in statute or regulatory information, it doesn't go
13 that direction, it just says as defined by the U.S. Census
14 Bureau, which clearly has definitions that define a place
15 and establish that you can't be in both a CDP place and in
16 an incorporated place at the same time. They make that
17 very clear in their definitions.

18 And from a real kind of logical point of view,
19 if you will, which is the only way I know how to work, is
20 that if you think about what the Census Bureau does, if
21 they're looking at populations in a given CDP area, if you
22 will, they wouldn't want to double count that population.

23 And therefore, they're making a clear distinction in
24 their definitions of a place so that there is not an over
25 counting, if you will, in a CDP area because that site has

1 been now annexed into a city's jurisdiction.

2 Obviously their mapping is updated once every
3 ten years so that there is some finality with respect to
4 the boundary areas over that ten-year period. So again,
5 similar to what Sarah said, geographic areas, if you will,
6 are recapped by the Census Bureau once every ten years, so
7 we look at where that site is today, and based on your own
8 prior decisions, it's where that site is as of March 1.
9 And in this instance the Sierra Vista site was in the City
10 of Edinburg as of March 1, and the Census Bureau by
11 definition says you cannot be in both places at the same
12 time.

13 Thank you.

14 MR. OXER: Thanks for your comments.

15 Michael, let's hear your letter.

16 MR. LYTTLE: "Dear Chairman Oxer,

17 "I agree with the Texas Department of Houston
18 and Community Affairs staff recommendation based on the
19 current rules regarding the issues surrounding the
20 Lopezville census-designated place. The TDHCA rule for
21 this item is clear and the Sierra Vista application merits
22 the award of the underserved points in question.

23 "The definition of place in the Department's
24 rules refers to the Census Bureau's definition of place.
25 The Census Bureau's information states that the creation,

1 dissolution, modification or amendment of a census-
2 designated place occurs at the decennial census.
3 Additionally, once the census-designated place is created
4 by the census, the boundaries become effective for ten
5 years until the next census. Exceptions to this are
6 handled through the census annual filing of the boundary
7 and annexation survey. Based on up-to-date information
8 published by the Census Bureau, the Lopezville CDP
9 boundaries have remained unchanged since 2010.

10 "Furthermore, Lopezville CDP is not listed in
11 the Census Bureau's list of changed entities from 2010 to
12 2015 that is published after the release of the annual
13 boundary and annexation survey, reiterating that the
14 development site is located within the Lopezville CDP.

15 "While I understand that the development site
16 has been annexed into the City of Edinburg, this
17 particular area is still underserved and in need of your
18 support. According to the annexation documentation of the
19 City of Edinburg, many of the current Lopezville residents
20 cannot access city water, and while the existing
21 residential neighborhoods do have limited access to city
22 wastewater services, there are no plans to extend services
23 to many of the vacant parcels located in the area.

24 "Sierra Vista will greatly benefit the comities
25 of both Lopezville and the City of Edinburg by providing

1 high quality affordable housing to those most in need. I
2 respectfully request that the Board support the staff
3 recommendation to award the points under consideration to
4 the application.

5 "If I can be of further assistance, please do
6 not hesitate to contact my office."

7 Signed: Sincerely, Juan "Chuy" Hinojosa, State
8 Senator, District 20.

9 MR. OXER: Okay. Thank you.

10 Is there anybody else that wants to speak on
11 this item?

12 (No response.)

13 MR. OXER: As I said earlier, we're going to
14 take a break and go into executive session. Everybody sit
15 still and listen.

16 The Governing Board of the Texas Department of
17 Housing and Community Affairs will go into closed or
18 executive session at this time. The Board may go into
19 executive session pursuant to Texas Government Code
20 551.074 for the purposes of discussing personnel matters,
21 pursuant to Texas Government Code 551.071 to seek and
22 receive legal advice of its attorney, pursuant to Texas
23 Government Code 551.072 to deliberate the possible
24 purchase, sale, exchange or lease of real estate, and/or
25 pursuant to Texas Government Code 2306.039(c) to discuss

1 issues related to fraud, waste or abuse with the
2 Department's internal auditor, fraud prevention
3 coordinator, or ethics advisor.

4 The closed session will be held in the anteroom
5 of this room, John H. Reagan Building 140. The date is
6 July 14, 2016, the official time is 12:16.

7 We've got some things to gnaw on, folks, so it
8 will be one o'clock, so let's be back in our seats at one
9 o'clock.

10 (Whereupon, at 12:16 p.m., the meeting was
11 recessed, to reconvene this same day, Thursday, July 14,
12 2016, following conclusion of the executive session.)

13 MR. OXER: The Board is now reconvened in open
14 session at 1:42. During the executive session the Board
15 did not adopt any policy, position, resolution, rule,
16 regulation or take any formal action or vote on any item.

17 So that being the case, we are underway again making full
18 turns.

19 Because of a timing issue, we're going to take
20 the very last item on the agenda first out of the box
21 here. That's you Andrew, come on.

22 MR. SINNOTT: Good afternoon, Chairman Oxer,
23 members of the Board. My name is Andrew Sinnott,
24 Multifamily Loan Program administrator. I'm presenting:
25 Presentation, discussion and possible action on the Draft

1 2016 State of Texas National Housing Trust Fund Allocation
2 Plan, and directing that it be published in the *Texas*
3 *Register*.

4 We last addressed the topic of National Housing
5 Trust Fund at the March Board meeting to report on a
6 timeline of the roundtables, public comment period, and
7 ultimately when the funds would be available in a NOFA.
8 since that Board meeting, we had two roundtables in Austin
9 and Houston that were fairly well attended and included a
10 number of different stakeholders. In May we found out
11 Texas would be receiving approximately \$4.8 million in
12 National Housing Trust Fund and we also received guidance
13 from HUD regarding allocation plan submission
14 requirements.

15 Over the past several weeks staff has worked on
16 drafting this allocation plan which included making the
17 required revisions to both the 2016 one-year action plan
18 and the 2015-2019 consolidated plan, resulting in over the
19 100 pages included with this Board item. The plan covers
20 the approximately \$4.8 million in National Housing Trust
21 Fund for program year 2016 which runs from February 2016
22 through January 31, 2017.

23 With the Board's approval of the allocation
24 plan, we will publish the plan in the *Texas Register* for
25 public comment. The public comment period will run for 30

1 days from July 15 through August 15, with a public hearing
2 scheduled for August 4. And then we intend to bring the
3 final version of the allocation plan to the Board in
4 September.

5 MR. OXER: In September did you say?

6 MR. SINNOTT: Yes, so after the public comment
7 period.

8 We do have a waiver request into HUD that we
9 submitted earlier this week regarding the August 16, 2016
10 submission deadline for the allocation plan. That's the
11 federal submission deadline. Should HUD deny that waiver
12 request, we'll submit the allocation plan to HUD
13 immediately following the public comment period on August
14 16, 2016 and bring it back to the Board for ratification,
15 but we don't anticipate the waiver request being denied by
16 HUD based on emails and phone calls that we've had with
17 them.

18 Some of the quick highlights from the plan. We
19 anticipate funding eligible for profit and nonprofit
20 entities, as we currently do with our direct loan NOFA,
21 existing direct loan funds, HOME funds, and TCAP Funds.
22 Anticipate using many of our existing Multifamily rules to
23 comply with the required selection criteria. Anticipate
24 using the Section 234 condo limits applicable to the HOME
25 Program for the maximum per-unit subsidy limits. We

1 anticipate using the rehab standards in our Multifamily
2 rules in 10 TAC to comply with the rehab standards that's
3 required by National Housing Trust Fund.

4 We do not anticipate using National Housing
5 Trust Fund for homeownership housing programs in program
6 year 2016. We do anticipate having the ability to limit
7 beneficiaries or give preferences to certain segments of
8 extremely low income populations, just the same as we have
9 that ability with our HOME funds. And we anticipate
10 allowing refinancing in conjunction with rehab, similar to
11 our HOME funds. So as you can see, we're trying to mirror
12 what we do with HOME funds with regard to Multifamily for
13 National Housing Trust Fund to kind of make it easier on
14 staff and applicants.

15 MR. OXER: Any questions for Andrew? So we've
16 basically got \$4.8 million, we're trying to get it in
17 gear, get the thing taken care of. This is procedural.

18 MR. SINNOTT: Exactly. And then in terms of
19 when it will be in the direct loan NOFA, we anticipate
20 drafting that this fall and then bringing it back to the
21 Board in December for final approval.

22 MR. OXER: So approve the NOFA and the NOFA
23 would come out, more or less, in January.

24 MR. SINNOTT: Right, yes. We'd start accepting
25 applications in January, just like we did this past year.

1 MR. OXER: Okay. Any questions?

2 MR. GOODWIN: Move approval.

3 MR. OXER: Motion by Mr. Goodwin to approve
4 staff recommendation on item 6(f)

5 DR. MUÑOZ: Second.

6 MR. OXER: Second by Dr. Muñoz. No request for
7 public comment. Motion by Mr. Goodwin, second by Dr.
8 Muñoz to approve staff recommendation on item 6(f). Those
9 in favor?

10 (A chorus of ayes.)

11 MR. OXER: And opposed?

12 (No response.)

13 MR. OXER: There are none.

14 MR. SINNOTT: Thank you.

15 MR. OXER: Thank you.

16 Okay. Let's get back to 6(a). For the two
17 items that are on there, because it was brought to our
18 attention in a prior meeting that there were some concerns
19 and some questions, we've asked the staff to gather
20 additional information which they have on both of these
21 applications. With respect to either of those, does any
22 member of the Board wish to have any action to change or
23 alter the status on either application?

24 (No response.)

25 MR. OXER: Hearing none, I guess the

1 pronouncement would be that it was brought to the agency's
2 attention, it's been managed, it's been handled, there was
3 a process, there was a procedure for it, there was an
4 interpretation of rule. I have to admit there was a lot
5 of dialogue today, a lot of heated commentary, some great
6 points that were made. The unfortunate issue is that
7 sometimes we have to make some hard decisions for things
8 that simply aren't easy to do, so at this point the staff
9 decision on item 6 with respect to application 16116, The
10 Standard on the Creek, and with respect to application
11 16380, Sierra Vista, will stand as decided by staff.

12 Marni, next item, part (b).

13 MS. HOLLOWAY: On item 6(b) we have:
14 Presentation, discussion and possible action on timely
15 filed scoring notice appeals under the Department's
16 Multifamily Program rules. The application we're
17 discussing is number 16387, Cantabria Estates in
18 Brownsville.

19 The application was submitted proposing replace
20 34 of 74 existing units to be demolished and add 68
21 additional units under the at-risk set-aside and relocate
22 them also. The Department's at-risk rule said that an
23 applicant may propose relocation of exiting units in an
24 otherwise qualifying at-risk development if the applicant
25 seeking tax credits proposes the same number of restricted

1 units. So if you're tearing them down in one place, you
2 have to put the same number in another place. The
3 application was submitted proposing to construct 40 more
4 restricted units than were being demolished.

5 A scoring notice was issued taking away the six
6 pre-application points because the application did not
7 qualify to participate in the at-risk set-aside because of
8 that unit variance. That application was timely appealed
9 and the executive director has denied the appeal.

10 This is a new construction project of 102 units
11 to serve the general population in Brownsville, Texas.
12 The applicant, in their appeal, proposed to change their
13 application so that their unit count -- the provided a
14 revised rent schedule which proposed 74 RAD units and 28
15 market units so they were going with the same unit count
16 instead of the 34 RAD units originally proposed.

17 Pursuant to the administrative deficiency
18 process, staff cannot accept these proposed changes to the
19 application as they are material, changing the unit mix
20 and it also changed the financing, and one of the criteria
21 for an application to receive six points related to the
22 pre-application participation is that the pre-application
23 and application are participating in the same set-asides.

24 So because of this unit mix question, they aren't able to
25 participate in the at-risk set-aside any longer so they're

1 losing their pre-application points and we would be moving
2 them to the region from the at-risk set-aside.

3 Because the application as submitted does not
4 qualify for the at-risk set-aside, it does not qualify for
5 the six points, and staff recommends denial of the appeal.

6 MR. GOODWIN: So moved.

7 MR. OXER: I was going to say are there any
8 questions. There are apparently none. So motion by Mr.
9 Goodwin to approve staff recommendation on item 6(b). Do
10 I hear a second?

