

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E 11th Street  
Austin, Texas

March 23, 2017  
9:00 a.m.

BOARD MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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## HOME AND HOMELESS PROGRAM

- f) Presentation, Discussion, and Possible Action Regarding Additional Authority to Reallocate Recaptured Program Year 2015 Emergency Solutions Grants Program Funding (PULLED)

## HOUSING RESOURCE CENTER

- g) Presentation, Discussion, and Possible Action on the re-release of a draft 2017 State of Texas Consolidated Plan: One-Year Action Plan

## MULTIFAMILY FINANCE

- h) Presentation, Discussion, and Possible Action on the Issuance of a Determination Notice for Housing Tax Credits with another Issuer  
17400 Casa Del Rio/Villa Hermosa Del Rio
- I) Presentation, Discussion, and Possible Action on Inducement Resolution No. 17-014 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List for Emli at Liberty Crossing Apartments

## TEXAS HOMEOWNERSHIP

- j) Presentation, Discussion and Possible Action regarding publication of a Request for Proposal ("RFP") for a Program Administrator for the Texas First Time Homebuyer Program, the My First Texas Home Program, the Texas Mortgage Credit Certificate (MCC) Program, and other first-time homebuyer programs that may be implemented by the Department

## RULES

- k) Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 6 Community Affairs Programs, including the 1) proposed amendments in Subchapter A, General Provisions, of §6.2 Definitions, §6.4 Income Determination, and §6.5 Documentation and Frequency of Determining Customer Eligibility; and 2) proposed amendments in Subchapter C, Comprehensive Energy Assistance Program ("CEAP"), of

§6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component; and directing that they be published for public comment in the *Texas Register*

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- b) Quarterly Report on Texas Homeownership Division Activity
- c) Report on Department=s Fair Housing Activities

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(ABOVE TWO ITEMS PULLED)

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P R O C E E D I N G S

1  
2 MS. BINGHAM ESCAREÑO: Good morning. Welcome  
3 to the March 23 meeting of the Board of the Texas  
4 Department of Housing and Community Affairs.

5 Yep, it's me. The girls are taking over.  
6 There's even a Lieutenant Tweety here today.

7 (General laughter and applause.)

8 MS. BINGHAM ESCAREÑO: Glad to be here.  
9 We'll take roll. Mr. Tolbert is not here.  
10 Mr. Gann?

11 MR. GANN: Here.

12 MS. BINGHAM ESCAREÑO: Mr. Goodwin?

13 MR. GOODWIN: Here.

14 MS. BINGHAM ESCAREÑO: Dr. Muñoz?

15 DR. MUÑOZ: Present.

16 MS. BINGHAM ESCAREÑO: We do have a quorum.

17 Let's go ahead and stand for the pledge.

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

20 MS. BINGHAM ESCAREÑO: Before we start the  
21 consent agenda, do we have a resolution for Fair Housing  
22 Month?

23 MR. IRVINE: We do. This is, as you all know,  
24 a very, very important principle and this is the time of  
25 year when we commemorate Fair Housing Month, and I would

1 offer the following resolution for your adoption.

2 "WHEREAS, April 2017 is Fair Housing Month and  
3 marks the 49th anniversary of the passage of the federal  
4 Fair Housing Act (Title VIII of the Civil Rights Act of  
5 1968), signed by U.S. President Lyndon Baines Johnson on  
6 April 11, 1968;

7 "WHEREAS, the Fair Housing Act provides that no  
8 person shall be subjected to discrimination because of  
9 race, color, national origin, religion, sex, disability,  
10 or familial status in the sale, rental, financing, or  
11 advertising of housing and charges the Secretary of the  
12 U.S. Department of Housing and Urban Development ("HUD")  
13 with administering HUD programs in a manner that meets the  
14 requirements of the law and affirmatively furthers the  
15 purposes of the Fair Housing Act;

16 "WHEREAS, the Texas Department of Housing and  
17 Community Affairs administers HUD and other housing  
18 programs that promote the development and supply of safe,  
19 decent, affordable housing for qualifying Texans;

20 "WHEREAS, it is the policy of the Texas  
21 Department of Housing and Community Affairs to support  
22 equal housing opportunity in the administration of all of  
23 its programs and services, including encouraging equitable  
24 lending practices for its homebuyer programs and ensuring  
25 compliance with Fair Housing rules and guidelines for its

1 multifamily developments;

2 "WHEREAS, the Texas Department of Housing and  
3 Community Affairs, through its programs, workshops,  
4 trainings, and materials seeks continually to educate  
5 property managers, consultants, program administrators,  
6 architects, contractors, developers, engineers, lenders,  
7 real estate professionals, and others about the importance  
8 of their commitment and adherence to the requirements of  
9 the Fair Housing Act;

10 "WHEREAS, the Texas Department of Housing and  
11 Community Affairs encourages the development of  
12 educational fair housing programs in local communities  
13 throughout the State and is seeking to build new  
14 opportunities for fair housing education and training; and

15 "WHEREAS, the Texas Department of Housing and  
16 Community Affairs and the State of Texas support equal  
17 housing opportunity and housing choice in accordance with  
18 the Fair Housing Act not only during Fair Housing Month in  
19 April, but throughout the entire year;

20 "NOW, therefore, it is hereby

21 "RESOLVED, that the Governing Board of the  
22 Texas Department of Housing and Community Affairs does  
23 hereby celebrate April 2017 as Fair Housing Month in  
24 Texas, and encourages all Texas individuals and  
25 organizations, public and private, to join and work



1 together in this observance for free and equal housing  
2 treatment and opportunity for all."

3 And we recommend your adoption of that  
4 resolution.

5 MR. GOODWIN: So move adoption of the  
6 resolution.

7 MS. BINGHAM ESCAREÑO: Mr. Goodwin motions.

8 DR. MUÑOZ: Second.

9 MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds.

10 All those in favor, aye.

11 (A chorus of ayes.)

12 MS. BINGHAM ESCAREÑO: Opposed, none. The  
13 motion carries. Thank you very much. Fair Housing Month,  
14 that's awesome.

15 Okay. The consent agenda, are there any items  
16 that the Board or staff recommend to be pulled from the  
17 consent agenda? I had 1(f), so we're going to pull 1(f).

18 Any other changes to the consent agenda? Any  
19 comments from staff, management, Board, public on items on  
20 the consent agenda?

21 (No response.)

22 MS. BINGHAM ESCAREÑO: Just housekeeping for  
23 anyone that isn't aware, so if do have any comment to make  
24 on an agenda item, if you'd move close to the front, the  
25 first two rows would be great.

1           There appears to be no comment on the consent  
2 agenda. We'll entertain a motion for approval of the  
3 consent agenda.

4           MR. GANN: I so move.

5           MS. BINGHAM ESCAREÑO: Mr. Gann moves.

6           MR. GOODWIN: Second.

7           MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

8           All those in favor?

9           (A chorus of ayes.)

10          MS. BINGHAM ESCAREÑO: Opposed?

11          (No response.)

12          MS. BINGHAM ESCAREÑO: Motion carries.

13          None of the report items need to be reported?

14          MR. IRVINE: No.

15          MS. BINGHAM ESCAREÑO: Okay. So we'll move on  
16 to agenda item 3, Mr. Irvine.

17          MR. IRVINE: Thank you, Madam Chair.

18                 First, we have item 3(a). Back in 2002, in  
19 response to a Sunset recommendation, there was a provision  
20 put into statute that asked the Board to delineate its  
21 policymaking functions and clarify their extent and then  
22 reserve managerial functions to the staff. This is  
23 obviously an appropriate separation.

24                 And we came upon a situation recently where we  
25 were kind of pondering what was the real staff authority

1 and what was the Board authority in this regard, and it  
2 specifically related to procurements. And it seemed to me  
3 that a really simple and logical way to do this would be  
4 by consulting that resolution 02-056, so I went back to  
5 the resolution, which is now quite old, and while I think  
6 it should remain in effect, we saw a desirability of  
7 providing some additional clarity, specifically in the  
8 context of procurement.

9 Procurements are a very important subject,  
10 they're getting a lot of scrutiny through our oversight  
11 offices, and we believe that it's appropriate that the  
12 Board be appropriately engaged on a procurements, and as  
13 we view it, the policy decision to enter into a  
14 procurement activity is clearly something that the Board  
15 should be focused on, you should know about our  
16 significant procurement.

17 But the way the procurement itself works, it  
18 really kind of disengages the Board from the procurement  
19 process itself, and the way that procurement occurs is we  
20 put out requests for proposals or applications or  
21 information or qualifications, whatever the particular  
22 procurement is, we specify what the criteria for selection  
23 are, and then we have internal selection committees that  
24 use those objective criteria to evaluate applicants for  
25 procurements, so we make the decisions in accordance with

1 the procurement documents themselves, and then we end up  
2 reporting those to the Board but the Board is not making  
3 those actual selections.

4 When we engage in a new area of procurement, we  
5 are going to bring those to the Board, and this document  
6 makes that clear. We want you to have the opportunity to  
7 weigh in and figure out how we should be going about these  
8 things, and frankly, if we should be going about them.  
9 However, where we've got an established area where we are  
10 using procurement, we view things like re-procuring for  
11 the exact same service, although it might be through a  
12 different provider, or even simple renewals of  
13 procurements, that those are things that are managerial  
14 and appropriately reserved to staff.

15 So with that background, I would ask if you  
16 would adopt this resolution confirming this expansion of  
17 the guidance under Resolution 02-056.

18 MR. GOODWIN: So move.

19 MS. BINGHAM ESCAREÑO: Mr. Goodwin motions. Is  
20 there a second?

21 MR. GANN: Second.

22 MS. BINGHAM ESCAREÑO: Mr. Gann seconds. Is  
23 there any further discussion?

24 (No response.)

25 MS. BINGHAM ESCAREÑO: All those in favor, aye.

1 (A chorus of ayes.)

2 MS. BINGHAM ESCAREÑO: Opposed, same sign.

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Motion carries.

5 MR. IRVINE: And in full disclosure, you should  
6 be begin to expect that we will have periodic reports to  
7 the Board about our procurement activities. The agency  
8 tries very hard to be a leader in procurement, to do it  
9 fairly and compliantly and publicly.

