

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

November 9, 2017
8:05 a.m.

BOARD MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESÉNDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director

I N D E X

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CALL TO ORDER	7
ROLL CALL	
CERTIFICATION OF QUORUM	
CONSENT AGENDA	
ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:	7
EXECUTIVE	
a) Presentation, discussion, and possible action on Board meeting minutes summary for July 27, 2017	
POLICY AND PUBLIC AFFAIRS	
b) Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey	
MULTIFAMILY FINANCE	
c) Presentation, discussion, and possible action on a waiver relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations	
17623 LIV at Boerne Boerne 17625 The Preserve at Hunters Crossing Bastrop	
d) Presentation, discussion and possible action on Inducement Resolution No. 18-010 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List	
17625 The Preserve at Hunters Crossing Bastrop	
HOUSING RESOURCE CENTER	
e) Presentation, discussion, and possible action on a final amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan	

FINANCIAL SERVICES

- f) Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard

ASSET MANAGEMENT

- g) Presentation, discussion and possible action regarding a Material Amendments to the Housing Tax Credit Land Use Restriction Agreement

98009 Terrell Senior Terraces Terrell
02034 Terrell Senior Terraces II Terrell

- h) Presentation, discussion and possible action regarding a Change in Ownership Structure Prior to Issuance of IRS Forms 8609 and Amendments to Developer and Guarantor

14402 Bruton Apartments Dallas

HOME AND HOMELESSNESS PROGRAMS

- I) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA")
- j) Presentation and discussion and possible action on a Policy Relating to the Initial Implementation of the Ending Homelessness Fund

RULES

- k) Presentation, discussion, and possible action on Orders adopting amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance ("TBRA")

General Requirements, and directing their publication in the *Texas Register*

- l) Presentation, discussion, and possible action on an order proposing actions to 10 TAC Chapter 10, Uniform Multifamily Rules including the: 1) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1002, Definitions, 2) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1005, HOME and NSP, and 3) an order proposing a new §10.1006 to Subchapter H concerning National Housing Trust Fund ("NHTF"), and directing its publication for public comment in the *Texas Register*
- m) Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published for adoption in the *Texas Register*

CONSENT AGENDA REPORT ITEMS

- ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS: 7
- a) TDHCA Outreach Activities, (October-November)
 - b) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
 - c) Report on the Department's SFY 2017 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2017
 - d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures
 - e) Report on the Department's 2018 Multifamily Programs Application Manual

ACTION ITEMS

- ITEM 3: HOME AND HOMELESSNESS PROGRAMS
- a) Presentation, discussion, and possible action on an appeal under 10 Texas 8

Administrative Code §1.7, Staff Appeals,
in regards to 2017 Emergency Solutions
Grants Application Process,
The Children's Center, Inc
(PULLED)

- b) Presentation, discussion, and possible 8
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- c) Presentation, discussion, and possible 14
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ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible 18
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17363 Residences of Long Branch Rowlett

- b) Presentation, discussion and possible 38
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- c) Presentation, discussion and possible 59
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Wolfforth

(PULLED)

ITEM 5: RULES

- a) Presentation, discussion, and possible 59
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- b) Presentation, discussion, and possible 83
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and Waiver of Rules; and Subchapter G,
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Other Provisions; and directing their
publication in the *Texas Register*

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P R O C E E D I N G S

MR. GOODWIN: I call to order the Board meeting of November 9 for the Texas Department of Housing and Community Affairs.

We'll start with a roll call. Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Goodwin here.

Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: Missing are Ms. Bingham and Ms. Thomason. So we do have a quorum, and we will begin by having Tim leading us in the pledge. Please stand.

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

MR. GOODWIN: Thank you, Tim.

We have a consent agenda and consent agenda report items. Do I hear a motion to approve that?

MR. BRADEN: Move to approve.

MR. GOODWIN: Moved to approve. Do I hear a second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any items or any discussion about

pulling any of these items?

(No response.)

MR. GOODWIN: If not, all in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: Motion passes.

We jump into the action items. We start out with item number 3, HOME and Homelessness Programs.

MS. VERSYP: Good morning. I'm Abigail Versyp, acting director, HOME and Homelessness Programs.

Agenda item 3(a) is going to be pulled today.

MR. GOODWIN: Is going to be pulled?

MS. VERSYP: Yes.

MR. GOODWIN: Thank you, Abigail.

MS. VERSYP: Moving on to agenda item 3(b), the waiver and appeal for Family Violence Prevention Services.

This is no longer a request to waive, which I'll explain as I move forward.

Item 3(b) on the agenda is a staff recommendation to grant an appeal submitted by Family Violence Prevention Services related to the 2017 ESG awards. Family Violence Prevention Services applied for funds from the ESG NOFA in 2017. Their application

scoring items were reviewed and the reviewers noted administrative deficiencies pertaining to part 3 of the application which requires the applicant to provide the methodology utilized to calculate the anticipated number of persons exiting the shelter to transitional housing and exiting the shelter to permanent housing after receiving emergency shelter assistance.

FVPS responded to the notice of deficiency timely, but the resolution contained a mathematical inconsistency within the methodology of calculation provided by FVPS. The resolution stated that 35 percent of persons would exit to transitional housing and 59 percent of persons would exit to permanent housing. The specific number of persons in each category for the percentages given was off, one by .5 percent, one by 2.3 percent. As such, staff sent a final scoring notice that reduced the applicant's score by 100 points, 50 for each item. The notice included instructions to appeal staff's decision in accordance with the Department's administrative rule.

Subsequent to the provision of the final scoring notice, FVPS contacted TDHCA to inquire about the necessity of an appeal in order to secure funding under the NOFA. While not addressed in their appeal letter,

FVPS spoke at the October 12 Board meeting and indicated that staff recommended that an appeal would not be necessary to secure funding under the NOFA. Staff concurs that at the time the conversation took place, that information would have been accurate, however, the reduced score ultimately did impact FVPS's ability to get funding under the award and it affected the order of the awards in the San Antonio CoC and in the Balance of State CoC.

After the October Board meeting, the applicant did submit a request to waive the administrative rules that required submission of the appeal within the specified time frame. They also requested an appeal of the staff's decision to reduce the score based on the calculation. The Administrative Code makes allowance for the executive director to consider an appeal if there's good cause. The executive director determined that there is good cause to hear this appeal, so a waiver of the rule is not necessary in order for the Board to consider the appeal today.

The appeal submitted includes information related to the rounding of the calculations to determine the percentage of persons exiting to either permanent or transitional housing which explains the discrepancy in the applicant's calculation and staff's calculation for the

item, namely, that the percentage entered by FVPS was automatically rounded in our sheet from 58.7 percent to 59 percent and from 34.9 percent to 35 percent. Staff was able to determine that when the automatic rounding from 34.9 to 35 percent under item U-5 is not applied, the number of persons based on the unrounded percentage equals FVPS's calculation. The intention of FVPS was to utilize the unrounded percentage to calculate their total and the slight reduction in number of persons exiting resulting from the calculation would not have impacted the score and would have made FVPS eligible for funding under the San Antonio CoC.

Because the explanation of the calculation and rounding issues in the appeal letter is compelling and because the original submission of corrective action to the deficiency notice could indeed be interpreted as correct for this item, staff does recommend that the appeal be approved and that the reduction in points to FVPS's application under item U-5 be reversed through Board action, potentially allowing FVPS to receive an award under the next agenda item.

MR. GOODWIN: Thank you, Abigail.

Do I hear a motion to hear comments?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Questions for Abigail?

MR. VASQUEZ: So bottom line, the rounding versus the exact percentage and exact figures, under the exact figures they still qualify for everything the same way?

MS. VERSYP: That's correct.

MR. VASQUEZ: Thank you.

MR. GOODWIN: Any public comment? Did you want to speak, ma'am? Please state your name and sign in, if you would, please.

MS. MORRIS: Dorothy Morris, and I'm with SAMministries in San Antonio, and I'm represented here with the collaborative of our application with San Antonio Food Bank, with Haven for Hope, and with St. Vincent de Paul.

We were the one that was awarded originally on the grant and we actually anticipate serving over 6,100 people with our ESG funds and 4,000 of them are high barrier clients, and it would really hurt our continuum if we had to let those funds go. So I know what they've

asked for is a smaller portion and we just would like for you to consider SAMMinistries at least being funded or at least being made partially whole in this situation.

MR. GOODWIN: Any questions?

So you're speaking against staff's recommendation?

MS. MORRIS: No. I'm just saying that if there's funds available after they make that award, we want them to come to SAMMinistries and our collaborative.

MR. GOODWIN: I don't think as a Board we have the right to take that up at this point, because what we're hearing is an appeal and staff's recommendation to grant this appeal, and what you're asking is not on our agenda and we're prohibited.

MR. ECCLES: I think that this is more relevant to the next agenda item. Is that correct? The actual award.

MS. MORRIS: Yes, I guess.

MR. GOODWIN: So this would need to come in front of the Board at another time when that agenda item is posted on the Board book.

MR. IRVINE: Abigail, could you come clarify this, please?

MS. VERSYP: Yes. Actually, they're here to

speak, I believe, either in opposition to the appeal or perhaps on the next agenda item which is the ultimate funding for the 2017 ESG awards on their own behalf.

MR. BRADEN: When would it be appropriate to talk about the collapse and the implication of that?

MS. VERSYP: Under the next agenda item.

MS. MORRIS: Do you want me to wait?

MR. GOODWIN: If you would, please.

MS. MORRIS: I will.

MR. GOODWIN: So motion regarding staff's recommendation?

MS. RESÉNDIZ: So moved.

MR. GOODWIN: So moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: Any other discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: 3(b) and staff's recommendation is confirmed.

MS. VERSYP: Moving on to item 3(c)?

MR. GOODWIN: Yes.

MS. VERSYP: Item 3(c) is staff's recommendation for the remaining balance of the ESG awards. Since FVPS's appeal was granted in the previous Board action and item 3(a) was pulled, the award and funding scenario we're discussing at this time is Scenario 1 in your Board book. Scenarios 2, 3 and 4 were included but are no longer germane.

To fully understand the funding scenario as presented, we need to walk back to the October 12 Board meeting. Prior to that meeting, FVPS was no longer in consideration for award and the awards were made to each region with the exception of the San Antonio CoC. Funding was withheld from the Balance of State to potentially fund an application from the Children's Center, pending approval of their PPR by EARAC. The funds then collapsed per the NOFA to the Balance of State and awards were made based on that collapse, including an award to Mid-Coast Family Services in the amount of \$450,000 and to the Salvation Army of Temple in the amount of \$62,530.

The successful appeal from FVPS changes the way the funds should have collapsed in step three. Since their award is significantly less than the request from San Antonio Metropolitan Ministries, the most underfunded region is now San Antonio rather than the Balance of

State, making SAMM the recipient of funds under step three of the NOFA. At the present time, the Children's Center is not recommended for award. Since the \$150,000 that was reserved for Children's Center is not enough to fully fund the next application with the highest score in the Balance of State CoC, the funds are made available in step three of the NOFA collapse where remaining funds are awarded to the most underfunded region. That changes from the Balance of State to San Antonio, based on the previous Board action.

Since action has already been taken under the presumption that the Balance of State would be the most underfunded region in step three but new information has come to light, staff recommends that the existing awards that would have been impacted, the \$62,530 to Salvation Army of Temple and \$450,000 to Mid-Coast Family Services, would still stand, and that an award of 2017 ESG funds made to San Antonio Metropolitan Ministries under step three would be reduced by \$57,500 to \$542,400, thereby exhausting the ESG allocation.

Any additional funds made available from de-obligated 2016 ESG contracts, currently that balance is approximately \$40,000, would then be applied first to make San Antonio Metropolitan Ministries whole. Funds in

excess of the \$57,500 would then be applied to the Salvation Army of Temple. Their original request was \$450,000. Although unlikely if the de-obligated funds from 2016 exceed both of those full award requests, the next award would come to the Board in accordance with the NOFA.

So in short, San Antonio Metropolitan Ministries, should this item be approved as presented, would receive an award today in the amount of \$542,000. Additionally, they would receive about \$40,000 in de-obligated funds, meaning that their original request of \$600,000 is reduced by \$17,600.

MR. GOODWIN: Motion to hear comments?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: All in favor say aye.

MS. MORRIS: Do you want a comment?

MR. GOODWIN: I think now is the appropriate time.

MS. MORRIS: Okay. We've always been ahead of the game.

(General laughter.)