11 DR. MUÑOZ: Second.

12 MR. OXER: Second by Dr. Muñoz.

13 Okay, Toni.

14 MS. JACKSON: Good afternoon, Board members. I
15 am Toni Jackson and I am here on behalf of my client,
16 Cantabria, LP to appeal the staff's decision to remove
17 Cantabria from the at-risk set-aside.

18 As was indicated, the staff has indicated only
19 in a FAQ that there had to be all of the units moved that
20 were going to be demolished into the application.
21 However, it is our position that it does indicate that
22 they all have to be moved at the same time. We have
23 provided information showing that it has always been the
24 intention of the housing authority to demolish all of the
25 units, and that has been proven and provided by a letter

1 from the housing authority, THA's five-year plan, and a
2 resolution for the housing authority indicating the intent
3 to demolish.

4 In the letter that we received from the E-D, as
5 well as in the administrative deficiency, it indicated
6 that we had provided information that there was an intent
7 to demolish. However, on the tab where that is supposed
8 to be checked, that was in fact checked that there was
9 going to be demolition, and as requested from the
10 administrative deficiency, we provided additional
11 information that indicated demolition.

12 Again, it was put in the administrative
13 deficiency, as well as in the E-D's letter, that we had
14 not indicated that the demolition was proposed. We did,
15 again, as I said, check the box, we provided additional
16 information as was asked with the administrative
17 deficiency, and we actually have not been clear what other
18 information we could have provided to show that demolition
19 was going to be a part of this particular transaction.
20 Demolition was not in the budget because the housing
21 authority is handling the demolition themselves and the
22 demolition is not intended to be completed until after the
23 tax credit award. However, based on the statute and our
24 understanding of the intention of RAD, nowhere does it
25 indicate that the demolition has to be done any time prior

1 to the tax credit award or even during the application
2 process. We simply must indicate and show that the
3 demolition is proposed, which we have provided.

4 So we have also provided the additional
5 information as requested in the administrative deficiency.

6 We did not feel that it was a material change, and
7 therefore, we ask that the points be reinstated.

8 MR. OXER: Any questions?

9 MS. BINGHAM ESCAREÑO: Are there folks living
10 in the existing area that's to be demolished?

11 MS. JACKSON: Yes. It's called Leon Gardens
12 and there are people living there, and so the plan was
13 that the new construction would take place and then they
14 would be moved and demolished at that time, and that was
15 so that the housing authority would not have to take on
16 responsibility of relocation funds.

17 MR. OXER: So essentially to protect the people
18 that were living there, or continue to provide them
19 service.

20 MS. JACKSON: That is correct.

21 MR. OXER: Any other questions?

22 MS. BINGHAM ESCAREÑO: Can I ask a question of
23 Marni?

24 MR. OXER: Yes.

25 MS. BINGHAM ESCAREÑO: Marni, is there anything

1 in our rules or anything that says that the demolition has
2 to occur prior to the award?

3 MS. HOLLOWAY: No, there's nothing that says it
4 has to happen prior to. The operative question, though,
5 for this particular item and why we took away the points
6 and moved them out of the at-risk set-aside is not about
7 the demolition question, it's about this unit count
8 question. Part of the concern with reconstructions is
9 that they're just going to rebuild a portion of those
10 units and not all of the units. How do rest of the units
11 are going to be reconstructed? And that's why there's
12 this requirement in rule saying that the applicant must
13 propose the same number of restricted units.

14 The Leon Gardens development is 74 units to be
15 demolished, they proposed to construct 34 units under the
16 RAD program. When they sent back their appeal, they
17 changed their application significantly to propose 74 RAD
18 units, and also as a consequence changed the financing and
19 some other parts and pieces that are material to the
20 application. That's why staff is recommending denial of
21 the appeal.

22 MR. OXER: What were the other parts and
23 pieces?

24 MS. HOLLOWAY: The financing structure,
25 operating expenses and financing structure. The unit

1 count changed.

2 MR. OXER: So essentially, tell us the numbers
3 again, they went from so many RAD to so many market.

4 MS. HOLLOWAY: The application originally
5 proposed to reconstruct 34 units under RAD, to add 58 tax
6 credit units, and then to add ten unrestricted units.
7 When they revised their information that they sent back,
8 they proposed 74 RAD units, so that was all the units that
9 were to be demolished, and 28 market rate units instead of
10 what was originally proposed.

11 MR. OXER: Come on up, Toni.

12 MS. JACKSON: And as indicated, it was the
13 client's understanding -- or we did not understand or did
14 not agree that the rule indicates that it 100 percent
15 moved at the same time because we had provided the
16 information from the housing authority showing that there
17 was always an intent that Leon Gardens is going to be
18 completely demolished and moved, it was just going to be
19 done in two phases. So in response to the administrative
20 deficiency, they changed it to bring in all 74 units at
21 one time, but again, it was not our understanding of the
22 rules that it has to be all done in one phase because the
23 rules do not state that. And there wasn't any unit mix
24 changed and all of the units would continue to be
25 affordable.

1 MR. OXER: Okay. Any other questions?

2 (No response.)

3 MR. OXER: So let me get this clear. Our point
4 is, Toni, that the whole thing was predicated on moving
5 part of them and then moving the rest of them later, that
6 you were going to finance this whole deal in two stages.

7 MS. JACKSON: That is correct. But Leon
8 Gardens as one application would be going in to HUD as a
9 RAD deal. That was always the intention. And the
10 resolution from the housing authority indicates that.

11 MR. OXER: Okay. Have you got anything to add
12 to that? Do we have anything on that, Marni?

13 MS. HOLLOWAY: Yes. Beyond the requirement in
14 rule and the at-risk rule about the unit count remaining
15 the same, under the administrative deficiencies
16 requirements for Housing Tax Credit applications it says
17 specifically may not add any set-asides, increase the
18 requested credit amount, revise the unit mix or adjust
19 their self-score except in response to a direct request
20 from the Department. We did not request that they change
21 their unit mix, operating expenses or financing structure.

22 MR. OXER: All right. Thanks, Toni.

23 MR. SUNNY PHILIP: Executive director for the
24 South Texas Collaborative for Housing Development which is
25 a nonprofit entity. We are partnering with the Cameron

1 County Housing Authority to facilitate this change.

2 Not to repeat Toni's comment, our goal was to
3 move these units to a high opportunity area which the
4 Board has prioritized, and also to make sure that the
5 concentration of the affordable housing is kind of put in
6 a way to be conducive to the neighborhood and also
7 acceptable to the neighborhood, and that's what we have
8 attempted to do. And we have consistently stated from the
9 beginning of the application what our whole plan was, and
10 it would appear that staff concluded with the underwriting
11 with that information. Then all this came up from a third
12 party challenge and we have been reacting to that, but the
13 question was about the demolition. From the beginning to
14 the last information we provided, we have stated as to how
15 the demolition will take place. Our humble understanding
16 is it fits within the rules of all the programs.

17 Thank you.

18 MR. OXER: Okay. Thanks, Sunny.

19 MS. FINE: Tracey Fine with National Church
20 Residences.

21 I just want to say that I read the rules, and
22 we're in the at-risk category as well, and it is clear as
23 day that that you have to have the replacement of one to
24 one if you determine that you're going to tear down your
25 property and rebuild it in another location. So for me

1 it's hard to understand that that interpretation was
2 unclear. It is very clear that it's a one-time
3 replacement.

4 And I did want to point out that should this
5 project move forward, and it's under appeal, 100 percent
6 of the at-risk category, other than the USDA set-aside,
7 100 percent would go to a new location, new construction.

8 Not one single existing property would be preserved under
9 this round in preservation and at-risk. This year marks
10 the 30th birthday of the Tax Credit Program. TDHCA has
11 awarded 2,200 tax credit properties. That means not one
12 of them would have been able to move forward in this
13 category because it wouldn't be seeking a new
14 construction, new location.

15 We're losing because of a property rate issue,
16 potentially on this, but my census tract includes my
17 residents that are part of the property rate. If they
18 were take that out and compare it to a new application, we
19 could be on equal playing fields. I'm just pointing that
20 out, it's not part of the appeal, but I think it
21 highlights some of the challenges of the at-risk set-aside
22 in this round.

23 MR. OXER: Thanks for your comments, Tracey.

24 Any other commentary? No requests.

25 Anything to summarize, Marni?

1 MS. HOLLOWAY: No, sir.

2 MR. OXER: Okay. There's been a motion by Mr.
3 Goodwin with respect to item 6(b) on the agenda, motion by
4 Mr. Goodwin, second by Dr. Muñoz to approve staff
5 recommendation which is to deny the appeal. Is that
6 correct?

7 MS. HOLLOWAY: Yes.

8 MR. OXER: Okay. Clear to the Board. Motion
9 by Mr. Goodwin, second by Dr. Muñoz. All in favor?

10 (A chorus of ayes.)

11 MR. OXER: And opposed?

12 (No response.)

13 MR. OXER: There are none.

14 Let's go to 6(c).

15 MS. HOLLOWAY: Item 6(c) is: Presentation,
16 discussion and possible action on staff determinations
17 regarding 10 TAC 10.101(a)(3) related to undesirable site
18 features and 10 TAC 10.101(a)(4) related to applicant
19 disclosure of undesirable neighborhood characteristics.
20 We are discussing two applications today, 16200 Kirby Park
21 Villas in San Angelo, and 16274 Rockview Manor in Fort
22 Hancock.

23 MR. OXER: And boy, aren't you popular.

24 (General laughter.)

25 MS. HOLLOWAY: Wow. Can I bring them in or

1 what?

2 So the purpose of this item is to bring forth
3 these two sites, these two applications to the Board for a
4 determination of whether or not this site is eligible. If
5 you do determine that this site is ineligible based on the
6 information that we're presenting, the termination
7 resulting from that decision is not appealable. So I
8 wanted to make that clear.

9 MR. OXER: Say that again.

10 MS. HOLLOWAY: Okay. What we are requesting is
11 a Board determination that these sites are ineligible, we
12 believe these sites are ineligible, we're asking for your
13 determination confirming that. If these sites are found
14 ineligible, the applications will be terminated, and under
15 our rule that termination is not appealable.

16 MR. OXER: Okay. 16200 Kirby Park.

17 MS. HOLLOWAY: 16200 Kirby Park Villas. The
18 application is proposing a 72-unit new construction
19 project with elderly limitation. It's located at the
20 southwest corner of 29th Street and Martin Luther King
21 Boulevard in San Angelo, Texas. The application has
22 requested and received community revitalization points due
23 to the location within a neighborhood targeted by the
24 city. The development site is at the edge of an older
25 neighborhood that has a combination of industrial and

1 residential uses, and in fact, this kind of land use is
2 frequently a trigger for revitalization plans in urban
3 areas.

4 One approach to the property is from N. Bryant
5 Boulevard which is a major north-south artery. Close to
6 the site N. Bryant is a divided road with mixed commercial
7 and industrial uses. This route largely avoids the
8 industrial uses and blight abutting the proposed
9 development site on the other side. Approaching the
10 property from the east on 29th Street requires traveling
11 from N. Chadbourne Street which is characterized by
12 multiple payday lenders, liquor stores and blight, through
13 a deteriorating residential area and a heavy industrial
14 corridor. Approach from Martin Luther King Dr. is
15 characterized almost solely by industrial uses.

16 So across from this site just directly across
17 the street is Terrill Manufacturing Company. This is less
18 than 200 feet away, border to border on the property, so
19 remember that we take measurements from the edge of the
20 property to the edge of the property. On Friday, May 20,
21 the date of staff inspection, there was a steady noise
22 coming from this manufacturing facility. There are
23 pictures in your Board book that show you what it looked
24 like on that day.

25 Approximately 200 feet from the site, across

1 the intersection of West 29th Street and Martin Luther
2 King Dr., is a pipe manufacturing plant serving the
3 petroleum industry. Due to the nature of the
4 manufacturing and the presence of multiple semi trucks
5 parked at these plants, traffic on 29th Street would
6 presumably be impacted as they travel from the plants to
7 N. Bryant Boulevard which is that major artery. The
8 development site is effectively blocked from any
9 residential uses by manufacturing facilities.

10 The applicant did not disclose multiple
11 undesirable neighborhood characteristics in their
12 application. While they were not required to disclose
13 schools with Improvement Required because this is an
14 elderly limitation deal and the poverty rate is just under
15 the limit, they should have disclosed the blight and they
16 should have disclosed facilities within the ASTM required
17 search distances. According to the environmental site
18 assessment, the ASTM facilities do not require mitigation
19 but having 38 such facilities within the search range
20 speaks to the character of the neighborhood and its
21 predominantly industrial land use.