10 MS. BINGHAM ESCAREÑO: Thanks, Tim.

11 MR. IRVINE: Sure.

12 MS. BINGHAM ESCAREÑO: Tim, there's another  
13 item (b).

14 MR. IRVINE: The next one, this is regarding  
15 the syndication issues that are frankly impacting the  
16 ability of a lot of 2016 awardees to proceed to close.  
17 Yesterday we had our monthly meeting which is a meeting  
18 with the development and investor and lender and advisor  
19 and consultant community, the collective group of folks  
20 who really come together to make multifamily programs  
21 work -- it was probably the best attended one of these  
22 meetings I've seen, at least in recent memory, and we  
23 talked about these issues.

24 I think that one of the things that's important  
25 to me is that we send, to the extent that we can, signals

1 that will calm markets and help people appreciate that we  
2 are committed to working within the constraints of our law  
3 and our resources to help these deals get done, but on the  
4 other hand, we do have constraints, and unfortunately, one  
5 of our constraints is time. Some of the things that might  
6 be accomplished are things that cannot be done except  
7 through rulemaking, and those would occur as we develop  
8 the 2018 QAP.

9           Anyway, I wanted to just kind of go over some  
10 of the things that we think can be done to help these  
11 deals and to seek your guidance as to whether you endorse  
12 any, all or none of them, and also to seek additional  
13 input from the public. If you've got other ideas, this is  
14 the appropriate forum to bring them forward and present  
15 them.

16           The first thing that obviously is available to  
17 anybody is that you can return your credits.  
18 Unfortunately, in current rule, the return of credits  
19 involves a potential for a penalty item in subsequent  
20 applications, so one of the things we recommend is that  
21 for these deals we simply waive that penalty as a way to  
22 encourage people who just can't get it done to go ahead  
23 and return the credits so that hopefully we can give them  
24 to somebody who can move them along and get them done.

25           The second thing that is a possible solution is

1 providing gap financing. You know, if you had a 10  
2 percent decline in your syndication price on a \$10 million  
3 deal, a million times ten, that's roughly a million dollar  
4 shortfall that's created as a gap that you have to  
5 address. You do have other tools that can address that  
6 gap, but they can only go so far. One of the things you  
7 can do is you can defer developer fee if it's sufficient,  
8 you can look to other lending sources and potential  
9 additional sources, and one of the things you can do is  
10 come to the Department and seek multifamily loan funds.

11 Our primary sources are HOME funds. HOME  
12 funds, by law, must be used 95 percent out of  
13 participating jurisdictions. In other words, they are  
14 directed predominantly to rural Texas so they would not be  
15 available to assist large urban deals.

16 The next source of funding that we have is the  
17 TCAP repayment funds. TCAP, of course, is the Tax Credit  
18 Assistance Program which was created under the American  
19 Recovery and Reinvestment Act of 2009. It was kind of  
20 controversial at the time back in 2009 when we were  
21 putting together the TCAP program, we made it repayable  
22 loans, and thank goodness we did because we now have a  
23 significant income stream coming off of TCAP and that  
24 generates lendable funds. Unfortunately, at the moment  
25 virtually all of the TCAP funds are spoken for and

1       oversubscribed, so as additional TCAP repayment funds do  
2       become available, however, they could potentially be  
3       redirected in some fashion to this activity.

4               The next option we've got is the concept of  
5       material amendment to our deal. If you, for example, want  
6       \$10 million to develop a property and it's going to be  
7       five buildings serving 100 units, perhaps you might reduce  
8       that to four buildings serving 80 units. As long as your  
9       salient characteristics that supported your scoring  
10       remained the same and there's no Fair Housing impact, for  
11       example, like cutting back unduly on larger units that  
12       might serve households with children or cutting back on  
13       units that would serve persons with disabilities, as long  
14       as you continue to meet those criteria and have an amended  
15       application that would have supported your award, that  
16       seems like a possible viable path.

17               There are other things that I think can be done  
18       to value engineer these deals. You know, instead of a 75-  
19       foot swimming pool, you might consider a 50-foot swimming  
20       pool; instead of a 3,000 square foot clubhouse, you might  
21       consider a 2,000 square foot clubhouse. But these kinds  
22       of value engineering things can only get you so far, and  
23       if your gap is huge, you may need actually to deal with  
24       units themselves. So that's a possibility.

25               The final one is probably the most ill-formed



1 and controversial. People have spoken about using force  
2 majeure to deal with these situations. Under force  
3 majeure under our current rule if you have a force majeure  
4 event, you can return your credits and basically get those  
5 credits re-awarded as new credits in the year when they're  
6 re-awarded. That, in effect, allows you additional time  
7 to get your deal done and hopefully it would allow you  
8 enough time that markets could stabilize and you could  
9 engineer one or more aspects of your development and/or  
10 financing in a way that could enable it to move forward  
11 and get done.

12 We really don't think that the kinds of  
13 declines that have been seen in the market right now  
14 constitute force majeure. It's the nature of markets that  
15 they are volatile, there is variability from day to day,  
16 month to month, year to year. I don't think what we're  
17 seeing is anywhere near on the magnitude of the decline  
18 that we saw, for example, in the 2008 economic situation.

19 But they are significant and we would be open to looking  
20 at a proposal for possible inclusion in the 2018 QAP that  
21 we would present to you for consideration where there was  
22 some opportunity for discreet treatment of these 2016  
23 deals to return and refresh.

24 I think it's important, however, to bear in  
25 mind that there's a dearth of information, we know of a

1 few deals that have been able to close. These seem to be  
2 predominantly deals that had already pre-sold into funds  
3 or deals where they had some important Community  
4 Reinvestment Act characteristics that made them highly  
5 desirable to the investors. We don't have a lot of  
6 information on the other deals. We have asked for the  
7 Texas Affiliation of Affordable Housing Providers to  
8 conduct a poll and give us some more granular data about  
9 these deals. And I think it's really important that as we  
10 look at this data we bear in mind that if folks were able  
11 to get deals done, especially in very difficult markets --  
12 for example, I heard of a deal that went ahead and got  
13 closed in a smaller South Texas market and that's a real  
14 challenge.

15 So we don't want to just have a one-size-fits-  
16 all approach to this where if you're a 2016 deal and you  
17 had some kind of pricing deterioration, congratulations,  
18 here's a bunch of help. We want to provide continuing  
19 incentives for the people that have the capacity and have  
20 the grit and determination to get their deals done.

21 So that's pretty much where we are. We have a  
22 recommended action item for you to consider to approve  
23 moving forward with some or all of these concepts, and as  
24 I said, we certainly solicit input from the community at  
25 large.

1 I'll be glad to answer any questions.

2 MR. GOODWIN: I've got a question. So if I'm a  
3 developer and I have a 2016 approved deal and I return the  
4 credits, and then in 2017, let's assume that I file for  
5 three developments. Do each one of those developments in  
6 2017 receive a five-point penalty, or just one?

7 MR. IRVINE: It's my understanding that only  
8 one of those would be penalized, but five points basically  
9 knocks it out.

10 MR. GOODWIN: So now take a different  
11 situation. I've got three in 2016, I can't do any of the  
12 three, I go to do one deal in 2017, do I have a five-point  
13 penalty or a 15-point penalty?

14 MR. IRVINE: Five.

15 MR. GOODWIN: Five-point penalty.

16 MS. BINGHAM ESCAREÑO: But you're saying  
17 there's almost no difference between five and 15 because  
18 with the margin, the way they look as competitive as they  
19 are, five would knock you out regardless.

20 MR. IRVINE: Typically five would be a D-Q.

21 MS. BINGHAM ESCAREÑO: And if you did the force  
22 majeure thing -- which I have a hard time getting my arms  
23 around, but something like that, and you said something  
24 about contemplating a provision in the 2018 QAP that would  
25 allow for it -- if somebody returned their credits, then

1 what your work group or what you guys were discussing was  
2 are they kind of reserved? Like in other words, they  
3 return them, they want to try to do a deal and get them  
4 back, and when the conditions change or in 2018 when  
5 something in the QAP allows it to happen, are those kind  
6 of earmarked credits for that developer?

7 MR. IRVINE: Right. It would be a one-for-one  
8 exchange where your 2016 credits would be returned and  
9 whenever you get them, your placed in service deadline  
10 would be two years out, so you would have basically bought  
11 additional time with what are effectively refreshed or  
12 extended credits. But from a legal perspective, we can't  
13 refresh or extend credits, we can only take them back and  
14 re-award them. Because of the one-for-one character of  
15 this, it would not impact the ongoing competition for the  
16 other credits.

17 MS. BINGHAM ESCAREÑO: Okay.

18 MR. IRVINE: I also want to talk a little bit  
19 more about the loan terms. We've talked previously about  
20 this and there's a lot of pressure for soft financing,  
21 cash flow loan structures, zero percent interest  
22 structures, and I want to underscore that repayment of  
23 loans is critical to providing the resources to keep these  
24 programs going and to do future deals. And there's a  
25 special interest for the repayment of the interest

1 component because that is our primary source for permanent  
2 supportive housing, and without some aggressive approach  
3 to identify an alternative source, what would effectively  
4 happen would be permanent supportive housing would be the  
5 one bearing the brunt of subsidizing the other deals.

6 MS. BINGHAM ESCAREÑO: So did you completely  
7 depress everybody that knows and wants to come up and  
8 comment, or were they worn out yesterday or whenever the  
9 meeting was?

10 MR. IRVINE: They are a very engaged bunch, and  
11 I hope that rather than depressing them, I'm fairly and  
12 neutrally putting out everything that was discussed.

13 MR. GOODWIN: I've got a question for Brent.  
14 Brent, do you mind?

15 I know in theory Tim has brought up the  
16 possibility of re-engineering some of these transactions,  
17 and I know you can't say absolutely no and absolutely yes,  
18 but in the general realm of things, is that truly an  
19 alternative in many of these transactions, in your  
20 opinion?

21 MR. STEWART: Brent Stewart, Real Estate  
22 Analysis.

23 I certainly have experience in being able to  
24 value engineer a property and changing some design  
25 elements, roof pitches and some of the amenities, some of

1 the quality of cabinetry, different ways of being able to  
2 carve a few bucks out. I have no idea in the current  
3 climate whether that's enough, whether there's enough of  
4 that kind of stuff to be able to do. Certainly  
5 eliminating some units, being able to go from particularly  
6 market units where you can get an applicable fraction back  
7 up to 100 percent so you're at least getting paid credits  
8 on the units that are you building, there's some of those  
9 options.

