

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

August 25, 2016
10:00 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

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c) Presentation, Discussion and Possible Action regarding Material Amendment to the Housing Tax Credit Land Use Restriction Agreement	
98180 Delta Estates Edcouch	
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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 August 25 meeting of the Texas
4 Department of Housing and Community Affairs Governing
5 Board.

6 We'll begin with roll call. Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. OXER: Mr. Chisum?

9 MR. CHISUM: Present.

10 MR. OXER: Mr. Gann?

11 MR. GANN: Here.

12 MR. OXER: Mr. Goodwin?

13 MR. GOODWIN: Here.

14 MR. OXER: Dr. Muñoz?

15 MR. MUÑOZ: Present.

16 MR. OXER: I'm here. We've got a full house
17 today so we've obviously got a quorum.

18 Tim, lead us in the pledges.

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

21 MR. OXER: I'd like to say hi to some guests
22 today. Julie Frank, there she is in the back. Thanks for
23 coming in. Appreciate you taking interest in what we're
24 doing today.

25 Captain Tweety, we got anybody else back there

1 I can't see?

2 MR. LYTTLE: Tom Gouris is here today.

3 MR. OXER: Oh, yeah, he's a guest. We can tell
4 he's here, he parked his tractor out front.

5 (General laughter.)

6 MR. OXER: All right. Let's get to work. With
7 respect to the consent agenda, Marni, do you have one you
8 want to pull?

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

12 We are pulling off the agenda for today under
13 item 1(e), application 16423, Plano Artist's Lofts. Some
14 questions have come up regarding this transaction in the
15 last couple of days that we need to get answered before
16 we're going to feel comfortable bringing it back,
17 hopefully at the September 8 meeting.

18 MR. OXER: Okay. With respect to the balance
19 of 1(e), the 16426, 87th Apartments in Odessa, remains
20 active for this consent.

21 MS. HOLLOWAY: Yes, it does.

22 MR. OXER: All right. We'll take that one off.

23 MR. IRVINE: And we would also like to pull off
24 item 2(c), Silverleaf at Mason, and make that a verbal
25 report.

1 MR. OXER: Right. I believe that satisfied
2 your request also.

3 Any Board member care to pull any other item
4 from the consent agenda?

5 (No response.)

6 MR. OXER: We'll have a motion to consider,
7 please.

8 MS. BINGHAM ESCAREÑO: Move to approve the
9 consent agenda.

10 MR. OXER: Motion by Ms. Bingham to approve the
11 consent agenda.

12 MR. GANN: Second.

13 MR. OXER: Second by Mr. Gann. No request for
14 public comment. Those in favor?

15 (A chorus of ayes.)

16 MR. OXER: And opposed?

17 (No response.)

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

19 Okay. It looks like we've got Brooke. Good
20 morning. I'm sorry. Let's take the consent item on Mason
21 first, the one we pulled. My mistake. It looks like
22 Brent is in the box.

23 MR. STEWART: Good morning. Brent Stewart,
24 Real Estate Analysis Division.

25 This item relates to the Silver Leaf at Mason

1 transaction in Mason, Texas. Before I get into the actual
2 item, I feel compelled to give you some contextual
3 background information on what we're doing here.

4 The applicant filed an application for
5 competitive 9 percent housing Tax credits for Silver Leaf
6 at Mason, number 16057. The application received the
7 highest score in its subregion and the Real Estate
8 Analysis Division published an underwriting report for the
9 application on July 6. The application was not
10 recommended for approval because the underwriter's gross
11 capture rate of 12 percent exceeded the 10 percent
12 maximum rate pursuant to 10 TAC 10.302(i)(1)(A). The
13 market analyst's gross capture rate was 2.9 percent.

14 These capture rates differed because the
15 primary market area that the underwriter used was smaller
16 than that of the market analyst, and therefore, contained
17 less demand which produced a higher capture rate.
18 Additionally, and contributing to the use of the smaller
19 PMA, the underwriter determined that the market analyst
20 did not adequately describe why the demand for this
21 project would be coming from within the PMA, adequately be
22 coming from within the PMA.

23 The applicant appealed the underwriting
24 conclusions and the executive director denied the appeal
25 at the July 29 Board meeting. The executive director

1 withdrew his denial of the appeal and basically asked
2 staff to go back and continue working on the transaction
3 with the market analyst.

4 So a bit about capture rates. The Department
5 uses capture rates to determine if there's ample demand
6 for a property. There's two types of capture rates.
7 There's a gross demand, gross capture rate, which
8 basically says within this area how many total qualifying
9 households in that area and that ratio to how many units
10 are in the development. There are individual unit capture
11 rates which take the demand and carves it up into family
12 sizes and says how many families do you have to lease this
13 unit size, how many families do you have to lease a two-
14 bedroom or could qualify to live in a two-bedroom.

15 The capture rates we use in determining
16 feasibility are extremely generous. A 10 percent maximum
17 rate says that you need 10 percent of the qualifying
18 rental households within a market area to show that the
19 deal has a reasonable shot at being feasible. The reality
20 is if you need a capture rate of 10 percent, the
21 qualifying renter households in a 3,000 square mile PMA,
22 the deal is considered to have really significant risk.
23 Note that on senior deals, in addition to the renter
24 households, we include homeowner households in that
25 calculation which provides for more demand in that

1 calculation number.

2 Again, the capture rates outlined in the rule
3 are very generous, very high maximums. For example, we
4 put a limit on individual unit capture rates at 100
5 percent which is extremely unrealistic, but the reason we
6 did that was because we had applications being submitted
7 that had individual unit capture rates as high as 600
8 percent which is a mathematical impossibility. These are
9 analytical tools that are designed to capture really
10 questionable markets, really risky deals.

11 REA doesn't review deals in a vacuum.
12 Underwriting is ticking and tying together a bunch of
13 different parts, a bunch of different moving parts. We
14 have to consider all feasibility aspects of development,
15 all the risks. For example, a pro forma may show a
16 breakeven rent that is very close to the average rent
17 being proposed. Market analysts don't analyze the pro
18 forma, they don't analyze the pro forma rent in
19 relationship to net operating income, they don't analyze
20 debt coverages, expense ratios, but all of those things
21 relate to each other.

22 On the Mason development, for example, there's
23 a \$46 difference between the pro forma rent and the
24 breakeven rent. A \$46 per unit cushion on whether the
25 deal can pay its operating and expenses and debt. On a

1 PMA that is close to 3,000 square miles, that's
2 concerning. How much of a discount or concession would
3 you have to potentially place on one of those units to
4 draw somebody from as far as 60 miles away to live in that
5 property, as opposed to other properties that are in that
6 PMA or in other cities that have properties that are
7 similarly priced?

8 So REA's recommendations and determinations of
9 feasibility must consider the totality of the deal, making
10 recommendations including satisfying itself that the
11 market area is appropriate. The market analyst doesn't do
12 that and they shouldn't, that's not their job. But the
13 market analyst should provide a decent rationale for
14 reaching the same conclusion as it relates to the primary
15 market area.

16 Market studies, while backed with data, are
17 opinions of the market analyst, appropriate opinions on
18 whether there is enough demand for a property within that
19 market. The key then is determining what is the
20 appropriate market area for a development. REA rules
21 provide a framework for defining a PMA and put some limits
22 on it but a key component of the rules require that the
23 market analyst tell the story -- in other words, what are
24 the qualitative aspects of a development and its location
25 within a market area that would draw people to it as

1 opposed to other properties in the same market area. What
2 are the qualitative aspects of the PMA and how those
3 relate to the property? What is the propensity for
4 someone that lives in the PMA, 60 miles away, to consider
5 the property as a viable place to live?

6 That story wasn't initially told in this market
7 study, so it took multiple discussions back and forth with
8 the market analyst and additional clarification of their
9 data to kind of understand the story that they were
10 telling.

11 There have been and still are issues
12 surrounding the market study for Silver Leaf. Various
13 individuals, attorneys and others aligned with the
14 application next in line which is Stonebridge at Lamesa,
15 have weighed in and asserted that staff is acting in some
16 sort of nefarious manner outside of your rules. Staff has
17 always focused on transparency. We understand,
18 acknowledge and respect that some or all of these
19 individuals who have expressed these concerns are
20 understandably acting in advocacy roles and are therefore
21 interpreting actions and rules to their best advantage.
22 It's also understandable that the applicant on the Mason
23 deal is likewise doing the same thing. I mean, that's
24 what everybody's job in that side of the role is.

25 And I only say all that because throughout the

1 whole process the one outside party that should be truly
2 disinterested is the market analyst. In fact, Section 42
3 requires that the market analyst is disinterested. The
4 underwriter's work with the market analyst is always a
5 back and forth process and the process can sometimes be
6 lengthy when working on difficult markets.

7 I'm going to try to explain what we understand
8 the facts are and the way that we understand our rules and
9 how we're applying the rules to the facts. And we
10 certainly want everybody else to have a full opportunity
11 to express their opinions as well.

12 So factually, this is an application to develop
13 49 total housing units in Mason, senior limitation housing
14 units in Mason. Of those, 44 are affordable units, the
15 rest are market rate units. Mason has a population of
16 approximately 2,100 people.

17 The market analyst identified a primary market
18 area comprising of Mason, Menard and McCulloch counties.
19 All three are geographically large counties with
20 relatively sparse populations. Mason county is 932 square
21 miles and has a population of approximately 4,100 people.

22 Mason County is the area that REA used as a primary
23 market area, 932 square miles. Mason is located just
24 north of the center of the county. McCulloch County to
25 the north comprises 1,073 square miles and has a

1 population of roughly 8,300 people. Most of this
2 population is in the town of Brady which is, again, kind
3 of centrally located in that county. And then Menard
4 County is to the west, northwest of Mason, has 902 square
5 miles and a population of about 2,200.

6 So the question at the most basic level is:
7 Can the proposed development in Mason be expected to draw
8 the majority of its tenants from this PMA? Majority can
9 be interpreted as 25 of the units makes the majority for a
10 49-unit development. I think the REA rule contemplated
11 that that majority meant the most of, it was never
12 intended to be a quantitative number, and that's something
13 that we'll need to go back and fix in the rule. But note
14 that the breakeven occupancy on this deal is 42 units, so
15 you have to have 42 units leased at all times at the rents
16 in the pro forma to break even.

17 REA grappled with the critical question of what
18 the PMA is and the market analyst had reached an
19 affirmative conclusion but the methodology in the rules
20 again require a narrative that tells the story, that leads
21 a reader of that report to draw the same conclusion that
22 the market analyst is trying to make. And while the
23 market study contained ample demographic data and study of
24 that data, there was only two paragraphs in the market
25 study that addressed the tell-the-story question, and we

1 didn't believe that that those two paragraphs were
2 adequate in telling that story and it didn't convince us
3 necessarily that the three-county PMA was appropriate to
4 use.

5 So we concluded it was inappropriately large.
6 We couldn't, for example, understand why an income-
7 eligible elderly household from in and around or north of
8 Brady would move 30 to 45 miles to the south past Brady
9 into a community that had much fewer amenities, including
10 a hospital, than Brady.

11 So we reached out to the applicant and to the
12 representatives and the market analyst and received some
13 responses, but in our judgment still could not get to a
14 place where we were comfortable with that PMA, so we
15 issued an underwriting report based on the county of Mason
16 which calculated a unit capture rate higher than
17 threshold, and therefore, we did not make a recommendation
18 on the deal.

19 Right before you made your awards in July, the
20 applicant, through their counsel, contacted us and took
21 the position that in accordance with 10 TAC 10.303(c)(2),
22 the market analyst needed to have any discrepancy
23 identified and be given the opportunity to address them.
24 This was in addition to the back and forth that we had had
25 with the market analyst at that point. Concern that the

1 Department had possibly not provided the applicant and
2 market analyst the total level of identification of these
3 issues and opportunity to address them, at the last Board
4 meeting the matter was kind of returned to us to re-engage
5 in the process with the applicant and the underwriter.