MS. MORRIS: We're glad that everybody in San

Antonio is going to get served, Family Violence, SAMMinistries, the Food Bank, Haven for Hope, and St. Vincent de Paul, and I think this decision is probably the best one that we could come up with. So I'm happy.

MR. GOODWIN: Thank you.

Any questions? Do I hear a motion on staff's recommendation?

MR. VASQUEZ: Move to approve staff's recommendation.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Moved and seconded. Any other discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Moving on to Multifamily Finance, we'll do 4(a).

MS. HOLLOWAY: Good morning, Chairman Goodwin, members of the Board. I'm Marni Holloway. I am the director of the Multifamily Finance Division.

Item 4(a) is presentation, discussion and

possible action regarding a waiver of the extension prohibition in 10 TAC 10.402(a) and treatment of an extension under 10 TAC 10.405(c) of the Uniform Multifamily Rules. Application 17363 for Residences of Long Branch received an award of 9 percent credits for the new construction of 76 units in Rowlett this past July. On September 25 we issued the commitment notice which had an expiration of October 25. The request before you today is for waiver of the statement in rule regarding commitments that says the commitment expiration date may not be extended.

Evidence of final approval of any necessary zoning change is part of the documentation required prior to expiration of the commitment notice, along with evidence that any other underwriting conditions have been met. The applicant has not provided any of the commitment notice documentation, nor have they paid the required fee. They also have not submitted the carryover package and agreement that was due on November 1, by rule, stating that because they did not have a valid tax credit commitment at the time, they believe if granted the requested waiver and extension, they would receive a later carryover deadline. The carryover deadline is in rule and it's not dependent on other dates unless an allocation is

made late in the year.

The applicant was not able to provide final approval of zoning prior to expiration of the commitment and has requested a waiver of the requirement to produce that evidence and extend the date of the commitment notice. In a letter dated October 18, the applicant states that the Rowlett City Council had not approved their request for a zoning change and requested an extension to the commitment notice expiration from October 25, to November 24, saying this was necessary in order to give Rowlett City Council the opportunity to approve the zoning request. The Rowlett City Council approved the requested zoning change at its November 7 meeting.

So first, the Board must determine whether the phrase "the commitment expiration date may not be extended" disqualifies the use of the waiver rule in this instance which says, "This waiver section, unless otherwise specified is applicable to" and then it lists all of the rule subchapters. So we have the commitment rule that says it may not be extended, we have the rule that says unless otherwise specified.

Second, if the Board finds that the waiver rule may be used, then the waiver request itself must establish how the waiver is necessary to address circumstances

beyond the applicant's control, and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. The applicant describes attempts to secure approval of the necessary zoning change from the Rowlett City Council, and states that by not granting the waiver, the Department is not fully satisfying its highest priority in statute, namely, to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department. According to the applicant, the families of Rowlett currently have no access to developments produced through the Tax Credit Program or to other affordable housing options.

If the Board determines that the commitment deadline can be waived, then the waiver standard would have to have been satisfied. If that occurs, staff recommends that the commitment deadline be extended to November 10. Staff recommends that should a waiver be granted, it be subject to the requirements of the waiver rule, including payment of the extension fee and completion of a point deduction of valuation.

I think it's important to note that there is

another application in line right behind this one that's ready to go. That would be Palladium Denton, application 17081, which would be a total of 150 units, 93 of those will be tax credit units, 57 of them are market units. These two applications have the same score, and it came down to the opportunity index tiebreaker so the opportunity index items beyond what they needed to get to seven points. The Rowlett application had six of those items, and the Denton application had three of those items.

MR. GOODWIN: Does staff have a recommendation?

MS. HOLLOWAY: We do not.

MR. GOODWIN: Okay.

MS. HOLLOWAY: The statement in the commitment rule is very clear that the expiration date cannot be extended, and we believe that the waiver rule is very clear under that unless otherwise specified, that otherwise specified, it cannot be extended.

MR. GOODWIN: Questions?

MR. BRADEN: To the Chair, does general counsel want to make a comment on whether or not this can be waived?

MR. ECCLES: Well, I mean, there's clearly a question before this Board as to its interpretation of

these rules. As Marni set out, the commitment deadline rule is contained in 10 TAC 10.402(a) and the last sentence says, "The commitment expiration date may not be extended." So we have that statement. Does that statement activate the first sentence in 10 TAC 10.207, Waiver of Rules for Applications, which says, "This waiver section, unless otherwise specified, is applicable to the Multifamily Rules."

Is the commitment expiration date may not be extended, that specification that the waiver rule is not applicable to it? I'd like to hear counsel or the applicant's thoughts on that, but ultimately, it comes down to this Board's interpretation of its own rules based on that conflict.

And that's, of course, the preliminary question before you get to if you believe that the waiver rule is still applicable, then you have to have the waiver rule satisfied. So I don't know if you want to break it down into those two rules or just have them address both of them at the same time. I think it might be a little bit more helpful to the Board to take it as a threshold matter before going into the next one. You can certainly discuss both, but I think breaking it down along those lines might be helpful.

MS. HOLLOWAY: It's definitely a two-part sort of decision.

MR. GOODWIN: So the first part, obviously, is the commitment extendable.

MS. HOLLOWAY: Can it be extended.

MR. GOODWIN: If it can't be extended, we don't have to discuss the second part. If the Board decides it cannot be extended, the second part becomes immaterial. If we decide it should be and can be extended with our language, then does it qualify.

MR. IRVINE: And Marni can clarify or correct me, but I actually view it as a three-part issue because there are other items that were required to have been addressed that have not been addressed, so those need to come on.

MS. HOLLOWAY: The balance of the commitment package and the carryover agreement.

MR. VASQUEZ: Excuse me. I was going to ask if you could clarify, it's not just one item or one deadline that was missed, there are multiple items or multiple deadlines that were missed?

MS. HOLLOWAY: After an award we issue a commitment notice, which the request for extension is on that commitment notice. The commitment notice carries

this requirement and for meeting any REA conditions, if those have been imposed as of the commitment deadline. There's a commitment fee that's due, there's a commitment notice to be executed and returned to us with a package of information. We have not received that from this applicant at all.

The carryover agreement is the agreement that's actually the official here are your credits going over into the next year, and this is something that goes back to Section 42. The requirement in the QAP in the calendar, it's in the calendar in the QAP, is that that carryover agreement is returned to us with that package of information, which includes corporate status and things like that, on November 1, and we have not received that.

MR. VASQUEZ: So there are at least two different deadlines for submissions that were missed.

MS. HOLLOWAY: Yes.

MS. HOLLOWAY: Okay.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Jean, I think you want to address this, your transaction.

MS. LATSHA: Yes. Good morning.

MR. GOODWIN: And let's try to keep, first and

foremost, we'll give a full hearing to the other two issues, but let's try to keep the first and initial comments to extending the commitment.

MS. LATSHA: Absolutely. I'm Jean Latsha, with Pedcor Investments.

Honestly, I was prepared more to talk to the other issues which is really just the worthiness of the application itself, and I will start by saying, too, that our zoning was approved on Tuesday night at about 9:30 at night on Tuesday, and so let's take that into account here.

So, as Marni explained, what happens is an applicant is issued a commitment and the rule with respect to -- and I'll take this at this point, too -- the rule with respect to the November 1 deadline, the carryover deadline, it states for applications -- and I'm doing this kind of from memory, but it says for applications that have received a commitment, then the carryover deadline is November 1. Well, as of October 25, when this originally issued commitment expired, that rule kind of didn't apply to us because there's no commitment to initiate that November 1 deadline.

It makes sense: you get the commitment, you have 30 days to satisfy the conditions of commitment, one

of which is zoning. So, no, we did not submit a commitment package because we knew it was not complete, it was impossible for it to be complete because we didn't have zoning in place. So that commitment went away, so the November 1 deadline, in my estimation and interpretation of that rule, also went away. It does not apply when the first sentence says for applications that have a commitment. We had no commitment, so there's no November 1 deadline.

So what happened instead, in practical terms, in this case would be another commitment or a revised commitment, however it is that you want to phrase it, would be issued and it would say this commitment is dated November 9, it's due back to the Department on November 10, and it would also state in that commitment notice, it would give you a carryover deadline. So the commitment notices that we all got, all the awardees got, said you're dated, let's say, September 15, you have until October 15 to satisfy the conditions of this document, the commitment, and then you have a November 1 deadline for your carryover.

So again, in a practical sense, when you get some credits returned or whatever happens, like right now staff could be issuing commitments that are dated today

that have maybe a 30-day or shorter deadline to satisfy commitment, and then would have also in there a carryover deadline that would be really after that. It made no sense to submit any documentation knowing that we absolutely could not satisfy the complete condition of commitment or carryover, we had no zoning. That happened Tuesday night.

Today we are ready. We have with us the folks that have to execute those documents. Our executive vice president is here, our senior vice president is here, one of the principals is here, we have our checks in hand, including, as staff recommended in their report, an extension fee check. I have to admit that wasn't something -- I wasn't sure if staff would be recommending that or not, since like they stated, there's not really a provision in the rule for an extension of a tax credit commitment, so it was difficult to know what to do when requesting that extension.

With respect to the waiver rule, my interpretation of that, when it says unless otherwise specified, would be if there was something in the rule that said this cannot be waived. The fact is the rule says commitments cannot be extended. I'm asking for a waiver of that sentence. That's exactly what the waiver

rule does, it takes a rule and it turns it on its head.

So I do think that this Board has the authority to allow staff to issue another commitment, revised commitment, whatever it is, with whatever deadlines they feel appropriate. I can guarantee that we can meet those deadlines.

And I have to say going through this process for the last year and working in this city and finally getting them to a place where they actually are accepting affordable housing after years and at least ten developers trying to do what we're doing here and finally being in a position to be able to do it. I don't want to blow it up to be something bigger than it is, but it honestly felt historic on Tuesday night, and so I hope that you can find that you do have the authority to allow us to move forward with this.

MR. GOODWIN: Okay. Other comments?

MR. PALMER: I'm Barry Palmer with Coats Rose, and I represent Palladium. They have the project in Denton that is next in line.

And we believe that this project does not qualify for a waiver. I mean, the rules say specifically you cannot extend this deadline, and then in the waiver section it says you can grant a waiver unless it's

specified otherwise. And so I don't see how you can get any more clear than that, that no, you can't grant an extension of this deadline, you can get a waiver unless the rules say something to the contrary, and that's what we have here.

And I'd like to address a little bit of what Ms. Latsha said about the carryover. If her position is that they don't have a valid commitment notice anymore, then what happens then is the Department goes to the next people in line. They don't grant new commitment notices to someone who didn't satisfy the requirements of their first commitment notice. If the commitment notice expired by its terms, then that means you go to the next deal in line, it doesn't mean you get a new notice and then you get to meet carryover sometime later after that notice.

They received their allocation at the July meeting, they got their commitment notice in the same time frame as everyone who got awarded in July, and so they should be held to the same carryover requirements as all the other applications, not getting some extension because they didn't meet their commitment notice requirements.

This is a competitive program. Developers spend a lot of money and a lot of time applying this program and they just ask to be treated fairly, to have

the same rules apply to everyone, and when you have a rule saying that there's not going to be any extension of the commitment notice, we have that rule for a reason, and that reason is because if they don't meet their requirements -- you've got to meet carryover by 12/31, so if they can't meet their commitment notice and carryover requirements, you've got to go to the next person in line and then they have less time because you've only got until 12/31 to meet it. So that's why we have that deadline.

And as far as granting a waiver, I don't think that they meet either of the requirements for a waiver, even if this project qualified for a waiver. To say that it's outside your control because you couldn't get zoning, well, that's never been the standard that we've held people to as being outside your control. If that's the case, any time that you've got to get a third party approval it's going to be outside your control? What about city council resolutions of support are due on March 1, or letters of support from the state rep due on March 1, are we going to give extensions of those deadlines because the developer couldn't get it in time? Well, it was outside my control, I couldn't get city council to meet until a week after your deadline and so I need an extension. I mean, how can we run the program that way if

we're going to give extensions for these type of major deadlines just because they couldn't get an approval in time.

Everyone knew when they put pre-applications in in January that you were going to have to have your zoning in place by your commitment notice deadline. I mean, Ms. Latsha knew that very well, having run this program, that she was required to have zoning by the commitment notice deadline. All the other developers knew that, and those who were awarded satisfied that requirement. So to give an extension to that deadline, saying it's outside my control to get zoning nine months after the time that I filed my pre-application, that just seems to set too low a standard, in my view, of what something is that's outside your control.