22 Staff recommends the Board determine that the
23 site is ineligible under 10.101(a)(3) Undesirable Site
24 Features, due to its proximity to manufacturing
25 facilities, and 10.101(a)(4) Undesirable Neighborhood

1 Characteristics, due to the blight surrounding the
2 property.

3 MR. OXER: Okay. Are there any questions?
4 We're going to take these one at a time for Board action.

5 MR. GOODWIN: Move approval.

6 MR. OXER: Motion by Mr. Goodwin.

7 MS. BINGHAM ESCAREÑO: Second.

8 MR. OXER: And second by Ms. Bingham to approve
9 staff recommendation on application 16200. Do you folks
10 want to speak on 16200 or the other one?

11 MS. BAST: Good afternoon. Cynthia Bast of
12 Locke Lord representing the applicant on this matter.

13 So we have three items of ineligibility here.
14 Unfortunately, only one of them was actually dealt with
15 through the administrative deficiency process. I feel
16 like had we been able to discuss some of these others with
17 staff, we might have worked through some of these issues,
18 but since that was not part of the described process, we
19 get to bring it to you and you get to hear all of this and
20 be the final arbiter.

21 I believe very firmly that the determination
22 has mischaracterized the Blackshear neighborhood of San
23 Angelo, and further, is not consistent with the rules.
24 I'm going to focus on the rules part, we have people from
25 San Angelo here to talk more specifically about their

1 community.

2 First I want to talk about the nearby
3 industrial use. This is considered an undesirable site
4 feature under 101(a)(3), and as staff mentioned, the Board
5 can decide whether this is an ineligible feature. I'd
6 like to focus on the language: It is an ineligible site
7 if it is within 500 feet of heavy industrial or dangerous
8 uses, such as manufacturing plants, fuel storage
9 facilities (excluding gas stations), refinery blast zones,
10 et cetera.

11 So the staff says that the development site is
12 ineligible because it is within 500 feet of manufacturing
13 plants. That's not the standard set forth in the rule.
14 The standard set forth in the rule mandates ineligibility
15 only if you're within 500 feet of heavy industrial or
16 dangerous uses. That's the standard.

17 So what's heavy industrial? I spent some time
18 looking for that definition and I gave you several, you'll
19 find them in your Board book on page 275. But it's
20 characterized by being capital-intensive, labor-intensive
21 with large machines, creating large products, industrial
22 customers. By contrast, light industry has less capital-
23 intensive nature, less labor-intensive nature. So the
24 staff cites these two facilities, Terrill Manufacturing
25 and Hirschfeld Manufacturing.

1 Terrill, there's a picture of it on page 269 of
2 your book. This is essentially a woodworking company,
3 they make cabinetry and paneling. And as described in the
4 letter, this is not a heavy industrial use. In fact, this
5 site is zoned by the City of San Angelo as CGCH, which is
6 general commercial, heavy commercial. That zoning
7 category excludes heavy manufacturing, so the City of San
8 Angelo has said this is not a site where we have heavy
9 manufacturing. Terrill Manufacturing also isn't a
10 dangerous use. I have provided for you evidence that
11 Terrill Manufacturing is rated by TCEQ as having, in their
12 words, perfect compliance that complies with the
13 environmental regulation extremely well. So we don't
14 think this one meets the standard of the rule.

15 The second facility is Hirschfeld
16 Manufacturing. Staff this is a pipe manufacturing plant
17 serving the petroleum industry. We understand where that
18 confusion comes from because there are multiple Hirschfeld
19 sites, but on this site they have their corporate
20 headquarters and they don't manufacture pipes. They are
21 fabricating stairs for stadiums. They have about 30
22 employees. A lot of their equipment is handheld. So
23 again, we argue this is not heavy industrial, this is not
24 a dangerous use. Again, they are zoned CGCH, not heavy
25 manufacturing. The City of San Angelo has said this is

1 not heavy industrial.

2 So if neither of these facilities meet the
3 definition in the rules for ineligibility, we can't use
4 that part of the rule to declare this site ineligible.

5 I'd like to move to blight and then I will
6 finish up. So blight, this is an undesirable neighborhood
7 characteristic which is under Section 101(a)(4). This one
8 under the rules is a little bit different. It requires
9 the applicant to disclose if there is that characteristic
10 and then the Board can look at mitigating factors and say,
11 okay, we've looked at this but we don't think this is of
12 the nature or severity that this site should be
13 ineligible.

14 So with regard to blight, again, going back to
15 the rule: the development site is located within 1,000
16 feet of multiple vacant structures visible from the street
17 which have fallen into significant disrepair, overgrowth,
18 and/or vandalism that they would commonly be regarded as
19 blighted or abandoned. So there's your standard.

20 Honestly, the applicant did not disclose blight
21 in this neighborhood because they didn't believe that the
22 surrounding features did rise to that level of standard.
23 One thing that is missing from your Board book is the
24 letter from TDHCA to the applicant, dated June 16, that
25 described the reasons for their determination of

1 ineligibility, but one of the things that they said was
2 that it is bordered to the north by vacant boarded
3 buildings and to the south by a private residential
4 property that has a large number of vehicles stored on the
5 lot. So those are the two instances that they notified us
6 about in that termination letter.

7 The Uresti house and the Park house, again,
8 they're in your book. Uresti is at 256 and Park is at 260
9 and 261. The Uresti house is occupied, it's not
10 vandalized. Yes, it has stuff, it has stuff in the yard
11 and on the site, but it is not vandalized and it is an
12 occupied home. The Park house is boarded up, it is
13 currently vacant. The pictures have no appearance of
14 vandalism. I understand that it is currently on the
15 market for sale.

16 In the June 16 letter, TDHCA staff also cited
17 properties on MLK Drive traveling south from the site, and
18 we addressed those in our letter.

19 But one of the things that I want -- there are
20 two things that I want you to consider and they are both
21 going to the issue of mitigation. One is that this city,
22 San Angelo, has a tremendous community revitalization
23 plan, they have been working on eliminating blight and
24 have been doing so very successfully for more than ten
25 years. They have plans for all of these properties, and

1 you're going to hear about that, and that mitigation can
2 allow you to find this site acceptable.

3 The second thing is to note the tremendous
4 commercial growth in the area, including much new
5 construction. Again, if you look at those pictures on
6 pages 254 to 270, you will see that there is a Walmart,
7 McAlister's Deli, a credit union, dental office, medical
8 office, gas station, all sorts of new facilities where
9 there will be sidewalks, crosswalks, accessibility for
10 these residents. This is a growing, revitalizing area,
11 this is not an area where a few instances of blight should
12 be considered to cause this to be ineligible.

13 Finally, on the environmental, I am going to
14 defer to the man who conducted the environmental study,
15 but want to again give you the rule basis. There are two
16 issues here. One is in the rule it says must disclose if
17 you have facilities within the ASTM required distance that
18 are listed on one of four databases. So staff gave us an
19 administrative deficiency and said, We're looking at your
20 report and it says that you have these facilities, why
21 didn't you disclose them? The simple answer is because
22 your rule doesn't require it. The things that were in our
23 study were not the things that are in your rule that
24 require disclosure. So that's another area where
25 ineligibility cannot be determined because none of the

1 items listed in the environmental study meet that.

2 So staff has also said, Well, we're concerned
3 about the sheer number of facilities that were listed in
4 the environmental study. So that goes to a rule that says
5 that TDHCA can deem a site unacceptable if there is
6 exposure to an environmental factor that may adversely
7 affect the health and safety of the residents. Again, we
8 don't meet that standard, which is what you're going to
9 hear from the environmental consultant. None of these
10 items listed present an environmental hazard of safety
11 concern to any of these residents.

12 In short -- and longer than my three minutes --
13 the rules give us very prescribed reasons for declaring a
14 site ineligible and none of the characteristics of this
15 site meet those rules. Thank you.

16 MR. OXER: Thanks, Cynthia.

17 MR. OSBOURN: Good afternoon. Michael Osbourn,
18 Kaw Valley Engineering. I'm a registered professional
19 engineer in the State of Texas, and my firm did perform
20 the environmental study for the site.

21 Generally, in order to understand the concerns
22 raised by staff, one needs to understand the basis, and I
23 don't want to get too deep into what constitutes an
24 environmental report, but at the end of the day,
25 environmental Phase I reports are developed in accordance

1 with ASTM Method 1527. You guys have seen it a hundred
2 time, you've seen these reports probably thousands of
3 times over the years. This method outlines multiple
4 elements that will be evaluated in the Phase I evaluation
5 of the site. Not only do you look at the site and go
6 through things, but one of the multiple elements you have
7 to deal with are what are known as environmental database
8 lists. Now, just because a site is on an environmental
9 database list doesn't mean it's a bad site.

10 As we look back to the history of environmental
11 issues, nothing was registered, nothing was in place and
12 nobody knew what was where. As we've progressed since
13 early 1990s when this all became part of the ongoing
14 process of land development, we have begun requiring, and
15 federal, state and local governments and agencies have
16 begun requiring various facilities to be registered. The
17 ones we all thing of the most are underground storage
18 tanks, leaking underground storage tanks, things of those
19 natures. It can also include major hazardous waste sites,
20 or they can be as minimal as a Dollar Tree store that
21 generates large volumes of trash, the boxes going out the
22 back, and they're required to list themselves on a RCRA
23 list, basically. So the lists themselves are highly
24 widespread in the types of facilities that may or may not
25 be on a list.

1 When you're near a commercial district, such as
2 this site is -- which is something that I think this Board
3 looks to see come together -- and when we look at
4 connectivity to Walgreen's, Walmart, Dollar Tree, local
5 health facilities, you're going to be near a more heavy
6 traveled corridor, i.e., the main road that comes through
7 the town. With that you will have had older facilities
8 that may have been cleaned up, you will have some
9 commercial facilities, so your list could be very broad
10 that is shown within an environmental report, i.e., the 38
11 sites defined.

12 Let's talk about what those 38 sites are and
13 that will kind of bring me to my end. Nineteen of them
14 were affiliated with gas station uses past or present. Of
15 those 19, all have been cleaned up or removed or taken out
16 and certified by the state as not an issue, but because
17 they had been a gas station historically, it has to show
18 up on a list. It is our job as the environmental engineer
19 to confirm that those sites are no longer an issue to the
20 region. Of those 19 sites, only four remain active:
21 Walmart, Murphy Oil, Star Fuel and Stripes. And I think
22 everybody has probably gone to a Stripes and gotten a soda
23 or at least filled up with gas in the state of Texas at
24 one point or another. All four of those sites are either
25 cross gradient or down gradient from the site which means

1 if they even had an issue -- which they've had none,
2 they're in full compliance -- it would not impact the site
3 because any groundwater issues that may occur there would
4 go away from the site.

5 There are five historical sites that are known
6 as historical automotive repair. All five of them are,
7 again, cross gradient or down gradient from the site, so
8 had they had a problem, which the list defines they did
9 not, there's no recorded incidents with any of the five
10 historical sites, they're just sites that had to be
11 registered. So with that, they're on the list, but again,
12 even though no issues happened, had they happened
13 historically, they would be cross gradient or down
14 gradient, no impact to the site.

15 The balance of the sites are RCRA's. RCRA's have
16 a wide range of uses, and yes, Terrill, Hirschfeld are on
17 those lists because they do generate some waste, but that
18 waste is controlled. And as you've heard, Terrill is in
19 full compliance and has never had an issue that has been
20 reported to or a part of TDHCA records. Other things on
21 that list are Walgreen's, Walmart, Dollar Tree. If we are
22 going to start denying a site's adequacy due to these
23 sites being in the proximity which are usually good points
24 for the site, I don't know where we go from here.

25 At the end of the day, I want to point out that

1 the environmental report is there to identify sites,
2 evaluate the impact of those sites to the specific project
3 site, and then have an engineer's evaluation of is there
4 any issues with any of these sites that are identified.
5 The misuse of this type of a report to characterize a site
6 is not the intent of the report. That's a full
7 mischaracterization of the project site by a report that
8 has no intent to be used to determine whether a site is
9 eligible in that regard or not. It's there to say are
10 there environmental issues or not. Our report said there
11 wasn't, no one has denied that, and it's been clear the
12 whole time there are no environmental issues associated
13 with this site.

14 I thank you for your time and I'm here to
15 answer any questions.

16 MR. OXER: Thank you.

17 Any questions?

18 (No response.)

19 MR. OXER: I have a little exposure to the
20 Tanks program, to the RCRA program. I recognize your
21 argument and accept that.