6 On that basis, the market analyst was given the
7 opportunity to further explain the situation. So one,
8 they explained that the use of the three counties was
9 because of the rule requiring the use of census tracts to
10 define PMAs and the facts that counties involved are made
11 of very large census tracts. That's a big problem in
12 rural Texas: you have very, very large census tracts and
13 our rules require a PMA defined on census tracts. And
14 that will be changing in the new rules if we're able to
15 find data that we can use that's not census tract related.

16 But in this case, they concluded that their PMA would not
17 have been that large, basically, if we did not require
18 census tracts to be used in the definition.

19 They indicated that the majority of the tenants
20 would come from an area within a reasonable driving
21 distance of Mason, with no intervening low income housing
22 alternatives. So they provided us with kind of a drive-
23 time analysis radiating out from Mason and did some
24 analysis on the numbers of folks in that area. However,
25 to depict that, that distance extended into Menard and

1 McCulloch which then means you've got to pick up those
2 census tracts, and that was the basis for the original
3 including those census tracts in their PMA. However, the
4 drive-time analysis included drives into other counties
5 that were not in the original PMA, Gillespie and Llano.
6 And while the majority of that drive-time falls within
7 Mason County, those other pieces are not included in the
8 original PMA.

9 According to the market analyst, there appears
10 to be sufficient documented income eligible population
11 within that drive-time area to enable the development to
12 be found feasible, meaning it meets the capture rate
13 requirements. Capture rate analysis of the drive-time
14 yields rates which are extremely close but technically
15 compliant, including a gross capture rate just under the
16 10 percent at 9.89 percent. Because the drive-time area
17 extends into the counties not originally part of the PMA,
18 REA has asked for yet further clarification, as late as
19 yesterday, to show us what that looks like if you do not
20 include those parts of the drive-time extending into those
21 other two counties -- in other words, keep it in the
22 original PMA. If they do that and the numbers show and we
23 believe that's reasonable, then the math may prove up that
24 the capture rates work.

25 So I guess I'm done with that. I'm here to

1 answer questions and certainly respond to comments or
2 questions that you may have.

3 MR. OXER: Okay. Thanks, Brent.

4 All right. Questions from the Board?

5 MS. BINGHAM ESCAREÑO: Is the drive-time
6 analysis typical, is that routine? Do we do that in most
7 of these or is it specific to the fact that you do have
8 those kind of huge census tract rural areas?

9 MR. STEWART: No. Because we deal with this
10 capture rate issue at such a high level, it's a 30,000-
11 foot view and the box is really big. And like most of the
12 REA rules, if you can't drive one of these things through
13 the REA rules, you really want to consider whether that
14 transaction is feasible or not.

15 Now, we do have market studies in that telling
16 the story they will say, look, our PMA is huge, but let us
17 tell you the real story. The real story is here's the
18 drive-time analysis or here's this other analysis, or
19 whatever the analysis is that says it dribbles into these
20 other counties, it dribbles into these other census
21 tracts, so therefore, it makes our PMA look huge. That's
22 the story that I think we've eventually gotten to on this
23 deal except for the question about the two pieces that go
24 into other counties, but it's that type of narrative that
25 tells that story.

1 Honestly, if you've got a deal in an urban area
2 and the math looks good, you don't have as much a story to
3 tell. Right? And so I think maybe it's our bad that we
4 don't necessarily even on those market studies go back and
5 say, hey, tell us more of the story. The story is very
6 obvious in those situations. It's on deals where the
7 story is not obvious, tell the story.

8 MS. BINGHAM ESCAREÑO: Thank you.

9 MR. OXER: So how many deals have you through
10 REA underwritten and gone through in, say, the last five
11 years?

12 (General laughter.)

13 MR. OXER: It's in four digits anyway. Right?

14 MR. STEWART: Well, in the eight cycles that
15 I've been here, including bond transactions and others,
16 we've reviewed 950 market studies.

17 MR. OXER: Okay. Close to a thousand.

18 MR. STEWART: Twenty-five to 30 percent of
19 those are deals where we have had to work on with the
20 market analysts, and probably with almost every developer
21 we've done that. That's the part of the market review
22 process that exists. Of those, we've had ten do not
23 recommends; of those, we've had three appeals come to this
24 Board, 950 versus three appeals.

25 MR. OXER: And so we're dealing with one appeal

1 now.

2 MR. STEWART: That's right.

3 MR. IRVINE: Potentially.

4 MR. OXER: Potentially. And so there were two
5 others.

6 MR. STEWART: Well, now three others because of
7 the transaction that was in Fort Hancock which withdrew
8 this week.

9 MR. OXER: But the ones that actually reached
10 the Board for a decision and were not placated, satisfied,
11 finished with, whatever REA and the agency came up with,
12 there were two that actually came through the process up
13 until now, two that you've resolved.

14 MR. STEWART: Three prior to this one.

15 MR. OXER: Three prior to this one.

16 MR. STEWART: That's right.

17 MR. OXER: And the resolution on each of those
18 was what?

19 MR. STEWART: The Board upheld staff's
20 recommendations.

21 MR. OXER: So what percentage -- because you're
22 talking about something that drops considerably as you get
23 in closer because you have to use the census tracts which
24 in those areas are enormous. I mean, we've got counties
25 in southwest Texas that are bigger than Rhode Island.

1 MR. STEWART: That's right.

2 MR. OXER: So what percentage of that overlaps
3 outside of the original PMA that was defined in the
4 project? Ball parking.

5 MR. STEWART: That's a question that's
6 outstanding because we don't have the ability to look at
7 data, population data in anything but a census tract.
8 There are ways of getting to block group data, but even in
9 the data world there's some questions about some of that
10 data. We would like to be able to get to a place where
11 the Department and the market analysts could use a smaller
12 geographical area than census tracts to better tell these
13 stories.

14 MR. OXER: More finely grained analysis.

15 MR. STEWART: Yes. Because most of the time it
16 is a drive kind of look analysis. You know, certainly
17 there are other factors that people would move from
18 further distances away. In urban areas, the studies that
19 we've done show that people come from within the zip code
20 around that property, makes sense. I've had personal
21 experience where if you do a transaction that is in a
22 really high rated school district, people will move from a
23 lot of places to go and put their kids in that school
24 district.

25 MR. OXER: But they're generally not seniors

1 that are looking to retire with kids.

2 MR. STEWART: My two experiences were family
3 deals, and I think most of what I've seen have been family
4 deals.

5 MR. OXER: And as a reminder, this one is?

6 MR. STEWART: Senior.

7 MR. OXER: Any other questions?

8 MR. MUÑOZ: So what you have right now to work
9 with is census tracts. Right?

10 MR. STEWART: That's correct.

11 MR. MUÑOZ: And so explain to me this, right
12 now the current capture rate is over 12 percent you said?
13 Or what was originally presented? I thought you said it
14 was like 12 point something.

15 MR. STEWART: Right. So the market analyst
16 presented 2.5 or 2.9, ours was 12.5.

17 MR. MUÑOZ: And the limit generally is 10.

18 MR. STEWART: On a senior, yes, 10.

19 MR. MUÑOZ: And I put a note, you said
20 something like at 10 percent it's doubtful.

21 MR. STEWART: Ten percent is a very high
22 maximum type of cutoff threshold that says if you're
23 trying to get 10 percent --

24 MR. OXER: You have to have 10 percent to make
25 it work, you're walking the edge.

1 MR. STEWART: -- from a 3,000-mile area, okay,
2 you technically complied with the rule but there's a lot
3 of risk there. You take that risk with a \$46 breakeven,
4 with a 115 DCR, you add up all those things and you kind
5 of get this confluence of things going on with respect to
6 how feasible a deal is. Underwriting, it's hard to put
7 anything other than big picture rules around it.

8 MR. MUÑOZ: So given this sort of confluence of
9 data, does the original recommendation change any?

10 MR. STEWART: The denial that was expressed in
11 the underwriting report related to the capture rates. We
12 addressed the confluence of concern issues in the
13 underwriting report, but those were not reasons that we
14 used for the denial of the transaction.

15 MR. MUÑOZ: Those were not.

16 MR. STEWART: No, because the capture rate
17 itself presented the rationale for the denial.

18 MR. MUÑOZ: So is the recommendation the same?

19 MR. STEWART: Right now today --

20 MR. MUÑOZ: Right now today where we're at.

21 MR. STEWART: -- where we're at is we have an
22 underwriting report out there that says do not recommend.
23 We have an appeal on that recommendation. We have where
24 we have been instructed to go back and continue our work
25 with the market analyst to get data to try to make sure

1 that we're making the right decision, make sure that we're
2 understanding their story. And we're still doing that,
3 that's what we're here today to do, basically, we've asked
4 for some information as late as yesterday. That's kind of
5 where we're at.

6 MR. MUÑOZ: So here's what I'm asking. Maybe
7 I'm not being clear. So based on there was an original
8 denial, then there was an appeal, then there was an effort
9 to collect more information, based on that effort to
10 collect additional information, work with the market
11 analyst, et cetera, has that altered what was the original
12 recommendation? Right now, here today.

13 MR. STEWART: Right. Not until we get the
14 answer with respect to carving off the pieces of the
15 drive-time area outside of Llano and Gillespie counties.

16 MR. OXER: So what you're saying is the answers
17 you have depends on gathering that continued data.

18 MR. STEWART: Yes, sir. That's why this is a
19 report item.

20 MR. OXER: So you're only reporting, it's still
21 engaged and active.

22 MR. STEWART: That's right.

23 MR. OXER: The process is active with respect
24 to this particular application.

25 MR. STEWART: That's right. And it's been an

1 extraordinarily long process. It's not unusual, again,
2 for us to work diligently with the market analyst back and
3 forth, it occurs a lot. Again, that 25 to 30 percent of
4 the 950, that's what happens.

5 MR. OXER: We have a couple of people on the
6 Board who have a little experience in real estate and in
7 banking, so when you really get down to it, this is one of
8 those things where real estate analysis is not
9 mathematics, it's an art form.

10 MR. STEWART: Yes. I think the other issue
11 here that should take note of is that for the first time
12 since I've been here we actually completed all the
13 underwriting reports before the July awards.

14 (General laughter and applause.)

15 MR. OXER: We appreciate that you did that too.

16 MR. STEWART: And so probably for that reason I
17 think it was appropriate to allow more time to go back and
18 try to work on this, because we had very few problem
19 children this year and they all warrant the time and the
20 effort.

21 MR. OXER: Ms. Bingham, did you have a
22 question?

23 MS. BINGHAM ESCAREÑO: Just on behalf of the
24 two people on the Board that don't have a huge depth of
25 real estate and banking --

1 MR. OXER: That would be me and you, by the
2 way.

3 MS. BINGHAM ESCAREÑO: Actually, I was throwing
4 Dr. Muñoz in there too.

5 (General laughter.)

6 MR. OXER: Okay. Half of us do and half of us
7 don't.

8 MS. BINGHAM ESCAREÑO: And probably
9 oversimplifying, but what I think I read and I heard you
10 saying is the original market analysis didn't support the
11 application, but in looking at it, there's an obligation
12 or you have the opportunity to look for that more
13 qualitative story, and the revised analysis that came back
14 included a PMA that was the three counties as opposed to
15 the original one that was the one county, and now the
16 story could support the application but you have a little
17 bit more work to do, especially once those two pieces of
18 those other two counties were kind of brought in through
19 the drive-time analysis.

20 MR. STEWART: That's right.

21 MR. OXER: So you know more than you think you
22 do.

23 MR. STEWART: Originally three counties,
24 originally not much of a story. REA said we didn't see
25 it, we didn't see the dots being connected, we didn't see

1 it. So we carved it back to one county. We still kind of
2 felt one county was maybe a problem because a lot of that
3 county is very close to much larger cities, and so it's
4 conceivable that you have populations living on the ends
5 of those counties that would rather go to Brady or
6 Fredericksburg or someplace else to live. So we kind of
7 felt that the county was a fairly generous market area.

8 Through the process, they've come back and
9 said, Well, REA, here's why we picked the three counties,
10 it's because we have this drive-time situation that
11 dribbles into these other two counties, and because of the
12 rule, we had to include it all in the PMA. Meaning our
13 look at it, going wow, three counties this big, that
14 doesn't make a lot of sense. Again, the story wasn't
15 there.