And as far as the second part, if you don't grant this waiver, you're not going to be fulfilling one of your specific statutory missions, well, all of the projects on the waiting list are good projects who serve citizens that aren't being served in their respective area. So there's nothing different about this project than Denton. They may not have family projects in Rowlett but there are projects certainly very close to Rowlett, and our developer will speak to some of that.

So number one, this project doesn't qualify for a waiver, and number two, it doesn't meet either of the two requirements to be granted a waiver. So I would request that the Board not grant this waiver, that you follow the rules which say we will not extend the commitment notice deadline.

MR. GOODWIN: Any questions for Barry?

MR. ECCLES: Mr. Palmer, what about Ms. Latsha's point that the commitment rule 10.402 says the commitment expiration date may not be extended refers to the requirements for seeing an extension but it doesn't disqualify from waiver. Can you think of a rule that states this rule may not be waived, as opposed to extended, or do you believe that the extension prohibition itself effectively is may not be waived.

MR. PALMER: Exactly. Unless specifically noted otherwise, that's what we have here, a case where it's specifically noted. And I'm not sure if there's any other place in the QAP that says this deadline will not be extended. This may be the only thing that can't be waived, except for the March 1 application deadline. I mean, these are two deadlines that have never been waived, this has never been done before, extending the commitment notice deadline, the commitment acceptance deadline has

never been extended before. So to do it under these circumstances really will just create bad precedent for the future. I mean, how are you going to say to a developer next year I need an extension for my city council resolution of support because it was outside my control. Well, no, we're not going to do it. Well, you just did it last fall on a commitment notice because they couldn't get zoning in time.

MR. GOODWIN: Is that a true statement that it's never been done before, to your knowledge, Tim or Beau?

MR. IRVINE: I'm not aware that it's ever been extended.

MR. GOODWIN: Okay. Any additional questions or comments for Mr. Palmer?

(No response.)

MR. GOODWIN: Thank you, Barry.

Other speakers? I see other people.

MR. COMBS: Ryan Combs, with Palladium USA. I appreciate you taking the time to discuss this today.

We do have the application that's first in line on the waiting list, and our application, as Marni said, scored the same as their application. I have absolutely no doubt that Jean's deal in Rowlett is needed. I mean,

the reality is all of North Texas is underserved. We had 100,000 new jobs move into North Texas two years ago, 80,000 new jobs last year and 80,000 new jobs this year. The housing shortage in all of North Texas is dramatic, and specifically the housing stock for affordable housing is needed everywhere, Rowlett, Denton, all over North Texas. And so I've got no doubt that it's needed in Rowlett, but it's very equally as needed in Denton.

We have been working with the City of Denton, we are at an incredible location, right at 288, and I'll spare you all the details of that, but the city has unanimously supported our development. Affordable housing is incredibly needed.

I will tell you that I did go look --

MR. GOODWIN: I hate to interrupt you, but the topic here is extension, not your project.

MR. COMBS: So the extension. All of us in this room in a competitive process, we look at these rules and we need to be able to rely on the rules. We're now over \$100,000 hard on our contract. All of us watch ahead of us, especially when you're on the waiting list you watch to see because we're all having to now float our land contracts almost a year, and so we're well over \$100,000 into floating our land, keeping our site control,

and we've done that because we've watched and we know that the rule says the commitment cannot be extended, it's never been extended before. We have to rely on those things, and so the impact down the line on everybody when rules are just broken in favor of one applicant, it has a big ripple through the whole industry.

I do have some other things, but I may wait to say that. Thank you.

MR. GOODWIN: Okay. Any questions for Ryan? Other comments?

(No response.)

MR. GOODWIN: Jean, did you want to re-speak?

MS. LATSHA: Thank you. It is true that this has not been done before and that it is rather unprecedented, but I would argue still that if we're talking about these three words "unless otherwise specified," I think you could even look at that another way and say this waiver section applies to all of these sections of the rule. Right? What if you were to read that to say unless otherwise specified, and there is a section of the rule here, a rule that's not listed here that says a waiver can be applied in this instance.

And I know that it's important, the words in these rules are important. I've been on the other side

where I've written them and I have a great respect for them, and I certainly don't want this Board or this staff to think that any of this comes from any sort of disrespect for this rule.

This is an incredibly unique situation. I don't find that this would be an act that would set precedent. A zoning case that takes nine months is not typical. This is exactly why even our statute calls for applicants to submit evidence that they have requested the appropriate zoning on March 1, because we all know that once we get to September, that should be plenty of time to get zoning done, unless you are talking about a city that, like I said, has an amazing history of thwarting efforts to provide affordable housing for its citizens, and it's, in a sense, not that surprising that it would take this city nine months instead of four or five months to finally get there.

There are 70-some-odd cities with 60,000 people in them or more in Texas. There are only four or five that size or larger that don't have any units that are not age-restricted. This is one of those five. And that is why I understand that there is another applicant in line but this application much more fully fulfills the policy objectives of this Department. And I, again, think that

the authority is there.

MR. GOODWIN: Okay. Any other questions for Jean?

(No response.)

MR. GOODWIN: Anyone else want to speak?

MR. PALMER: Everyone thinks that their project and application is special and unique, they spend a lot of time and a lot of effort working on it, but the next project on the waiting list is special and unique also, and while there may not be family deals in the city of Rowlett itself, within five miles of the proposed site there are ten family deals in the area, so there's plenty of family affordable housing, even if it's outside the city limits of Rowlett. There's nothing in the record to treat Rowlett any different or anything special over Denton.

The rules are the rules and the rules say you will not get an extension of the commitment notice date.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: I'll entertain a motion from a Board member.

MR. BRADEN: I find Mr. Palmer's argument to be persuasive, and so I would make a motion that the

applicant's request for a waiver be denied.

MR. GOODWIN: Do I hear a second?

MR. VASQUEZ: Second.

MR. GOODWIN: I hear a motion and it's seconded. Any further discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: That waiver is denied. I think we don't have to discuss the second and third parts because of that.

Marni.

MS. HOLLOWAY: The applicant for item 4(b) has requested that we take it out of order.

MR. GOODWIN: I think they're here.

MS. HOLLOWAY: They're all here?

MR. GOODWIN: Okay.

MS. HOLLOWAY: All right. 4(b) is presentation, discussion and possible action on a determination regarding eligibility under 10 TAC 10.101(a)(4) related to undesirable neighborhood characteristics for Villa Americana, application 17411, in

Houston.

A 4 percent housing tax credit application for Villa Americana was submitted by ITEX Partners on June 23.

The Texas Bond Review Board issued a carryforward designation certificate on January 12 of 2017 which will expire on December 31, 2019. The proposed issuer of the bonds is the Houston Housing Finance Corporation.

Villa Americana was originally constructed in 1972 on Selinsky Road in Houston. The 258-unit development is proposed to be rehabilitated with all of the units restricted at 60 percent of AMI. The development has a Project-Based Section 8 contract. It is located in a census tract with a median household income of \$35,250, which is at the fourth quartile, and the tract has a poverty rate of 27.7 percent. This is in the Minnetex Super Neighborhood which has no market rate developments, there are 18 affordable developments located within the primary market area.

The undesirable neighborhood characteristics rule requires applicants to disclose the existence of these characteristics. The proposed site is located in a census tract where Part 1 violent crime exceeds 18 per 1,000 persons annually, according to Neighborhood Scout. The applicant did not initially disclose that the

development site is also within 1,000 feet of another census tract with the same high crime rate, but subsequently submitted the appropriate disclosure.

So for clarity, the 18 per 1,000 annually, according to Neighborhood Scout, is a trigger for disclosure and to take a look at this. It's just the trigger for us to take a look at these issues. According to Neighborhood Scout, the subject census tract has a Part 1 violent crime rate of 22.89 per 1,000 and the adjacent tract is at 23.57. The actual incidences of Part 1 violent crimes, based on HPD data submitted by the applicant, reflected an increase from 2015 to 2016. In 2015 it was at 10.37 per 1,000, in 2016 it was 17.72.

So while the HPD data indicates that the actual rate is below the 18 per 1,000, it also shows an upward trend so that the data does not meet the requirement in rule that the undesirable characteristic be sufficiently mitigated by the time the development places in service if the crime rate is rising. The applicant has provided data for the first half of 2017 but staff has not been able to make an assessment regarding these figures as they would not include seasonal variations or similar factors that could impact the crime rate

If approved, this development would be the

second affordable development funded by the neighborhood in the past ten months in an area that is struggling with undesirable neighborhood attributes which could be likened to a first money in approach which would be inconsistent with our current policy.

Staff recommends that the proposed site be found ineligible under the undesirable neighborhood characteristics rule because they have not established the positive and downward trend required under the rule to sufficiently mitigate the instances of Part 1 violent crime.

I'd be happy to take any questions.

MR. GOODWIN: Any questions? Well, first let me have a motion to hear comments.

MR. BRADEN: So moved.

MS. RESÉNDIZ: Second.

MR. GOODWIN: Made and seconded. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. Now we'll have questions and comments. Any questions for Marni?

(No response.)

MR. GOODWIN: Marni, I have a question. I look at this on the map compared to the project that we

approved about a year ago.

MS. HOLLOWAY: The Crestmont.

MR. GOODWIN: The Crestmont. It literally looks like it's four blocks away.

MS. HOLLOWAY: It is very close.

MR. GOODWIN: Did we make a mistake when we approved Crestmont, or have things gotten worse? There's no major roads between this project and Crestmont, and on Crestmont, if I recall, we heard from the chief of police and local leaders and some of these places look familiar to me.

MS. HOLLOWAY: These same people right here. Well, so a couple of things, that action on that application does not automatically roll to action on the next application. So this application triggers this rule so it's something that the Board would have to find that site eligible, regardless of the previous decision.

The other part of it is we have new Board members here, so this Board has not taken up these issues and these questions, so I think that it's important that we do that.

MR. GOODWIN: And refresh me on the project we did a year ago.

MS. HOLLOWAY: Staff recommended that the site

be found ineligible for largely these same reasons.

MR. GOODWIN: And the Board voted to go against staff's recommendation, if I remember correctly. Is that correct?

MS. HOLLOWAY: Yes, they did.

MR. GOODWIN: Any other questions for Marni?

(No response.)

MR. GOODWIN: I see that we have people that want to speak. I want to remind you to please sign in and state your name

MR. LYTTLE: Mr. Chairman, I have two legislative letters. Would you like for me to read those now or after?

MR. GOODWIN: Why don't you read those into the record before we take comments.

MR. LYTTLE: Okay. Thank you.

The first letter is from State Senator Borris Miles. It reads:

"I represent District 13 which includes Villa Americana apartment community. I fully support the proposed acquisition and rehabilitation of the development and urge you to support this community by finding the development eligible and approving and award of funding.

"The neighborhood surrounding Villa Americana

is experiencing positive change which includes reductions in violent crime. I understand that TDHCA's rules prevent staff from taking into account the demonstrated reduction in violent crime in the area in the past 12 months. I ask the Board to use its discretion to accept more current crime statistics than the TDHCA rules contemplate, which clearly demonstrate the positive trend required by the rules. I also ask that you find the site eligible related to the existing site features, a pipeline and high voltage transmission lines that have existed for years at and near to the site.

"Affordable housing is needed more than ever in Houston, including rehabilitation developments like Villa Americana. Please use your discretion to support affordable housing in Houston and find Villa Americana eligible for an award of funding.

"Thank you for your service to the State of Texas.

"Sincerely, Senator Borris Miles, Texas State Senate District 13."

The second letter is from State Representative Garnet Coleman. It reads:

"I represent House District 147 in Houston where Villa Americana is located. I am in strong support

of the proposal for the preservation and rehabilitation of this community and request that the Texas Department of Housing and Community Affairs find the development site eligible and approve an award of housing tax credit funding.

"The Crestmont Park community has benefitted greatly from the turnaround of a number of apartment complexes in close proximity to Villa Americana over the past year, including the Pointe at Crestmont, which is a half mile from Villa Americana and which was approved by the TDHCA Board at the end of 2016. As a result of these turnarounds, the neighborhood has seen a reduction in crime of 13 to 14 percent in the police beat surrounding the development and 59 to 63 percent within a half mile of Villa Americana. The proposal to rehabilitate Villa Americana is an opportunity to continue this positive trend and also strengthen a community that TDHCA has already invested in only one year ago.

"Following the devastation caused by Hurricane Harvey, quality affordable housing is badly needed in the City of Houston. Please support the rehabilitation of Villa Americana Apartments and find the development site eligible for an award of funding.

"Thank you for all that you do to provide safe,

decent and affordable housing to the residents of the State of Texas.