10 You know, the cost information and stuff that  
11 we get, the information kind of falls in this competitive  
12 world of in prior years we had a number that was kind of  
13 set, that if you stay under this number you get points for  
14 staying under the \$75, or whatever the number is for your  
15 particular deal type, and so magically, all the deals that  
16 came in were between \$74 and \$75.

17 So the cost numbers that we get -- and I've  
18 said this publicly before -- it's a creative way of being  
19 able to put a deal together and make sure you have  
20 sufficient basis and sufficient costs in your deal to make  
21 it work. This year, 2017, we changed that such that we  
22 want the real cost numbers and you just basically select  
23 or choose the amount of costs you're putting into eligible  
24 basis, and I think that will help us better understand  
25 what's happening out there with costs.

1           So having said that, and me being personally  
2 out of the market for so long, I'm not really sure what's  
3 happening with costs, and so therefore, I don't know how  
4 those costs and that relationship between the current debt  
5 and equity climate really work. My conversations with  
6 people have been there's some help there but it's not  
7 going to go all the way.

8           MR. GOODWIN: Thank you.

9           MS. BINGHAM ESCAREÑO: Joking aside, obviously  
10 we've been through difficult times as a community and an  
11 agency and it is encouraging that we're all putting our  
12 heads together to try to come up with some solutions. And  
13 I think we also like trying to do a more granular study of  
14 the deals that are getting done, what are the  
15 characteristics of those deals and is there anything that  
16 we can take away from that.

17           So what you're asking for today is I've got the  
18 return of the credits without penalty; being able to look  
19 at gap financing, whether it's HOME funds for the rural  
20 deals or maybe TCAP repayment funds in the future when  
21 they're not oversubscribed; like re-scoping projects to  
22 allow material amendments that we typically wouldn't allow  
23 as long as they don't put in jeopardy Fair Housing and  
24 those kinds of things, so you'd like the Board to approve  
25 moving forward with those. And then where do you stand on

1 the force majeure? You'd like us to ask you to further  
2 explore it in terms of how you would word it in the next  
3 QAP?

4 MR. IRVINE: I think it's basically crafted in  
5 terms of being okay with exploring that concept.  
6 Obviously, any QAP is a phenomenally complex work of  
7 hundreds of people and comes back through this Board and  
8 through the Governor's Office for ultimate approval, so  
9 you'd have plenty of opportunity for input.

10 DR. MUÑOZ: Explore just that one or all four  
11 of those options?

12 MR. IRVINE: I think that the others we would  
13 probably in one form or another move forward with them.  
14 The gap funding, obviously the biggest constraint is lack  
15 of available gap funds, but as more funds become  
16 available, I would imagine we would take this into  
17 consideration in crafting SOFAS.

18 DR. MUÑOZ: Move forward with them or come  
19 forward and say here's what it would look like were we to  
20 move forward?

21 MR. IRVINE: I think the NOFA concept would  
22 probably come back to this Board for your approval. I  
23 think that material amendments, on a case-by-case basis,  
24 some are already in the hopper and will probably  
25 ultimately come to this Board for consideration under the



1 current rule. I think it would require Board action to  
2 waive the penalty point item for voluntary returns right  
3 now. And if you want to provide any more guidance on  
4 developing specialized treatment for the 2016s in the 2018  
5 QAP, we're open to it.

6 MS. BINGHAM ESCAREÑO: Barry, good morning.

7 MR. PALMER: Barry Palmer with Coats Rose.

8 I'd like to encourage the Board to support some  
9 of the recommendations from staff. What I'm seeing out  
10 there is very few 9 percent deals have closed so far, and  
11 the ones that have closed have, for the most part, been in  
12 the big cities where the pricing has held up better  
13 because of CRA needs, so Houston, Dallas, some of those  
14 cities we've closed some 9 percent deals. But as you go  
15 outside the big cities, pricing gets down to 88-89 cents  
16 and it could go lower. Some people have been holding out  
17 hoping things will get better, and they might, but who  
18 knows. If the president introduces his tax reform bill  
19 and he's got in there a 15 percent corporate tax rate,  
20 pricing will probably go lower.

21 And in making some of the changes that Tim  
22 mentioned about material changes to reduce your units  
23 perhaps, I think that's a very good possible alternative.

24 The thing is it takes time because you've got to go back  
25 and redo your architectural plans and go back through the

1 city. So that's going to cause people to get pushed  
2 further and further back into the year which is another  
3 reason to consider supporting some kind of force majeure  
4 alternative so that people who can get their deal  
5 together, but maybe not until the end of this year and  
6 there's only twelve months left, they may at that point  
7 have trouble getting an investor and lender to close  
8 because there's not enough time left.

9 So I support all of these alternatives that Tim  
10 suggested.

11 MR. IRVINE: There's one other factor that I  
12 think it's really important to understand and appreciate.

13 It's not just what's going on in the markets or what's  
14 going on in your deal, a lot of it is who are you. There  
15 are people with strong balance sheets, ability to utilize  
16 credits themselves, who can get deals done that other  
17 people can't get done. Because this is a governmental  
18 program, as long as you meet the minimum requirements for  
19 participation, you're eligible to compete and perhaps win.

20 But it's a simple truth of real estate that strong  
21 professional developers with healthy balance sheets can do  
22 things that newer developers who haven't build those  
23 capacities can't get done.

24 MS. BINGHAM ESCAREÑO: Tim, so what I thought I  
25 heard you say is the Board has an option today to go ahead

1 and move to approve the return of credits without penalty.

2 How about allowing material amendments, that one would  
3 probably need to go back through another process?

4 MR. IRVINE: They're already permitted under  
5 the existing rules, I just wanted to include that as one  
6 of the solutions that we have heard people pursuing.

7 MS. BINGHAM ESCAREÑO: And gap financing really  
8 too. Right?

9 MR. IRVINE: Sure.

10 MS. BINGHAM ESCAREÑO: So maybe what we'll do  
11 is entertain a motion for the 2016 return of credits  
12 without penalty and then maybe encourage staff and  
13 management to continue to work with the community on  
14 exploring these other options?

15 MR. IRVINE: The only question that I've just  
16 had whispered --

17 MS. BINGHAM ESCAREÑO: Very discreetly.

18 (General laughter.)

19 MR. IRVINE: -- is whether there would be any  
20 time limit for return without penalty. Does anybody on  
21 staff have any thoughts on that issue?

22 I mean, obviously, the sooner we get them back,  
23 the sooner we can reallocate them. They would come back  
24 for reallocation in the 2017 round. If they aren't back  
25 in time to factor into the 2017 round, then we can't

1 prioritize the underwriting and all of that stuff.

2 MS. HOLLOWAY: Exactly.

3 Marni Holloway, director of Multifamily  
4 Finance.

5 Really, the sooner the better. We have a  
6 process that we have to go through. When credits come  
7 back, they originally go back to the subregion or set-  
8 aside that they came out of, and so we evaluate like  
9 what's next one down on those, and then can eventually  
10 roll into collapse.

11 DR. MUÑOZ: Marni, let me help you out. Today  
12 is the 23rd, give us a date. Sooner the better is a  
13 little too open-ended.

14 MS. HOLLOWAY: No pressure, though. In order  
15 for us to be able to roll into the awards on July 28, we  
16 would need to be able to bring that list to you at the end  
17 of June at that Board meeting, so we would need to have  
18 those credits back if we're going to include them in those  
19 awards within the next month, absolutely.

20 DR. MUÑOZ: June 1?

21 MS. HOLLOWAY: Absolutely. We can manage the  
22 process afterwards.

23 DR. MUÑOZ: June 1, though, works. Right?

24 MS. HOLLOWAY: It works.

25 DR. MUÑOZ: I appreciate your sort of mental

1 gymnastics of we can manage it after that date. I don't  
2 know how much more management you want.

3 MS. HOLLOWAY: Well, and I also don't want to  
4 create a situation that a developer is saying, well, you  
5 know, I'm talking to these folks and I may be able to get  
6 this deal done but then the only way I can avoid the  
7 penalty is to return the credits right now. There's a  
8 balance there. So while my preference is that the awards  
9 would come back very quickly, I would say absolute drop  
10 dead for not having a penalty would be October in order  
11 for us to be able to evaluate through the waiting list and  
12 get carryover out and make sure that awards that we're  
13 making down into the waiting list are actually deals that  
14 will move forward.

15 DR. MUÑOZ: I'm not clear. Is it June 1 or  
16 October?

17 MS. HOLLOWAY: I would say October, because  
18 then we can manage into the waiting list and get those  
19 deals awarded through the end of the year.

20 But Raquel has something to say too.

21 MS. MORALES: Raquel Morales, director of Asset  
22 Management.

23 So the next time that we would see these 2016  
24 deals would be at 10 percent test. At that point they  
25 have to prove up that they've forward far enough to get to

1 closing or will soon thereafter, and so I can understand  
2 by October we can manage that, but I think July 1 at 10  
3 percent, I would hope that most of these applicants would  
4 have an idea of where am I, where can I go, can I move  
5 forward or not. So I'm just throwing that out there as an  
6 option.

7 DR. MUÑOZ: We started at June, went to  
8 October, back to July.

9 MS. BINGHAM ESCAREÑO: So that sounds like a  
10 good compromise.

11 And so then the other thing would be so  
12 somebody is considering returning their credits but  
13 they're wondering if the force majeure thing is going to  
14 work out. They take the risk if they don't return their  
15 credits, and for whatever reason, the force majeure  
16 related option doesn't work out, then they have a penalty.  
17 Right?

18 MR. IRVINE: Correct.

19 MS. HOLLOWAY: Marni Holloway again.

20 I believe that there's an option within rule  
21 for if we are imposing a penalty, that applicant of course  
22 can appeal and come to the Board.

23 MS. BINGHAM ESCAREÑO: Okay. Very good.

24 MR. IRVINE: On a case-by-case basis.

25 MS. BINGHAM ESCAREÑO: All right. So let's do

1 this, is there a motion?