16 MR. CHISUM: I've got a question and a comment,
17 being one of the bankers on the Board. Real estate in
18 itself is marketing and numbers and location. That being
19 said, you mentioned that there was a \$46 spread and so if
20 you're going into a real estate transaction, you're almost
21 going in under water when you close that deal.

22 I also will remind us that distance in those
23 rural counties are quite different than in the
24 metropolitan areas in that you're 60 miles but the speed
25 limit is 75, so it's much closer in the rural counties

1 time-wise than it is in the metropolitan.

2 But going back to the deal, for it to be
3 successful, the numbers have to work, and so if the
4 numbers don't work, then we're doing a disservice to
5 everybody because it's going to collapse.

6 And so that's my observation purely from a
7 financial standpoint. I don't even know where this is; I
8 think it's in South Texas, West Texas.

9 MR. STEWART: Hill Country, north of
10 Fredericksburg.

11 MR. CHISUM: Oh, sure. Well, I am familiar
12 with it then. But for me to be comfortable, the financial
13 side has to work, and if it doesn't work, well, then we're
14 going to fail and they're going to fail and it's going to
15 be something that we'll have to deal with, Mr. Chairman,
16 going forward.

17 MR. MUÑOZ: Brent, help me to understand, just
18 a followup, because I thought what they originally
19 presented was sort of three counties and then you reduced
20 it to one county, and then they made the sort of
21 narrative, provided a narrative argument for the inclusion
22 of the three. But I thought I heard earlier in the
23 conversation about it sort of dribbling into two other
24 counties. Are those the two that they included? Because
25 I thought I heard you say and I thought I may have read

1 something like they weren't originally included.

2 MR. STEWART: Picture the drive-time area.

3 MR. MUÑOZ: And I go through there all the
4 time.

5 MR. STEWART: We refer to it kind of as an
6 amoeba, and so there are parts of the amoeba that extend
7 into the counties that were included in the original PMA.

8 Makes sense, that's fine. There are a couple of parts,
9 maybe three, one is kind of insignificant, doesn't matter,
10 but two parts of that amoeba that extend into counties
11 that were not originally part of the three-county PMA.
12 And so our question back to them has been what happens to
13 the data if you carve off those two pieces that extend
14 into Llano and Gillespie counties.

15 MR. MUÑOZ: That weren't part of the original.

16 MR. STEWART: They were not part of the
17 original, and that's why we're asking the questions.

18 MR. MUÑOZ: See, that sort of thing gets my
19 attention because so often in other deals, right, you
20 can't modify. Is this an instance where this has happened
21 in your kind of analysis before, it occurs sometimes, not
22 really? Does that make sense what I'm asking?

23 MR. STEWART: Sure. And I think it kind of
24 gets back to Mr. Chisum's comments that it's hard to
25 evaluate and underwrite a property in a vacuum, and a

1 market study is data that a professional then comes up
2 with a market area based on that data and their thoughts
3 and opinions. There's always that back and forth.
4 Questions or disagreements -- not disagreements -- well,
5 in this case, disagreement -- but there's always that back
6 and forth, there's always that work that goes on. And it
7 is not part of the parts of the application necessarily
8 that say, well, you submit this document, now you cannot
9 change it. The market study and the review process of
10 that is more fluid.

11 MR. OXER: So the parts that you can't change,
12 basically, we're saying so many units, so many square
13 feet.

14 MR. STEWART: Scoring items.

15 MR. OXER: Scoring items. But the real estate
16 analysis, back to the original point I made was, this is
17 the art form on it. So they plop it down in the middle of
18 this county expecting that it's going to work because even
19 though the PMA they put together includes this very vast
20 area, they ostensibly included that because of those
21 census tract issues. Even if you take those two counties
22 off, there's enough in there to make this work if you add
23 these in the bottom. So it's more a matter of drawing the
24 circle out to figure out where the deal will work,
25 irrespective of what the location is.

1 MR. STEWART: You can draw any area and make a
2 deal work, and we do have situations where it's very clear
3 that the area that's drawn is drawn for reasons to make
4 the deal work. That's why our review of that area is
5 important.

6 MR. OXER: It's a risk management issue. It's
7 basically to predict the probability this deal is going to
8 work.

9 MR. MUÑOZ: Because if you draw the circle
10 large enough, it will work, but you have to evaluate
11 whether or not it is practical, whether or not somebody
12 might want to drive 50 miles this way as opposed to 20
13 miles that way for greater amenities.

14 MR. STEWART: That's right.

15 MR. MUÑOZ: That's part of the underwriting
16 analysis.

17 MR. STEWART: What would compel somebody to
18 move to this property, given that there are other options.

19 MR. MUÑOZ: Closer.

20 MR. STEWART: Closer, more amenities. What is
21 compelling about this property that would draw people
22 there.

23 MR. MUÑOZ: In order to populate the property,
24 in order to make it financially viable.

25 MR. STEWART: That's right.

1 MR. OXER: And so you've got 42 out of 49 is a
2 minimum breakeven on the rent, and even with a full load
3 you've got \$46 a month.

4 MR. STEWART: That's right.

5 MR. OXER: So you're running at low freeboard
6 to start with, your DCR is probably what, 115 or less?
7 Probably 115 is the minimum to get by on this.

8 MR. STEWART: The DCR here was at a 120, but
9 it's a small deal and so numbers move pretty rapidly on
10 small deals with small changes.

11 MR. OXER: It has a high beta on that.

12 MR. STEWART: So a 115 versus a 120, but
13 breakevens, we're talking about a 1.0. You know, we're
14 not talking about a debt coverage issue, we're talking
15 about how do I pay expenses and debt at a breakeven.

16 MR. OXER: How does it keep from going
17 underwater.

18 MR. STEWART: Right.

19 And I need to make sure I point out that's not
20 on our pro forma. You know, we have this issue of we
21 underwrite a pro forma, the applicant has a pro forma, if
22 they're within 5 percent of each other, we use the
23 applicant's numbers. So these numbers are based on the
24 applicant's numbers. Our pro forma was reasonably close.

25 MR. CHISUM: And I'm assuming that they have

1 all of the apartments filled, their pro forma?

2 MR. STEWART: That's assuming a 7-1/2 percent
3 vacancy and collection loss, so 92.5 occupancy.

4 MR. CHISUM: And the housing tax credit on
5 this, is it 9 percent?

6 MR. STEWART: It's 9 percent. Yes, sir.

7 MR. OXER: Competitive deal.

8 MR. CHISUM: Mr. Chairman, my concern still
9 remains on the financial side. If in fact we have a \$46
10 differential, that's going to be, I'm afraid, too
11 difficult for this property to make it over time.

12 MR. STEWART: And again, I point that out as a
13 confluence of things. It's not the death knell at all,
14 it's just a confluence of things.

15 MR. CHISUM: That's also your job.

16 MR. OXER: An accumulation of risk against
17 things that could happen, so it sounds like a lot of these
18 are teetering right on the edge and combine them all
19 together, there's got to be a whole lot of things that
20 have to go right to make this work.

21 MR. CHISUM: Almost perfect.

22 MR. OXER: Right.

23 MR. MUÑOZ: How often does almost perfect occur
24 in your business?

25 MR. CHISUM: When things are very, very good

1 with deep pockets.

2 MR. GOODWIN: My projects don't ever.

3 (General laughter.)

4 MR. CHISUM: What happens is the market
5 continues to change like right now, and so unless -- and
6 it does not have to be perfect but you have to go in
7 knowing that it works under normal circumstance, and if it
8 doesn't, then when things get tougher, we'll be back here
9 doing foreclosures and everything else, and that's not
10 where you want to be.

11 MR. STEWART: I have to make a comment that
12 part of this is a result of how we're pushing deals into
13 certain areas. Because there are rural communities that
14 need the housing but maybe it's not the right type. But
15 we're having some problems with market issues because of
16 the way the scoring and things work to put properties in
17 these places, and that's driving the location maybe over
18 other areas that might make some more sense.

19 MR. CHISUM: What is the best answer for
20 closing the differential?

21 MR. OXER: Let me speak to that just for a
22 second, Brent, because one of the things that we're doing
23 is trying to, from a policy standpoint, increase the
24 distribution so we don't continue to cluster all these
25 projects more or less in the same areas. The policy is to

1 get these out but we're doing so at the expense of
2 assuming more risk in the financial viability of the
3 deals.

4 MR. STEWART: It's doing that, it's causing
5 higher costs, it's doing a number of things.

6 MR. OXER: So it costs more to do it, runs a
7 higher risk of failure for the purpose of increasing the
8 distribution of available housing.

9 MR. CHISUM: More staff time too. That's their
10 job.

11 MR. OXER: That's their job, that's the job of
12 this Board is to figure out how to do this because I
13 haven't seen any place yet that truly had as much
14 affordable housing as they needed. I've heard comments
15 from a couple of counties that had more than they wanted
16 but not as much as they needed.

17 MR. STEWART: Well, and it's in addition to
18 that scoring issue of to where they're going. You'll see
19 if you look at the list every year there are multiple
20 applications in the same places, particularly rural
21 places. We've had situations in urban areas where there
22 has been out and out bidding wars on the same site which
23 has created land costs that are not market.

24 MR. OXER: Unsustainable.

25 MR. STEWART: They're not market, they're tax

1 credit market. We've created a market, an artificial
2 market.

3 MR. OXER: We've created a bubble is what we
4 did.

5 MR. STEWART: Some of these rural towns,
6 unfortunately, Texas doesn't have some of the resources
7 that we would really need to go and address some of these
8 rural housing issues. Sometimes a tax credit structure is
9 just not the best execution.

10 MR. OXER: One of the comments that other
11 members of the Board have made is that the Tax Credit
12 Program is a good program, an excellent program in terms
13 of the capacity and the magnitude and the strength and the
14 detail and the things that go about it, but it's not the
15 only tool that we have and it's not the only program that
16 we have and it's not the only one we can use, and not
17 every type of deal is going to fit in the Tax Credit
18 Program. My comment from that discussion that came up
19 some time ago was if you use that as the only tool in your
20 toolbox, eventually you're going to find yourself standing
21 there with a hammer looking at an electrical problem.

22 So the issue is what can we do from a policy
23 standpoint and while this is a report item and we're
24 reporting some discussion and it's one of those things
25 that needs to be done, yes, we'll have to look at this

1 from policy but at this point the best we can do is use
2 the rules that we have as interpreted as best you can in
3 an aspect of this process and program that more correctly
4 resembles an art form than a fine hard science and say,
5 We're trusting your best judgment on nearly a thousand
6 deals to come through this and we got one that fell
7 through the cracks that needs a hard analysis. And it's
8 an analysis but it's a review of the facts, but what it
9 really is is a review of perspective.

10 MR. STEWART: Well, and I think if we continue
11 the way we're allocating deals, we're going to see more
12 and more deals that are not going to pass because we're
13 putting them in places --

14 MR. OXER: We're driving them to places that
15 don't work.

16 MR. STEWART: That's right.

17 MR. MUÑOZ: Brent, I wasn't at the last Board
18 meeting, and this is a report item, I appreciate that, but
19 how much more information, if at all, do you all need?

20 MR. OXER: And do you anticipate that to be
21 forthcoming?

22 MR. MUÑOZ: I mean, because everybody is
23 entitled to the opportunity for clarification,
24 elaboration, et cetera, but at some point something is
25 going to have to be done.

1 MR. STEWART: We've asked for one more piece of
2 information that's either going to say excluding those two
3 pieces that spill into Gillespie and Llano counties, if
4 you cut those off, does the capture rate work.

5 MR. OXER: So that's a math problem.

6 MR. STEWART: If you carve off the population
7 out of those two fingers that are going into Llano and
8 Gillespie counties, what do you have?

9 MR. CHISUM: Won't work.

10 MR. OXER: So if you left it in, what would be
11 the implications for the applicant for having added those
12 later in the real estate analysis? Since it's a give and
13 take, adding information, and even though that wasn't
14 included in the original PMA, what does that do for the
15 REA position on this application?