"Very truly yours, Representative Garnet Coleman, District 147."

MR. GOODWIN: Thank you, Michael.

Comments?

MR. PALMER: Barry Palmer with Coats Rose. I represent the developer on this, and I'll be brief because we have a number of speakers.

But I would like to point out that one year ago we looked at this same neighborhood, and at that time we were looking at a proposal to tear down 500 dilapidated, boarded up, vacant units that were crime-infested and to allow in place thereof construction of 192 new family units. The Board approved that action, and the mayor and the citizens of Houston thank you for that. I was there in April when the mayor and others from his office were out at the site and he drove the bulldozer to initially demolish some of the units. So 500 units of just terrible dilapidated housing were torn down and there's no construction underway, the foundation has been laid, they're starting to go vertical on that new development.

Right down the street we have Villa Americana which is an existing property, it's already there. It's a

Project-Based Section 8 deal that's rundown, in need of capital repairs, owned by an absentee landlord, poor management. Villa Americana is really the last problem in this neighborhood, and it's going to be there whether this gets approved or not, but if it gets approved, there's going to be substantial renovation of the project. It's going to be taken over by new management, local people who know how to manage and will change the profile of the tenant mix and improve the situation.

So I'm going to let some of our other speakers speak directly to the crime issue and also to what else is going on in the community there because we do not agree with staff that the only thing that's going on there is the housing. There's a brand new school, \$72 million high school, walking distance from both of these properties, that is going in there. There's a Boys and Girls Club across the street from Villa Americana. So there's a lot of investment in this area and not just housing.

Thank you.

MR. GOODWIN: Thank you.

MS. MARTIN: Good morning. My name is Audrey Martin. I'm with Purple Martin Real Estate, and I'm speaking on behalf of the applicant today.

I wanted to take just a minute to talk about

the crime statistics specifically because the rules are very specific about what kind of crime information applicants need to present once you trigger that Neighborhood Scout 18 per 1,000 persons, so we have to come back and present data from the law enforcement agency about violent crimes in calendar year 2015 and 2016. What's interesting in this case is what we've just been talking about, which is that there have been some dynamics that have changed very recently in the neighborhood related to that apartment complex that was really a source of crime which is being replaced by the Pointe at Crestmont.

So the demolition of this problem complex didn't happen until April of 2017, so we presented some data from HPD for calendar year 2015 and 2016 as the rules required, and then we also took a look at the data that's available for 2017, which at that time when we were going back and forth, was January through July. And I agree that the trend from 2015 to 2016 did show an increase in violent crime, but what we went back and did was to instead look back over a 24-month period instead of stopping at the end of 2016. We looked back from July 2017 back to July '16, and so that's where we saw a very dramatic decrease in violent crimes around the apartment

complex.

So we looked at the police beat that Villa Americana is in and the nearest neighboring police beat, which is where the Pointe at Crestmont is, and each of the police beats had either a 13 or 14 percent decrease in Part 1 violent crimes in the most recent 12-month period.

And then when you look specifically within a half mile of Villa Americana, the decrease is much more dramatic. Within the neighboring police beat and within that half mile it's been a 59 percent decrease in violent crime, and then within the police beat that contains Villa Americana, and again, within half a mile of the site, a 63 percent decrease in violent crime.

So what we would ask today is that the Board use its discretion to take into consideration those statistics that staff really isn't able to based on how the rules are crafted. And so that kind of sums up my testimony. We have some other speakers here.

MR. GOODWIN: Thank you.

MS. MARTIN: Thank you.

LT. BAKER: Lieutenant Kenny Baker, representing the Houston Police Department.

MR. GOODWIN: I'm sorry. I couldn't hear your name.

LT. BAKER: Kenneth Baker, representing the Houston Police Department. I'm here to speak towards the TDHCA group with this.

I've worked in the area my whole career, I've been there a little over 24 years, and the beat that they specifically talk about with this apartment complex was my very first beat I ever rode, and now I command the whole area.

And just to speak towards the crime in the area, the crime is in a decrease in the area, and the great thing about it is it's really in a great area with the Villa Americana and the potential there. Like they said before, you literally have an aerospace and flight high school, so you have top students from all over the City of Houston, right at the end of the street. And then you have a church on both sides that anchor the whole street, and of course, you have the Crestmont that you approved before next to there, and that wiped out a lot of the crime, and now if we work Villa Americana right next to there, then we have a middle school right next to it, and then we have an elementary school just right on the other side of the church, so it's really a nice area once it gets up and going which it's headed that way and that's what we need.

Crime overall, like I said, is decreasing in the area and we, as representing the Houston Police Department, we're going to give them all the assets we can from our side of it. I also run a tac team, gang task force, gang units, I run all the proactive units in the area also, and we're going to give them as much assets and everything to get their hands to where it's maintainable from then on. They have our full backing as far as police presence and everything else, and we do as, as the Houston Police Department, that you do allow the petition.

MR. GOODWIN: Thank you, Officer Baker. Let's see if there are any questions before you leave. Any questions?

MR. ECCLES: If I may ask, Lieutenant, would you say that there is a high probability and reasonable expectation that the crime rate will be sufficiently mitigated within a reasonable time in this area?

LT. BAKER: Yes, sir.

MR. ECCLES: Thank you.

MR. GOODWIN: Thank you.

MS. DULA: Good morning. I'm Tamea Dula with Coats Rose, and I'm here today to provide you with the perspective of the community.

I have a letter here from the Crestmont Park

Civic Association which they asked be read to the Board. It's addressed to the chair and the Board members.

"Dear Board Members: The Crestmont Park Civic Association urges the Board to approve the proposed application to acquire and rehabilitate the affordable housing rehabilitation project planned for the Villa Americana Apartments located at 5901 Selinsky Road, Houston, Harris County, Texas 77048.

"Quality affordable, well managed housing is one of the bedrocks on which good, strong, viable communities exist. Without it, communities are prone to suffer and fall victim to high crime rates and other negative social evils that seek to destroy strong families and civic-minded citizens.

"Our civic association is working to do our part in reducing neighborhood crime. We have an active Citizens on Patrol group which was chartered and certified by the Houston Police Department several years ago. The group patrols the neighborhood and reports suspicious criminal activities to the Houston Police Department. Last month we held our annual National Night Out Crime Prevent event at our newly renovated and rehabbed Codwell Elementary School. The school reopened on its original campus after a \$14 million Houston Independent School

District renovation and improvement project.

"Also worth noting is that our community was largely spared the ravages of the massive flooding that took place during Hurricane Harvey a few weeks ago. We were spared largely due to major improvements that were done over the last several years to the Sims Bayou Watershed. Our civic association was a major leader in lobbying and urging our local and federal political representatives to make those improvements. Without those improvements, our neighborhood would have been devastated by Hurricane Harvey's lingering rainfall. Those improvements have made our community a more valuable place to live, given its ability to have weathered such a devastating storm.

"Thus, approval of this project would greatly enhance our community's continued progress towards improving the quality of affordable housing in our neighborhood. This, along with other improvements and investments in our neighborhood schools, infrastructure and businesses, are making a strong difference toward improving and strengthening our community.

"Once again, for these reasons we urge the Board's approval of this proposal. If you have any questions or need any additional information, I can be

reached by phone at 832-752-2082, or by email at buildonsuccess@gmail.com.

"Sincerely, Charles Cave, President, Crestmont Park Civic Association."

I also have here a letter, should you wish to hear it, from HUD in support of the project and stating that HUD will consider, upon application, granting approval to extend the current HAP for the Section 8 project vouchers for a total of 20 years, subject to availability of funds and all applicable HUD requirements being met.

And I also have a letter from Dwight Boykins, the city council member for District D, that speaks in support of the project. If you wish, I can read these in, but I would like to point out that Council Member Boykins discussing that not being the first money into the area issue, and he points out that construction has recently been completed on the community's new \$72 million Sterling High School campus within walking distance of the proposed development. Street and drainage projects are underway to improve infrastructure, specifically in the last three years, the City of Houston has completed or has allocated over \$10 million in street and utility improvements in the immediate area of Villa Americana.

MR. GOODWIN: I think your summary of those letters is adequate.

MS. DULA: Okay. Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MR. AKBARI: Mr. Chairman and Board members, I'm Chris Akbari with ITEX Group. I'm here to briefly talk about this particular project, Villa Americana.

It is 258 units of Project-Based Section 8. We are seeking to preserve that housing and better that housing. We want to invest \$44,000 per unit in the rehab of these units. We want to be able to change what is going on in this neighborhood.

Currently there is a downward trend. Since the Crestmont property has gone down, we can see changes already in the trailing. Unfortunately, staff can't use that data. But what is even more important -- and I realized this when we met with Lt. Baker -- is that this particular management of Villa Americana, this particular owner does a very poor job of collaborating with others. He has never met with the city, he has never met with local stakeholders, he's never worked with anyone outside of just HUD to get every single dollar that he can out of

the property. What has happened is that people have left Crestmont and they have gone to Villa Americana. So if you still see a high violent crime rate, it's because there's a lack of management at the property.

What you need is a proactive management team who's collaborating with companies like Rainbow Housing to provide better services and to provide a hand up to a lot of the families that live there. Our company, ITEX, has been successful at doing this in many places in the State of Texas and in Louisiana, and we look forward to being able to do the same thing, to partnering with local stakeholders like the pastors in the area, to working with PD, to working with the DA's office, to make sure that as this housing is preserved that it's operated correctly and it helps the community to continue its path forward in growing and revitalizing.

So I appreciate your time, and thank you very much.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you, sir.

I see they saved the greatest for last. The closer is here.

DR. SIMON: Good morning, Mr. Chairman and

respected Board members. I'm Dr. Murphy E. Simon, Jr., the pastor of Bethel Institutional Missionary Baptist Church.

One year ago we stood before you and we asked if you would invest in a people, invest in a community, and you partnered with us and we were able to give people a hand up and not a handout. And that's what our church is about, we're not about giving handouts, we're about giving hands up so that people will be able to rise out of the doldrums of life in which many find themselves in in despair.

I'm happy to report to you, as you've heard so far, that since we were able to get the Crestmont Park and the Foxwood Apartments torn down, there has been a reduction of crime, especially to the church, because many times we have been broken into and they would go and hide there. Not only that, we've also seen investments within the community. There's a brand new gas station, there's a brand new Family Dollar right down the street, on the back side there's another brand new gas station that's being built, along with another community. Martindale, which is the street that runs right in front of the new Sterling High School, we have a new community there.

Now, the beautiful part about it, as the new

structures are going up, we can say that although you may never know any of the children or the people that you've had a positive effect upon, but some of those children may one day be the airplane pilot that flies you from here to wherever you're going, and you'll be able to say that I had a part in that.

Now we are faced with another opportunity in which there's a people that need a hand up and not a handout, and we are asking that you will again partner with the people in this community, that you would invest in the lives of these people that are looking to come out of the doldrums of life and have a better quality of life so that they will be able to succeed, just like you and I. We're asking you to invest in this Villa Americana project, and we thank you so much. The Bible says, You have not because you ask not, and we've just asked you to partner with us. Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you, sir.

DR. SIMON: Thank you.

MR. GOODWIN: I wouldn't want to follow that, so I assume you have left him for the end.

Any questions for Marni?

MS. HOLLOWAY: So once again I get to follow the pastor.

(General laughter.)

MR. VASQUEZ: Actually, I do have one clarification question. Is this property contractually locked up where ITEX has full control? I mean, we talked about the current owners.

MR. AKBARI: Yes, sir. This is actually an acquisition of the property from another third party, and we will close on that if we're successful in getting these waivers, acquire it and then renovate the property.

MR. VASQUEZ: But assuming we did grant this waiver, contractually there's nothing stopping you from being able to actually close on it.

MR. AKBARI: We would not be able to go forward without this waiver to be able to invest these dollars into the project.

MR. VASQUEZ: Again, if you get this waiver, you will be able to close on it.

MS. MARTIN: Right. The site is under control, current contract, and so there aren't any other obstacles to that closing other than having a finding of eligibility and then the award of tax credits.

MR. IRVINE: And just to be clear, we're not

talking about a waiver, we're talking about a finding by the Board, based on the testimony that's been presented, that the site should be found eligible.

MR. GOODWIN: Any other questions? Marni, did you have any other comments?

MS. HOLLOWAY: No, I have nothing further.

MR. GOODWIN: Okay. We need a motion from a Board member, a Houston Board member.

MR. VASQUEZ: Again, being the Houston Board representative, I applaud the efforts to help develop this community, and I would make a motion to find the site eligible to proceed under our programs.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: We have a motion and a second.
Any other discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: Thank you.