2 MR. IRVINE: Madam Chair, one other thing I'd  
3 like to point out is Real Estate Analysis is down a couple  
4 of underwriters and there is a pretty strong likelihood  
5 that between these issues, the current round, bond  
6 activity, amendments and other matters that we will have a  
7 cycle this year where we will be making recommendations  
8 that may be subject to additional underwriting. That's a  
9 very real possibility.

10 MS. BINGHAM ESCAREÑO: Would anybody on the  
11 Board provide a motion to approve returning tax credits  
12 without penalty if they're returned before July 1, and to  
13 support management and staff working with the community to  
14 further explore the other options for getting the 2016  
15 deals done?

16 MR. GOODWIN: I will so move.

17 MS. BINGHAM ESCAREÑO: Mr. Goodwin motions.

18 MR. GANN: I'll second.

19 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

20 Is there any further discussion on the issue?

21 MR. GOODWIN: I've got a question. Are there  
22 any developers in the room who have deals pending that  
23 might think their deals are in jeopardy, and if there are,  
24 would they mind coming up and telling us what they think  
25 about this and what the situation

1 (No response.)

2 MR. GOODWIN: I guess the answer is no.

3 DR. MUÑOZ: Crisis averted.

4 (General laughter.)

5 MR. IRVINE: The only thing I would add with  
6 respect to the specifics of that motion is that because  
7 statutorily the list has to be published in June, if  
8 someone returns after the publication of the list but  
9 before the awards, that would mean that they would de  
10 facto be handled as wait list items, not as July award  
11 items.

12 MS. BINGHAM ESCAREÑO: Mr. Goodwin, are you  
13 okay with that recommended modification?

14 MR. GOODWIN: I am okay.

15 MS. BINGHAM ESCAREÑO: Mr. Gann, are you okay  
16 with that?

17 MR. GANN: Yes.

18 MR. ECCLES: Megan is running to the dais.

19 MR. GOODWIN: Legal advice.

20 MS. SYLVESTER: I was just looking at the  
21 calendar -- Megan Sylvester, Legal Services -- I just want  
22 to clarify that you mean that credits would have to return  
23 without penalty by June 30 because July 1 is a Saturday.

24 MS. BINGHAM ESCAREÑO: Mr. Goodwin, are you  
25 okay with that?



1 MR. GOODWIN: I'm okay with that amendment.

2 MS. BINGHAM ESCAREÑO: Mr. Gann?

3 MR. GANN: I'm also okay with that.

4 MS. BINGHAM ESCAREÑO: Great. Thank you.

5 All those in favor, aye.

6 (A chorus of ayes.)

7 MS. BINGHAM ESCAREÑO: Opposed?

8 (No response.)

9 MS. BINGHAM ESCAREÑO: Motion carries.

10 Thanks very much.

11 MR. IRVINE: Thank you very much.

12 MS. BINGHAM ESCAREÑO: We have a report item.

13 Marni, a report on 2018 QAP project.

14 MS. HOLLOWAY: Good morning. Marni Holloway,  
15 director of Multifamily Finance.

16 This is a report on our continued 2018  
17 Qualified Allocation Plan project. As you're aware, last  
18 year we had a series of meetings, our monthly group  
19 therapy sessions, that led to quite a bit, actually, of  
20 work on the current QAP, and now this year we're  
21 continuing on that effort but now that we have Patrick  
22 with us, it's a much more organized effort and I think  
23 we're going to have some really good results out of it.

24 We did not have a roundtable meeting in  
25 February. You'll recall the Board meeting was rescheduled

1 and it was a day or two before the looming March 1  
2 deadline, and we didn't think anyone would show up so we  
3 just canceled it. So in lieu of a report on that meeting,  
4 I thought I would talk to you about our tenant survey.

5 This is something that we've mentioned a couple  
6 of times. We are making really good progress in getting  
7 that survey started. The idea is that the households  
8 served by TDHCA developments hold a wealth of information  
9 as to what they desire in terms of unit and development  
10 features, the social services offered by the development,  
11 and the neighborhood where the development is located.  
12 The goal of the survey is to develop a repository of data,  
13 both quantitative and qualitative, that reflects the  
14 opinions, experiences and preferences of households so  
15 that the data may be considered in the development of  
16 scoring items in future QAPs.

17 TDHCA intends to secure an interagency partner  
18 in the coming months -- or coming month, actually. The  
19 survey is planned for the summer of 2017 and the data  
20 collected will be analyzed in the fall of 2017. While the  
21 results of the survey may influence some aspects of the  
22 upcoming 2018 QAP and rules, it's more likely that they  
23 would be discussed in more depth during the 2018 QAP  
24 roundtables that discuss the 2019 rules.

25 That's it. I'm just offering this as a report

1 item.

2 MS. BINGHAM ESCAREÑO: Thank you very much.

3 Any questions or discussion on the overview of  
4 the survey?

5 (No response.)

6 MS. BINGHAM ESCAREÑO: Good. Thank you very  
7 much.

8 Let's move on agenda item 5, Multifamily  
9 Finance. Marni, hi, again. Presentation, discussion and  
10 possible action on timely filed appeals of application  
11 termination under the Department's Multifamily Program  
12 rules.

13 MS. HOLLOWAY: And from the list of  
14 applications included under this item -- this was in the  
15 book but just so that everyone is clear -- we are pulling  
16 application number 17069 Arlinda Gardens. That one may be  
17 presented in the future; we're continuing to work with  
18 that applicant. 17742 Las Villas del Rio Hondo, we did  
19 not receive an appeal. I was wrong, let me correct my  
20 statement. On 17742, Las Villas del Rio Hondo, that will  
21 be presented at the April meeting.

22 MS. BINGHAM ESCAREÑO: So we'll pull for later.

23 MS. HOLLOWAY: Yes.

24 MS. BINGHAM ESCAREÑO: Okay. Thank you.

25 MS. HOLLOWAY: So of the remaining

1 applications, they have all been terminated for the same  
2 reason. We have terminated twelve 9 percent applications  
3 because they failed to upload the Excel spreadsheet  
4 required for submission of a full application. All of the  
5 appeals presented today relate to the same issue.

6 The applicants, through appeals submitted by  
7 their counsel, have claimed that because the separate  
8 Excel workbook was not listed in the application manual,  
9 they did not know it was required. The application manual  
10 cannot be considered a substitute for the 271 pages of  
11 rules that govern the Multifamily programs. Applicants  
12 are expected to understand the requirements at 10 TAC  
13 Subchapter C related to applications, and in particular,  
14 regarding this item 10 TAC 201, Procedural requirements  
15 for application submission, at number 1, item (c), the  
16 first line: the applicant must upload a PDF copy and  
17 Excel copy of the complete application to the Department's  
18 secure web transfer server. This clear requirement has  
19 not changed since 2011 when the electronic application was  
20 first introduced. The Department received a total of 138  
21 applications that did, in fact, include the required  
22 spreadsheets.

23 I also would add that all of these applications  
24 are in regions that are oversubscribed at this point.

25 It's important to note that the entire list of

1 items to be uploaded for an application was removed from  
2 the manual this year, yet these same applications appear  
3 to have uploaded the environmental site assessments and  
4 feasibility reports that also had been previously listed.  
5 So that whole part came out but they still managed to get  
6 these other things into their apps.

7           The other statement that's common across the  
8 appeals is that the Excel spreadsheet contains the same  
9 information found in the PDF document, so it therefore is  
10 not material and should be treated as an administrative  
11 deficiency rather than a termination. The Excel file, in  
12 fact, is not alternative depiction of the same information  
13 but provides critical functionality necessary for staff to  
14 evaluate the application. This live data is used at  
15 multiple points in the evaluation process, for instance,  
16 in creating the application log. We were first alerted to  
17 these applications when we pulled the data to create the  
18 log and we had more applications than we had listings in  
19 the log. REA uses the information in the spreadsheets  
20 extensively in creating their underwriting reports.

21           There are a number of applications here. I  
22 would assume that there's some folks that will want to  
23 speak to the issues. I have no other information to  
24 present on this item at this time.

25           MS. BINGHAM ESCAREÑO: Staff's recommendation

1 is to deny the appeals?

2 MS. HOLLOWAY: Is denial of the appeals.

3 MS. BINGHAM ESCAREÑO: We have a recommendation  
4 from the staff to deny the appeals and terminate  
5 applications on these twelve projects.

6 MR. GANN: Madam Chairman, I think it's really  
7 ten, is it not, rather than twelve?

8 MS. BINGHAM ESCAREÑO: Ten after the two that  
9 are pulled?

10 MR. GANN: I heard twelve, too, but for  
11 clarity, I think we need to say it's ten.

12 MS. BINGHAM ESCAREÑO: But I'm wondering if we  
13 should entertain the motion on the ones that are  
14 represented together?

15 MR. IRVINE: You can break them out by the  
16 tabs.

17 MS. BINGHAM ESCAREÑO: Okay, very good. So  
18 we'll entertain a motion to approve staff's recommendation  
19 to deny the appeals on applications -- I'm going to read  
20 and make sure I have them correct -- the first set of  
21 four: 17029, 17043, 17045, 17049.

22 MS. HOLLOWAY: Correct.

23 MS. BINGHAM ESCAREÑO: Is there a motion?

24 MR. GOODWIN: So moved.

25 MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

1 MR. GANN: Second.

2 MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

3 MS. HOLLOWAY: Thank you.

4 MS. BINGHAM ESCAREÑO: Good morning.

5 MR. GUTTMAN: Good morning, Board. My name is  
6 John Guttman. I'm representing JES Dev Co, the developer  
7 for the four deals currently considered for termination,  
8 and really I want to use my time right now to go through  
9 kind of what happened to us specifically.

10 So we received deals in the past, we received  
11 awards in 2016, 2014 and 2012 and 1998, and on the three  
12 deals from 2016 to 2012, our staff has relied heavily, if  
13 not solely, on the procedures manual as the full required  
14 documentation for submitting our application. As you can  
15 see, we've successfully submitted applications that  
16 received awards, based on using solely the procedures  
17 manual to put together, assemble and submit our  
18 application.