16 MR. STEWART: Right. The goal would be to
17 understand the market analyst's thoughts on why their
18 original PMA made sense to use and that it works, so they
19 provided a drive-time area to help explain that. The
20 drive-time area spills into these other two counties that
21 we don't want to include because that's adding to the PMA
22 as opposed to what we're looking for is the explanation as
23 to why that PMA that you submitted works.

24 MR. IRVINE: I would also inject that not only
25 would those little fingers that go outside of the original

1 PMA go beyond this self-limiting description of the PMA,
2 but they also get closer to large centers of population,
3 like Llano or Fredericksburg or Kerrville, where the pull
4 changes. Basically, you've got five roads running out of
5 Mason: you've got one going northwest into Menard and
6 it's going to draw, presumably, some people from that
7 area; it's got one going north towards Brady, and the
8 closer you get to Brady, the less likely it is that you'll
9 be drawing from that area; you've got one going east
10 toward Llano and then you've got two going down south into
11 Gillespie, and the closer you get to those other
12 population centers, the less likely it is that you'll
13 attract someone.

14 MR. STEWART: And the market analyst has done a
15 good job through this followup process. They went and
16 interviewed more people and got some data and things that
17 help tell that compelling story. It now simply relates to
18 those two fingers.

19 MR. OXER: So from the perspective of where we
20 are on the application and the standpoint, you continue to
21 be in the REA give and take back and forth with the
22 applicant, and the applicant's market analyst.

23 MR. STEWART: We're at the end of that road,
24 but, yes, sir.

25 MR. OXER: So it's either going to turn off or

1 stop.

2 MR. STEWART: That's right.

3 MR. OXER: Okay. So you're going to get that
4 answer. What you need from us today is we'd like to have
5 the answer too so we'll give you another meeting.

6 MR. STEWART: We would expect to have this
7 wrapped up by the next meeting for sure. That's September
8 8, I believe.

9 MR. OXER: September 8. Correct. Two weeks
10 from today.

11 MR. CHISUM: Mr. Chairman.

12 MR. OXER: Sir. With this being a report
13 item -- go ahead, Tolbert. I'm sorry.

14 MR. CHISUM: Would the reduction of the
15 project, the size, the number of apartments, would that
16 change the deal? If they cut it in half, would that be
17 something? It sounds like to me that the \$46 differential
18 is driven by much of the fixed costs, so if you reduced
19 the size of the project, it's still underwater. Or would
20 we allow that?

21 MR. STEWART: The rules would not allow the
22 applicant to reduce the number of units at this point.

23 MR. OXER: That's a material change. Right?

24 MR. STEWART: I'm sorry?

25 MR. OXER: Material change?

1 MR. STEWART: I'm guessing. I try to stay away
2 from the QAP and so forth.

3 MR. OXER: Marni is still healing over there
4 and patched over most of the scars from the last one.

5 (General laughter.)

6 MR. STEWART: From a capture rate standpoint,
7 it would be obviously much better because there's less
8 supply that you're calculating that on. Probably from an
9 appropriate size of a development going into Mason,
10 something smaller than 49 units might make more sense.
11 But then you get into the whole toolbox thing. Tax
12 credits were originally intended for certain things and
13 we've kind of taken it and done a lot with it, it's been
14 good, but sometimes you reach a limit where maybe not so
15 much.

16 MR. CHISUM: That's my banker side coming out.

17 MR. OXER: Right. That's the one we want
18 exposed on this.

19 MR. MUÑOZ: Brent, just some final thoughts.
20 Just what I've have read and as I hear you explain, this
21 10 percent, some concern about that threshold 40-something
22 dollars cushion, some concern, and now we're looking at
23 all these different areas, I hear this sort of theme of
24 risk.

25 MR. STEWART: It's important to know that this

1 is the level of work we would do on any transaction that
2 had these types of issues. This is not something where we
3 are trying to make a deal happen or not make a deal
4 happen. We want to get to a definitive place where we can
5 use our judgment and make a recommendation to you and say
6 this is what we've concluded.

7 MR. MUÑOZ: So you have until the 8th. Right?

8 MR. STEWART: Yes, sir.

9 MR. MUÑOZ: So I'm going to drop the mic now.

10 MR. OXER: That meant something.

11 MR. MUÑOZ: I meant turn it off.

12 (General laughter.)

13 MR. OXER: All right. So you have more
14 information coming, expect to continue on your real estate
15 analysis. This was a report item. I think as chair I'll
16 acknowledge we've accepted the report, we recognize the
17 issues associated with it. And you feel fairly
18 comfortable what our concerns are?

19 MR. STEWART: Yes, sir.

20 MR. OXER: They seem to be consistent with what
21 good real estate finance would suggest, which aside and
22 apart from the fact as an agency we do have to use that
23 good judgment for the sector we're working in.

24 All right. Anything else to offer, Brent?

25 MR. STEWART: Not from me.

1 MR. OXER: Any other questions from the Board?

2 (No response.)

3 MR. OXER: Okay. Appreciate you doing it.
4 We'll let it play out and let's see how this works out.
5 Keep your standards high.

6 MR. STEWART: Right.

7 MR. OXER: All right, Brooke.

8 MS. BOSTON: Hi, Chairman OXER, Board. I'm
9 Brooke Boston, one of our deputies of the Department.
10 I'm here today to present to you on items 3(a)
11 through (d). All four of these items relate to Department
12 rules in the Texas Administrative Code. While these
13 actions are separated into four distinct action items in
14 your agenda and in the book, that was done primarily to
15 make it a little less unwieldy and more manageable.

16 MR. OXER: And so you didn't have to stand
17 there all morning.

18 (General laughter.)

19 MS. BOSTON: But because they're so
20 interrelated, my presentation to you now is covering all
21 four together.

22 These four items together represent the Board's
23 action on the Community Affairs rules project, or the CA
24 rules project. Within the Department's sections of the
25 Texas Administrative Code, a series of different

1 Department rules govern all of the programs administered
2 by the Community Affairs Division. Those programs include
3 the Community Services Block Grant (CSBG), the
4 Comprehensive Energy Assistance Program (CEAP), the
5 Weatherization Assistance Program (WAP), the Emergency
6 Solutions Grant Program (ESG), and the Homeless Housing
7 and Services Program, also called HHSP.

8 Over time varying components of these rules
9 have been amended as needed to address specific changes,
10 but a wholesale review and revisit of the rules has not
11 take place in several years and we felt that was well
12 overdue. So we decided to begin a broad reorganization of
13 and revision to the rules that govern the Community
14 Affairs Program, hence, the CA rules project.

15 So the programmatic rules that currently govern
16 the Community Affairs programs are located in Chapter 5,
17 we call that the Community Affairs Programs. However, to
18 remove ambiguity about what program contracts are subject
19 to which sets of rules, the Department is proposing to
20 actually leave Chapter 5 unchanged, as it continues to
21 apply to many existing contracts. We alternatively are
22 proposing two new chapters that will govern these
23 Community Affairs programs contracts in the future: a new
24 Chapter 6 to govern the traditional Community Affairs
25 programs, CSBG, CEAP and WAP, and a new Chapter 7 to

1 govern the two homelessness programs.

2 Staff is recommending that these two sets of
3 programs be separated into two different chapters because
4 staff believes that the CSBG, CEAP and WAP programs, and
5 their applicable state and federal oversight regulations
6 are sufficiently distinct to support separate rulemaking
7 from the homelessness programs. So those two new chapters
8 are represented for you in items 3(a) and 3(b).

9 There are also other rules that affect the
10 Community Affairs programs being proposed for change as
11 part of the CA rules project, which include Chapter 1,
12 Administration, and Chapter 2, Enforcement, which are
13 located in the parts of the rules that relate more broadly
14 to all Department activities. Those actions within
15 Chapters 1 and 2 are represented in items 3(c) and 3(d) in
16 your book.

17 As part of the CA rules project, staff is
18 proposing a set of rule actions that jointly capture the
19 rule reorganization and revisions. The rule changes being
20 made include everything from incorporating language that
21 is currently in Chapter 5 into Chapter 6 and 7 because
22 it's still relevant to program activities, removing
23 unnecessary or redundant requirements or sections,
24 streamlining uniform requirements, organizationally
25 placing sections in a logical order or within more

1 appropriate chapters and subchapters, incorporating new or
2 more fully addressing existing federal program
3 requirements, renumbering consequential sections, and in
4 some cases making significant policy and process changes.

5 Because a lot of this was very significant, we
6 have worked pretty diligently to make sure that the public
7 is aware of all of this, so on June 27 we held a
8 roundtable to discuss the proposed changes. And then
9 based on what we heard at that roundtable, we actually
10 released a staff draft of this rule on July 29 and let
11 people comment on that for a week. And then we took that
12 into consideration into the set of revisions that we are
13 providing you today, or the set of rule documents that you
14 see today. So after your action today, then the rules
15 will go out, be published for draft and then be put out
16 for public comment, so there will be even additional input
17 at that point.

18 So at this point I was not going to take you
19 through a comprehensive list of each of the sets of
20 specific changes going into each of the different
21 chapters. Those lists were provided in your Board items.

22 If you have specific questions, I can take you through
23 all that, but in the essence of time, I wasn't going to.
24 That's kind of it, so I'm happy to answer any questions.

25 MR. OXER: So we're essentially putting out

1 rules to make us better, sleeker and faster.

2 MS. BOSTON: Yes.

3 MR. OXER: Nothing bad about that.

4 Any questions from the Board?

5 MR. GOODWIN: Move approval.

6 MR. OXER: Motion by Mr. Goodwin to approve
7 staff recommendation on item 3(a), (b), (c) and (d).

8 MS. BOSTON: Yes.

9 MR. OXER: All four at one time. We'll take
10 3(e) coming up here next.

11 MS. BINGHAM ESCAREÑO: I'll second.

12 MR. OXER: Second by Ms. Bingham. We have
13 request for public comment.

14 MS. RODRIGUEZ: Good morning, members of the
15 Board, Mr. Irvine. My name is Stella Rodriguez. I'm with
16 the Texas Association of Community Action Agencies.

17 First and foremost, I want to thank Brooke and
18 the staff for this opportunity that we've had. This is a
19 major revamping of the rules and I know it's taken months
20 for them to work on them, and so we really do appreciate
21 the opportunity to comment during the roundtable and then
22 as well during the staff draft. So kudos to the staff for
23 that.

24 But there are a few concerns that we have with
25 the proposed rules that you have before you, and I'm only

1 going to hone in on one. Hopefully we can continue to
2 work with Brooke and staff and iron out some of the other
3 kinks. But the one that I want to bring to your attention
4 is in reference to Chapter 6, Subchapter B, 6.204, the use
5 of the Community Services Block Grant funds. That was
6 completely rewritten the way it currently stands, and so
7 we would encourage the rule to continue to be under the
8 current language, not the proposed language because it's
9 in line with the federal CSBG Act. And we encourage the
10 staff to leave it as is because otherwise revising that
11 language to not just pointed to the Community Services
12 Block Grant removes the intent of the CSBG Act and the
13 local control. So we will continue to work with her to
14 offer more comment about that.

15 MR. OXER: Any questions?

16 (No response.)

17 MR. OXER: Thanks, Stella.

18 MS. RODRIGUEZ: Thank you.

19 MR. OXER: Got a quick question on that one,
20 Brooke. So how is it we are once again telling the feds
21 that we do it better than they do?

22 MS. BOSTON: So to give you the specifics of
23 the section she's talking about, I think you guys, from
24 hearing testimony over the years and hearing about the
25 program, the CSBG Act does, in fact, provide a lot of

1 latitude locally for them to decide through a needs
2 assessment, and then some planning documents that they
3 turn in to us, what the local communities need. The
4 suggestion, that is in the draft that's in your book, from
5 staff is that we're adding some specificity to what we
6 think how those funds should be used. We're saying that
7 we think that 10 percent of the funds should be used for
8 direct client assistance for people transitioning out of
9 poverty, and that an additional 20 percent of the funds
10 should be used for assistance for case client services
11 which would not necessarily have to be for transitioning
12 out of poverty.