MS. HOLLOWAY: Item 4(c) is being pulled from the agenda. We will be bringing it to you next month.

So 5(a), presentation, discussion and possible action on an order adopting the amended 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan.

The Department is required by Section 42 of the Internal Revenue Code and by Texas Government Code to have a Qualified Allocation Plan that establishes procedures and requirements relating to an allocation of housing tax credits. Statute also requires that the Board adopt and submit the proposed QAP to the governor no later than November 15.

The Board approved the proposed amendments to the QAP at the September 7 meeting in order that we could publish in the *Texas Register* and open for public comment.

We had 42 commenters this year, which is a significant reduction from last year's more than 60, and the more than 90 commenters we had from the year before, so I think we're getting a little better. Patrick has done an outstanding job of synthesizing the comments received into the reasoned response presented today with our proposed final rule, with a seven-day posting, no less. I can definitely tell the difference in mood this year amongst our group having Patrick working on this. It's just been wonderful.

Staff has made limited changes from eh draft QAP that we presented in September as a result of comments received. We've also made some technical corrections as we've encountered errors.

So briefly, we have increased the maximum consultant fee from \$150,000 to \$200,000, based on the Bureau of Labor Statistics Consumer Price Index Inflation Calculator, so that applying that from 2004 when the \$150,000 cap was first imposed, the \$200,000 would be the amount now.

We've made some clarifying changes to the at-risk set-aside section.

We received multiple comments regarding tiebreakers, some of which will be included in our discussions for the 2019 QAP but we have not made any changes as a result of those comments.

We removed the fee limitations in the opportunity index so that this concept can be better developed for 2019.

We've also removed language regarding ADA accessible paths but added a very basic description that speaks to the need for a safe path to amenities. We've also made a clarifying change to the pharmacy item.

For 811, we've added language that speaks to

whether an applicant has authority to use a particular property for 811.

We have made a change to the concerted revitalization section that requires sites within municipalities to have support resolutions from the municipality regardless of what entity created the plan.

We had so many comments with differing data to support various positions on cost per square foot that we thought it best to revert to the 2017 language and we will include this as a high priority item for 2019.

Staff recommends that the final order adopting the amended 10 TAC Chapter 11 be approved for submission to the governor and for publication in the *Texas Register* upon his approval.

MR. GOODWIN: Do I hear a motion for such approval?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. We'll hear discussion.

MS. LANGENDORF: Good morning. My name is Jean Langendorf. I'm with Disability Rights Texas. I think I'm on the right item but there was no mention about the change regarding the 811 Program. I do have copies of

testimony for you.

Again, I'm with Disability Rights Texas. I'm also representing the Disability Policy Consortium which is an independent group of disability advocacy organizations committed to promoting the rights, inclusion and integration and independence of Texans with disabilities. DPC is made up of 21 member statewide organizations. DPC has a longstanding interest in priorities supporting meaningful input by individuals with disabilities regarding how services are designed, with the slogan: "Nothing about us without us."

Ideally, the formulation of rules should involve stakeholders representing a balanced range of legitimate interests at the table as rules are being developed and modified. The disability community has been a partner in the past with TDHCA staff to address issues impacting housing for individuals with disabilities. Unfortunately, the proposed changes to the Multifamily Rules and the Qualified Allocation Plan that eliminate the development of units for the Section 811 Program were developed without collaboration or discussion, no discussion at a disability advisory workgroup or at one of the monthly roundtables, taking the disability community by surprise.

The disability supported the addition of the program as a threshold item and believe the Department had made great strides in increasing the number of units available for this important program that supports the housing of low income individuals with disabilities to live in the community. The Department's previous actions supported the state in its response to the Federal Olmstead decision and addressed the needs identified in the analysis of impediments.

Removing this program from the threshold is a step backward in the state's effort to move individuals with disabilities into the community. Eliminating this requirement for housing tax credits, direct loan and tax-exempt bond supported housing is a setback to the program that has struggled in recent years to provide the necessary units to meet the growing waiting list. The proposed elimination of this program from the rules is a substantial change that could have benefitted from the input from the disability community. With over 250 individuals eligible and waiting to be served, the action of eliminating the program from the requirements of the state multifamily housing funding will make the wait even longer.

Please do not remove the Section 8 Project

Rental Assistance Program from the required documentation applications submitted and keep it in the rules. Thank you for the opportunity to provide comments on behalf of the Disability Rights Texas and the Disability Policy Consortium.

MR. GOODWIN: Any questions?

MR. BRADEN: For clarity, is this the correct agenda item?

MR. IRVINE: I believe it is.

MS. LANGENDORF: It's in both, it's been changed in both, although nobody highlighted it.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Marni, did you want to address any of these comments? You looked like you were about get up, that's why I asked.

MS. HOLLOWAY: Just for a point of clarification, last year we had put 811 into threshold in Chapter 10 so that all applicants for 9 percent credits and for direct loans had to participate in 811. That didn't work out very well for us internally due to a number of issues. We basically were imposing additional requirements on applicants that -- help me explain it better.

MR. GOODWIN: The way I remember it is an applicant had to show that in other projects that they had a certain percentage of 811 units.

MS. HOLLOWAY: And we've taken that threshold language and moved it directly over to the QAP. We haven't changed that requirement that you start from existing, you go to your current application, if you can't do either, then you set aside 5 percent. So that requirement is still there but now it is a scoring item, it is a choice on the part of the applicant. Knowing how 9 percent scoring goes, I can't imagine that anyone is not going to select those points. It also is in scoring for the multifamily direct loan rule.

MR. IRVINE: I would summarize it as sort of a directional change. When it's a threshold item and you're talking about an existing deal that's got units that could work under the 811 Program, if you say we're going to start with the presumption that you are subject to the 811 Program, then you've got to deal with the issues of investors, lenders and so forth whether they agree with that and accept that outcome. So what we were finding was people that we thought were in the program, through other issues were not ready to move forward in the program.

What we've done by converting it to a scoring

item is basically to reverse the process: you figure out on the front-end, with our first priority being that you're going to put existing units in the program, our second priority being that you're going to put your new deal in the program, and our third alternative being the alternative.

MS. HOLLOWAY: The 5 percent.

MR. VASQUEZ: So again, just to understand, it's going to be component in our QAP scoring.

MS. HOLLOWAY: In the scoring, yes.

MR. VASQUEZ: So any project that doesn't have those points, it's virtually going to be impossible to score winning.

MS. HOLLOWAY: It's a two-point item so it would be difficult to get to a winning application with missing two points that others have selected.

MR. IRVINE: In the QAP, any scoring item that is within your control is de facto virtually a threshold item.

MR. VASQUEZ: So again, we've moved the requirement.

MS. HOLLOWAY: I just want to be clear that we haven't eliminated the program, it's just moved to a different part of our rules.

MR. GOODWIN: Other questions?

(No response.)

MR. GOODWIN: Additional speakers?

MS. ANDERSON: Good morning. Sarah Anderson.

And I guess my first question is someone asked me to read a letter in the record for them that they're not here. I know they sent it to Michael, and I don't know whether or not Michael was going to read it or not.

MR. LYTTLE: I visited with the executive director and general counsel about the matter. The Board is going to have to determine whether or not they can accept the letter as comment.

MS. ANDERSON: And I can read it either way.

MR. IRVINE: Just for general information, our protocol is out of deference we certainly read into the record letters from senators and representatives, and that's kind of where we draw the line.

MS. ANDERSON: That's what I thought. So again this first part are not my comments per se, although I would say that I agree with them.

But to digress a little bit, to address the 811, being on this side of the dais, I think the majority of the development community agreed that we would prefer that the 811 be done as a scoring item as opposed to a

threshold. Threshold for something that we don't know if we can meet always makes us very nervous. Even though there were steps that you could go down, we did discuss this quite a bit through the course of the last two years and staff was making changes based on comment.

So the letter that I'm going to read, and actually, I'm just going to pick and choose the parts that I want to do to make this go quickly. This is submitted from Leslie Holleman & Associates, specifically from Kathryn Saar, and this has to do with the leveraging of state and private federal resources.

In the reasoned response from staff, they indicated there had been requests that the percentages used be increased because we're concerned about cost increases coming from the hurricane in construction costs, and so there were several requests prior to the creation of the QAP that this be raised, then the hurricane happened, we again asked that it be done. Staff is concerned that the changes would be too substantive to be made between the draft and the final, and per Kathryn Saar's letter: In the reasoned response to the comments, staff has indicated it believes such revisions to the scoring item represent sufficient substantive changes and proposed that it could not be accomplished and done.

However, there is precedent for changing this specific scoring item in the very manner based on public comment. The increased percentages that occurred in the 2014 QAP resulted directly from comment received during the official public comment period for that year's rules.

So this has been done before, percentages have been increased, so we believe that there's sufficient precedent to be able to do that, that it not be considered significant. Given lower equity pricing, rising interest rates, construction inflation, as well as increased land costs associated with high opportunity areas, this change is needed now more than ever.

I'm just going to leave it at that, we believe that those changes can happen, and we believe that given the unknowns of the hurricane impact that it would be better. Deals that are over-leveraged are not as strong financially, and I think that we would all agree that we would prefer that the deals be as financially sound as possible.

I think those are my comments for her. I don't know if I can come back up and speak for myself or if I can just get one more minute on my behalf.

MR. GOODWIN: Go ahead.

MS. ANDERSON: I have since gone back and forth

with Marni on a couple of issues I'm hoping she's going to bring up. They're not policy changes, language changes, but they are requests for clarification. We come before you every year pointing out a couple of items that we know we're going to see in July unless the Board hears them and maybe makes a couple of minor tweaks to language now.

We've pointed out one that has to do with an underserved area in a census tract inclusion question, and I'm hoping that staff will have that discussion with you later. Otherwise, I know we're going to be here fighting over what the word "is" is and things like that.

Another one that we've seen that I think needs to be discussed, or at least clarified on the part of staff, has to do with the submission of these other than neighborhood letters. They are letters that we receive that are local service organization letters. For the first time these letters can be submitted directly to staff and don't have to go into our applications. The problem with this that we see might happen is that we receive two points for a letter if they're positive and you receive negative points for letters that are negative.

What we don't see is clarification that if I turn in more letters than are needed for scoring and I lose points, whether the additional letters will raise my

scoring back up. If I turn in two letters I get four points, someone sends in a negative, I'm down to two, can I submit an extra letter that puts me up? We haven't seen this before but I know we're going to see this this year, and I think there needs to be a discussion now as to whether or not there's a limitation, or if we send in 20 letters and we get a negative, how that's going to be scored.

So just something to think of for the future to avoid some of the problems we've had.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Next speaker.

MS. MARTIN: Hello again. Audrey Martin with Purple Martin Real Estate.

I know we're almost to the end here on the QAP. I just wanted to make a quick comment on the two scoring items that relate to how we financially structure our deals, so this is in line with the comment that Kathryn Saar submitted. So we have two scoring items that really kind of tell us what our credit request needs to be and effectively have the effect of limiting our credit request lower than what the cost of the development would otherwise justify, so there's a cost per square foot

scoring item and then the leveraging scoring item that Sarah talked about on Kathryn's behalf.

I think that given the expectations we certainly have related to rising construction costs after the hurricane, I think we might be missing an opportunity this year because the proposed final QAP does not propose any increases to the level of cost per square foot that we've been operating under, nor does it increase the leveraging percentages that we've been operating under. I do think we're going to see some cost increases and I think the result will be that the self-limiting of our credit request that we already have to do in a normal year is going to put our developments at a higher level of jeopardy on a financial feasibility basis because costs are going to increase.

That's it. Thank you so much.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MS. FINE: Hi. Tracey Fine with National Church Residences, and I just really appreciate the hard work that staff put into this QAP and I just had a clarification question as it relates to revitalization.

Under urban revitalization it states that you

need to make sure that all the issues being addressed in the revitalization plan are expected to be completed by placement in service which is about a two-year time frame, and this year there was some added language that said that the revitalization plan has to extend for three years, so to me, it's a conflict asking for it to be done in two years and then it says it needs to go on for three years.

I just want to get clarification on what staff is looking for.

MR. GOODWIN: Marni, when you come back, will you address that question?

MS. SISAK: Good morning, Board. My name is Janine Sisak. I'm testifying right now on behalf of DMA Development Company. I might hop up in a few minutes and say a few words on behalf of the TAAHP QAP Committee.