22 MR. OSBOURN: Thank you very much, sir.

23 MR. OXER: Next.

24 MS. MEYERS: My name is Craig Meyers. I wear
25 several hats because those of you who have been around a

1 while remember that when I came before I would come with
2 20 to 40 very diverse folks wearing yellow shirts that
3 were down here five times getting approval of the Noah
4 Project which is a part of what's going on here, and
5 that's one of the reasons that it's relevant.

6 For ten years, I'm a Presbyterian pastor, I'm
7 an officer in NAACP, and the MLK Association, and hands-on
8 involvement in planning and implementing the
9 revitalization program for the past ten years in San
10 Angelo. And as I read what we had -- I don't know if you
11 have the same thing -- when I read the description of the
12 program here and the area, I have to, with all due respect
13 to whoever did the study, that this is a very cursory and
14 inaccurate characterization and it does so in
15 generalizations. The specifics were just given to you
16 about some of the problems that are really not problems.

17 But when you use the term "blight," ten years
18 ago, eleven years ago, the City of San Angelo designated
19 four areas as blighted in San Angelo based on housing,
20 based upon infrastructure, based upon crime, based upon
21 the environment that was there. In the revitalization
22 program, all four of those as neighborhood blights have
23 been removed by granting agencies who say they are no
24 longer blighted. One of the reasons we quit coming down
25 here was because the Noah Project got approved. Those of

1 you who were down here at that time got this packet of
2 information that describes a process that is really
3 unequaled anywhere in the state of Texas because we don't
4 put projects into the middle of blighted areas, we remove
5 the entire blight as much as possible.

6 Just a couple of statistics to give you an
7 evaluation, because Chadbourne was said to have been in
8 the middle of a declining, deteriorating housing area.
9 That's simply not true. Deteriorating is a sort of
10 dynamic characteristic. This is what has happened. In
11 the past ten years what used to have 70 percent
12 substandard housing visual from the sidewalk and from the
13 street is now less than 20 percent, which is not blight.
14 I said 70 percent to 20 percent. That is not a
15 deteriorating neighborhood, that is a developing
16 neighborhood, and there's no other way to characterize it.

17 So whoever drove through there and looked
18 around, you will find, in any neighborhood that is not a
19 pristine new neighborhood, a pocket of houses over here,
20 you'll find a building over here that is not attractive.
21 That is not blight, that is something that has been and is
22 being corrected. In that process, tens of millions of
23 pounds of solid waste were removed, hundreds of sites that
24 were overgrown, filled with trash have been leveled. New
25 houses, rehabilitation of apartment complexes, new

1 apartment complexes, new houses, rehabs, major repairs
2 have gone on.

3 And I'd just like to add one simple thing with
4 my time. The idea of having these kind of projects is to
5 improve the quality of life of the people who are going
6 into them. There is no danger here, one, that the project
7 will deteriorate because of its environment because this
8 is a continuing progress that has gone to 26th Street with
9 removal of the bad housing and is going, as it goes to
10 29th Street, going to continue to absorb a lot of these
11 buildings that they're talking about because the city has
12 just declared that that is going to be rezoned as a
13 strictly commercial area. So things that are
14 grandfathered and that will be there for a while are in
15 the process of being a part of the project.

16 Also, though, one of the things, I have been
17 hands-on in the houses of the people in this neighborhood
18 for ten years. I have seen them, I have talked to them,
19 and one of the real problems is that the people who most
20 need low income elderly housing do not go there because
21 they have been treated by society for so long that they
22 don't trust moving out of their neighborhoods, away from
23 their churches, away from their friends, even if they're
24 living in substandard houses. And most of the houses that
25 are substandard still are still there because they we

1 don't want to displace elderly people who would rather die
2 there than move out of their neighborhood.

3 This is one of the few of these kind of
4 projects that is going to be in a safe growing area, but
5 also is in a neighborhood where people who need it most
6 will feel free to apply for being here. And the
7 characterization of blight, of deteriorating residential
8 areas, and the last one is the characterization of
9 Chadbourne corridor as being characterized by things, yes,
10 there are liquor stores, there are some bars, there are
11 some payday loans, but it is a 30-block area connecting
12 downtown to the city limits of San Angelo, and in that
13 area it's characterized by churches, by new buildings of
14 chain food places, by light industry, by a new bank that's
15 been put in there because Texas Bank trusts this is a
16 growing area.

17 And on the other hand, on two sides this is the
18 only one of these kind of facilities where the people will
19 be able by foot traffic to get every grocery, retail,
20 medical, pharmaceutical service that they need without
21 getting on a bus and going 30 minutes to downtown and
22 back, when and if the buses run in that area. The people
23 who move in here are going to be people who benefit
24 greatly and there is no danger to their quality of life.

25 Thank you. I'll answer any questions if you

1 have any.

2 MR. OXER: Any questions for Mr. Meyers? And
3 if you're talking about a church next to a liquor store,
4 next to an elementary school, next to an office park,
5 sounds like Houston, actually.

6 (General laughter.)

7 MR. MEYERS: And I think that most of those,
8 our zoning has kept that from happening.

9 MR. OXER: Which I compliment you for that.

10 MR. MEYERS: Thank you.

11 MR. OXER: Okay. Hard clock here, folks, we're
12 running short. And as a comment to everybody, because of
13 the travel logistics today, we're running potentially
14 short of losing a quorum, so I'm going to ask everybody to
15 be courteous. Make your point. We want to give everybody
16 an opportunity. We've basically got to get going here.

17 MR. SALAS: I'm Bob Salas. I am the director
18 of Neighborhood and Family Services for the City of San
19 Angelo.

20 And I've got to tell you I thought this project
21 was a slam dunk. It's a perfect location for the elderly
22 apartment complex. It's got shopping, medical, dental,
23 restaurants, banks, all within walking distance. Needles
24 to say, the city leadership is a little dismayed and a
25 little concerned that this project is being put at risk.

1 And I won't repeat everything Mr. Meyers said,
2 he kind of stole my thunder, but let me highlight a couple
3 of things that the city is doing. We fixed the zoning.
4 In fact, there's a section there that's going to be
5 designated a neighborhood center designation which really
6 means that we'll have only small scale retail type
7 commercials uses, and those are geared for immediate
8 neighborhoods.

9 We're completely reconstructing MLK which is
10 right on the east side, bordering that lot there. We're
11 adding sidewalks to help integrate the neighborhood. In
12 fact, we're just about to let out the contract as we
13 speak. We've vision created an art district with the old
14 Chicken Farm Art Center which is just down the street.
15 We're going to initiate code compliance blitzes. We're
16 going to go in there and basically ensure that those
17 properties are in compliance, either voluntarily or
18 involuntarily.

19 We believe that the staff recommendation to
20 disqualify it is really kind of shortsighted. Thanks to
21 TRZ, that area is booming and we want to take advantage of
22 that growth. Many of those blighted buildings they're
23 talking about, they're going to be sold, they're going to
24 be bought, they're going to be demolished and new
25 businesses will go in there. In fact, Walmart offered to

1 buy several of those buildings but they're holding back
2 for some higher prices and they're probably going to get
3 them.

4 We fully expect that the market force will take
5 over, and that's how neighborhood revitalization works and
6 it's working in San Angelo. And I'm just hoping that
7 before you make a decision, come visit us and we'll show
8 you what we're talking about. I've worked with Marni and
9 her staff in the past. They're highly talented
10 professionals, but in this case I think they got it wrong.

11 Thank you.

12 MR. OXER: Thanks for your comments.

13 You won't be able to do that unless there's
14 enough for everybody and it has to be posted in the book.

15 MR. HOLDEN: Well, this is in your book.

16 MR. OXER: Okay. If it's in the book, then
17 we've got it.

18 MR. HOLDEN: It's just larger.

19 MR. OXER: That's all right. If it's in the
20 book, then you can leave them, but we've got that.

21 MR. HOLDEN: My name is Paul Holden.

22 MR. OXER: Welcome back.

23 MR. HOLDEN: Thank you. I'm with Zimmerman
24 Properties, and I'm the guy who found this site about a
25 year ago, and I've been working with the City of San

1 Angelo ever since and they've been fantastic to work with.

2 Now, I've been catching a lot of heat about the
3 guy who found this site, however, when I went in and
4 looked at it, it was obvious this may be one of the best
5 sites for seniors that I have come across, and there's one
6 simple reason for it is that everything is moving in. We
7 have new development that's been there for less than a
8 year and a half, and we've got everything within walking
9 distance for the seniors. You have a health facility
10 that's part of the larger hospital, you've got a Walmart,
11 you've got a Walgreen's, you've got some eating
12 establishments, McAlister's Deli, shopping, a dental
13 clinic, all within walking distance for older people.

14 And we have taken this site and turned it
15 towards the commercial that's come in there that's new,
16 turned our back on MLK street and took our building as far
17 to the west as we possibly could. We're also putting
18 sidewalks in that go down to the stoplight that goes
19 across 29th Street and there will a thing where you push
20 the button and then you can walk across the street being
21 safe. And that is the thing that we looked for. This has
22 all the elements that this program looks for to be
23 successful

24 And the Hirschfeld property across the street,
25 I took the time to go into the property and visit with

1 them, talked to their office manager who was just a
2 sweetheart. She gave me a tour of the whole facility, as
3 well as their office buildings there, and I even got a
4 ball cap on the way out. But their manufacturing, what
5 they build is small. Those staircases are maximum of ten
6 feet, that's it. Five trucks a day come in and out, and
7 they're not all semi tractor trailers.

8 The thing that I really want to stress to you
9 is that during the time that I've spent at city council,
10 I've had more ladies come up to me that are elderly people
11 that have said, Mr. Holden, I live over on Chadbourne
12 Street -- which Chadbourne is at least 1,500 feet away
13 from this site, 3-1/2 blocks away -- and they said, We
14 live over there, we've lived there for years, and what
15 you're building we would love to come in it because our
16 houses are old, we rent some of them, they don't take care
17 of them, blah-blah-blah.

18 Mr. Chairman and Board members, I can't go back
19 and tell these ladies that they can't have their housing
20 in a good safe location. I'm asking you to reconsider
21 your earlier vote because these ladies are depending on
22 us.

23 MR. OXER: Was there an earlier vote?

24 MR. IRVINE: No. There's only been a motion.

25 MR. OXER: There's only been a motion, there's

1 no vote.

2 MR. HOLDEN: Well, your earlier motion then.

3 I'm sorry.

4 But these ladies are depending on us and they
5 live in substandard housing and we need to do something to
6 help these ladies out.

7 MR. OXER: Understood. Just so everybody
8 knows, procedurally for any item, we'll hear the item from
9 staff, there has to be a motion to consider. Once that
10 motion is there, then the commentary proceeds, and then
11 there's the vote. But there's been no vote on this item
12 yet, Mr. Holden, to be clear.

13 MR. HOLDEN: Thank you very much. Any
14 questions I'll be happy to answer.

15 MR. OXER: Any questions?

16 (No response.)

17 MR. OXER: Anybody else want to speak on this
18 one? Peggy, have you got something to add in the record?

19 MS. HENDERSON: Peggy Henderson, TDHCA,
20 registering opinion for Jason Modglin from Representative
21 Drew Darby's office for project 16200, Kirby Park Villas,
22 against staff recommendation.

23 MR. OXER: Okay. It was against staff
24 recommendation. Come on, Marni. And the staff
25 recommendation is to deny the appeal.

1 MS. HOLLOWAY: is to find the site ineligible.

2 MR. OXER: To find it ineligible.

3 Representative Darby's office is asking us to find it
4 eligible. On the current motion as Mr. Goodwin has moved
5 and Ms. Bingham has seconded, approving that motion would
6 find it ineligible.

7 MS. HOLLOWAY: Yes, it would.

8 MR. OXER: Do either one of you want to
9 reconsider that?

10 MS. BINGHAM ESCAREÑO: I do. I would like to
11 withdraw my second.

12 MR. OXER: Mr. Goodwin, does your motion stand?

13 MR. GOODWIN: My motion stands.

14 MR. OXER: Okay. His motion stands. Do I hear
15 a second?

16 DR. MUÑOZ: You know, Marni, reading the
17 description that you've prepared and listening to the
18 people that live there, it's like we're talking about two
19 entirely different communities.