13 You know, we've done some analysis of how
14 they're spending the money now and we think most of this
15 them would satisfy this anyway. I can tell you kind of
16 from what we've talked about with the network, if I were
17 to say what I think they would say, some of them do a lot
18 of their work through referrals and they're successful
19 with that, and so they, I think, take exception that we
20 say that you would need to do it directly.

21 MR. OXER: I'm just trying to make sure we're
22 clear. We, TDHCA, the crew on this little ship of state
23 here, the crew has a responsibility to spend those monies
24 that are provided to us through allocation from HUD and
25 elsewhere in the federal programs, in a manner that

1 reflects their expectations and our standards in terms of
2 quality and way we're looking. So what you're saying is
3 we've got a few added expectations.

4 MS. BOSTON: Correct.

5 MR. OXER: All right. You're still working
6 with Stella.

7 Stella, you're going to have plenty of shots at
8 this, we're announcing this. So your point is taken,
9 point understood, but as we've tried to point out in other
10 things, we're going to try to set the standard for how
11 these should be done.

12 Comments from the Board?

13 MR. CHISUM: I do have a question. Under
14 Chapter 7, item 4 through the definitions it's mentioning
15 about a child, household member not exceeding 18 years of
16 age. Is that the standard that we have used historically?

17 MS. BOSTON: Let me look real quick. I think
18 that's for as it would be defined if we were trying to
19 figure out a household for a child. It doesn't mean
20 someone can't get assistance if they're under 18, just to
21 clarify. Right, Megan? Because someone could be, for
22 instance, a youth under 18 and still get assistance. So
23 it's not saying that you would have to be that age to be
24 assisted.

25 MR. OXER: So it's not a matter of restricting

1 that individual.

2 MS. SYLVESTER: Megan Sylvester, Legal
3 Division.

4 That is how HUD in its rules defines a child,
5 and Chapter 7 is the part that deals with our Emergency
6 Solutions Block Grant which is a HUD-funded program and
7 our state-funded HHSP program, which because several of
8 our subrecipients of those funds use them to match to make
9 the required match under CSBG, we try to have those
10 programs work as much in concert as we can.

11 MR. OXER: So that means they sort of parallel
12 up on the definitions and such. Right?

13 MS. SYLVESTER: It makes it a whole lot easier
14 for reporting purposes.

15 MR. OXER: Okay.

16 MR. CHISUM: Thank you.

17 MR. OXER: Satisfy your question?

18 MR. CHISUM: Yes.

19 MR. OXER: Any other questions? Counselor.

20 MR. ECCLES: Just a quick note because there
21 was a staff draft that went out and public input was
22 received on that. With the Board adopting this draft of
23 rules, it begins the public comment period, the formal
24 public comment period. So there may have been some
25 discussions that ran around. If out in the public there

1 is a desire to make a formal comment on it, just because
2 you made it back during an input phase when you were
3 talking about a staff draft doesn't mean that it carries
4 forward, so if you have comments that persist, please put
5 them in now.

6 MR. OXER: Whatever you want to say, keep
7 saying it.

8 MS. BOSTON: Great clarification. Thank you.

9 MR. OXER: Of course, we don't have any
10 question about you, Stella. We know you'll make sure we
11 know.

12 Any other questions?

13 (No response.)

14 MR. OXER: Let the record reflect on this vote
15 that Dr. Muñoz has taken a brief leave.

16 With respect to items 3 collectively, 3(a),
17 (b), (c) and (d) --

18 MR. MUÑOZ: Let the record reflect he's
19 returned.

20 (General laughter.)

21 MR. OXER: Just making sure you knew there,
22 Doc.

23 We had a motion by Mr. Goodwin, second by Ms.
24 Bingham, if I recall, had public comment. Motion by Mr.
25 Goodwin, second by Ms. Bingham. Those in favor?

1 (A chorus of ayes.)

2 MR. OXER: And opposed?

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

4 Hey, Steph. Jump in the box.

5 MS. NAQUIN: Good morning, everybody. I'm
6 Stephanie Naquin, the director of Multifamily Compliance.

7 MS. NAQUIN: Item 3(e) is: Presentation,
8 discussion and possible action on rulemaking related to
9 utility allowances for the Department's multifamily rental
10 programs.

11 At the Board meeting of March 31, 2016, the
12 Board approved rulemaking regarding utility allowances,
13 and at that time staff was proposing changes to align our
14 rule with the new Treasury regulation requirements
15 regarding the Housing Tax Credit Program and HUD's
16 requirements regarding the HOME Program. The public
17 comment period for that action was April 15 through May 16
18 of this year. We were all ready to propose adoption of
19 the rules with some small tweaks based on that comment
20 when HUD released a HOMEfire for the HOME Program that
21 requires us to make additional changes.

22 MR. OXER: It's a flyer, not a fire,

23 MS. NAQUIN: No, it's a fire, it's a HOMEfire.

24 A HOMEfire is the publication through which the community
25 planning division of HUD provides guidance related to the

1 HOME Program.

2 So staff attended a QAP roundtable on June 29
3 to discuss this new guidance, so today we're requesting
4 you approve withdrawal of the proposed action from March,
5 propose repeal of the current utility allowance rule in
6 the Texas Administrative Code, and a proposal of a new
7 rule that will reflect what we would have proposed for
8 adoption, plus other changes needed due to the HOMEfire.

9 We talked a lot over the last eight months
10 about utility allowances, so today I'm going to focus on
11 just the things that are new since we last discussed this
12 issue. The HOMEfire guidance did not introduce any new
13 requirements, rather provided additional clarification of
14 the changes made to the utility allowance requirement in
15 August of 2013 when the HOME final rule was revised.
16 Prior to this clarification, it was proposed that for all
17 developments with HOME funds, the Department would
18 calculate the utility allowance using the HUD utility
19 model schedule to meet our obligations as a participating
20 jurisdiction under the HOME final rule. The HOMEfire
21 introduced alternate methods that the Department could
22 adopt to satisfy these obligations, and the rule we're
23 proposing today allows for those methods to be used.

24 To sum it up, we're asking you to withdraw the
25 rulemaking proposed in March, propose repeal of the

1 current rule in the Administrative Code, and propose a new
2 utility allowance rule, with a new public comment period
3 which will be from September 9 to October 10.

4 I'd be happy to go into any detail, explain the
5 various options for calculating utility allowance, when
6 it's appropriate to do so. That might be more information
7 than you guys are interested in, but I'd be happy to
8 answer any questions. So do you guys have any questions?

9 MR. OXER: Well, utility allowances are just
10 one of those things that are just fascinating technical
11 adventures.

12 (General laughter.)

13 MR. OXER: Essentially what we're doing is
14 taking away what we recommended, they said here's some
15 more stuff you need to add, so we're unwinding and winding
16 some more things in, straightening it out so what we're
17 recommending includes what they've told us to add.

18 MS. NAQUIN: Exactly. And hopefully, when this
19 public comment period concludes, we won't receive any
20 additional federal guidance that would interrupt what
21 we've done.

22 MR. OXER: I wouldn't count on that.

23 MS. NAQUIN: I said hopefully. I'm keeping my
24 fingers crossed.

25 MR. OXER: Exactly.

1 Any questions from the Board?

2 MR. CHISUM: My question, Mr. Chairman, are any
3 of the current provisions being grandfathered into this?

4 MS. NAQUIN: So prior to this guidance, it
5 eliminated the owner's ability to choose different utility
6 allowance methodologies when they had HOME funds on their
7 project.

8 MR. OXER: If there were HOME funds on it, we
9 got to tell them what they used.

10 MS. NAQUIN: That's exactly right. We would
11 have to calculate it under a very specific method. What
12 this HOMEfire did is allowed for the choice that they
13 previously had prior to the August 2013 HOME final rule.
14 So with the August 2013 HOME final rule, it introduced a
15 new idea, it tasked the PJ for calculating the utility
16 allowance using the HUD model schedule, and we in turn
17 have received guidance that it's not that narrow of a
18 prescribed methodology but we have some additional
19 guidance. So what this does is provide the choice which
20 was what most of the comment that we had received with the
21 previous rulemaking was about was the lack of choice. So
22 we're hoping this really kind of satisfies a lot of that.

23 MR. OXER: So the project owners and such now
24 have a little bit more latitude and we have the capacity
25 to offer them more latitude in the way they do this which

1 is better for them and for us.

2 MS. NAQUIN: Right. So as the participating
3 jurisdiction, we're still tasked with establishing it,
4 this just allows different avenues through which we can
5 meet that obligation.

6 MR. OXER: There are a number of different ways
7 you can calculate the utility allowance. They'll say we'd
8 like to do it this way, and we say, well, have you thought
9 about this. It's a give and take, like Brent was talking
10 about on the real estate analysis.

11 MS. NAQUIN: Exactly.

12 MR. CHISUM: So there was some grandfathering.

13 MS. NAQUIN: Yes.

14 MR. CHISUM: Thank you.

15 MR. OXER: I'm good with that.

16 MS. BINGHAM ESCAREÑO: Move to approve.

17 MR. OXER: Motion by Ms. Bingham to approve
18 staff recommendation on item 3(e). Do I hear a second?

19 MR. CHISUM: Second.

20 MR. OXER: And second by Mr. Chisum. Nobody
21 wants to talk. Motion by Ms. Bingham, second by Mr.
22 Chisum to approve staff recommendation on item 3(e).
23 Those in favor?

24 (A chorus of ayes.)

25 MR. OXER: And opposed?

1 (No response.)

2 MR. OXER: There are none.

3 MS. NAQUIN: Thank you.

4 MR. OXER: Thank you.

5 All right. Here's what we're going to do.

6 We're at the end of that time and we'll take a little

7 short 15-minute break. We'll be back in 15 minutes.

8 Don't go away, folks.

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

11 MR. OXER: All right. Boots in saddles. Let's
12 get back in the game, everybody.

13 Marni, I think you're up. Item 4.

14 MS. HOLLOWAY: Item 4(a) is: Presentation,
15 discussion and possible action regarding the issuance of
16 Multifamily Housing Revenue Bonds for Skyline Place
17 Apartments, Series 2016, Resolution No. 16-024, and a
18 determination notice of housing tax credits.

19 So the Board adopted the inducement resolution
20 for Skyline Place Apartments at the meeting of January 28,
21 2016 and a full application was subsequently submitted on
22 April 1. A certificate of reservation was issued in the
23 amount of \$19 million on May 31, 2016 with a bond delivery
24 deadline of October 28.

25 The applicant has disclosed undesirable

1 neighborhood characteristics, as required by 10 TAC
2 10.101(a)(4), specifically that that the Harold Wendell
3 Lang, Sr. Middle School did not achieve a 2015 Met
4 Standard rating by the Texas Education Agency. The
5 borrower is Dalcor Skyline, Ltd. and includes the entities
6 and principals as illustrated in Exhibit A in your Board
7 book. And in accordance with 10 TAC 10.301(d)(1), the
8 applicant's compliance history is designated a Category 3
9 small portfolio and was deemed acceptable by EARAC, and
10 EARAC recommends the issuance of Multifamily Housing
11 Revenue Bonds and the issuance of the determination
12 notice.

13 Skyline Place Apartments, for some background,
14 is an acquisition and rehabilitation transaction for 318
15 units serving the general population. It was originally
16 constructed in 1987. All of the units will be rent and
17 income restricted to 60 percent of AMFI.

18 As I mentioned earlier, the proposed
19 development is located in the attendance zone of the Lang
20 Middle School which failed to achieve that 2015 Met
21 Standard rating by three points on performance index 4.
22 From a historical perspective, Lang achieved a Met
23 Standard rating in 2013 and 2014, so 2015 was the first
24 time that they were IR, and preliminary data from midyear
25 student assessments indicates that they're making good

1 progress across the majority of subjects in all grade
2 levels and that they were making good progress towards
3 the objectives identified in their school improvement
4 plan.

5 When TEA released the 2016 accountability
6 ratings, Lang fell one point shy of achieving the Met
7 Standard rating, so there's still improvement required but
8 they're just one point off, they've certainly made
9 progress, and there's every indication that that will
10 continue.