The comment I'm going to make is in regards to some what I consider very last minute changes to the community revitalization plan scoring item. In the past this scoring item has been really clear, in my opinion, and has worked without conflict with regard to the specific issue that I'm going to raise today, and that is under the previous rules, cities could pass resolutions establishing community revitalization planning areas and if you were in one of those areas you could get four

points, and then cities could pick one project within the city to receive two points for the project that most significantly contributed to the planning effort.

Similarly, and in a very parallel scenario, counties could do the same. Counties could establish plans, we all know that counties have the authority to establish plans, and again, in a parallel extension of that rule, in addition to the four points, counties could pick a project that most significantly contributed to their plan for the two-point bonus. Again, this is how the rule has worked for years, there's never been a problem with this rule. And then all of a sudden in the rural section there was a nuance that counties couldn't award the two points to a project if that project wasn't within the city limits, and it kind of has come out of the blue.

With regard to a rural context, I can understand it a little bit because a rural town will be such a small geographic proportion of a rural county, so it makes a little bit of sense there, although I would argue are there truly robust community revitalization efforts in rural communities. I mean, I think that that rural CRP concept was born to create kind of a point scoring ability for rural projects to score those

important six or seven points. Within the urban context, it really doesn't make sense when in a lot of our urban areas the county is only slightly larger than the city.

Another change to CRP within the urban context in the rule as written is that cities now can award the bonus two points to multiple projects in a city. So now the rule reads, all of a sudden, that a city can give the bonus two points to one project per area, so if a city like Houston has 15 TRZs, they could conceivably award the bonus points to 15 projects -- which is great. I mean, if you guys remember my comments in the past with regard to this item, I love when it's broadened, and so I'm in support of that change, but I think that counties should be extended the same consideration.

I don't understand why counties are being limited in their ability to award the two points. It's my belief that this change was made due to comments by one commenter, one single commenter made this comment, as opposed to some other rule changes that were suggested that had consensus of the larger group and those comments weren't made. So I'm very concerned about this little nuanced change, and I really would respectfully ask that that aspect of the rule with the carve-out for counties be removed and it revert back to last year's rule.

Thank you.

MR. GOODWIN: Any questions?

Janine, I have a question for you. Is your concern that between the draft and the final product this was a material change?

MS. SISAK: Yes, with regard to the urban CRP points.

MR. GOODWIN: Okay. Not a tweak of language but a material change as it relates to the urban points.

MS. SISAK: Yes.

MR. SALOVITZ: Good morning. My name is Heiwa Salovitz and I'm a community organizer with the across disability group, ADAPT of Texas, here to speak on the 811 Program.

To substantially change and to water down the program would be basically a bad thing. And we had no idea this was happening. In fact, we are shocked. Like Ms. Langendorf said, to have little or no input from the disability community regarding this program it's not a good thing to do. And also, the 811 Program is one of the few sources to provide not only affordable housing in the community but deeply affordable housing in the community in the State of Texas right now.

Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you, sir.

MR. KROCHTENGEL: Hi. Zachary Krochtengel with Marquis Real Estate Consultants.

I just have two points of clarification, the first being on the opportunity index amenity list. In the preamble to the amenities it states that if there's an age restriction, that age restriction needs to be to the targeted community that you're working with for your project. Now, a new amenity on that list is Meals on Wheels. A lot of Meals on Wheels only support elderly customers or people that are living in elderly communities, but elderly tenants live in multifamily communities as well, and I just wanted a clarification if that is on the list of amenities, does that coincide with using it for a multifamily deal where there would be elderly tenants as well, or is Meals on Wheels specifically reserved for an elderly population deal. And the same could be asked about child care services within two miles as well. So that was my one point of clarification that I just wanted to hear staff expound on.

Another point that I had is that in the underserved area there are two instances where they ask

about property being awarded within 15 years and property being awarded within 30 years. Now, on the inventory that was placed in the site demographics for 2018, there are no dates, no specific dates, so I would propose that that 15-year be an entire year of awards, but I would just like clarification of is that an entire year of awards or is that 15 years from the 2018 award date, is that 15 years from the 2018 application deadline.

I just want clarification on those two points.

Thank you.

MR. GOODWIN: Any other public comments?

(No response.)

MR. GOODWIN: Marni, you were going to address.

MS. HOLLOWAY: On the CRP question regarding timing, so the two sections that I believe were discussed, the first one is: "The adopted plan must have sufficient documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the development being placed in service."

The language that we've added is: "The plan must be current at the time of application and must

officially continue for a minimum of three years thereafter."

I don't see a conflict here. I see that the plan is in place, the money has been flowing, things are continuing to happen, so I don't think that the rule says everything in the plan must have been completed by the time that the development places in service.

MR. GOODWIN: Any other comments regarding any of the other issues, or any questions for Marni?

MR. BRADEN: Chair, just a confirmation. I think you said this in the materials. The changes we're making to the 811 Program, staff doesn't anticipate that to be any negative effect on special needs housing.

MS. HOLLOWAY: We don't anticipate a reduction in the number of units that come out of the 2018 QAP than what we got out of the 2017 threshold, but as was described, we think that this is a better way to get there and have the information that's needed in front of the process rather than at the end.

MR. BRADEN: Is there a way we can just monitor that to see if that takes place?

MS. HOLLOWAY: Absolutely.

MR. GOODWIN: Other questions?

(No response.)

MR. GOODWIN: No other comment. Before we vote on this, I'm going to take the chair's prerogative to move the Board into executive session, so I will read this to you, if you don't mind.

The Board may go into executive session pursuant to Texas Government Code for the purposes of discussing personnel matters, including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer; pursuant to the Texas Government Code to seek advice of its attorney about pending or contemplated litigation or a settlement; pursuant to the Texas Government Code for the purpose of seeking advice of its attorney about a matter in which the duty of the attorney or the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Government Code; pursuant to Texas Government Code to deliberate the possible purchase, sale, exchange or lease of real estate; pursuant to Texas Government Code, the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in executive session to discuss issues related to fraud, waste or abuse.

We'll move into executive session and I show

that it is approximately ten minutes till 10:00. We will be in there for about 30 minutes so we'll be back to reconvene at 10:20.

(Whereupon, at 9:50 a.m., the meeting was recessed, to reconvene this same day, Thursday, November 9, 2017, following conclusion of the executive session.)

MR. GOODWIN: I call the November 9, 2017, Board meeting of the Texas Department of Housing and Community Affairs back in order.

And, Marni, any comments you have regarding the comments that we've heard?

MS. HOLLOWAY: No, sir, I have no comments. If there are any questions, I'd be happy to answer them.

MR. GOODWIN: Do I hear any other public comments? If not, do I hear a motion from the Board?

MR. BRADEN: Yes, Mr. Chairman. I'll make a motion that the amendments to the order as presented by staff be accepted and approved with the following exception: on Subparagraph (ii) which talks about the two points that would be the addition to the development site of a city, making that comparable to counties, I ask that that language go back to the original language as first published.

MR. GOODWIN: Do I hear a second?

MR. VASQUEZ: Second.

MR. GOODWIN: So it's been moved and seconded.

Any questions, comments?

MR. ECCLES: Can you provide a specific section name? I'm sorry, I'm searching through my thing. This is dealing with CRPs?

MS. HOLLOWAY: The concerted revitalization plan. That is 11.9(d)(7) and then (A)(ii).

MR. ECCLES: That appears to be in 5(a) at page 41 of 50.

MS. HOLLOWAY: If I may ask for a clarification, please? Are we discussing the line that says, "If the development site is completely outside of a city" or are we also removing the language that we've added for "per CRP area" that was added as a clarifying change to that same paragraph?

MR. BRADEN: Actually, I think we're steadying the beginning, so the "per CRP area" can stay in there.

MS. HOLLOWAY: So the line that says, "If the development site is completely outside of a city."

MR. BRADEN: So that's not being added and you're going back to the original language "as contributing more than any other."

MS. HOLLOWAY: Right. Okay.

MR. BRADEN: And the "being necessary for" you don't need that anymore as well. Right?

MS. HOLLOWAY: Yes. That's no longer necessary.

MR. BRADEN: So those changes would not be made, but the "per CRP area" I think can be made.

MS. HOLLOWAY: Just a clarifying change.

MR. GOODWIN: Okay. That's your motion?

MR. BRADEN: That would be my motion.

MR. GOODWIN: And a second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any other discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: We'll move on to item 5(b).

MS. HOLLOWAY: Item 5(b) is presentation, discussion and possible action on adoption of amendments to 10 TAC Chapter 10, Subchapter A, concerning general information and definitions, Subchapter B concerning site and development requirements and restrictions, Subchapter C concerning application submission requirements,

ineligibility criteria, Board decisions and waiver of rules, and Subchapter G concerning fee schedule, appeals and other provisions, and directing the publication in the *Texas Register*.

So the Uniform Multifamily Rules in Chapter 10 contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding. These rules in Chapter 10 apply to all applications; the QAP, of course, that we just considered is only for the 9 percent.

The Board approved the proposed amendments to Chapter 20 regarding the Uniform Multifamily Rules at the Board meeting of September 7, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each, or rather, Teresa reviewed all the comments and provided the vast majority of the reasoned response, all while showing Patrick how to do it right.

So changes that we've made since the draft of the final, we've made some changes to the supportive housing definition, and I believe there will be some comment regarding that item.

For undesirable site features, we have received

comments requesting that the distance to railroads be reduced to 100 feet. We have not made that change as we have addressed that issue in the past with last year's rules.

We've received multiple comments on undesirable neighborhood characteristics, including suggestions that we do away with the section altogether. Staff is recommending no changes based on those comments.

We have received minimal comments regarding the revised accessibility requirements, and also are recommending no changes as a result of those.

Staff recommends that the final order adopting the amendments to 10 Chapter 10, Subchapter A, general information and definitions, Subchapter B, site and development requirements and restrictions, Subchapter C, application submission requirements, ineligibility criteria, Board decisions and waiver of rules, and Subchapter G, fee schedule, appeals and other provisions, be approved for publication in the *Texas Register*.

MR. GOODWIN: Any questions for Marni?

(No response.)

MR. GOODWIN: If not, do I hear a motion to hear comments?

MS. RESÉNDIZ: So moved.

MR. VASQUEZ: Second.

MR. GOODWIN: Been moved and seconded. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: We'll start hearing comments. I'm going to ask you, however, to be very specific as to the rule that you're commenting on, and if you would, please also inform us -- for any of you that are going to speak -- as to what comments you have supplied to staff during the comment period.

MR. MOREAU: I'm Walter Moreau, the director of Foundation Communities.

I want to specifically address the definition for supportive housing.

MR. GOODWIN: What is that, Walter, what number and page so we can follow along?

MR. MOREAU: Subchapter A, definitions, and I don't know the page number.

MS. HOLLOWAY: Page 18.

MR. GOODWIN: Page 18? Okay.

MR. MOREAU: Briefly, supportive housing serves folks that are very low income and oftentimes homeless. Last month Robert and Dalton, two of our residents, spoke and shared their stories. When we build supportive

housing, we have six communities, we don't borrow money, we have to do a lot of fund-raising, so most recent community, Bluebonnet Studios, we had \$2-1/2 million from the St. David's Foundation, funding from Home Depot, Lowe's, Meadows Foundation, Stillwater Foundation, plus the City of Austin also put in funds.

There's one sentence in that definition that I think needs clarification that makes it possible for us to take charitable dollars, donations and city funds and be sure that we can still loan them into the partnership so they're not taxable. So the sentence that says, "Debt meeting this criteria may be provided by an affiliate," we would like to be more specific and clarify that it be "foreclosable cash flow debt provided by an affiliate is permissible if originally sourced from charitable contribution or pass-through local government non-federal funds." Sorry it's so specific.

MR. GOODWIN: Did you make these comments during the comment period?

MR. MOREAU: Similar comments, and then the sentence was just "Debt meeting this criteria may be provided by an affiliate." We've had a chance to speak with staff in the last few days to try to make sure we get a sentence that doesn't create a loophole for a developer

to go to a bank and get a bank loan but still allows us to go do fund-raising and put city funds into a project. It's a technical tricky thing to get just right, but we think it needs to be clarified in the rules so we don't run into issues down the road.

I believe if Brent Stewart or other staff could speak to the proposed language so that you've got them as a resource.

MR. GOODWIN: Any questions?

MR. BRADEN: Can you repeat the specific words that you were asking?

MR. MOREAU: And I have a handout as well. That the sentence, "Debt meeting this criteria may be provided by an affiliate" be replaced with "Foreclosable cash flow debt provided by an affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds."