19 And so this time around, using the procedures  
20 manual, I could say there was a lot of confusion,  
21 actually, in the room and that our decision to submit just  
22 the PDF was not a decision come to lightly, there was  
23 debate, talk, and when it came down to it, the answer was  
24 the procedures manual has had all the information in the  
25 past, it's been reliable, and so let's rely on it this

1 time as well moving forward.

2 It's true, going through the Multifamily Rules  
3 do state it, but just with how we've experienced and how  
4 we've been able to put it together, and out of 210 pages  
5 and looking through the procedures manual and the  
6 Multifamily Rules and the FAQ and the QAP, there's a lot  
7 of documentation to go through to put together this  
8 application, and I'm going to state again that the  
9 procedures manual has collected everything prior that  
10 we've needed to submit a full and complete application,  
11 and so it's been a tremendous resource, a reliable  
12 resource historically from 2012 to 2016 to contain  
13 everything that we've needed.

14 Each of these applications for us, we spend  
15 months and months on them, we spend \$50,000 or more  
16 putting these together, a lot of time and effort go into  
17 these for each one, and it hurts to kind of see it all go  
18 away because we submitted a PDF which we believe contains  
19 all the information that is needed to evaluate an  
20 application. The Excel file is a tremendous benefit for  
21 staff to go through and quickly evaluate the application,  
22 to pull together the log for REA to evaluate, to pull it  
23 into their spreadsheets and everything else. I completely  
24 agree with staff that that is essential for them to make a  
25 quick and thorough review of the application.



1                   And if we can handle this through an  
2 administrative deficiency process, we can provide our PDF  
3 which has not been altered, the metadata and everything  
4 will have a date before the application deadline. We are  
5 happy to submit that through the administrative deficiency  
6 process, there will be no discrepancies from the PDF to  
7 the Excel files.

8                   MS. BINGHAM ESCAREÑO: Thanks, John.

9                   Any questions?

10                  (No response.)

11                  MR. RACKLEFF: My name is Neal Rackleff. I'm  
12 with the law firm of Coats Rose -- Locke Lord.

13                  (General laughter.)

14                  MR. RACKLEFF: The law firm of Locke Lord. The  
15 Coats Rose people are great, but I'm not with them. Thank  
16 you. Good to have partners around you.

17                  We at Locke Lord represent the developer, JES  
18 Development Company, of Cibolo Senior Gardens, Maplewood  
19 Gardens, Rock Prairie Village, and Oak Creek Senior  
20 Village, which Mr. Guttman just spoke to.

21                  I think it's really important to recognize the  
22 number of applicants who have had the same problem here.  
23 These twelve applications out of 138 is almost 10 percent.

24                  I mean, this is not an anomaly and these are folks that  
25 made earnest efforts to follow the instructions that they

1 received from the Department.

2           The Department has conceded that the 2017  
3 Multifamily Program procedures manual did omit key  
4 information that has been included in past years. And  
5 while the Multifamily Rules do provide very helpful  
6 information, I think it's very reasonable to expect that  
7 applicants can look at the procedures manual and gain  
8 clear instructions on what they should do. We shouldn't  
9 have a system that has some mixed signals in it such that  
10 folks are dropped into a system so complicated that they  
11 need to hire a lawyer or a high-paid consultant to make  
12 sure that they don't miss one jot or tittle in the law and  
13 end up getting crucified for it.

14           So the Department has a mechanism to provide  
15 precisely the kind of relief that we're asking for, and  
16 that mechanism is to call this an administrative  
17 deficiency rather than a material deficiency. So while  
18 it's true that the live Excel file is important and  
19 helpful to those who are reviewing the applications, we  
20 need to see what does material mean and what does  
21 administrative deficiency mean in this context, where  
22 important is not the same as material.

23           And so let's go to the rules. In 10 Texas  
24 Administrative Code, Section 10.3, an administrative  
25 deficiency is defined as: information requested by

1 Department staff that is required to clarify or correct  
2 one or more inconsistencies; or to provide non-material  
3 missing information in the original application; or to  
4 assist staff in evaluating the application that may be  
5 cured by supplemental information or explanation which  
6 will not necessitate a substantial reassessment or  
7 reevaluation of the application.

8           Then let's go to the specific definition of  
9 material deficiency. In 10 Texas Administrative Code,  
10 section 10.3, it reads very clearly: any deficiency in an  
11 application or other documentation that exceeds the scope  
12 of an administrative deficiency. So material doesn't just  
13 mean important, something that's helpful, it means it  
14 exceeds the scope of the administrative deficiency. Well,  
15 this falls squarely within that scope. This was clearly  
16 either information requested by Department staff that  
17 would provide non-material missing information from the  
18 original application, or would assist staff in evaluating  
19 the application that can be cured. So we feel very, very  
20 strongly that you have the mechanism before you to be able  
21 to provide reasonable relief.

22           This situation, I would liken it to -- if I may  
23 have a moment more -- let's say we had ten pedestrians  
24 that were standing at a signal waiting to cross the street  
25 and when the little white pedestrian indicator person

1 showed up saying it's safe to cross, the red light starts  
2 flashing, and let's say we have 138 pedestrians and twelve  
3 of them decide, they look both ways, and say we're going  
4 to cross, it seems to be safe, and we have mixed signals,  
5 we're not sure what to do. A police officer watching this  
6 could give them a warning or instruction, he could write  
7 them a ticket, or in the extreme, he could go get the  
8 department's new T-1 terminator robot to come out and  
9 pursue them to the death.

10 And we feel that if there was a crime here that  
11 the punishment certainly doesn't fit. We're coming to  
12 you, we're the pedestrians that have run to court, running  
13 from the terminator -- literally -- and are asking for  
14 reasonable relief. You have the ability to do it and we  
15 would respectfully -- I would, on behalf of the great law  
16 firm or Locke Lord and my client, request your reasonable  
17 review of this and that you would grant us mercy in this  
18 instance.

19 MS. BINGHAM ESCAREÑO: Any questions for Neal?

20 MR. IRVINE: May I make a comment and offer a  
21 question or two?

22 First the comment is I don't think that your  
23 characterization of what staff has conceded is something  
24 that staff is nodding north and south that they've  
25 conceded. But be that as it may, I think everyone so far

1 sounds as if they're acknowledging the materiality of the  
2 functionality embedded in the Excel spreadsheet, and it  
3 was missing. And I understand that it was not  
4 specifically pointed out in the procedures manual, yet  
5 your prior witness said that you agonized over whether to  
6 submit or not, knowing full well that the rule  
7 unambiguously said PDF and Excel. I submit that Marni and  
8 Sharon were the traffic cops standing at that intersection  
9 who could have told you if it was okay to cross in the  
10 face of the blinking red light. Did you contact them?

11 MR. RACKLEFF: So I accept in part and reject  
12 in part your characterizations, respectfully. Our client  
13 did not recognize that the Multifamily Rules clearly  
14 indicated a different path than what was indicated for  
15 them in the procedures manual. Had they understood that,  
16 they would have complied with that. That recognition did  
17 not come until after the fact, and they did pore through  
18 hundreds of pages of documentation, they also did provide  
19 information that is identical to the live Excel file.

20 I agree with staff and the characterization  
21 that the functionality in the live Excel file is  
22 important, but a PDF copy of an Excel document is the same  
23 information. That's the point of a PDF. You have PDF  
24 capability so that if you have a Word document or an Excel  
25 document and you want to communicate it to someone

1 electronically in a form where it will remain the same in  
2 a manner where they can't manipulate it or change it, they  
3 use a PDF. Right? So the functionality, I agree,  
4 is different with the live Excel file, but that difference  
5 does not constitute material information, the information  
6 is identical. It's just the functionality, which is what  
7 you have maintained and I completely agree with, and I  
8 believe that's why we have an administrative deficiency.  
9 I mean, we shouldn't be terminated for something as simple  
10 as not providing two copies of the identical information,  
11 one with better functionality. I mean, look at how many  
12 folks are up here. We don't all need to be here. We  
13 could have just said, hey, this is important functionality  
14 but the material information was provided and sent us the  
15 copy, and move on.

16 MR. IRVINE: And I remind everyone that every  
17 applicant does certify that they have read and understood  
18 the rules.

19 MS. BINGHAM ESCAREÑO: Any other questions for  
20 Neal?

21 MR. ECCLES: I have a few questions.

22 You're not saying that the procedures manual  
23 said do not file the Excel file.

24 MR. RACKLEFF: The procedures manual says to  
25 provide a copy of the Excel file and not a scan of the PDF

1 for the Excel file, so in addition to omitting the clear  
2 instruction from previous years, the language that was in  
3 there is frankly confusing. You know, what is a copy of  
4 the Excel file versus -- in one sense, a PDF copy of that  
5 same data is a copy of the Excel file. And I think that  
6 was part of the crux of the confusion for folks.

7 MR. ECCLES: But in previous years your client  
8 had provided just an upload of the Excel file?

9 MR. RACKLEFF: They provided both in the past  
10 because both were clearly indicated. In this procedures  
11 manual, both were not clearly indicated.

12 And I would agree with Mr. Irvine that there  
13 was a recognition that there was a difference here. The  
14 difference that they recognized was between the previous  
15 procedures manual and this procedures manual. They didn't  
16 dig back into the Multifamily Rules to find further  
17 guidance. Now, could they have? Certainly. But I think  
18 that in this situation it's understandable and quite  
19 reasonable that this was an error based on some mixed  
20 signals that were given and that it could be easily  
21 remedied with an administrative deficiency.

22 MR. ECCLES: Well, with respect to your client,  
23 that's their confusion and their interpretation of the  
24 procedures manual, but you would agree that you have to go  
25 to the Multifamily Rules if you have any questions

1 internally about the procedures manual, don't you? Isn't  
2 that what we all have to go by, the rules?

3 MR. RACKLEFF: As general counsel for the  
4 organization who understands the law very thoroughly, you  
5 understand that and I understand that, however, I think  
6 that in using my analogy, let's say that the police  
7 officer understands that technically if the red light is  
8 flashing it should override the white walk sign, would a  
9 judge reasonable expect your average citizen to understand  
10 that distinction. Should they have to go hire a lawyer to  
11 look up the specific provision in the traffic code to know  
12 whether they can go or not?

13 That direction is clearly in the rules,  
14 however, there is ambiguity here and lack of clarity, and  
15 so we are asking for reasonable relief for folks who did  
16 everything right other than that one minor issue.