20 MS. HOLLOWAY: I understand.

21 DR. MUÑOZ: It's hard to reconcile the
22 undesirable characteristics described here. I get it, the
23 humming from the manufacturing plant, and what-have-you
24 within 500 feet, I see the photographs, and then what's
25 being represented as Shangri-la in San Angelo, I mean,

1 it's hard to see that much development and benefit and
2 attractability could have been overlooked.

3 MS. HOLLOWAY: And I will tell you that I ate
4 lunch in that Walmart parking lot, I'm the one that went
5 and did the site visit. The picture that you have that
6 has the legend on it, Bryant Boulevard is this street,
7 here is the Walmart, here's all the commercial
8 development, and it's there. There's a gas station,
9 there's a drugstore, there's a Walmart, there's a deli,
10 all of those things are there over here. This is the
11 proposed development site. This is industrial, this is
12 blight, this is blight, based on this picture that was
13 just handed to you and that's in your Board book.

14 So yes, there is development going on in the
15 area, it is along that Bryant Boulevard corridor, I full
16 acknowledge that. The concern is the industrial uses that
17 are on the other side of the property and the condition of
18 the two properties north and south.

19 MS. BINGHAM ESCAREÑO: But Marni, so it looks
20 like to me -- I'm going to hold this, it's in our Board
21 book but I'm going to hold it up here -- it looks like the
22 planned entrance will be off of 29th.

23 MS. HOLLOWAY: Yes, it is. But what's
24 happening is that Terrill Manufacturing on the other side
25 of MLK is right across the street from the edge of the

1 site.

2 MS. BINGHAM ESCAREÑO: Okay. I guess I'm
3 looking at all of like the stuff that is desirable just
4 for right now, like you said, the strip center and the
5 Walmart and stuff. It looks like the entrance will be
6 right where the nice strip center is with the fingernail
7 place.

8 MS. HOLLOWAY: There's a nail place in it, yes.
9 Our rule does not speak to where the entrance is to the
10 property, it speaks to proximity.

11 DR. MUÑOZ: Marni, is that the administrative
12 code that says about 500 feet from industrial?

13 MS. HOLLOWAY: Yes.

14 DR. MUÑOZ: Is that what you're saying about
15 Terrill Cabinet Manufacturing?

16 MS. HOLLOWAY: Because Terrill is just right
17 across the street. And then Hirschfeld, which granted, I
18 didn't know anything about manufacturing staircases, what
19 I saw when I was there was storage yards with big racks
20 with pipes. So are both within close proximity to this
21 site, not on the side where the Walmart is, not on the
22 side where the commercial development is, on the other
23 side.

24 DR. MUÑOZ: Doesn't make a difference what side
25 it's on, it's the distance and proximity to some part of

1 the development?

2 MS. HOLLOWAY: Yes.

3 MR. OXER: Be patient, everybody. We're
4 grinding here.

5 So Marni, with respect to the heavy industrial
6 and the, quote, blight and heavy industrial, I take Mr.
7 Osbourn's argument at face value because I happen to know
8 a lot about the environmental side of all of this. That's
9 not an issue, I take it.

10 MS. HOLLOWAY: Yes. The environmental site
11 assessment says that no mitigation is required for any of
12 those listed facilities.

13 MR. OXER: Right.

14 MS. HOLLOWAY: Generally, when we're looking at
15 an ESA for a site, there may be a few listed, and yes,
16 there are Walgreen's and Dollar Stores always trigger
17 those kinds of things. We rarely see that many listed for
18 one site, that was the concern that we were bringing up.

19 MR. OXER: And that's principally the solid
20 waste that they produce in terms of boxes and packing
21 matter that goes out the back into the dumpster.

22 MS. HOLLOWAY: For those commercial facilities.
23 Yes, sir.

24 DR. MUÑOZ: And so it's 10.101(a)(3)(C)
25 ineligible because it's within 500 feet of a manufacturing

1 plant.

2 MS. HOLLOWAY: Yes.

3 DR. MUÑOZ: Manufacturing meaning heavy
4 manufacturing, heavy industrial.

5 MR. IRVINE: If I could just chime in and cut
6 to the chase.

7 MR. OXER: Please.

8 MR. IRVINE: I think that the testimony has
9 clarified that this would not be what you would commonly
10 regard as heavy industrial, despite the appearance and the
11 way that it was disclosed. That's what they're
12 representing.

13 MR. OXER: And that's one of the reasons we
14 have these clarifications.

15 Quick question: Where did the pipes come from?

16 MR. HOLDEN: They're for the railing on the
17 handrails for the stairs.

18 MR. OXER: Okay. Big pipes like that?

19 MS. HOLLOWAY: If you'll look at the Board
20 item -- well, they don't really show. Directly behind the
21 Board item in the supporting information, there's a shot
22 of a couple of the Hirschfeld facilities, they actually
23 cover two different blocks.

24 MR. OXER: I can see that they cover the
25 blocks, but that's still not heavy industrial in my mind,

1 aside and apart from the definition.

2 Let's see, this one picture right here, I think
3 I see the one that you're talking about, Marni. This is
4 not, Mr. Osbourn, this is like a pipe yard for drilling.
5 I can see what she's talking about.

6 MS. HOLLOWAY: And the picture right below it
7 is the front part of that property.

8 MR. OXER: Right. And clearly this is not
9 associated with manufacturing stairs, so my question is --

10 MR. HOLDEN: (Speaking from audience.) Mr.
11 Oxer.

12 MR. OXER: You can't do it from there, you have
13 to come up here. Come up and say who you are again just
14 for the record so Nancy can put the target on you.

15 MR. HOLDEN: Paul Holden, Zimmerman Properties.

16 Now, the other Hirschfeld facility which is
17 across down south of Bryant, you don't see it on your maps
18 there but that facility is over 100 acres and they do use
19 piping down there. They don't manufacture the piping but
20 they do things with it. That could have been a storage
21 pipe because this area they do store items but they do not
22 build with it.

23 MR. OXER: Me looking at it, it looks just like
24 a lay-down yard right there, but everybody has to make
25 their own decision.

1 MR. HOLDEN: They don't do anything with pipe
2 there. They store pipe for the other facility but that
3 would be the extent they're using that size of pipe.

4 MR. OXER: Okay. Thank you for your
5 clarifications.

6 Okay. Mr. Goodwin's motion stands. Do I hear
7 a second? Absent a second, we'll have to have another
8 motion. Don't everybody jump up and knock us out first.
9 Okay?

10 (General laughter.)

11 MS. BINGHAM ESCAREÑO: I'll move to deny
12 staff's recommendation to make Kirby Park Villas
13 ineligible due to undesirable neighborhood
14 characteristics.

15 MR. OXER: And for the record, based on the
16 proximity of desirable things, that we've all identified
17 here that there are a lot of good things associated with
18 this site. Is that fair?

19 MS. BINGHAM ESCAREÑO: yes.

20 MR. IRVINE: Well, because it's in a rule that
21 goes to the issue of how undesirable features are
22 addressed, don't you really need to conclude based on the
23 testimony, both with regard to the characterization of the
24 industry, and also, as I understood it, the plans to
25 address the perceived blighted structures?

1 MS. BINGHAM ESCAREÑO: I'll amend my motion to
2 include based on the characterization of the industry that
3 it does not appear to be heavy industrial, and of the
4 intent to --

5 MR. OXER: The ongoing efforts to improve.

6 MS. BINGHAM ESCAREÑO: There you go -- the
7 ongoing efforts to improve the identified blighted areas.

8 DR. MUÑOZ: Second.

9 MR. OXER: Second by Dr. Muñoz. Does anybody
10 else want to say anything else?

11 (No response.)

12 MR. OXER: Good plan.

13 Motion by Ms. Bingham, second by Dr. Muñoz to
14 deny staff recommendation to declare this site ineligible.
15 Is that a correct statement?

16 MR. IRVINE: You're basically finding that it's
17 eligible.

18 MR. OXER: We're saying they get to go with
19 this one. Okay?

20 So that being the case, those in favor?

21 (A chorus of ayes.)

22 MR. OXER: And opposed?

23 (No response.)

24 MR. OXER: There are none. I heard everybody
25 vote.

1 All right. We're running slack on the clock.

2 Congratulations, folks. Hey, when we come out
3 to San Angelo, we want to see something nice around there.

4 MS. BINGHAM ESCAREÑO: Real pretty.

5 MR. OXER: By the way, tell Rob Junell, my
6 friend, hello.

7 Okay, do it, Marni.

8 MS. HOLLOWAY: Application 16274 Rockview Manor
9 in Fort Hancock. There is a letter and survey, it's a
10 two-sided piece that was out on the table and I put it on
11 the dais for you earlier. Based on the letter from the
12 superintendent that indicates that the elementary school
13 has improved and is now meeting standard, staff is
14 withdrawing the part of the recommendation that's about
15 the schools. We still have a railroad issue to deal with,
16 but the schools, we're fine that they have done some good
17 work and they're going to meet standard again.

18 So per 10.101(a)(3)(B) Undesirable Site
19 Features, a site will be found ineligible if it is located
20 within 100 feet of active railroad tracks unless the
21 applicant provides evidence that the city or community has
22 adopted a railroad quiet zone or the railroad in question
23 is commuter or light rail.

24 In a notice of administrative deficiency, staff
25 asked the question, it came out of the ESA, the ESA said:

1 A noise study is recommended due to the proximity of the
2 subject site to railroads; subject site is 50 feet from
3 Southern Pacific Railroad. And we requested evidence from
4 a reliable third party source of the distance from the
5 nearest boundary of the development site to the railroad.

6 In response, the applicant submitted a letter
7 from the ESA provider revising the ESA, and referring to a
8 map provided by the applicant. There was no information
9 provided at the time regarding the reason for revision to
10 the environmental site assessment, nor was there any
11 information to indicate that a reliable third party source
12 provided the measurement. Since that time, staff has
13 contacted the surveyor who provided the survey included in
14 the application to verify the distance between the
15 railroad tracks and the site.

16 In response to our inquiry, the surveyor sent a
17 new survey with a revised measurement of 106.5 feet from
18 the centerline of the track to the development site
19 boundary. That's the survey that you have hard copy of.
20 The surveyor has not responded to our followup question
21 seeking to verify that this revision reflects a
22 measurement taken at the site rather than an estimate.

23 In order to assure that we are presenting
24 accurate information, a staff member from our El Paso
25 field office went to Fort Hancock on July 12 to verify the

1 measurements. Working with the commonly accepted
2 definition of railroad track, he found the measurement
3 from the centerline to the edge of the subgrade under the
4 track to range from 8-1/2 feet to 14-1/2 feet. So if the
5 survey says 106-1/2 but then the distance to the subgrade
6 is eight, that means you take that eight out of that 106
7 and then you're down below 100, and then it goes all the
8 way down to 14-1/2 feet. Even at its narrowest, the
9 subgrade extends two feet further than the measurement
10 indicated on the revised survey, rendering the site
11 ineligible under undesirable site features.

12 And staff recommends that the Board determine
13 the site is ineligible under 10.101(a)(3) Undesirable Site
14 Features due to that railroad, proximity to that railroad.

15 MR. OXER: So is it defined in our rule that
16 it's measured to the center of the railroad?

17 MS. HOLLOWAY: It says 100 feet from existing
18 railroad tracks.

19 MR. OXER: Those railroad tracks are 4 feet, 8-
20 1/2 inches wide.

21 MS. HOLLOWAY: Google is our friend, and if
22 you're trying to figure out exactly what to measure to and
23 from because our rule doesn't really specify, it just says
24 100 feet from existing railroad tracks, what we found
25 is -- and this is just putting it up on Google, this is

1 the first thing you get: The track on a railway or
2 railroad, also known as a permanent way, is the structure
3 consisting of the rails, fasteners, railroad ties and
4 ballast, plus the underlying subgrade.

5 MS. BINGHAM ESCAREÑO: What do you think about
6 that, Engineer?

7 (General laughter.)

8 MR. OXER: Actually, from an engineering
9 standpoint, the railroad consists of all that but the
10 railway consists of the right of way. It says the
11 railroad track.

12 MS. HOLLOWAY: The railroad track, and just put
13 "railroad track" in Google and this is what we came up
14 with because we're not finding a better definition.

15 This is an item that we will be working on,
16 actually this entire undesirable site and neighborhood is
17 something we're working on really hard for the next round
18 of rules.

19 MR. OXER: Well, as has been the case in a
20 number of the cases that have arisen here this meeting and
21 last, I suspect that there's going to be continued staff
22 exploitation of opportunities to define those definitions
23 so that we don't get into this game anymore.