11 MR. OXER: Trajectory is in the right
12 direction.

13 MS. HOLLOWAY: Yes.

14 The undesirable neighborhood characteristics
15 rule provides for consideration of acceptable mitigation
16 on the basis that there is a determination that such
17 characteristic is not of such a nature or severity that it
18 should render the development site ineligible.

19 After reviewing the historical ratings and
20 improvement over the past year, staff does not believe
21 that the development site should be considered ineligible
22 under the Uniform Multifamily Rules.

23 A public hearing for the proposed development
24 was conducted on July 5 of 2016. There was no one in
25 attendance. The Department has not received any letters

1 of support or opposition for this development. On August
2 9 of 2016, the Department received a copy of a housing
3 discrimination complaint that was filed with HUD relating
4 to the resolution of no objection which was passed by the
5 City of Dallas to fulfill the requirements of 10.204 of
6 the Uniform Multifamily Rules and our statute under
7 2306.67071. A copy of the complaint is included in your
8 Board book, along with the resolution of no objection
9 which triggered that complaint. We will point out that
10 that complaint was filed against the City of Dallas and
11 not TDHCA. Staff will continue to work with counsel and
12 the Bond Review Board regarding this issue moving forward.

13 This transaction utilizes Fannie Mae
14 multifamily pass-through mortgage-backed securities which
15 mirrors the financing structure used for the Williamsburg
16 Apartments transaction which you approved in November of
17 2015. So under the proposed structure, the Department
18 will issue tax-exempt fixed rate bonds in an amount not to
19 exceed \$19 million which is currently sized at
20 \$18,750,000. The bonds will have an interests rate
21 currently estimated to be 2.7 percent which does not
22 include servicing or guarantee fees.

23 Staff is recommending that the site be found
24 eligible under 10.101(a)(4) and is recommending approval
25 of Resolution No. 16-024 for the issuance of \$19 million

1 in tax-exempt Multifamily Housing Revenue Bonds and the
2 issuance of a determination notice of \$955,499 in 4
3 percent Housing Tax Credits for Skyline Place Apartments.

4 MR. OXER: Any questions from the Board?

5 MR. GOODWIN: Move the recommendation of staff.

6 MR. OXER: Motion to Mr. Goodwin to approve
7 staff recommendation.

8 MR. GANN: Second.

9 MR. OXER: And a second by Mr. Gann.

10 Looks like all is going well. Basically, we're
11 taking a reconstruction and remodeling of one that was put
12 in 30 years ago and we're fixing it back up and putting it
13 back in the portfolio, using the 4 percent puddle that we
14 haven't dipped into very often.

15 MS. HOLLOWAY: Actually, we've been doing a lot
16 of 4 percent deals this year.

17 MR. OXER: Better this year than before.

18 MS. HOLLOWAY: We're at 50 this year so far and
19 we were at 30 last year all for the entire year, so
20 business has picked up quite a bit.

21 MR. OXER: Got any sense on why that is? Just
22 easier to do?

23 MS. HOLLOWAY: I don't know about easier. I
24 think that it's just that it's another tool that
25 developers are out there using.

1 MR. OXER: Got a screwdriver instead of just a
2 hammer in the box now.

3 MS. HOLLOWAY: Exactly. Before long they'll
4 have pliers, and then I don't know what we'll do.

5 MR. OXER: Oh, my gosh, then we can fix fence.

6 (General laughter.)

7 MR. OXER: Okay. Motion by Mr. Goodwin, second
8 by Mr. Gann to approve staff recommendation on item 4(a).
9 Those in favor?

10 (A chorus of ayes.)

11 MR. OXER: And opposed?

12 (No response.)

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

14 Thank you, ma'am.

15 MS. HOLLOWAY: Item 4(b) is: Presentation,
16 discussion and possible action on Inducement Resolution
17 No. 16-025 for Multifamily Housing Revenue Bonds regarding
18 authorization for filing applications for private activity
19 bond authority and determination regarding eligibility
20 under 10 TAC 10.101(a)(4) related to undesirable
21 neighborhood characteristics. We are discussing the pre-
22 application we have received for Piney Woods Village.
23 That's number 16608.

24 In their pre-application, the applicant has
25 disclosed undesirable neighborhood characteristics

1 pursuant to 10 TAC 10.101(a)(4), specifically that the
2 proposed site is located in a census tract where the Part
3 1 violent crime rate exceeds 18 per 1,000 persons
4 annually, according to Neighborhood Scout, and that the
5 site is located within 1,000 feet of multiple vacant
6 blighted structures.

7 Staff has conducted a further review of the
8 proposed development site and surrounding neighborhood and
9 is recommending that the proposed site be found eligible
10 currently under those rules based on the mitigation
11 provided.

12 The proposed development is new construction of
13 290 units serving the general population in Houston. 288
14 of the units will be rent and income restricted at 60
15 percent of area median income, the remaining two units
16 will be employee occupied.

17 Regarding the undesirable characteristics, the
18 applicant disclosed the presence of a crime rater greater
19 than 18 per 1,000 persons annually and that there was
20 blight within 1,000 feet of the site.

21 With respect to the violent crimes, the
22 proposed site is not within the census tract that triggers
23 that measurement, it's actually the census tract within
24 1,000 feet of the census tract that it's in which has a
25 measurement at 21.56 per 1,000 persons annually, per

1 Neighborhood Scout. The applicant provided crime data
2 from the City of Houston's Police Department as well as
3 Harris County Sheriff's Department which indicates that
4 actually the average violent crime rate for that census
5 tract is 3.7 per 1,000 persons. They also provided
6 information regarding violent crimes within a half mile
7 radius and a three-quarter mile radius of the proposed
8 development which shows at that measurement 2.38 violent
9 crimes per 1,000 persons, both of which are well below our
10 threshold.

11 MR. OXER: Our threshold being?

12 MS. HOLLOWAY: Eighteen per thousand.

13 The proposed development is located in a
14 neighborhood of primarily older single family homes as
15 well as several multifamily developments. During a site
16 visit on June 7, staff observed several blighted
17 structures but we could not at that point determine
18 whether they were within that 1,000 foot measure. The
19 applicant has provided a map with a 1,000 foot radius from
20 each of the four corners which revealed two structures
21 that the applicant believed could be considered blighted.

22 On further assessment, staff believes that only one of
23 them could be considered blight. One of them is actually
24 an occupied home that's under repair, and therefore, not
25 of a magnitude that would render the site ineligible.

1 So under 10.101(a)(4) which is the Undesirable
2 Neighborhood Characteristic rule, there is consideration
3 for the Board to find a site eligible despite the presence
4 of undesirable neighborhood characteristics on the basis
5 that there is a factual determination that such
6 characteristic is not of such a nature or severity that it
7 would render the site ineligible. Staff believes the
8 information provided by the applicant meets this criteria
9 and the site should not be considered ineligible.

10 So keeping in mind this is an inducement, if
11 additional information should become available during the
12 full application process regarding undesirable
13 neighborhood characteristics, the site will be reevaluated
14 for eligibility and the staff would present that
15 information to the Board if applicable at that time.

16 Staff is recommending that the Board find the
17 site eligible at this time under 10 TAC 10.101(a)(4)
18 Undesirable Neighborhood Characteristics and approve the
19 Inducement Resolution No. 16-025 to proceed with the
20 application submission to the Bond Review Board for
21 possible receipt of state volume cap issuance authority
22 from the 2016 Private Activity Bond Program for Piney
23 Woods Village.

24 MR. OXER: Any questions?

25 MR. GOODWIN: Move staff's recommendation.

1 MR. CHISUM: Second.

2 MR. OXER: Motion by Mr. Goodwin, second by Mr.
3 Chisum to approve staff recommendation. Is there request
4 for comment?

5 MR. LYTTLE: Yes.

6 MR. OXER: Okay. On that one we'll have a
7 letter by Mr. Lyttle to read into the record.

8 MR. LYTTLE: Thank you, Mr. Chairman.

9 We do have a letter that's been submitted from
10 State Representative Armando Walle. His chief of staff is
11 here today as well, but they've asked me to read the
12 letter into the record.

13 It reads to Mr. Irvine:

14 "I write to you today to express my opposition
15 to the housing tax credit application for the proposed
16 affordable multifamily housing complex, Piney Woods
17 Village Apartments. On behalf of my constituents, I
18 strongly advocate against adding another unnecessary
19 multifamily housing complex to our community.

20 "My Texas House district encompasses a northern
21 section of Harris County, with some areas falling within
22 City of Houston boundaries with the rest in unincorporated
23 Harris County. Community residents end up depending on a
24 variety of different sources, government and otherwise, to
25 access basic service needs like law enforcement, water and

1 wastewater, trash pickup and others. Despite spotty
2 public services and the modest means of many of our
3 residents, we are a proud, hardworking, family-oriented
4 community. As such, our community is always concerned and
5 skeptical of development in our neighborhoods that do not
6 potentially improve on these values.

7 "As part of encouraging a safe family-oriented
8 community, my constituents and I prioritize public safety.

9 My district has previously encountered issues related to
10 apartment developers using tax incentives to build and
11 fill new multifamily construction but later failing to
12 hold up promises to maintain their new properties, letting
13 properties fall into disrepair. Such neglect not only
14 creates more visual blight and diminishes living
15 conditions, but also invites criminal activity to the area
16 and surrounding neighborhoods.

17 "An unfortunate recent example of this is only
18 a few blocks down the road across the street from this
19 proposed Piney Woods development, the Haverstock Hills
20 apartment Complex at 5619 Aldine Bender. The Haverstock
21 Hills complex is well known to be a nexus of criminal
22 activity, often related to gang activity. A simple search
23 on Google for Haverstock Hills pulls up reports of murder
24 and gang-related vandalism, drug trafficking, trespass and
25 other criminal activities, as well as different local

1 efforts to curtail this activity.

2 "The problems are of such a scale that a multi-
3 jurisdictional effort among local law enforcement entities
4 established a 217-acre East Aldine "Safety Zone" designed
5 to mitigate the gang-related criminal activity at
6 Haverstock Hills and other nearby apartment complexes.
7 While efforts like this have some occasional success,
8 problems persist to the extent that this safety zone
9 continues to be necessary. Violent crime is still a too
10 common occurrence in the area. I am confident this type
11 of environment is not safe for our families and children.

12 "The elevated level of criminal activity also
13 makes the nearby residential area less safe. Building a
14 new large multifamily complex across the street, along the
15 existing safety zone, despite their admirable yet non-
16 guaranteed goal of serving U.S. Veterans, sets this
17 proposed development up for failure and potentially
18 following the infamous footsteps of the Haverstock Hills
19 Apartments.

20 "My concern with this proposal was also derived
21 from my experience in helping constituents living in
22 Haverstock Hills and other nearby complexes needing
23 assistance dealing with neglect of their apartment issues.

24 Issues include rental contract disputes, lack of interior
25 and exterior maintenance and rodent infestations, among

1 others. My experience with these repeated issues over
2 time and under different property management continue to
3 give me pause. I worry about developers knowingly,
4 negligently, or otherwise adding to this ongoing public
5 safety and quality of life problem.

6 "Three multifamily complexes have been built
7 directly across the street from the Piney Woods Village
8 site with TDHCA financial assistance since 2001: Costa
9 Rialto, Timber Ridge I and Timber Ridge II. Another two
10 TDHCA assisted complexes are located just north of these
11 around a half mile from the Piney Woods site: Villas in
12 the Pines which was funded in 1999 on Crosswinds Blvd.,
13 and Northland Woods funded in 2003 on Vickery Drive. The
14 area community does not have a need or interest to take on
15 another multifamily experiment until, at the minimum,
16 existing criminal and poverty issues are addressed and
17 balanced with existing community need.

18 "For all of the foregoing reasons, I
19 respectfully oppose the approval of TDHCA assistance for
20 the proposed Piney Woods Village Apartments. To note, I
21 am a strong proponent of housing affordability, especially
22 programs that serve senior citizens and families and help
23 them purchase an affordable property to live in. I support
24 giving people the opportunity to live in residences that
25 foster a safe environment and help them build their credit

1 in working towards property ownership.