17 MR. ECCLES: To staff I would ask the question,  
18 it's been repeatedly asserted that a PDF of the  
19 application is going to contain identical information to  
20 that which is contained in the Excel file and it's merely  
21 functionality. Is there any substantive difference?

22 MS. HOLLOWAY: Frankly, yes, there is a huge  
23 difference. You can print out a print, an Excel page and  
24 print the PDF of that same Excel page and they look  
25 exactly the same, but behind the Excel page are formulas



1 and information that's gathered and calculated that is not  
2 captured in the PDF that we need in our process.

3 And if I could just a moment. The line in the  
4 manual that talks about don't send a scanned copy of your  
5 PDF, print it, relates back to more than two pages of that  
6 manual that discuss how to properly turn your Excel file  
7 into a PDF so that we're not getting scanned ones.

8 MS. BINGHAM ESCAREÑO: It relates back to the  
9 rules?

10 MS. HOLLOWAY: Yes, it does. And it also  
11 relates back to information that we spend a lot of time on  
12 in the application workshops.

13 DR. MUÑOZ: So Marni, just to be clear. So  
14 you're saying in the Excel document that there's  
15 additional content, explanations, formulas perhaps that  
16 are accessible by your office and necessarily accessible  
17 by your office that is categorically not contained in the  
18 PDF version?

19 MS. HOLLOWAY: Yes.

20 MS. BINGHAM ESCAREÑO: Any other questions for  
21 Marni or Neal?

22 DR. MUÑOZ: Make the jaywalking analogy a  
23 little tougher.

24 MR. RACKLEFF: I don't think that it does  
25 because I still maintain -- and I bet that my colleagues

1 here are going to argue the same point -- that the fact  
2 that there's functionality -- I mean, you have a  
3 spreadsheet, you can put it in electronic form so you can  
4 see --

5 DR. MUÑOZ: That's not what I'm understanding,  
6 and so help me understand your point. It's not a matter  
7 of functionality, it's a matter of access to new content,  
8 new information. It's not exercising this manipulation of  
9 this kind of electronic function in this platform but  
10 accessing information that exists in this file that  
11 doesn't exist in this one.

12 MR. RACKLEFF: So I don't understand that there  
13 is additional explanations, et cetera in the live Excel  
14 file. What I believe that staff is referring to is that  
15 when you're looking at an Excel file you can click on the  
16 cell that has a sum, for example, and you can drill down  
17 deeper and you can see the formula that shows you where  
18 that came from. That's functionality. But the data, the  
19 information that's in that cell is identical to the  
20 information in the PDF. So we're not disputing that it's  
21 very helpful for staff to have this, we understand the  
22 need for them to have that.

23 DR. MUÑOZ: You heard Marni -- I'm sorry to  
24 interrupt -- but you heard sort of -- what I understand --  
25 not agree with your sort of description. Right?

1 MR. RACKLEFF: Yes, sir. And I think that  
2 reasonable minds could come to different conclusions based  
3 on deciding what is the information in an Excel file  
4 versus what's the functionality. And I think here clearly  
5 staff is saying that functionality equals information  
6 which equals material. We're saying functionality is  
7 important but functionality falls right within the  
8 definition of administrative deficiency where it talks  
9 about information that can be helpful to staff in  
10 reviewing the application.

11 So that's the distinction, and I think you have  
12 the latitude legally to go either way. And so what we're  
13 asking, respectfully, is that you have mercy and recognize  
14 the fact that there are two different interpretations that  
15 could be valid here and please don't kill our applications  
16 based on not providing an alternate copy of what we think  
17 is the same information.

18 MS. BINGHAM ESCAREÑO: Thanks, Neal.

19 MR. RACKLEFF: Thank you.

20 MS. BINGHAM ESCAREÑO: In light of your  
21 prediction that your colleagues are all going to argue the  
22 same thing, I would just ask that you not repeat the exact  
23 same thing, that you bring to us anything that you think  
24 would help us in addition to whatever has already been  
25 contributed.

1 MR. CAMPBELL: Good morning. Jonathan  
2 Campbell, and I'm speaking about 17351, the Heritage  
3 Apartments, so I will respectfully not echo anything, but  
4 I would address some data that was included in your Board  
5 books about how we submitted.

6 MR. IRVINE: It's a different appeal.

7 MS. BINGHAM ESCAREÑO: So thank you very much  
8 and we definitely want your comments. Right now we're  
9 going to look at 17029, -043, -045 and -049. Thank you,  
10 Jonathan.

11 MS. DULA: Tamea Dula, and I am a Coats Rose  
12 attorney.

13 (General laughter.)

14 MS. DULA: Respectfully, I understand you're  
15 only dealing with the first four of these appeals, but all  
16 of these appeals ride together, and if we can't speak to  
17 the argument now because you haven't gotten to ours, you  
18 want to make a decision, presumably, and our appeals will  
19 be a foregone conclusion. So I would respectfully request  
20 that you take all argument before handling any group of  
21 appeals.

22 MS. BINGHAM ESCAREÑO: So we have a motion  
23 that's only on the specific four. I'm okay with taking  
24 all.

25 MR. GANN: I am too, on my part of the motion.

1 MR. GOODWIN: I am too.

2 MS. BINGHAM ESCAREÑO: So does that mean we  
3 revise the motion and take them all together?

4 MR. GOODWIN: Take them all together.

5 MS. BINGHAM ESCAREÑO: Very good. Let's do  
6 that then. So Mr. Goodwin, you're going to modify your  
7 motion to approve staff's recommendation to deny the  
8 appeals for all ten that are still active on the agenda  
9 under item number 5?

10 MR. GANN: I so agree.

11 MS. BINGHAM ESCAREÑO: And Mr. Gann agrees to  
12 that.

13 Okay, thank you.

14 MS. DULA: Is it okay for me to proceed?

15 MS. BINGHAM ESCAREÑO: And then Jonathan.

16 MS. DULA: Thank you.

17 I take issue with Marni's representation of the  
18 Excel file. It does have functionality in it. When you  
19 fill in an Excel spreadsheet, you put numbers in it. If  
20 you are, for instance, doing your operating expenses, you  
21 fill in the number that you think will be the operating  
22 expense for lighting, electricity. The Excel's  
23 functionality is that it takes that number and it  
24 automatically adds it up, it subtotals it when it's  
25 necessary. All of that is background functionality in the

1 Excel file. It does not appear when you do a PDF of the  
2 Excel file or when you make a copy, a scanned copy of the  
3 Excel file.

4 Now, I truly do understand that the staff needs  
5 the Excel file, but with a PDF of it, they could take  
6 those numbers and with a pencil and piece of paper and a  
7 long, long, long time, they could evaluate the  
8 application. Nothing in that functionality is changed by  
9 the applicant. The applicant puts in the number, the  
10 functionality works the numbers to come up with the  
11 subtotals and the totals. The staff can go in and say  
12 this number was wrong, and they can change it in the Excel  
13 file and then see how it affects the total or the  
14 subtotal.

15 But that functionality is not part of what the  
16 applicant works with, it is not part of the information  
17 relating to the application, it is merely accelerating the  
18 review of the application because Brent Stewart doesn't  
19 have to sit down and go, well, three plus four is seven.  
20 So it is something that they need but it's not material to  
21 the application, it is the same functionality for all  
22 applications. The form has the functionality in it before  
23 you put any numbers in the form. The numbers, the total  
24 is dictated by the functionality, but as I said, it is a  
25 mere case of adding up, subtracting, doing mathematical

1 calculations.

2 I don't think there's anything else in that  
3 functionality that would make a change in the application  
4 itself, in the data that relates to what the project is  
5 presenting to TDHCA. And so for that reason it  
6 accelerates the staff's review of the project, of the  
7 application, but it doesn't add to the application, nor  
8 does the missing functionality subtract from the  
9 application. It only makes the review of the application  
10 much more arduous, and we don't want to do that to the  
11 staff, we're happy to provide the Excel files.

12 However, in the past it has said specifically  
13 include an Excel file, this year it was changed, it's the  
14 only year it was changed to not refer to that, and it  
15 says: the submitted application should be the electronic  
16 copy created from the Excel file, not a scanned copy of  
17 the Excel or PDF file.

18 Thank you. Any questions?

19 MS. BINGHAM ESCAREÑO: Any questions for Tamea?

20 (No response.)

21 MR. GRAULEY: Madam Chair. Thank you for the  
22 opportunity to speak to you. I'm Jim Grauley. I'm the  
23 president and chief operating officer of Columbia  
24 Residential. Our application was 1703, Columbia at  
25 Renaissance Square Senior.

1           Our arguments follow the similar lines and  
2 they're threefold, there's one that's additional. First  
3 is that the Multifamily procedures manual was, in fact,  
4 changed, and it hasn't been discussed why that was  
5 changed, but clearly, as you've seen in the documentation,  
6 it was changed from the prior years. Our staff followed  
7 that to the letter. We submit applications in multiple  
8 states and have in Texas and been successful with prior  
9 years following that manual. This year the manual did not  
10 require the Excel file to be uploaded, and at best was  
11 unclear.

12           We did not agonize over that, we followed the  
13 manual to the letter, we double checked it, triple checked  
14 it. I was on the receiving end of the receipt, that we  
15 always look for the receipt from the agency upon the  
16 application being submitted, and at that point we thought  
17 we had a successful application. Immediately upon finding  
18 two days later that we did not have that and that there  
19 was an issue with the Excel file, we uploaded it. We're  
20 used to uploading that with Texas and with other states  
21 for the very reason that Ms. Dula spoke to which it makes  
22 it easier for staff to analyze the data and to process the  
23 data, but in fact, all the answers to the application, all  
24 the content of the application is included in the PDF  
25 file.



1           I'm not a software expert but it's a simple  
2 matter of the software, what PDF does and Adobe does is  
3 take the content of your document and put it into a  
4 printable, non-changeable file, whereas, the Excel file  
5 remains changeable. But the data itself, there's no  
6 difference and there's no materiality.