24 MS. HOLLOWAY: Exactly.

25 MR. OXER: And an elevation on a railroad

1 track, basically depending on where it is with respect to
2 the terrain that it's on, will have that subgrade can go
3 out any number of feet. It's a wild difference.

4 MS. HOLLOWAY: Well, and even on this site,
5 with the measurements that were sent back to us, the
6 subgrade ranged from 8-1/2 feet to 14-1/2 feet out.

7 MR. OXER: So this is a commentary on something
8 to do in the future, but none of those are a fixed point
9 or definable as the centerline would be. So the
10 centerline of a railway would be fixed wherever it is, as
11 opposed to variable if the railway includes all that all
12 the way to the ballast down to the terrain that it's built
13 up on to cross. So that's why I'm suggesting that we need
14 to refine that rule.

15 MS. HOLLOWAY: Yes.

16 MR. OXER: But under the existing rule.

17 MS. HOLLOWAY: Under the existing rule.

18 MR. OXER: Any other questions of Ms. Holloway?

19 (No response.)

20 MR. OXER: We'll need a motion to consider on
21 this. So your position is that it is ineligible as a
22 consequence of the proximity.

23 MS. HOLLOWAY: Yes. Staff recommends that the
24 Board determine this site is ineligible.

25 MR. OXER: Is ineligible.

1 MS. BINGHAM ESCAREÑO: Mr. Chair, I know we
2 were within four feet at some point in time when you were
3 doing your calculation. Just for giggles, if you made the
4 very middle of the train tracks, would it have satisfied
5 it?

6 MR. IRVINE: It would be just outside.

7 MS. BINGHAM ESCAREÑO: Okay. Just outside.

8 MS. HOLLOWAY: So the revised survey that we've
9 received has it at 106-1/2 feet. We have not been able to
10 verify that that is an actual measurement. The
11 conversation that we had with the surveyor was: Well, we
12 usually do it this way. That revision, we don't know if
13 someone actually went back out there and laid that tape
14 down.

15 MR. GOODWIN: And that looks like on the survey
16 it's measured from the middle of the railroad track?

17 MS. HOLLOWAY: Yes.

18 MR. OXER: It's 106-1/2 to the middle.

19 MR. GOODWIN: So if you measured it from one
20 side, you're actually a little further away.

21 MR. OXER: Or you're a little closer depending
22 upon.

23 MS. HOLLOWAY: Or you're a little closer which
24 side you measure from.

25 MR. OXER: Depends on which side you're on.

1 MR. GOODWIN: I'm talking about on the outside
2 of the track, the inside part of the track that would
3 reach to the outside if you're moving south.

4 MR. OXER: Go ahead, Marni.

5 MS. HOLLOWAY: I have nothing.

6 MR. OXER: I know we're getting a little giddy
7 up here. A lack of calories will do that to you. What we
8 need, actually, is a half bathroom in the middle of this
9 railroad.

10 MS. BINGHAM ESCAREÑO: Flat.

11 MR. OXER: This is a flat so we can put a half
12 bathroom in the middle of the railroad. So how narrow
13 would a census-designated place have to be to fit within a
14 railroad.

15 (General laughter.)

16 MR. OXER: All right. Go ahead. Sorry.

17 MS. HOLLOWAY: I have nothing further.

18 MR. IRVINE: So basically, it's just over 100
19 feet to the middle of the railroad and it's just under 100
20 feet to the edge of the subgrade.

21 MR. OXER: And the edge of the subgrade, since
22 it's as much as 14 feet in there, that subgrade could be
23 seven feet.

24 MS. HOLLOWAY: The measurements that we have is
25 anywhere from 8-1/2 to 14.

1 MR. OXER: So if it was 14, then to the edge of
2 the subgrade -- the width of the subgrade is 14. Is that
3 what they're saying? So it could be from the centerline
4 to the subgrade could be 14.

5 MS. HOLLOWAY: Right.

6 MR. OXER: Okay. That's different.

7 Anybody want to speak up? What we need to do
8 is carve off a piece of the property line that's just like
9 four feet off of that -- I know you can't comment.

10 So we have to have a motion to consider. We
11 can't do nothing, we have to do something.

12 DR. MUÑOZ: Move staff recommendation.

13 MS. BINGHAM ESCAREÑO: I'll second.

14 MR. OXER: Move staff recommendation which will
15 make it ineligible.

16 MS. BINGHAM ESCAREÑO: I know. We'll hear
17 comment. Right?

18 MS. HOLLOWAY: Which would make the site
19 ineligible.

20 MR. OXER: Okay. Motion by Dr. Muñoz, second
21 by Ms. Bingham to approve staff recommendation which would
22 make the site ineligible.

23 MS. HOLLOWAY: Yes.

24 MR. OXER: All right. Cynthia.

25 MS. BAST: You'll be happy to know this is the

1 last time you'll hear from me today.

2 MR. OXER: You won't be surprised if I don't
3 agree with you or don't believe that.

4 MS. BAST: The rules have been laid out there
5 very nicely. The rules is you're ineligible if you're
6 located within 100 feet of -- here's the actual
7 language -- "active railroad tracks." That's what we're
8 talking about. The rule also says that the distances are
9 to be measured from the nearest boundary of the site to
10 the undesirable feature. So what's the undesirable
11 feature of a railroad way or active railroad tracks?

12 The applicant here has always measured to the
13 closest metal rail. That's that makes the noise when the
14 train is propelling down the track. So that is in its
15 mind what could be considered an undesirable feature. So
16 if you look at that and go 106.5 feet to the middle line
17 of the track -- and Mr. Oxer, you're right, 4, 8-1/2
18 between -- then you can see that we'd be at 104 if we went
19 to the closest metal track.

20 The applicant also would acknowledge that they
21 know that this is close to a railroad track, and he's here
22 to talk to you a little bit about the characteristics of
23 this community, Fort Hancock. They intentionally designed
24 this site with that proximity in mind, and I would call
25 your attention to the site plan which is in your book. It

1 is, I believe, Exhibit A.

2 MR. OXER: What page, Cynthia, do you know?

3 MS. BAST: I'm sorry, I don't have the page.

4 It's Exhibit A to my letter.

5 MS. BINGHAM ESCAREÑO: Page 294.

6 MS. BAST: Thank you.

7 MR. OXER: Okay, got it.

8 MS. BAST: So what you're seeing here is
9 there's an angle on the site here, this is the closest
10 point, this is the point which would be either 106-1/2 to
11 the center of the railway or 104 to the metal. You see
12 over here that we're farther away, it's approximately 150
13 feet away over here. Intentionally, there has been a
14 ponding area established here to provide additional buffer
15 on this site, again recognizing the proximity. So
16 acknowledging that this is close within the rule, but
17 nonetheless, intentionally designed to fit within the
18 rule.

19 I would note that the applicant has
20 acknowledged that they will follow the recommendations of
21 the environmental professional, they will conduct a noise
22 study, they will implement any mitigation that's required.

23 If TDHCA wants additional mitigation on this matter,
24 they're happy to consider that. But that is the position
25 that they have is that it should be from the closest point

1 to the metal track because we are talking in this rule
2 about an active railroad track.

3 I also did some looking for definitions, I
4 spent some time with the Federal Railroad Administration's
5 rules and website, and there are places where they talk
6 about tracks and they talk about metal and welding, but I
7 didn't find the be-all and end-all definition, but I do
8 think that it is a logical definition that can be accepted
9 for purposes of this rule.

10 MR. OXER: Any questions for Cynthia? As
11 represented here on the diagram, the ponding area,
12 basically the flood control pond does add additional
13 buffering and it's considerably farther away from the
14 railroad track. Actually, it seems like a good plan, just
15 looking at it from a site development concept.

16 DR. MUÑOZ: And our rule requires 100 feet?

17 MS. BAST: To be ineligible it has to be 100
18 feet from an active railroad track and the measurement is
19 from the nearest boundary of the development site to the
20 undesirable feature, is your phrase. So what's the
21 undesirable feature?

22 DR. MUÑOZ: And you're arguing that begins
23 where?

24 MS. BAST: That the metal rail is the
25 undesirable feature to which we measure.

1 DR. MUÑOZ: Why do you keep making the point of
2 active railroad?

3 MS. BAST: Because that's just the language.

4 DR. MUÑOZ: This is an active. Right?

5 MS. BAST: It is an active railroad track.

6 MR. OXER: Because if it was an abandoned
7 railroad inactive, then we wouldn't be having this
8 conversation.

9 MS. BAST: I may be making a different
10 argument. I'm just trying to really, hopefully as you can
11 hear today, focus on the rules and try to look at the
12 language and say what's the language say and where should
13 we be.

14 MR. GOODWIN: And our rule says track.

15 MS. BINGHAM ESCAREÑO: Track. Yes, sir.

16 MR. ECCLES: I'm going to chime in with Texas
17 Transportation Code, Title 5, Railroads, Subtitle B, State
18 Rail Facilities, Subchapter A, Section 91.001, Definition
19 of Track Work, which includes track, track beds, track bed
20 prep, ties, rail fasteners, slabs, rails, emergency
21 crossovers, setup tracks, storage tracks, drains, fences,
22 ballasts, switches, bridges and structures. But you'll
23 notice that track work encompasses track, so that metal
24 thing that the train rides on is passively defined through
25 Texas Code as being that metal line. So this on Cynthia

1 Bast batting a thousand day.

2 (General laughter.)

3 MR. LOPEZ: Roy Lopez, and I represent the
4 applicant, Ike Monty.

5 As Cynthia said, we did read the rules when we
6 chose this site and we read the rules as being the 100
7 feet marker was to the active railroad tracks, so we took
8 that to mean the tracks. We looked into the width of the
9 tracks, 4 feet, 8-1/2 inches, so we did comply with that.

10 We realized it was close to a railroad so we did put
11 mitigation efforts and we put the ponding area. There's
12 also parking that separates the buildings thereafter, so
13 most of these buildings are 150-170 feet away from the
14 railway. So we do have ponding, we're going to have trees
15 in that area.

16 Part of the construction efforts we're also
17 incorporating in here is that we're going to have six-inch
18 walls with soundboard on the side of the railway. So all
19 these are mitigation efforts that we were aware of, trying
20 to make sure the residents lived in a nice community that
21 had quiet so they had some solitude even when the train
22 came by. So we did take all that into consideration.

23 The survey that was provided that Marni
24 mentioned, we did call the engineer and ask him to provide
25 us a survey because the original survey didn't have the

1 distance from the nearest boundary line to the centerline
2 of the railway. So we asked him please send us a revised
3 survey and give us that dimension, and that's when he came
4 back and provided the dimension 106-1/2 feet from the
5 nearest boundary line to the centerline of the rail. And
6 he provided additional dimensions as the site goes further
7 away. So that's what we did when we were asked to provide
8 third party documentation. It is from the surveyor, he
9 did provide that and that's what you have in your Board
10 book.

11 MR. OXER: The centerline of the railroad would
12 be easily definable and not unambiguous -- or would be
13 unambiguous as opposed to the lower edge of the bed would
14 be highly variable, there's no way to define that. I
15 mean, there's a way to define it but it would be all over
16 the place.

17 MR. LOPEZ: And obviously we did quite a bit of
18 Googling on railways also and we found some that the bed
19 only extends five feet from the center or ten feet from
20 the center, so there's a lot of different dimensions for
21 that bed.

22 So at this time, again, we did take into
23 consideration the rule that said active railroad tracks,
24 so we measured from the middle of the tracks.

25 MR. OXER: Thanks.

1 Robbye.

2 MS. MEYER: (Speaking from audience.) I'm only
3 here if you need me.

4 MR. OXER: That's a good answer.

5 MR. BOWLING: Mr. Chairman, I'd like to speak.

6 MR. OXER: Bobby.

7 MR. BOWLING: Bobby Bowling, for the record.
8 Full disclosure, we're the project right behind this in
9 XIII Rural.

10 There's a couple of things that haven't been
11 mentioned here. First of all, you're very astute, Mr.
12 Chairman, I got what you were saying about how to draw the
13 boundary line. It's important to note the applicant owns
14 this parcel of land. That can be reconfigured next year
15 and resubmitted. It's a high scoring deal. They can get
16 within your rules next year by redrawing their boundary
17 line. I don't know why they didn't. We've had this
18 instance before with junkyards or railroads or things, all
19 of us developers, and we usually try to err on more than
20 six feet or four feet or two feet or negative eight feet,
21 however you look at it. I mean, you go with 20 feet, he
22 owns the land, he can draw the boundary wherever he wants.