MR. IRVINE: So you're really addressing not the issue of whether it's permissible because it's simply debt from an affiliate. but are you trying to create a way to close the possibility that the affiliate goes out and borrows on market terms?

MR. MOREAU: The sentence that's currently here is vague on debt meeting this criteria, so we wanted to be

clear that the only allowable debt is that that comes from -- if we go raise funding, charitable funding, we should be able to put it into the project.

We can't build supportive housing just with credits and federal funds, so we really are trying to clarify the language. I think the same shared goals among the development community and the staff that it be clear.

MR. GOODWIN: Any additional questions?

(No response.)

MR. MOREAU: Thanks.

MR. GOODWIN: Are you going to be speaking to the same issue?

MR. MARKS: Yes, sir. My name is Scott Marks, I'm with Coats Rose. We represent supportive housing developers, including New Hope Housing in Houston, and essentially we agree with what Walter just proposed as a change to the rule. We think this is helpful.

It's a very delicate balance in the supportive housing arena with the sources of funds that are being used to try to get those loaned into the project so you can still bring a tax credit investor into it and there's not taxable income from grants that are being fund-raised, and so we think this would be a helpful change.

Essentially saying something like "in addition,

foreclosable cash flow debt provided by an affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds." We agree with that change to the supportive housing definition.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: So let me make sure I'm understanding your position, which is that this would be a change to what has been proposed by staff.

MR. MARKS: Well, it is different language from what's in the proposed rule but we made that comment during the public comment period. I think it's a logical outgrowth of the rule that was out for public comment. New Hope Housing made that suggested comment, and I know Foundation Communities did as well.

MR. BRADEN: Just to make sure I understand what you're saying. So we're talking about subparagraph (e) and the new sentence that was added says, "Debt meeting these criteria may be provided by an affiliate." You're talking about changing that sentence?

MR. MARKS: Yes.

MR. BRADEN: And then the sentence before that says, "Permanent foreclosable must-pay debt is permissible

if sourced by federal funds, but the development will not be exempted from Subchapter D of this chapter." Debt meeting this criteria, so are you talking about adding the words in that first sentence to the second sentence?

MR. MARKS: The second sentence would then expand on the federal financing and say, "In addition, foreclosable cash flow debt by an affiliate is permissible if originally sourced from charitable contributions or local government non-federal funds" so that it expands beyond federal financing to charitable contributions that get re-loaned to the project or local government funds that could be, for example, bond funds from the local government that may not be federal.

So we're trying to expand beyond just the federal funds that are permissible in the first sentence and add language allowing these other sources of financing here, but not language that's so broad that would allow just any money put in by an affiliate, but the types of sources of financing that are used in these supportive housing developments tend to be from charitable contributions or local government non-federal funds.

Did that answer your question? Does that help you?

MR. BRADEN: Actually, it would probably be

helpful if someone has written out what you're doing. It would probably be easier for me to read it, just to understand what you're doing. I'm not making any judgment of whether we should accept it or not.

MR. GOODWIN: Any additional comments on this issue? Yours are all different issues?

MS. SISAK: Hi. Janine Sisak. I'm speaking on behalf of TAAHP.

I wasn't a fan of the way this language was in the most recent draft, so I reached out to staff yesterday and reached out to Joy and Walter was involved, and I think this language is much improved and this addresses concerns that I raised yesterday, and maybe that's why there was a last-minute change. I'm not sure. But I'm fine with what they're proposing in terms of the supportive housing definition.

MR. GOODWIN: You're fine with what who's proposing, with Walter is proposing or what staff has proposed?

MS. SISAK: Well, the new compromise language.

MR. GOODWIN: Meaning? I didn't hear that we compromised on that.

Marni, can you come up and address?

MS. SISAK: Well, I've compromised.

(General laughter.)

MR. GOODWIN: You heard these comments in the comment period and yet you've come out with the language that we see today, so that's what I'd like to hear you comment to the Board on.

MS. HOLLOWAY: We received comment during the comment period that led to staff making the change for the final, part of which is "Debt meeting this criteria may be provided by an affiliate." So we made a change between draft and final that the community is concerned isn't as clear and could be problematic in the future, so they are requesting a further change to our change.

MR. GOODWIN: Okay.

MR. IRVINE: Could I clarify one thing? Because the comment raising the issue was made within the public comment period and staff attempted to be responsive to the comment raised within the public comment period, we're not, in fact, reopening public comment at this point, we're simply having a discussion about whether the staff proposed language is sufficient or whether there is more elegant language that better addresses the matter at hand.

MR. BRADEN: Another point of clarification. Is this affiliate debt also supposed to be intended to be

permanent?

MS. HOLLOWAY: I'm going to ask Brent to answer that question.

MR. STEWART: Brent Stewart, Real Estate Analysis. Yes.

(General laughter.)

MR. GOODWIN: Does that answer your question, Paul?

MR. BRADEN: Yes. Well, I think if we're going to accept this language, we ought to stick the word "permanent" in there, as well, because it would be different than the first sentence.

MR. GOODWIN: And I've got a question, Janine. The compromise you're talking about was between you and other people who spoke in here this morning that has taken place before this meeting?

MS. SISAK: Well, I mean, maybe it wasn't a compromise. I was concerned about the language that staff had in the final that it had a loophole that would allow people to get -- and remember, this definition is important because it allows applicants to get a three-point advantage, so I was concerned that the way it was written would allow applicants to get conventional debt, funnel it through an affiliate, and be considered

supportive housing. And then I think Brent had different concerns, so this all kind of came up yesterday and the people that know supportive housing much better than I came up with better language to prohibit that situation, which was my concern.

MR. GOODWIN: And that's the language that we've heard this morning that's been proposed.

MS. SISAK: Correct.

MR. GOODWIN: Thank you. I'm sorry for being so dense.

MR. BRADEN: The proposed language does seem more limiting than what staff had proposed and I see how it addresses that concern.

MR. GOODWIN: Okay. Any other comments on that particular issue?

MR. ECCLES: I just need to make sure, from staff's perspective, has the scope of this rule changed such that it is becoming essentially a new rule coming out here at the Board meeting?

MS. HOLLOWAY: I don't believe so. I think that this tracks very closely to what we have been doing, what our policy has been, but describes it more clearly within the rule.

MR. ECCLES: Thank you.

MR. GOODWIN: Other comments on other rules, I'm assuming?

MR. BOWLING: Yes, sir. New issue. I'm Bobby Bowling. I'm a developer from El Paso. I also speak on behalf of TAAHP.

Before I get started, Mr. Chairman, I have some handouts that I'd like to see if Beau would allow me to share with you. They're public documents. One is the page from your rule, just for clarification so you can follow along. This is going to be somewhat of a technical issue. And the rest are some pages from the Fair Housing Act Design Manual, again, a public document.

MR. IRVINE: Are they available for everyone here?

MR. BOWLING: Yes. So if I could approach.

MR. GOODWIN: Yes. We'll give Beau a little time to review it before we ask for his opinion.

MR. BOWLING: Yes, sir.

MR. GOODWIN: And just as a point of clarification, are you going to be speaking to exactly the same thing? Okay.

Janine, are you going to be speaking again on these recommendations, or something else?

MS. SISAK: Not on the rules. I was just going

to make some general comments, but I can not, if you prefer.

MR. GOODWIN: Well, I do not want to tell you no, but that sure would be nice.

(General laughter.)

MR. IRVINE: It's an awful lot for the Board to digest on the fly.

MR. BOWLING: I'm going to bring it all around, Mr. Irvine.

MR. ECCLES: I have no particular objections to this, especially the second exhibits which purport to be the page from the LURA, as well s the Fair Housing accessibility guidelines out of the *Federal Register* from March 9 of 1991. They may be what you purport them to be.

I can't really comment on their legal relevance or primacy.

MR. BOWLING: Okay. So with that, I've got some handouts to share with the Board.

MR. ECCLES: Sure. As long as they're also available for everyone here.

MR. BOWLING: Yes.

MR. GOODWIN: All the people here?

MR. BOWLING: No, I don't have 100 of them. That was my question, because they're public documents

that they can be accessed from the internet.

MR. IRVINE: I think it's kind of a foundational premise here whenever actual documents come into the record, they've got to be available for everybody to see.

MR. BOWLING: Okay. So that's a no?

MR. ECCLES: But you can talk about them.

MR. BOWLING: Okay. So specifically, I can direct your attention to the particular rule which is Subchapter B, Section 101, it's item (b)(8). And when you get to Subchapter B, that's a 21-page document, if you go to page 20 you'll see item (8), that's the specific rule that I want to comment on.

MR. GOODWIN: Did you say page 20?

MR. BOWLING: 20 of 21 on Subchapter B, Site and development requirements and restrictions, 10.101.

MR. IRVINE: You wouldn't happen to know what page in the Board PDF?

MR. BOWLING: I don't, I'm sorry.

MS. HOLLOWAY: Page 18.

(General discussion about location of document in Board materials.)

MR. BRADEN: 101(b)(8), it's 16 of 22.

MR. GOODWIN: What page in the Board book is

that?

MR. BOWLING: The title is Development accessibility requirements, Mr. Braden?

MR. BRADEN: Development accessibility requirements, yes.

MR. IRVINE: Page 736 in the PDF.

MR. BOWLING: Is everyone there, Mr. Chairman?

MR. GOODWIN: Okay.

MR. BOWLING: So in that paragraph (8), if you'll go to (b) you'll see the blue highlighted change underlined language, I want to direct your attention to the stricken language that's at the bottom of that paragraph, so it might be actually the next page. So the rule that we've been working under since I've been in this program since 2001 is the language that's stricken. It says, "Developments where some units are normally exempt from Fair Housing accessibility requirements, a minimum of 20 percent of each unit type..." and then it goes on to talk about the rule.

And what I wanted to provide you as backup is the Fair Housing Design Manual which specifically speaks to which types of building types are excluded from the accessibility requirements. And I'll just break it down for you in a nutshell. What we're talking about is two-

story townhomes not accessed by an elevator. They're exempt from visitability requirements in the Fair Housing Act Design Manual and -- excuse me, let me get the nomenclature here -- the Fair Housing accessibility guidelines. Those unit types are exempt.

We have always, as the State of Texas, said for that portion that's exempt, we're still going to make the developers do 20 percent, and that's what the old rule says. Now, there's been some change in interpretation over the years. If you had some two-story, two-bedrooms, you could meet the requirement of visitability with some one-story, two-bedrooms, as long as you were providing access to two-bedrooms. That's not what I'm here to speak to.

I'm here to speak to this new language which starts in paragraph (b) of "regardless of building type."

So this rule change would have all Texas developments go from having to make 20 percent of the federally exempt unit types go to 100 percent now. So again, I spoke to this when you were introducing the rule two months ago and I was telling you I'm not sure why Texas wants to go beyond the federal requirement in this regard, and this is still going forward and it's still in the language. I was talking to staff and we were supposed to meet and we were

going to get together.

Now, in staff's defense, they provided me -- and my main concern is with topography, if you remember from two months ago. I live in a mountainous community, people don't realize that but there's a big mountain in the middle of El Paso, elevation almost 7,000 feet, and everything in the foothills has topography and it lends to some really great sites. I have a particular site that we did in 2013 and it's benched and it provides tremendous views, but I can't comply with this requirement if you pass this today, and I think it's probably the nicest property in my entire portfolio in El Paso. So I can't do that deal.

There is a mechanism in the federal guidelines to where if topography is a problem, you can get a waiver, but the waiver process is like for federal funding, it doesn't fit with tax credits. Like when would I apply for the waiver: prior to my pre-application, after I'm awarded? And what if I get told no, then my project just goes by the wayside and I've spent a hundred grand on an application and the waiver wasn't granted. It's a very technical and bureaucratic process, as you can imagine. HUD generated the waiver process. You have to shoot grades, in its raw land state, you have to shoot grades at

your construction proposed and you have to go back and shoot grades after the fact. To me, presumptively, you can't even entertain my waiver until I've provided you all this documentation, so if I don't provide you all of this prior to -- and I really can't -- then technically there really isn't really a legitimate waiver process for topography in this.

My ask and this is from TAAHP as well -- we vetted this and we had unanimous consent of the board at TAAHP, so I speak for TAAHP as well -- is to back to the old rule, and really our preference would be to make this rule coincide exactly with the federal requirement to allow for the exempt units to also be exempt in Texas. But at the very least, let us go back to the 20 percent rule that we've been operating under for at least 15 years here in Texas.