7           Our second argument falls to the fact that upon  
8 realizing this and upon the fact that there was lack of  
9 clarity in the procedures manual -- which is what, when  
10 you're in the firing line putting that application in, you  
11 follow -- since that was not clear, this could be treated  
12 as an administrative deficiency. Again, there's no  
13 difference in the information provided, there is a matter  
14 of convenience for staff that we acknowledge and we  
15 routinely provide to Texas and other states, but it was  
16 not called for in this year's procedures manual.

17           But we find in the rules, if you're going back  
18 to the rules, that there is an ability for an  
19 administrative deficiency to be cured. We tried to do  
20 that by immediately uploading the file well before we  
21 received any letter, but once we knew there was any issue,  
22 we would be happy to follow nay procedures that you  
23 outline to allow for that administrative deficiency to be  
24 cured, and we believe those do exist in the rules.

25           Third, I just want to highlight -- and I'm sure

1 it's the case for all the applicants -- that these  
2 applications have many, many people behind them other than  
3 ourselves, and those people were part of who submitted  
4 letters on behalf of our appeal after understanding the  
5 circumstances. Our state representative of the City of  
6 Fort Worth, the councilwoman from this district all have  
7 submitted letters to you that are part of the package in  
8 terms of that. And this development in Fort Worth was  
9 designated as that which had the greatest impact on  
10 community revitalization in the city, and so to throw it  
11 out over an administrative technicality, that's the nature  
12 of those requests from our state rep and from our city.

13 And so I ask respectfully that you would  
14 consider that, consider that the procedures were changed,  
15 that the procedures that you use when you're actually  
16 uploading did not require this, and give us an opportunity  
17 to cure that administratively. Thank you very much.

18 MS. BINGHAM ESCAREÑO: Thanks, Mr. Crawley.

19 Any questions?

20 MR. CRAWLEY: I'll be glad to answer questions.

21 (No response.)

22 MS. BINGHAM ESCAREÑO: Thank you very much.

23 Would you sign in? And if I've neglected to  
24 ask anyone that came up to make public comment, if we  
25 could just get you to sign in at some point, that would be

1 great. Thank you.

2 MR. PALMER: Barry Palmer with Coats Rose.

3 I'll be brief, I don't want to rehash the  
4 things that have already been mentioned. I just would  
5 like to point out that there were twelve applications  
6 terminated for exactly the same reason out of about 140.  
7 I can never remember something like that happening in the  
8 program in the years that I've been working in it. There  
9 may be one or there might be two some years where they  
10 make that same mistake. And the reason for it is because  
11 the procedures manual in 2016 called for the Excel version  
12 to be uploaded, the 2017 version did not, and people  
13 preparing the applications followed the procedures manual  
14 to the letter and because it was not listed there, that's  
15 why you had twelve applications not include the Excel  
16 version.

17 So I would urge you to treat this as an  
18 administrative deficiency and allow these applications to  
19 remain in play.

20 MS. BINGHAM ESCAREÑO: Thank you, Barry.

21 Any questions for Barry?

22 (No response.)

23 MS. BINGHAM ESCAREÑO: Another speaker?

24 MR. SETH SULLIVAN: Good morning, Madam Chair.  
25 Good morning, members. Good morning, Executive Director.

1 Seth Sullivan. I'm speaking on behalf of Cass County  
2 Communities II, Ltd. I'm staff counsel for the general  
3 partner.

4 I don't want to touch on what the colleagues  
5 have already hit, but I would like to address some points  
6 that have been made in the questions and that Marni has  
7 made here today.

8 First of all, Atlanta, Texas, where our  
9 development is, has never been awarded credits, and the  
10 city there has consistently supported our efforts in  
11 rehabbing that property, and so I don't know if it's  
12 oversubscribed or not, but the credits are still  
13 desperately needed there.

14 I also want to touch on what we were discussing  
15 in the Excel spreadsheet and the functionality as opposed  
16 to the PDF version. We believe it to the same  
17 information. We're not arguing that the functionality is  
18 different, it's clearly different. I think everybody here  
19 would willingly submit the Excel version if we were  
20 allowed to through the administrative deficiency process.

21 I think that what we're trying to touch on is  
22 the difference from the 2016 to the 2017 procedures  
23 manual. I think everybody thought that the language could  
24 have said one or two different things, and I think that's  
25 why we all took the time to be here today. I know with

1 our application, we had a certified public accountant  
2 helping us, and they misinterpreted the language as well,  
3 and we tried to focus on that in our appeal.

4 We also would like to ask that the Board  
5 considers the merits of the application. We think the  
6 whole policy purpose of this program is to put the credits  
7 to use where housing is needed the most. We think our  
8 application deserves to be scored with the other  
9 applications, and we wish we wouldn't have made the  
10 omission and that we would have interpreted it in a  
11 different manner, but we think that the language was  
12 ambiguous and that's not the fault of the applicant.

13 That's all I have.

14 MS. BINGHAM ESCAREÑO: Thank you for your  
15 comments, Seth.

16 Any questions for Seth from the Board?

17 (No response.)

18 MS. BINGHAM ESCAREÑO: Thank you very much.

19 MR. WINSTON SULLIVAN: Good morning, Madam  
20 Chairman and the rest of the Board, staff. I'm Winston  
21 Sullivan. I'm the general partner, the father of Country  
22 Place Apartments, 17084, and we've had a long struggle  
23 with this property. It's in the rural set-aside, it's an  
24 acq rehab. The property itself is 35 years old, started  
25 in 1979 when we started construction. We have struggled

1 with the new application process. We have 15 real  
2 successful tax credit properties that are all in  
3 compliance, scattered, all rural properties, all senior  
4 properties. Country Place is a family property.

5 And I'm not going to go back and repeat what  
6 these lawyers have had to say because I'm certainly not an  
7 attorney. Proud of my grandson. He represents us and  
8 he's very astute. He's been a part of housing for a long  
9 time because he grew up seeing it done.

10 And so the way we did this year was we felt  
11 like we had a great application. When we self-scored, we  
12 were the top three in the rural set-aside. We would also  
13 like for you to judge the merits of our application.

14 I did just some stats, and I didn't get to the  
15 last two because I didn't see them on the log, but it was  
16 kind of unique because the ten applications that are  
17 represented here today were almost 500 units, within just  
18 a few units, and they were almost equally divided between  
19 elderly preference and general population. There was only  
20 two, I think, that were acq rehab deals. But when I  
21 calculated kind of the number of people that's involved in  
22 that, I come up with almost -- you could say that the  
23 elderly would have less residents per unit than probably  
24 the general population, but I kind of calculated about  
25 almost 1,500 people that are involved in that process. Of

1 course, the people that live in 17084, a lot of them have  
2 been there for 35 years, and the property is in real dire  
3 need of rehab.

4 We're willing to upload the spreadsheet. We  
5 interpret the rules to be that we would not have to, but  
6 we're willing to do that. We were willing to do that the  
7 day we discovered that we didn't have it in there, that it  
8 was a deficiency or it was just stated that it wasn't  
9 there. But we didn't do that, we wanted to wait to see  
10 just exactly how we should do it.

11 But anyway, respectfully, I ask that you grant  
12 our appeal, give us a chance to follow the administrative  
13 procedures, and get this thing done. Thank you.

14 MS. BINGHAM ESCAREÑO: Thank you, Mr. Sullivan.

15 Any questions for Mr. Sullivan?

16 (No response.)

17 MS. MYRICK: Good morning, my name is Lora  
18 Myrick, and I'm with BETCO Consulting, and I also work  
19 with several developers who actually did upload the Excel  
20 spreadsheet file to the server.

21 While we understand the merits of all  
22 applications, they're all good, we all have submitted, I  
23 think, good and meritorious applications that should be  
24 considered, but I believe it was 138, that I heard  
25 earlier, applications that were filed, twelve did not

1 submit the Excel file, 126 did, so we follow the rule.

2 The application, my understanding of when I  
3 read the rule, is the PDF and an Excel file with all of  
4 the third party reports that are required at that time.  
5 That is a full application, that is what TDHCA prescribes  
6 and that is now they define a full application. 126 of us  
7 submitted a full application. I think lack of that Excel  
8 shows that that is not a full application.

9 The other thing is that we've seen in the past  
10 where if you don't bookmark your application, that is a  
11 termination right there. That's not figures or formals,  
12 that is that you did not bookmark your application, so  
13 that would also terminate your application.

14 I guess I just want to have a voice for the  
15 clients that I've worked with and others that did do this  
16 process right, that we also have a voice and that you  
17 consider us as well.

18 DR. MUÑOZ: How did you know? I mean, you said  
19 you went to the rule. Why would you have gone there and  
20 just not relied on the manual?

21 MS. MYRICK: Because I did not see language  
22 that I've seen previously, I went back to look at Subpart  
23 C of the Multifamily Rules, and it said PDF and Excel.  
24 And if I still had confusion, I could have picked up the  
25 phone and called staff to ensure that: You've asked me



1 for this since 2011-2012, did you mean to not ask me for  
2 it this year? If the answer would have been no, you don't  
3 need to, I wouldn't have uploaded it. But I went to the  
4 rule, it seemed very clear to us, so we uploaded the Excel  
5 file. If there was any confusion even after the rule, I  
6 have the ability to call staff.

7 DR. MUÑOZ: Thank you.

8 MS. BINGHAM ESCAREÑO: Any other questions?

9 (No response.)

10 MS. BINGHAM ESCAREÑO: Thank you.

11 MS. MYRICK: Thank you.

12 MS. BINGHAM ESCAREÑO: Does the Board have any  
13 questions of staff at this point in time?

14 MR. ECCLES: I'd like to just say something.

15 It's less of a question and more of a statement about  
16 staff's process because it may seem to folks out there  
17 that staff is being heartless or mindlessly bureaucratic.

18 10.2(a) talks about resources, such as the procedures  
19 manual, when it says: While these resources are offered  
20 to help applicants prepare and submit accurate  
21 information, applicants should also appreciate that this  
22 type of guidance is limited by its nature and that  
23 staff -- like Marni and her folks -- staff will apply the  
24 Multifamily Rules to each specific situation as it is  
25 presented in the submitted application.

1           Furthermore, in the QAP itself when it's  
2 talking about general information in 11.9(a), it says that  
3 failure to provide supporting documentation will not be  
4 allowed to cure the issue through an administrative  
5 deficiency. That's why when staff comes up against an  
6 omission from an application, it's not I wonder if we  
7 should ask questions about why it was not submitted, it's  
8 a hole in the application.