23 I think it's the right of way is what I would
24 be afraid of. When we're afraid of a junkyard, I don't
25 measure the junk car, I go to the boundary of the junkyard

1 and then go whatever it is, 300 feet.

2 MR. OXER: And that was my point on making the
3 right of way for the railroad as opposed to the rail
4 itself.

5 MR. BOWLING: And then two other points. Fort
6 Hancock is 55 miles from El Paso, it's not a population
7 center. It's a shrinking community if you look at the
8 census data. They've got problems that aren't being
9 addressed here that are in the backup about the market
10 study and the market analyst drew a 5,000 square mile
11 market area and then he put revision papers in the Board
12 book that he doesn't even meet the underwriting criterion
13 for drawing from the community because it's so small and
14 it's so far off. I mean, this is way outside of any
15 population areas in our county. It's not even in El Paso
16 County, it's in Hudspeth County which is a huge county and
17 has like 30,000 people in it. I mean, it's a huge county,
18 like bigger than most, like four or five northeastern
19 states.

20 MR. OXER: It's like where I grew up, it's got
21 more cows than it has people in it.

22 MR. BOWLING: Right. And then the final thing
23 I want to speak to is a matter of process. When they got
24 this notice back in April or May, whenever it was, they
25 were asked as an applicant -- as an applicant we get five

1 days, seven days to respond -- provide proof that the
2 railroad is 100 feet away. The survey you have is dated
3 like July 11, July 12. They sat on the sideline and
4 didn't address staff's request for like three months, and
5 we're supposed to lose a point every day or there's some
6 mechanism. This thing should be down to zero points even
7 if you approve this. So I don't understand how this is
8 now new information being brought forth 60 days, 70 days
9 after staff asked for clarification. They never provided
10 it.

11 I don't think that that survey that you have in
12 front of you -- I look at a lot of surveys as a normal
13 course of business -- you have a point and a point that
14 makes a segment when a surveyor gives you a dimension.
15 You have a line, you have a point and an arrow on that, it
16 doesn't specifically say. Then there's some note about
17 centerline being 104, but why is there not a point and a
18 point? If they wanted to point the railroad and the rail
19 itself, why is that dimension not there? I mean, there's
20 still at this point lacking what staff asked for which was
21 provide us data and documentation that you're more than
22 100 feet away from the railway, however you want to define
23 it, railroad, rail whatever. But they're not giving you a
24 point and a point on that survey. So I think that's
25 telling as well.

1 Time up. I'm good.

2 MR. OXER: Okay. Thanks, Bobby. We appreciate
3 your comments.

4 Marni.

5 DR. MUÑOZ: Just a minute, Robbye. I've got a
6 question for Marni.

7 Marni, do you have any doubts as to the
8 veracity, the accuracy of the survey information that
9 you've been provided?

10 MS. HOLLOWAY: As I said, we contacted the
11 surveyor as we were working through the site eligibility
12 issue. We had asked for third party information earlier,
13 we didn't get it. We looked at the site eligibility, we
14 were looking at the survey, we weren't sure. We contacted
15 the surveyor and the next day -- was it the next day? --
16 we got the revised survey with 106-1/2 feet on it and the
17 surveyor has not responded to our question about was this
18 from an actual measurement.

19 MR. OXER: That was July 11 when you go that?

20 MS. HOLLOWAY: Yes. As we've been working
21 through and trying to get this all together.

22 MR. OXER: So speak to Bobby's issue about this
23 being requested.

24 MS. HOLLOWAY: As I said, there as the
25 administrative deficiency earlier regarding the ESA. Out

1 of the result of that, we moved to the site ineligibility.

2 MR. GOODWIN: The survey I see, Marni, was
3 dated February 25.

4 MS. HOLLOWAY: Yes. There is an earlier one.

5 MR. GOODWIN: This one shows 106.5 feet.

6 MS. HOLLOWAY: From February?

7 MR. GOODWIN: Well, that's the date on the
8 survey. That doesn't mean you received it.

9 MS. HOLLOWAY: The hard copy survey --

10 MR. GOODWIN: This is the one I'm looking at
11 right here. It says February 25, 2016. They may not
12 have sent it.

13 MS. HOLLOWAY: The one that we had previously
14 that we weren't sure of what it was measuring to was
15 100.5.

16 MR. OXER: He's showing, the best I can tell on
17 this, this is 106.5 from the corner to the centerline, and
18 those are the tracks.

19 DR. MUÑOZ: And that's dated in February, not
20 July.

21 MS. HOLLOWAY: I'm going to ask Sharon because
22 she's been working on this more than I have.

23 MS. GAMBLE: Hello, Board. Sharon Gamble,
24 administrator for the Tax Credit Program.

25 There was a survey in the application, and

1 that's probably the one that says February that you're
2 looking at, and I do believe it said 105 feet at the
3 closest point. Also, though, with the application was
4 when we got the environmental site assessment and the
5 environmental site assessment said 50 feet, and that is
6 the issue, that inconsistency is what initially raised our
7 question about why does the ESA say 50 feet but your site
8 plan or your survey says 106 feet, and that's how this
9 started.

10 MR. OXER: Okay. So what was the answer?

11 MS. BAST: Mr. Oxer, the answer was that the
12 environmental consultant made an error, and with all due
13 respect to Mr. Bowling, that administrative deficiency was
14 responded to within the time frame. We were given a
15 request to resolve that, to reconcile those two things.
16 The environmental consultant said, Oh, we made an error,
17 and they submitted an amendment to their ESA that said --
18 it's changed to say: The subject site is approximately
19 106.5 feet from the nearest boundary line to the nearest
20 rail of the Southern Pacific Railroad.

21 MR. OXER: The nearest rail.

22 MS. BAST: This says to the nearest rail of the
23 Southern Pacific Railroad. And this is the letter dated
24 May 2, 2016 that was submitted. And so this is a third
25 party provision. That's what staff asked for is a third

1 party response, and so they submitted a third party
2 response.

3 Staff subsequently came back to us, and this
4 was much later that staff came back, and said, We're
5 concerned that that third party response that the
6 environmental consultant was relying on a map that was
7 drawn by the applicant, not by something more
8 professionally measured.

9 MR. OXER: More authoritarian

10 MS. BAST: Correct. And so then you have in
11 your book a subsequent letter from the consultant who
12 said, I relied on that survey. And that survey is that
13 February 25 survey, Mr. Goodwin, that you found. He said,
14 When I looked at this, I relied on that survey to make the
15 revision to my ESA that said 106.5 feet.

16 So that's how the materials were submitted
17 procedurally and the administrative deficiency was
18 responded to timely.

19 MR. GOURIS: Can I pick up the story from
20 there? Tom Gouris, deputy executive director.

21 MR. OXER: You had to come up, Tom, we haven't
22 seen you all day.

23 MR. GOURIS: I did. I haven't been up, I've
24 been sitting on the edge of my seat.

25 So when we looked at that survey then, that

1 survey showed that it's from the centerline, and so that
2 begged the question because the third party said it was to
3 the rail which might have been okay, but it looked like
4 they were reading what looks like something that went to
5 the centerline. And so we asked the surveyor, not the
6 applicant, we went right back to the surveyor and said,
7 How did you measure that, is that to the centerline? And
8 he said, Yes, in fact that is the centerline. And we
9 said, Well, could you update the survey, give us a sense
10 for if you measured the distance of the rail and the
11 subgrade and what-have-you and could you send that back to
12 us? And so he sent us this copy that was handed out today
13 that said the 105, which he just subtracted six feet.

14 So we put another call in to him and email in
15 to him, but we haven't got a response back for how he got
16 that six feet. That's when we sent out staff out to look
17 and see how much subgrade. We keep calling it subgrade
18 but I think it's actually the ballast, actually that stone
19 that holds the ties up.

20 MR. OXER: It's actually the vibration dampener
21 for the entire railroad, but go ahead.

22 MR. GOURIS: So how far that went out, and
23 that's when he went from the centerline over the railway
24 that was there to the edge of those rocks, as it were,
25 that he measured that and told us that that distance from

1 the middle to the edge was between 8-1/2 and 14 feet.

2 MR. OXER: However this comes out -- which we
3 haven't decided yet -- but however, fix this next year.

4 MR. GOURIS: Half mile?

5 MR. OXER: Something inside 12-, 14,000 feet.

6 MR. GOURIS: And so I'd point out that the
7 easement for the railroad runs right up to the site, the
8 railroad easement abuts the site.

9 MR. OXER: Basically, the railroad easement is
10 the property line, more or less.

11 MR. GOURIS: In theory, they could move the
12 track six feet over or anywhere within that easement. And
13 there's also an arroyo right there, there's a little
14 bridge and an arroyo, and that's part of the reason for
15 the ponding area so when that arroyo flows there's a place
16 for it to resolve. So there are dual purposes for all
17 that stuff.

18 MR. OXER: Who made the motion on this?

19 DR. MUÑOZ: I did.

20 MS. MEYER: I didn't want to speak but I'm
21 going to have to now just to bring out a couple of points.

22 MR. OXER: You have to tell us who you are.

23 MS. MEYER: Robbye Meyer, Arx Advantage. I'm
24 the consultant for the applicant.

25 Mr. Bowling brought up a couple of points.

1 One, that the applicant owns the property. I'm not really
2 sure what that has to do with anything that you're looking
3 at today.

4 What's on the agenda for today is the
5 ineligibility of the railroad. It doesn't have to do with
6 market, it doesn't have to do with ownership of the
7 property, it has to do with the railroad and that's what's
8 before you today. There has been a mention of market.
9 It's West Texas, there are always market issues with rural
10 Texas and this is part of Rural Texas. But we ask that
11 you reserve the market issues, let us bring those up with
12 Real Estate Analysis later on. We had previous market
13 issues with an application in 2015 and we gave
14 supplemental data for that application. That particular
15 development is now 60 percent full.

16 DR. MUÑOZ: Robbye, let me interrupt you. Do
17 you want to speak to this distance issue or just to what
18 Bobby said? I mean, all you're doing is expanding what he
19 contributed which you may or may not disagree with, but do
20 you have something to say about our better understanding
21 this distance issue?

22 MR. OXER: This is hinging on the railroad.

23 MS. MEYER: I don't want to say anything about
24 the railroad. I just want to make sure that if you're
25 going to consider market issues, I would rather you not.

1 DR. MUÑOZ: We're considering what's before us
2 here in this application, not necessarily what Mr. Bowling
3 might have contributed.

4 MS. MEYER: Well, if you're going to take all
5 of that off the table, then I'll sit down and I'd go home.
6 Just as long as that's off the table, then I'll bid my
7 adieus. Thank you very much.

8 MR. OXER: Thanks.

9 MS. HOLLOWAY: Just to be clear, the market
10 analysis questions were not part of this item at all.

11 MR. OXER: Good. Stop.

12 DR. MUÑOZ: Marni, about this distance, I mean,
13 seems like we're going through a lot of trouble for two
14 feet here, five feet.

15 MS. HOLLOWAY: Two feet here, five feet there,
16 keep in mind that we're still talking about putting a
17 general population housing development within 100 feet of
18 a railroad track.

19 MR. OXER: But as they pointed out, they're
20 also willing to put in the noise mitigation and the
21 separation. I'm not going to assume anything, I'm going
22 to ask directly. We'll expect you to have some physical
23 separation between the railroad, essentially along your
24 property line, so that kids, for example, don't get there
25 and meander out on the tracks.

1 SPEAKER: There will be a six foot high rock
2 wall.

3 DR. MUÑOZ: Marni, is there something magical
4 about 100 feet?

5 MS. HOLLOWAY: I don't know, and actually it's
6 one of our problems that we're working through with this
7 rule. Right now under our current rule you can be 100
8 feet away from a railroad track but you have to be 300
9 feet away from a lingerie store.

10 MR. OXER: Those can be really dangerous.
11 Those are dangerous to different people.

12 (General laughter.)

13 MS. HOLLOWAY: And frankly, no one has really
14 been able to say why this measurement is here. The
15 Department of Transportation currently is making
16 recommendations for literally the half mile that Tom
17 mentioned for oil trains.

18 MR. OXER: For the oil trains I can see how
19 that might be a concern, given there's a couple of places
20 up in North Dakota that had some issues with those. I
21 think one of them burned down most of the middle part of
22 the town.