2 "I appreciate your time and consideration in
3 this matter. I appreciate it if you could please keep my
4 office informed of any updates.

5 "Sincerely, Armando Walle, State
6 Representative, House District 140."

7 MR. OXER: So for the TDHCA properties that
8 were mentioned, do we have any information? Is Patricia
9 here, the chief?

10 MS. HOLLOWAY: I can tell you that the
11 Haverstock development that was described as a source of
12 crime and blight is not a TDHCA property.

13 MR. OXER: Right.

14 MS. HOLLOWAY: So while it is absolutely
15 unfortunate that that's going on in that development,
16 that's not something that we as an agency have any
17 oversight of.

18 MR. OXER: Right. And I understand that, but
19 the point is that even though this would use private
20 activity bonds, it would still be in the monitoring
21 portfolio.

22 MS. HOLLOWAY: Yes. This deal would be, yes,
23 absolutely.

24 MR. OXER: The one we're talking about would
25 stay within Chief Murphy's overview for compliance, and

1 God help anybody who opposes that and doesn't stay in line
2 on that one.

3 MS. HOLLOWAY: That's right. And keep in mind
4 also that this is an inducement, so we have not received
5 and evaluated the full application.

6 MR. OXER: Okay. This is something we're
7 offering as an inducement, and it's not through every gate
8 that it will have to get through.

9 MS. HOLLOWAY: Exactly.

10 MR. OXER: It has to go wrestle with the dragon
11 over in Brent's shop yet. Right? Keep your standards
12 high, Brent.

13 Any questions? Mr. Chisum.

14 MR. CHISUM: First of all, given the tone of
15 the letter, the recommendations we just received from a
16 legislator, would it be the policy of the Board -- Tim is
17 here or our attorney -- that we should respond to that
18 from the Board? Because example, the property that is in
19 disarray nearby, we have nothing to do with and I'm not
20 sure he understands that. That's number one.

21 And number two, he obviously is totally
22 committed for us not to do this, and I think that maybe we
23 need some clarification or a sit-down meeting with him or
24 something so he better understands what we're doing, what
25 we're proposing.

1 MR. OXER: And I know but I would like to hear
2 you to speak into the record, any letter like that from a
3 member of the legislature gets a personal response, even
4 if it's a letter saying this is how we're taking this into
5 consideration.

6 MR. IRVINE: We can absolutely provide a
7 personal response, including reaching out to meet with the
8 representative's office.

9 I think it's also really important to
10 understand that although there are multifamily properties
11 in the world that run into maintenance problems and the
12 way that they operate and so forth, but the Tax Credit
13 Program and the bond program which is adjunct to it, are
14 really kind of unique. With Chief Murphy's regimen of
15 routine inspections and oversight, and frankly, the
16 financial incentives of the risk of tax recapture,
17 responsible owners and investors really, really work hard
18 to make sure these are well maintained and well run
19 properties. They're a credit to any neighborhood.

20 MR. CHISUM: Amen.

21 Can I keep going? I've got a couple more, Mr.
22 Chairman.

23 MR. OXER: Absolutely.

24 MR. CHISUM: First of all, in our relationship
25 when we know that there's a blighted area and there's some

1 crime, obviously, heavy crime in that area, does that
2 imply in any respect to us having any liability as a
3 Board, as an organization, a state agency?

4 MS. HOLLOWAY: That's really a legal question I
5 think that I am not equipped to answer. I can tell you
6 about our review process when we know about those things.

7 For instance, there was some concern about this site and
8 Teresa went and drove around and looked at it, number one,
9 to see if there was blight. She had to get a feel for the
10 neighborhood, and this is something that we do if there's
11 a concern, one of us will go out and actually physically
12 look at the property. From that, we sent questions to the
13 applicant, said we have these problems, please address
14 them.

15 And then also we had received the information
16 regarding the crime data that's in Neighborhood Scout.
17 Neighborhood Scout we use because it's available statewide
18 and it's not always the most current information but it
19 gives us that threshold to go and look deeper. So in this
20 instance what the applicant did was go to the police
21 department and the sheriff's department and say, okay,
22 what's really happening here, does the rate of violent
23 crime hit this threshold or what is it actually on the
24 ground, and proved to us that the rate was actually much
25 lower than what was presented in Neighborhood Scout.

1 MR. OXER: So they made the effort to get a
2 finer resolution.

3 MS. HOLLOWAY: Right. So those are the things,
4 the process that we go through when we note these issues
5 with any development.

6 MR. CHISUM: Next question is about the video
7 cameras, and a lot of these video cameras don't record.

8 MS. HOLLOWAY: The security measures at the
9 site?

10 MR. CHISUM: Yes. And so from a staff
11 perspective, I think it would be important you've got a
12 video camera up there but you're looking at it in real
13 time but it's not recording anything, so should something
14 happen, unless you're watching, you have no record of it.

15 MS. HOLLOWAY: And I don't know if it's
16 included in the documentation provided by the applicant.

17 MR. CHISUM: I tried to find it and I couldn't
18 find it. That doesn't mean it's not in there.

19 MS. HOLLOWAY: It doesn't really full describe
20 everything that they've told us, but certainly, as we're
21 discussing site features and they've told us that they're
22 going to provide this additional security, and we
23 certainly can make sure that that box is checked about
24 cameras actually recording and those recordings being
25 stored.

1 MR. CHISUM: I did see where they mentioned
2 that the courtesy cops or whatever, mall police, would be
3 there at night, and of course, the security police and the
4 county sheriffs are 24/7. So I would encourage that that
5 place in the clubhouse for the police/sheriff be 24/7 too.
6 It didn't say that.

7 The other question I have for you being that
8 the state law has changed for concealed carry. Are there
9 any restrictions in our projects that we fund that would
10 limit the ability of the residents to have weapons for
11 defense within their properties?

12 MS. HOLLOWAY: So far as I know there wouldn't
13 be. There's nothing in our statute or anywhere that would
14 limit a tenant's ability to legally possess firearms.

15 MR. OXER: I know this is just a question and
16 inquiry. A place of business can limit the carry on
17 premises which is inside the door; outside in the parking
18 lot they're still allowed. That's a place of business. A
19 place of residence, I don't think can do that.

20 MS. HOLLOWAY: That's far beyond my capacity.

21 MR. CHISUM: Well, Mr. Chairman, I was looking
22 and simply was there some restriction that we put on.

23 MR. OXER: Are we in a position to be able to?
24 I don't think we can do that, can we?

25 MS. HOLLOWAY: No. We do not put that

1 restriction on a property.

2 MR. OXER: Nor are we able to.

3 MS. HOLLOWAY: Right.

4 MR. OXER: So this is an inducement which we
5 are offering for the purpose of?

6 MS. HOLLOWAY: We have received a pre-
7 application and what the inducement does is allows the
8 applicant to continue the process through a full
9 application and issuing bonds. So with approval of the
10 inducement today, then we start the full application
11 process which is a much deeper review.

12 MR. OXER: So we're basically giving them an
13 idea that they're going to get the bond if they go through
14 the whole process.

15 MS. HOLLOWAY: If they go through the whole
16 process. This is in no way saying: Yes, you will get the
17 bonds. Actually the resolution includes that language
18 that says that basically this is not a guarantee of
19 issuance of bonds.

20 MR. LYTTLE: Mr. Chairman, I just want to
21 interject one thing. Yesterday, Teresa Morales and I had
22 a phone call with Representative Walle's staff about this
23 transaction, and I do know that they're aware that
24 Haverstock Hills is not a TDHCA property, and I think from
25 their perspective -- and I don't want to speak for the

1 representative, because traditionally he is not somebody
2 that would opposed affordable housing -- it is that they
3 feel it's being placed in an area that would not be set up
4 for success. But regardless, I'm sure Tim and I can go
5 meet with them and bring Marni along with whoever else and
6 work that out.

7 MR. OXER: Okay. Point taken. Thanks,
8 Michael.

9 MR. OXER: This is an inducement to continue
10 the process to go through their application.

11 MS. HOLLOWAY: Yes.

12 MR. OXER: As opposed to them going through a
13 full application and making that expense and we say no,
14 you didn't do this, we wouldn't give you the money, they
15 at least get some sense that we're inclined to consider
16 it.

17 MS. HOLLOWAY: We will consider their
18 application.

19 MR. OXER: But it still has to go through all
20 of the REA and fine-toothing.

21 MS. HOLLOWAY: Yes, and the Bond Review Board
22 process.

23 MR. OXER: Which I assume will include the Real
24 Estate Analysis will look at the market analysis because
25 the representative indicated that there's a concentration

1 of units that are already nearby. So they'll have to
2 defend their capacity or capture rate for that area.

3 MS. HOLLOWAY: Yes, that is a fact.

4 MR. OXER: Okay. Any other questions?

5 (No response.)

6 MR. OXER: Okay. Motion by Mr. Goodwin and
7 second by Mr. Chisum to approve staff recommendation on
8 item 4(b). We've had public comment. Are there any other
9 questions from the Board?

10 (No response.)

11 MR. OXER: Okay. Motion by Mr. Goodwin, second
12 by Mr. Chisum. Those in favor?

13 (A chorus of ayes.)

14 MR. OXER: And opposed?

15 (No response.)

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

17 MS. HOLLOWAY: Item 4(c) is: Presentation,
18 discussion and possible action on Inducement Resolution
19 No. 16-026 for Multifamily Housing Revenue Bond regarding
20 authorization for filing applications for private activity
21 bond authority for the 2016 waiting list for Robert E. Lee
22 Apartments.

23 A bond pre-application for Robert E. Lee
24 Apartments has been submitted to the Department for
25 consideration of an inducement resolution. The pre-

1 application included disclosure of undesirable
2 neighborhood characteristics under 10 TAC 10.101(a)(4),
3 specifically that one of the schools located in the
4 attendance zone of the development did not achieve a 2015
5 Met Standard rating by the Texas Education Agency.

6 This item differs from the previous item in
7 that we have not yet considered this undesirable
8 neighborhood characteristic. Staff will conduct further
9 review and present findings and make a recommendation as
10 to eligibility of the site under the undesirable
11 neighborhood characteristics rule at the time of
12 consideration for an award of housing tax credits and
13 issuance of private activity bonds.

14 So the last one, we had looked at it and we are
15 saying that, yes, right now today it's okay and we're
16 going to look at it again later. This one we're saying we
17 haven't started looking at it, the applicant would like to
18 continue forward with the process. We will bring back to
19 you at final approval our recommendation regarding site
20 eligibility.

21 MR. OXER: So there's no request for inducement
22 on this one?

23 MS. HOLLOWAY: This is a request for
24 inducement, this is not a request to find the site
25 eligible or not at this time. We are informing you that

1 there's been this disclosure and we have not examined it
2 yet.

3 MR. OXER: Okay. This disclosure is related to
4 the school as opposed to the neighborhood characteristics.

5 MS. HOLLOWAY: Yes, right. And that's all we
6 know of it at this point is the schools. We haven't taken
7 a deeper dive to see if there's anything else.

8 MR. OXER: I'm sorry to interrupt, but
9 essentially on each one of them we're not saying no now.

10 MS. HOLLOWAY: Yes, that's exactly what it is.

11 MR. OXER: Okay.

12 MS. HOLLOWAY: The Robert E. Lee Apartments is
13 the acquisition and rehabilitation of an existing 72-unit
14 development in San Antonio serving the general population.

15 All units will be restricted for occupancy and rents at
16 60 percent of AMI.

17 This is a ten-story structure originally
18 constructed in the early 1920s in downtown San Antonio.
19 It was last renovated in 1994 with non-competitive housing
20 tax credits. The initial compliance period ended in 2011,
21 however, the extended use period extends through 2026.

22 Preliminary information submitted in the pre-
23 application reflects approximately \$35,000 per unit in
24 rehabilitation costs. This is a historic building; they
25 are also applying for historic tax credits.

1 The Department has received letters of support
2 from Mayor Ivy Taylor, State Representative Diego M.
3 Bernal, City Councilman Robert Treviño, and San Antonio
4 ISD Superintendent Pedro Martinez. No letters of
5 opposition have been received.