9           And regardless of how some might see the  
10 procedures manual, keep in mind -- as a question I asked  
11 earlier -- the procedures manual doesn't say don't submit  
12 the Excel file. It's been the same way, some interpreted  
13 that -- twelve apparently -- that perhaps it wasn't  
14 necessary, but from staff's perspective, staff is  
15 constrained by the rules, the rules are very clear on this  
16 point.

17           So I just wanted to put out that's the  
18 motivation, we're not trying to be mean, that's just the  
19 way the rules read.

20           MS. HOLLOWAY: And if I could just correct some  
21 of the numbers. We did receive 138 applications that did  
22 have the spreadsheet, ten did not, six of those ten came  
23 from two applicants.

24           MS. BINGHAM ESCAREÑO: So we have a motion by  
25 Mr. Goodwin, second by Mr. Gann to approve staff's

1 recommendation to deny the appeals for the ten  
2 applications on the agenda. All those in favor, aye.

3 (A chorus of ayes.)

4 MS. BINGHAM ESCAREÑO: Opposed?

5 (No response.)

6 MS. BINGHAM ESCAREÑO: None opposed. Motion  
7 carries to approve staff's recommendation to deny the  
8 appeals.

9 MS. HOLLOWAY: Thank you.

10 MS. BINGHAM ESCAREÑO: So I think, unless we've  
11 skipped something, we're at the part of the agenda --  
12 there's no need for executive session today. Correct?

13 MR. ECCLES: It's your call, Chair.

14 MS. BINGHAM ESCAREÑO: Any need from the Board  
15 for executive session?

16 (No response.)

17 MS. BINGHAM ESCAREÑO: So we'll move to public  
18 comment on matters other than the items that were posted  
19 agenda items.

20 MS. DULA: Tamea Dula with Coats Rose.

21 I would like to bring to your attention another  
22 language issue that has arisen in connection with the  
23 current round of applications. That has to do with the  
24 underserved area points, and the underserved area points,  
25 there is an alternative that provides three points and one

1 that provides two points. The three-point alternative  
2 says: a census tract within the boundaries of an  
3 incorporated area that has not received a competitive tax  
4 credit allocation, or a 4 percent non-competitive tax  
5 credit allocation for a development within the past 15  
6 years and continues to appear on the Department's  
7 inventory (three points).

8           There's a big problem in how this is being  
9 interpreted. What we have here is what is called a  
10 relevant pronoun. I had a big lesson in English grammar  
11 recently. A relevant pronoun: that.

12           DR. MUÑOZ: I thought that was a demonstrative  
13 pronoun.

14           MS. DULA: Well, I think it's relevant and  
15 demonstrative. It's relevant to this issue.

16           What does the "that" refer to? There is a  
17 general rule that when you have a relevant pronoun, it  
18 refers to an antecedent. The antecedent is the noun, the  
19 subject for which the pronoun is being substituted. There  
20 is a rule that it's the closest, the immediately preceding  
21 antecedent. The immediately preceding antecedent here is  
22 the word "area" so it would read: incorporated area that  
23 has not received a competitive tax credit allocation or a  
24 4 percent non-competitive tax credit allocation. And that  
25 is how many people interpreted it.

1           However, there's an alternative interpretation  
2           that that relevant pronoun is actually referring not to  
3           the immediately preceding antecedent but another  
4           antecedent which is the words "census tract" that it is  
5           the census tract that has not received a competitive tax  
6           credit application or a 4 percent non-competitive tax  
7           credit allocation for 15 years.

8           We are given to understand that although there  
9           is an indication in the FAQs -- well, let me restate that.  
10          The FAQs asks this particular question; the unfortunate  
11          fact is that the answer didn't answer the question: Can  
12          you please clarify points for item (c) under underserved  
13          area, an existing property in the same census tract as the  
14          proposed development will be okay for points as long as  
15          its credit award is over 15 years old, regardless of  
16          whether or not it's on TDHCA's property inventory. Right?

17          And the answer was: If the tract has received  
18          an award in the last 15 years and the development is still  
19          in the inventory, the tract would not be eligible for the  
20          points. So it kind of approached the question being asked  
21          but didn't get to the gist of it.

22          And I think that this should be taken into  
23          consideration in the scoring of these items. You will  
24          find that some people have asked for three points when  
25          they are not qualified for three points because the

1 municipality has had applications, the census tract may  
2 not have but other census tracts in the municipality have.

3 And the alternative point item reads like this:

4 For areas not scoring points for (c) above -- which we've  
5 just been talking about -- a census tract that does not  
6 have a development subject to an active tax credit LURA  
7 (or has received a tax credit award but not yet reached  
8 the point where it's LURA must be recorded) two points.

9 I am requesting that the Board take this into  
10 consideration if and when issues come up before you that  
11 you possibly consider an instruction to staff that they  
12 should make a determination and then look at the two  
13 together and figure out where the applicant's property  
14 fits. Maybe they asked for three points but they only  
15 qualified for two, it should be a case of you can get the  
16 two points. In the application it said you can only check  
17 one box, so you had to make a determination. If you  
18 happened to choose the determination that was not the same  
19 determination as staff, then you're out of luck  
20 completely.

21 So that is what I'm requesting, consideration  
22 for instruction to staff with regard to how to handle  
23 these. Thank you.

24 MS. BINGHAM ESCAREÑO: Thank you, Tamea.

25 Any other comments? Staff, any comments?

1 MS. HOLLOWAY: Marni Holloway, Multifamily  
2 Finance.

3 I wanted to inform the Board that one of our  
4 colleagues and dear friends at HUD will be retiring soon,  
5 Steven Eberlein is the manager of a big chunk of the  
6 programs out of the Fort Worth office. We deal with him  
7 through our HOME funds, we've dealt with him through NSP,  
8 a little bit through National Housing Trust Fund. He has  
9 proven himself over and over again to be a reasonable,  
10 reliable, thoughtful colleague, and I for one will very  
11 much miss having that guidance and that just huge body of  
12 knowledge, also one that he applies with a sense of what  
13 we as a state are capable of doing.

14 So I wanted to let you know that Steve is  
15 retiring. Staff will be sending him a small appreciation,  
16 but I also wanted it to be on the record and to let you  
17 all know.

18 MS. BINGHAM ESCAREÑO: Thank you, thanks for  
19 doing that.

20 DR. MUÑOZ: Hey, Marni, just one final thought  
21 before you sit down. Has the manual for next year been  
22 created?

23 MS. HOLLOWAY: For next year, no.

24 DR. MUÑOZ: Is it going to have a sentence  
25 about -- are we going to restore that statement about the

1 Excel sheet?

2 MS. HOLLOWAY: Probably. We'll probably make a  
3 big swing at some other changes too. And I would point  
4 out that our application workshop completely covered all  
5 of these issues and several of the people sitting here  
6 were in that workshop.

7 DR. MUÑOZ: I get it. I guess what I'm saying  
8 is it should be more than just probably, if for no other  
9 reason than to avoid ten, twelve. I mean, it's a  
10 sentence. Right?

11 MS. HOLLOWAY: Actually, it was a whole section  
12 that we took out, but we certainly will put that back in.

13 DR. MUÑOZ: If you could put a sentence back  
14 in.

15 MR. ECCLES: Respectfully, this beyond the call  
16 of the Public Meetings Act.

17 MS. BINGHAM ESCAREÑO: Just general public  
18 comment.

19 MR. ECCLES: This is really a public comment  
20 section.

21 MS. BINGHAM ESCAREÑO: Good observation.

22 DR. MUÑOZ: Okay.

23 MS. BINGHAM ESCAREÑO: Thanks, Marni.

24 And I hope that whoever your new contact is at  
25 HUD had Steve as a role model.



1 MS. HOLLOWAY: Well, so remember that the  
2 Federal Government is under a hiring freeze and HUD hasn't  
3 been filling positions. They did not fill the position  
4 for the last manager that left; Steve has been down by two  
5 or three staff for quite some time.

6 MS. BINGHAM ESCAREÑO: So we may have to share  
7 with Louisiana or Arkansas?

8 MS. HOLLOWAY: Something. But he will be very  
9 much missed.

10 MS. BINGHAM ESCAREÑO: Thanks for recognizing  
11 him.

12 Any other comments from staff?

13 MR. IRVINE: I have one additional comment  
14 about Steve. One of the thing I really treasured about  
15 Steve is he would tell you point blank exactly what he  
16 thought, why he thought it, and how it was grounded in  
17 statute or rule, whether you liked it or not, and it's  
18 nice to have that kind of directness and clarity.

19 MS. BINGHAM ESCAREÑO: Thanks, Tim.

20 Any other comments from staff, management,  
21 Board?

22 MR. GOODWIN: What happened with the Fenix  
23 project that we discussed at our last Board meeting? Is  
24 that is an appropriate time to get a briefing?

25 MR. IRVINE: We are not permitted by the Open

1 Meetings Act to provide briefings on matters not posted on  
2 the agenda, but we'll provide an update at the next Board  
3 meeting if you so desire.

4 MR. GOODWIN: Okay.

5 MS. BINGHAM ESCAREÑO: Thank you.

6 So we'll let the record reflect that the ladies  
7 managed a very time-efficient Board meeting today. As  
8 time efficient as it was, a couple of major take-aways.  
9 Just the continuing struggle with our 2016s, and again,  
10 just an appreciation because I can tell everybody that  
11 comments, staff, community, that we're all working  
12 together to try to figure out the way to get the deals  
13 done.

14 And then unfortunately, the appeals, a  
15 difficult position because as Lora said, every one of  
16 these applications has tremendous merit in their  
17 communities, so it's not easy for the Board to make some  
18 of those difficult decisions, but I appreciate the desire  
19 to get that information and to make the best decision and  
20 to recognize opportunities to clarify for the future. So  
21 thank you for that.

22 If there are no other comments or additions,  
23 we'll adjourn the meeting. Thank you very much.

24 (Whereupon, at 10:43 a.m., the meeting was  
25 adjourned.)

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: March 23, 2017

I do hereby certify that the foregoing pages, numbers 1 through 75, 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) 3/24/2017  
(Date)

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