23 DR. MUÑOZ: Marni, I'll just say this and then
24 we'll stop. Like when I grew up, I grew up pretty close
25 to a train track, I'm sure it was more than 100 feet, it

1 might have been 300 feet, and there must have been 100
2 houses between my house and the train track, and you heard
3 the train track. There was nothing that was going to stop
4 it. And then I lived in a house and we were close to a
5 subgrade highway that wasn't there when I bought the house
6 and they told us they were going to build a highway there,
7 it's a big highway now. And it was 40 feet down, maybe
8 more, with a ten-foot noise abating wall with vegetation
9 to capture ambient, and it didn't make a difference.

10 MS. HOLLOWAY: It doesn't look like that worked
11 real well for you.

12 DR. MUÑOZ: So you know, you're going to hear
13 it. So that's why asked the question, 100 feet, 105,
14 105.5, 106.

15 MS. HOLLOWAY: Again, as Ms. Bast has said,
16 these are the rules that we have to deal with right now
17 today.

18 MR. OXER: The current QAP says 100 feet,
19 existing rules, irrespective of what we would like them to
20 be, what they are is 100 feet.

21 MS. HOLLOWAY: And we have a concern that we
22 are right at that 100 feet and we don't have confidence
23 that that's the accurate measurement.

24 MR. OXER: Okay. And with respect to whether
25 or not -- my inclination, when someone says railroad

1 track, I see metal as opposed to dirt down at the bottom
2 of the hill.

3 Are there any other questions from any other
4 Board member? Anybody else want to say anything else over
5 there?

6 (No response.)

7 MR. OXER: Okay. There was a motion by Dr.
8 Muñoz, second by Ms. Bingham.

9 DR. MUÑOZ: I withdraw my motion.

10 MS. BINGHAM ESCAREÑO: Me too.

11 MR. OXER: Okay.

12 MR. GOODWIN: I move to deny staff's
13 recommendation.

14 MR. OXER: Motion by Mr. Goodwin to deny staff
15 recommendation which would make the site eligible. So it
16 would be eligible.

17 MR. GOODWIN: Make it eligible.

18 MS. HOLLOWAY: Would make it eligible. Yes, it
19 would.

20 MR. OXER: Okay. Motion by Mr. Goodwin. Do I
21 hear a second?

22 MS. BINGHAM ESCAREÑO: I'll second.

23 MR. OXER: Second by Ms. Bingham.

24 Motion by Mr. Goodwin, second by Ms. Bingham to
25 deny staff recommendation which would essentially make

1 this site eligible to continue in this round. Those in
2 favor?

3 (A chorus of ayes.)

4 MR. OXER: And opposed?

5 (No response.)

6 MR. OXER: There are none.

7 Was that four for four, Cynthia? You'd better
8 go home.

9 Sharon.

10 MS. GAMBLE: Yes, sir.

11 MR. OXER: One at a time?

12 MS. GAMBLE: However you want to do it, sir.

13 MR. OXER: We've got the bunch, we've got six
14 in the pile here, so unless there's something unique.

15 MS. GAMBLE: I can tell you very quickly.

16 Sharon Gamble, administrator for the Tax Credit Program,
17 talking about staff determinations regarding application
18 disclosures.

19 We do have six applications here. The first
20 application, Timber Ridge, basically meets an exception
21 that's provided in the rules because it's a preservation
22 deal, it preserves existing affordable housing and it has
23 existing rent restrictions with the USDA. And so that one
24 staff has determine should be eligible based on that
25 exception.

1 The next four, Heritage Pines, Hawks Landing,
2 Gala at Four Corners, and Provision at Clodine Road, staff
3 reviewed those and we looked at all of the things in the
4 environmental site assessments, other information about
5 the neighborhoods, and staff has determined on those four
6 that the undesirable characteristic that was disclosed is
7 not of such a nature or severity that it should render the
8 development site ineligible. So we're asking you to find
9 those next four eligible based on that determination.

10 The last one, 16317 Blue Line Lofts, is one
11 that we would like to discuss because we are recommending
12 that it be found to be an eligible site but we are asking
13 that a condition be placed on that finding, some
14 mitigation conditions be placed on that finding.

15 MR. OXER: So as it currently stands, it would
16 be ineligible. If they're willing to agree to the
17 mitigation, you would find it acceptable and eligible.

18 MS. GAMBLE: Yes, sir.

19 MR. OXER: Any questions of anybody? We'll
20 take them all as a group.

21 MR. GOODWIN: Move approval.

22 MS. BINGHAM ESCAREÑO: Second.

23 MR. OXER: Motion by Mr. Goodwin, second by Ms.
24 Bingham to approve staff recommendation on all
25 applications under item 6(d). There's no request for

1 public comment. Motion by Mr. Goodwin, second by Ms.
2 Bingham to approve staff recommendation on item 6(d).
3 Those in favor?

4 (A chorus of ayes.)

5 MR. OXER: And opposed?

6 (No response.)

7 MR. OXER: There are none.

8 It looks like you get number (e) too, don't
9 you?

10 MS. GAMBLE: Yes, I do.

11 Number (e) is sort of a continuation of the
12 item on third party requests for administrative deficiency
13 that we presented at our last Board meeting. I forgot to
14 put these two on the agenda so we're bringing them this
15 time. I don't think either of these is controversial.
16 We'll see if there's any public comment. The first one,
17 Cottages at San Saba, that one actually came to the Board
18 meeting, there was actually a good bit of discussion on
19 that. They lost points and they appealed and this Board
20 denied that appeal and that was basically the end of any
21 action regarding that request.

22 The second one listed, 16168 Stone Bridge at
23 Whitehouse, that application lost appeals. They appealed
24 and the executive director denied their appeal but they
25 did not appeal to the Board, they decided not to bring

1 that appeal forward, and so that essentially ended any
2 action on that recommendation.

3 And there's no action required here, we just
4 bring these to you just to let you know what we're doing.

5 MR. OXER: So essentially these were issues
6 that came up, processed through procedure, went through
7 the procedure internal to the agency, stopped at the E-D
8 and it was resolved at that point.

9 MS. GAMBLE: Yes, sir.

10 MR. OXER: Any other questions.

11 (No response.)

12 MR. OXER: Good. Thanks.

13 MS. GAMBLE: Thank you.

14 MR. OXER: All right. We have arrived at the
15 point in the agenda to accept public comment on matters
16 other than items for which there were posted agenda items.
17 This is for the purpose of building our future agendas so
18 we can announce these pieces of information or items to
19 consider for other persons to respond to.

20 Barry.

21 MR. KAHN: Good afternoon. My name is Barry
22 Kahn. I'm a developer in Houston, Texas.

23 First of all, I'd like to introduce to the
24 Board Alex Hammond who is the new chief of staff with
25 Carol Alvarado's office.

1 MR. OXER: Welcome aboard.

2 MR. KAHN: Anyhow, the reason I'm speaking to
3 you has to do with the missing element with high
4 opportunity points tied to education where we're leaving
5 behind those in minority neighborhoods.

6 Take a city like Houston which is majority
7 minority. You've got a very poor school system. Over 40
8 percent of the schools are rated D or F by Children at
9 Risk. So people in many of the neighborhoods are at risk
10 anyhow due to schools. With not allowing housing in these
11 neighborhoods, it puts them further at risk.

12 Now, some of you don't know this, but my wife
13 is one of the national leaders in childhood development,
14 appointed by the president to be on a commission and so
15 childhood development is very important to us. It's being
16 neglected due to our point system.

17 I've spoken to Ann Lott and a number of other
18 people and have a suggestion. I've got a number of
19 comments in writing, I'm not going to spend your time
20 reading them, but the bottom line is we have an obligation
21 under the furthering affirmative rule which requires a
22 focus on replacing segregated living patterns with
23 integrated and balanced living patterns and transforming
24 racially and ethnically concentrated areas of poverty in
25 the areas of opportunity. Well, if we deny all these

1 areas any type of new housing, which in turn brings new
2 commercial, new jobs, other types of opportunity to these
3 areas, we're pushing further and further behind.

4 I'm fully aware of the ICP lawsuit, done a lot
5 of stuff with regard to trying to follow it and find
6 improvements. There's lots of contesting each year when
7 the QAP comes out on should this be a priority, should
8 that be a priority. Essentially I have a very simple
9 solution for you. The last few years have been all high
10 opportunity, very low opportunity areas have hardly gotten
11 any deals, revitalization requirements are over strenuous
12 for the cities.

13 And why don't you just come up with a simple
14 policy? Next year all deals in the bottom 50 percent
15 census tracts with no educational requirement, the
16 following year they're all in high opportunity areas with
17 an educational requirement, and then you start
18 alternating. That way you create balance which is the
19 whole underlying aspect of the furthering affirmative rule
20 published by HUD, and you're meeting both goals and you
21 aren't doing it in a contested manner. It's very simple,
22 and you don't leave behind people which is in effect what
23 you're doing now.

24 And I'm happy to answer any questions.
25 Sometime something simple is too easy to accept.

1 DR. MUÑOZ: Hey, Barry. I appreciate the
2 proposition. You sit up here and we face allegations and
3 lawsuits if you put properties in the communities that the
4 people and the neighborhoods want.

5 MR. OXER: Unfortunately, we can't engage in a
6 discussion on this or anything else because it hasn't been
7 posted on the agenda, but we appreciate your comments on
8 it, Barry. If it comes up as an agenda item, then we'll
9 talk about it.

10 DR. MUÑOZ: I'll say more at the next meeting.

11 MR. KAHN: Well, you've got my phone number on
12 the letterhead. I don't think there's anything against
13 the law of speaking one on one since it wouldn't be a
14 public hearing.

15 Thank you.

16 MR. OXER: Thanks, Barry.

17 Anybody else in the audience wish to say
18 anything? Any of the staff want to say anything?

19 (No response.)

20 MR. OXER: Come on, Tom, I haven't even used
21 the tractor analogy today.

22 Anybody on the dais? Michael, have you got any
23 comments from our Twitter feed? Everything good? Any
24 other Board member?

25 (No response.)

1 MR. OXER: Mr. E-D, do you wish to have another
2 comment?

3 MR. IRVINE: I believe Marni can confirm or
4 deny, but don't we have a QAP roundtable tomorrow?

5 MS. HOLLOWAY: There is in fact a QAP
6 roundtable scheduled for tomorrow morning at the Thompson
7 Center on the UT campus. We're going to be starting at
8 9:00, from 9:00 to noon.

9 DR. MUÑOZ: Where? At the what?

10 MS. HOLLOWAY: The Thompson Center on the UT
11 campus.

12 MR. IRVINE: Couldn't get in at Tech.

13 (General laughter.)

14 MR. OXER: I have one procedural item. Is
15 Michael DeYoung here?

16 MR. IRVINE: He's gone.

17 MR. OXER: I don't know if you can do this or
18 not, Nancy. On item 5, did we address both items that
19 were listed on there?

20 THE REPORTER: No, sir.

21 MR. LYTTLE: From my notes with the Tweets, you
22 only addressed the Denton appeal, not the second one.

23 MS. SYLVESTER: Megan Sylvester, Legal
24 Division.

25 I believe that appeal was pulled and it's

1 reflected in the Board supplemental materials. The one
2 that you addressed was TX-607COD.

3 MR. OXER: We did the one for the City of
4 Denton but we didn't get to the one for Lubbock because it
5 was pulled.

6 MS. SYLVESTER: Correct.

7 MR. OXER: All right. I just wanted to check
8 and make sure we put a checkmark by that.

9 Any other Board member? Mr. E-D, do you have
10 any final comment?

11 (No response.)

12 MR. OXER: All right. I get the last word, as
13 I always do. I appreciate the effort that everybody puts
14 in. I am very grateful, as we all are up here, for the
15 efforts that everybody over at 221 East 11th Street puts
16 in, so thanks again to everybody that's in there watching
17 in.

18 So we have another meeting scheduled two weeks
19 from today. We'll remain on our uniform code for that
20 one, summer casual.

21 With that, we'll entertain a motion to adjourn.

22 MR. GOODWIN: So moved.

23 MR. OXER: Motion by Mr. Goodwin.

24 DR. MUÑOZ: Second.

25 MR. OXER: And a second by Dr. Muñoz to

1 adjourn. All those in favor?

2 (A chorus of ayes.)

3 MR. OXER: Opposed?

4 (No response.)

5 MR. OXER: There are none. See you in two
6 weeks, everybody.

7 (Whereupon, at 3:40 p.m., the meeting was
8 adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: July 14, 2016

I do hereby certify that the foregoing pages, numbers 1 through 217, 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) 07/19/2016
(Date)

On the Record Reporting
3636 Executive Cntr Dr., G22
Austin, Texas 78731