6 Staff recommends approval of Inducement
7 Resolution No. 16-026 to proceed with the application
8 submission to the Bond Review Board for possible receipt
9 of state volume cap issuance authority from the 2016
10 Private Activity Bond Program for Robert E. Lee
11 Apartments. It is important to note that Board approval
12 of this action does not indicate that the site has been
13 found eligible under 10 TAC 10.101(a)(4) Undesirable
14 Neighborhood Characteristics. That determination will be
15 made in connection with the resolution approving issuance
16 of the bonds at a future date.

17 MR. OXER: So it's not that we're saying it has
18 been found eligible, we're simply not saying that it has
19 been found ineligible.

20 MS. HOLLOWAY: We have received disclosure, we
21 are not making a recommendation on that item at this time.

22 MR. MUÑOZ: Move staff's recommendation
23 Inducement Resolution No. 16-026.

24 MS. BINGHAM ESCAREÑO: Second.

25 MR. OXER: Item 4(c). Motion by Dr. Muñoz and

1 second by Ms. Bingham. Did I hear that?

2 Any other questions?

3 (No response.)

4 MR. OXER: Okay. Motion by Dr. Muñoz, second
5 by Ms. Bingham to approve staff recommendation on item
6 4(c). Those in favor?

7 (A chorus of ayes.)

8 MR. OXER: And opposed?

9 (No response.)

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

11 MS. HOLLOWAY: Thank you.

12 MR. OXER: Okay, Brent.

13 MS. HOLLOWAY: We are pulling that item from
14 the agenda.

15 MR. OXER: We got finished early.

16 MR. MUÑOZ: You're so efficient.

17 MR. OXER: Keep the trains running on time,
18 that's what good engineers do. Right?

19 All right. We have now reached the point in
20 the agenda where we'll receive public comment on matters
21 other than items for which there are posted agenda items.

22 As I think everyone would recognize by now or should
23 know, we cannot respond to these but we'll simply gather
24 information and public comment to build future agendas.

25 You guys know to get up here. Now, how long

1 have you been in the game here? Right?

2 MR. ALCOTT: You recognize me after all these
3 times.

4 MR. OXER: After all this time.

5 MR. ALCOTT: I am Tim Alcott from the San
6 Antonio Housing Authority, and thank you for listening to
7 me for a few minutes.

8 MR. OXER: Welcome back.

9 MR. ALCOTT: So we had a meeting yesterday,
10 staff is doing a great job.

11 MR. OXER: You're on the clock, you know that.

12 MR. ALCOTT: Okay. About the changes to the
13 QAP and they're doing a good job. We applied for a Choice
14 grantee, San Antonio Housing Authority is. We didn't get
15 tax credits this year, that's the way the cookie crumbles
16 so we're not complaining. But when we told HUD about it,
17 they were surprised. They said, If we would have known
18 early on that the QAP was written in a way whereby you
19 wouldn't be able to leverage your dollars because you're
20 building in the inner city. And the rules had changed on
21 us midstream, so the first phase we're so thankful we got
22 tax credits, the second phase we're so thankful, the third
23 phase the rules changed, and they said you're not an area
24 of high opportunity, and so because you're not an area of
25 high opportunity, that's why you got the Choice Grant but

1 you will not get the tax credit dollars.

2 And they said, You know what, this causes us to
3 pause on all future applications to Texas that are Choice
4 grantees. Harlingen just got an implementation grant
5 which means they get to do the neighborhood component
6 because normally they do the neighborhood, but to get the
7 full grant they have to show that they can leverage their
8 tax dollars. And what they're saying is, the
9 conversations I'm having with them is: Listen, all these
10 other states, they have revised their QAPs to specifically
11 give additional points to folks that are Choice or Promise
12 grantees.

13 Texas doesn't do that. And so the ability for
14 Texas, all across the state because there's been
15 applicants probably from every major city asking for
16 Choice Grants, all these people, all these different
17 cities will not have the same opportunity of other states
18 to get these Choice dollars the way it's currently
19 written.

20 So I specifically request that when you revise
21 the QAP you put the low income from Texas, let them have
22 the same opportunity to get these Choice Grants as other
23 states. I can't think of a reason why we wouldn't want to
24 do this. Why not have Texas on the same playing field as
25 other states. So that's my humble request.

1 MR. OXER: Appreciate your comments, Tim.

2 And this is simply a notification, but our QAP
3 discussion continues today. Marni, is that correct? Do
4 you want to make a quick note of that just to advise
5 everybody?

6 MS. HOLLOWAY: That's right. Our QAP meeting
7 yesterday afternoon was fairly spirited, and we didn't
8 actually get to cover all of the ground that we really
9 wanted to with the group. There's still a couple of
10 scoring items that we would like to discuss and make sure
11 that everybody has an opportunity to be heard. Because of
12 that, we will be reconvening in this room at 1:30 this
13 afternoon. We have the room for the rest of the day and
14 hopefully we'll be able to work through a few more of
15 those items that we didn't get to yesterday.

16 MR. OXER: You get to sit up here and I get to
17 go home.

18 MS. HOLLOWAY: That's right. And I would point
19 out, I don't know if the Board is aware, we have chunk of
20 the QAP posted on forum right now, so it's an opportunity
21 for everyone to see what's up there and provide us their
22 written comments. We've been encouraging everyone to do
23 that. There have been lots of views and not so many
24 comments.

25 MR. OXER: We offer everybody an opportunity at

1 this point, we like to think a fair opportunity to make
2 comments for items to be considered on the agenda for
3 future meetings. If anybody here has a comment to make on
4 the QAP process, there's a forum. Bobby, I know you're
5 out there and I appreciate that you're here, but there's a
6 forum, an online forum to do that. For those comments,
7 while we will be here and they will be recorded, they're
8 best made into that process that you've set up online to
9 receive public comments on the QAP.

10 MS. HOLLOWAY: And it's actually technically
11 not public comment at this point, it's like stakeholder
12 input. Once we bring you the draft and we go through all
13 that process, then we get to the formal public comment
14 part.

15 MR. OXER: Okay, good.

16 Bobby, have you got something else?

17 MR. BOWLING: I understand what you're saying,
18 Mr. Chairman. Bobby Bowling, developer from El Paso. I
19 wouldn't have come up here but I do want to comment on the
20 other public comment that came here before you.

21 I can't think of a reason why you wouldn't do
22 what the last speaker was asking you. You've had lots of
23 hearings about this before, and I again have always
24 advocated for and I'm still strongly advocating for don't
25 make an unlevel playing field between housing authorities

1 and private developers. That's specifically what was just
2 asked of you and I don't think that's right. I understand
3 through the QAP process you have repeatedly not done that,
4 unlevel playing field, you've always kept it level, and I
5 just wanted to come up here and give you, since you heard
6 one side of that. The process is just beginning.

7 MR. MUÑOZ: Bobby, I don't mean to interrupt.
8 I appreciate what you're saying. I'm commenting --

9 MR. OXER: We can't.

10 MR. CHISUM: Can't do it.

11 MR. OXER: This is to build agendas for future
12 meetings.

13 MR. MUÑOZ: But if there's a mechanism to
14 communicate these kinds of concerns outside of this, I
15 mean, this is a forum or an opportunity on an item for a
16 future meeting. Is that what we're hearing, or are we
17 hearing comment on what was commented that shouldn't have
18 been commented now?

19 MR. BOWLING: Probably the second, Dr. Muñoz. I
20 apologize.

21 MR. OXER: And the intent is to make
22 opportunity because we really can't comment or digest it
23 and take it in to consideration, but the point is we can
24 hear everybody but recognize that we can't respond to
25 anybody.

1 MR. BOWLING: I understand.

2 MR. IRVINE: I think the bottom line is if
3 you've got ideas on the QAP, whether it has to do with the
4 level of tilt on the playing field or Choice Grants or
5 anything else, bring them to Marni, to the QAP online
6 forum, to me, whatever, and we'll work through it to the
7 best of our ability and bring something back.

8 I also want to let people know just because
9 there are particular documents up on the forum that are
10 out for discussion and consideration or whatever, check
11 regularly because I would anticipate that as we get
12 feedback rather than continuing to receive input about
13 what's up there that people don't like, we will come up
14 with things that are different and we'll propose some
15 different ideas, it will evolve.

16 MR. GANN: Mr. Chairman?

17 MR. OXER: Yes, sir.

18 MR. GANN: I'd like to bring up a subject that
19 came up a little earlier today that I think we need to be
20 having some research and development on so we can start
21 making better decisions or thinking about it, and that's
22 the part where I just heard that there's a 1920 project
23 that had been approved for two or three different
24 financial situations, and so now we're into an extended
25 long time frame on a 1920 project or a 1940 project --

1 we've had several of those. We've got to determine how
2 many times we can refinance on some of these things
3 because these properties are destined to have
4 dysfunctional situations simply because in 1920 they
5 didn't have what we have today, like air conditioning, for
6 instance, little stuff.

7 MR. OXER: Indoor plumbing.

8 MR. GANN: But we can't carry these things out
9 30 years from now and still have to guarantee that they're
10 going to close. That's really bothering me, and we've
11 never had the problem because we've never been this far
12 out in the deal. But somebody has got to do some research
13 and development to say, hey, look, this is going to work.

14 And we know every project is going to have to be separate
15 because some of them may be totally --

16 MR. OXER: And that's Brent's job to tell us if
17 it's going to work.

18 MR. GANN: Okay. I love him to death but I
19 don't think he can handle all that. It's a tough
20 situation, though, really, if you think about it.

21 (General laughter.)

22 MR. OXER: And it is.

23 MR. GANN: And you can't see functional
24 obsolescence, it's hard to see sometimes.

25 MR. OXER: A lot of times that functional

1 obsolescence is hidden behind the plaster, the drywall.

2 MR. GANN: But we're still guaranteeing it for
3 30 years basically, is the way I'm looking at it, and we
4 just need to really realize how many times do we want to
5 reinvest money in these projects when after a while they
6 need to be self-sufficient anyway.

7 MR. IRVINE: I would just like to chime in with
8 a pretty important clarifying remark. This is a private
9 sector program, the Tax Credit Program. We're attracting
10 private capital that's coming in and it's really those
11 investors who are providing that 30-year certainty, it's
12 not our certainty. We certainly underwrite them to say to
13 the best of our knowledge and ability these deals are
14 going to work for 30 years, but really, the ultimate
15 challenge is to the investor/developer.

16 But I agree with you completely that we need to
17 probably tee up some additional research and discussion
18 for a future meeting on the whole issue of fast
19 approaching functional obsolescence on some of these
20 properties.

21 MR. GANN: Thank you.

22 MR. CHISUM: Well said.

23 MR. OXER: And point well made, Tom.

24 All right. Bobby, have you got anything else?

25 MR. BOWLING: I don't.

1 MR. OXER: Okay. Anything else from anybody
2 else in the audience?

3 (No response.)

4 MR. OXER: Okay. Any of the staffers? Tom, we
5 haven't heard from you today.

6 MR. GOURIS: Amen.

7 (General laughter.)

8 MR. OXER: Thank you.

9 Any member of the Board? Anyone on the dais?

10 (No response.)

11 MR. OXER: Okay. I get the last word. It's a
12 good thing we do here and it's worth the effort that we
13 put into it. Sometimes it's hard. Marni was a bit
14 reserved in her assessment of the discussion in
15 yesterday's QAP session, so one of the things that makes
16 it good is Texas puts this into a pot, heats it up nice
17 and hot and beat it up till it's clean and we make
18 something really good come of it, which is why we lead the
19 nation in how we do this.

20 With that, I'll entertain a motion to adjourn.

21 MR. CHISUM: So moved.

22 MS. BINGHAM ESCAREÑO: Second.

23 MR. OXER: Motion by Mr. Chisum, second by Ms.
24 Bingham to adjourn. Those in favor?

25 (A chorus of ayes.)

1 MR. OXER: See everybody in two weeks.
2 (Whereupon, at 12:11 p.m., the meeting was
3 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: August 25, 2016

I do hereby certify that the foregoing pages, numbers 1 through 95, 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) 08/30/2016
(Date)

On the Record Reporting
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