This is a marked change, and my question two months is I don't know really what the background of this is, I don't really understand. I come to most of your Board meetings and I haven't heard this outcry that there's this community that wants this. You all took a step back in the QAP from the ADA requirements making our apartment units accessible to a park, you took that out this year, which is reasonable. This is going the exact

opposite direction, you're taking the federal requirement, and everything that they've exempted, you're saying, it might be okay to exempt those units federally, but Texas, we're going to do it different, we're going to ramp it up on steroids and we're going to make every unit have this requirement.

So that's my comment.

MR. GOODWIN: Any questions.

MR. BOWLING: I would answer any questions. I know this is technical, so feel free if you've got any.

MR. BRADEN: Actually, I was looking at this rule and I want to make sure I'm looking at the right thing, 10.101(b)(8).

MR. BOWLING: Right.

MR. BRADEN: But I don't see a 20 percent requirement being lined out.

MR. BOWLING: It's in (8)(b) "regardless of building type."

MR. BRADEN: You're saying that phrase which is not new?

MR. BOWLING: "Regardless of building type" is new. What's stricken at the bottom of that paragraph says, "developments where some units are normally exempt from Fair Housing accessibility requirements, a minimum of

20 percent."

MR. BRADEN: So you're reading in comparison from the existing rule and what we have is just what was published.

MR. ECCLES: Yes.

MR. BRADEN: Now I understand.

MR. GOODWIN: Any other questions?

MR. BOWLING: To break it down, Mr. Braden, to make sure I'm clear, the old rule is better than what's being proposed from the development community.

MR. ASARCH: Hi. My name is Chad Asarch. I'm with Steele Properties. We have been doing tax credit deals in Texas since 2007, we have eleven projects, both 4s and 9s, and we do primarily preservation projects. We're also active across the country. I've done projects in 16 states. I'm talking about the same rule that Bobby was talking about. Before I talk about the specific new proposed Texas language, I just want to step back a second and follow on to something Bobby said about the federal rules.

We have three basic federal statutes that deal with accessibility and visitability in the standards: the Americans with Disabilities Act, the Federal Fair Housing Act, and then something called Section 504 of the Federal

Rehabilitation Act. And all of those federal laws have come with lots of rules, case law, decades' worth of interpretation of what these rules mean and how they're supposed to be interpreted. I'm not going to hand it out, but just one example, this is just one of the federal documents, it's the Federal Fair Housing Act Design Manual, it's 334 pages. That's just one of them that sort of clarifies exactly what types of units are exempt from these requirements, what types of units aren't exempt, how many unit types you have to provide of each kind that have to be accessible, and all of that is kind of well settled and well established.

In most other states -- not most other states, all the other states that I've operated in, those states apply the federal rules for those three statutes for accessibility. They say you have to comply with the Fair Housing Act, the ADA and the Rehabilitation Act. And that's it, you have to comply with those federal rules and the other states have not imposed additional requirements.

The federal rules are good enough, we're not going to burden developments and developers with additional regulation beyond that, especially when there's a lot of clarity about what those federal rules mean.

Unfortunately, this change, as Bobby was

explaining, adds more requirements than the federal rules do, so you either take one of two approaches: you say we're going to do exactly what the federal government requires, the federal rules require, and that's it, or we're going to add on to that. And it seems to me in Texas our approach has been we don't want to burden businesses and developments with additional requirements, additional regulations beyond what's already well established under the federal system, and unfortunately, this rule, as Bobby was explaining, would add those additional requirements.

The problem with that is there are whole categories of projects that won't be able to proceed, and not just new construction. Bobby was talking about new construction, but this will also mean that a number of preservation deals just won't be able to proceed because -- for example, I have a project that you're probably, unfortunately, going to hear an appeal on next month that we're dealing with staff on right now, a preservation deal that's already completed, where staff is saying we think even though you've complied with the federal rules, you haven't done everything you need to do for Texas, and it seems like they're already applying this new rule retroactively to our project.

Specifically, I have a project that has 100 units, it has 21 bedroom flats, has 80 townhomes. All the bedrooms in the townhomes are on the top floor, so they're, by definition, not accessible, they don't have elevators. And under federal rules those are clearly exempt, you don't have to make townhomes that have the bedrooms on the top floor that don't already have elevators, you don't have to do anything to those to make those accessible, because if you tried -- and our architect actually showed what would happen if you tried, you'd have to add an internal elevator or an internal lift, the turn radiuses you'd need for wheelchairs would end up making some of those bedrooms so small that they don't even count as bedrooms anymore, three or four feet wide, so you'd lose bedrooms in existing units. Well, that's an irrational conclusion, an irrational kind of decision you try to make to say that an existing property that you're rehabbing that complies with all the federal rules, Texas is going to make you eliminate bedrooms because you now have to meet some new standard that TDHCA is applying. That just to me just doesn't seem to make any sense.

So I would urge that the Board reject this subsection (b)(8) -- or Chapter B, 10.101(b)(8), I'd urge

that they reject the changes to that, and I actually, as Bobby was saying, would urge that in future meetings when the time is right that we go back and change this Texas rule and say we're going to apply the federal standard and that's it, we don't need to do more than that, that's already sufficient.

MR. GOODWIN: Thank you.

Any questions?

MR. VASQUEZ: Not for Chad but for staff.

MR. GOODWIN: We have one more comment on the same rule before we get staff back up here. Is that okay with you, Leo?

MR. VASQUEZ: Sure.

MS. FINE: Tracey Fine with National Church Residences.

A slightly different spin, and I did include this in my public comment, and we also do --

MR. GOODWIN: Could you be specific with the rule and your comments, and did you comment during the comment period?

MS. FINE: This has to do with the visitability language in the Multifamily Rules, and I did include this in public comment.

MR. GOODWIN: Okay.

MS. FINE: So we do also a lot of preservation projects, and the original requirements began March 13, 1991, and in our experience, we have found that many projects that were placed in service around 1991 up through even 1999 did not even include these original ADA requirements that they should have done, the architect missed it, the inspector missed it. And for us to have to take a project, similar to what this gentleman just said, and try to bring it up to these standards under reconstruction or rehabilitation would be financially completely infeasible. You can make anything work if you throw enough money on it, but our entire project would implode.

And so we also ask that for projects that are submitted under rehabilitation that there is at least some kind of a waiver to exempt it should it not already include these provisions, and preferably, I would also request that it also be completely excluded from the Multifamily Rules.

MR. GOODWIN: Thank you.

Any questions?

Did you want to speak to this rule? Why don't you come up and then we'll ask Marni to come and kind of address all comments.

MS. LANGENDORF: And I think Marni will hopefully clarify some of it.

I wasn't prepared to discuss this particular rule, but we are in support of what the staff has done on this. My name is Jean Langendorf. I'm with Disability Rights Texas and I can speak for the Disability Policy Consortium also. We did attend the QAP roundtable when this was discussed and how it would go.

Just a little historical, I do want to speak to, having been doing this a very long with totally different boards, previously there has been so many of the townhouses developed across Texas under the Tax Credit Program in the past that accessibility for people with disabilities, they do not have the options that others would have with the kinds of developments. For Texas to now put something like this in place is very appropriate to address the past history of so many townhouses being in place and the ability of people with disabilities even to visit their neighbors was not provided.

Yes, the Federal Fair Housing does exempt townhouses and Texas in the past very much developed that particular mode of housing. We have talked with the Department, we have worked with the Department and other disability advocates to try to address putting more

availability of housing for those that are challenged with mobility and have the opportunity to fully participate. So this is a step forward; hopefully you won't go backwards on this one.

Thank you.

MR. GOODWIN: Thank you.

Any questions?

MR. BOWLING: Mr. Chair, can I clarify one thing?

MR. GOODWIN: Sure.

MR. BOWLING: We're not talking about all townhomes, we're talking about specifically townhomes from the federal rules which are two-story, non elevator served townhomes. So most of my developments are a mix of townhomes one-story and then there's a class of two-story townhomes. It's easier for us to work with a difficult topography, we can make some of them work.

MR. GOODWIN: We got that clarification. Thank you.

MR. IRVINE: Before Marni speaks, could I just clarify?

MR. GOODWIN: Sure.

MR. IRVINE: I'm probably flapping along behind this out of sync with everything, but in mind there are

two issues. One, there's the issue within the unit itself. We're talking about coming into a townhome, you're coming through a door that's wide enough to accommodate a wheelchair and you're talking about a bathroom facility on the ground floor, not an accessible bathroom but a bathroom that's big enough --

MS. HOLLOWAY: Or a half bath.

MR. IRVINE: -- or a half bath that a person who's visiting can use the restroom. That's all we're talking about inside the unit, and I do not know of anybody who would develop a townhome of this type today that does not meet those criteria.

I think what Bobby is concerned about is what about the route to that particular unit. It's exempt under the Fair Housing accessibility requirements. What are the federal requirements that govern that route, and the design manual, as I understand it --

MS. HOLLOWAY: Has more than 20 pages that address what they call impractical routes, so it's grades of more than 10 percent.

Speaking to Mr. Bowling's 2013 -- was that a tax credit deal? -- he would not have passed final construction inspection if it had not met the Fair Housing design requirements, so it did. We're not changing that.

MR. BOWLING: (Speaking from audience.)
Correct. But, Marni, not 100 percent on the two-story,
only 20 percent.

MS. HOLLOWAY: I'm talking about the routes.
You mentioned the topography. Right? So we are not
seeking to make any changes to the Fair Housing design
requirements around topography. That's why we mentioned
those standards over and over and over again: in
accordance with the Fair Housing Design Manual. So the
topography question is addressed within that manual and we
are not going to make any changes to that.

MR. BOWLING: (Speaking from audience.) I beg
to differ. I only had to meet the route with 20 percent
of the exempt units.

MS. HOLLOWAY: No. I beg to differ. Your
entire site had to meet Fair Housing design requirements.

MR. BOWLING: (Speaking from audience.) That's
not correct.

MR. IRVINE: Could we clarify this by simply
stating in the rule that nothing in this rule imposes
external route requirements over and above those required
by the Fair Housing Design Manual?

MR. BOWLING: (Speaking from audience.) The
language does not say that. The language says for all

units.

MR. IRVINE: I'm asking a question.

MR. GOODWIN: He's asking a question.

MR. IRVINE: Would that nail it down for you?

MR. BOWLING: (Speaking from audience.) Yes, it would.

MR. GOODWIN: And that's not a substantial change, that is just a tweaking and clarification.

MS. HOLLOWAY: There is language right here that says there must be an accessible or exempt route as provided for in the Fair Housing Act Design Manual from common use facilities to the affected units.

MR. GOODWIN: So you feel like it's already in there in this language.

MS. HOLLOWAY: Right, but if we need to clarify that, we absolutely can.

I need to speak to the 20 percent requirement actually required a bedroom and full bath on the ground floor of a townhouse, so it actually created a more onerous requirement on the 20 percent of units. There has been quite a bit of conversation recently about whether a flat of the same square footage is equivalent, and we've actually wound up having to bring you some waivers in the last couple of years based on that requirement.

Speaking to Mr. Asarch's issues with his rehabilitation, that is not a Fair Housing issue, that is a Section 504 issue which is imposed by statute. By statute we are required to follow those accessibility requirements for 5 percent of the units to be accessible for persons with disabilities. So that is not what's going on here.

MR. GOODWIN: In these rules.

MS. HOLLOWAY: In these rules. That's a different rule, a different requirement that is imposed by statute.

The other way that we could have handled this rule is just said townhouses aren't exempt, but that probably would have much broader implications than we could get to here. What we are trying to achieve is exactly as Ms. Langendorf described, the ability for a person with a disability to visit their neighbor and use the restroom, stay for dinner, those kinds of things, and it's not an accessible bathroom, it doesn't have a turning radius, it doesn't have all of those requirements, and I honestly doubt that anyone is building a townhouse without at least a half bath on the first floor.

MR. GOODWIN: Any questions?

MR. IRVINE: I just wanted to clarify one other

point to address Tracey's issue. If something was constructed post '91 and it was not in compliance, I don't think we can un-ring that bell.

MS. HOLLOWAY: Right. And that is something that we could handle through our current waiver process. Absolutely.

MR. GOODWIN: Paul, you had a question?

MR. BRADEN: So, Marni, with respect to this issue, do you think what we're doing is changing the way it was before?

MS. HOLLOWAY: It is absolutely changing the way it was before. Now 20 percent of the townhome units aren't going to be required to have a bedroom on the first floor and they're not going to be required to have a full bath.

MR. BRADEN: The accessibility route, you think that it's only required to the extent required by the Fair Housing Act Design Manual.

MS. HOLLOWAY: Yes.

MR. BRADEN: So if we change subparagraph (ii) to say to the extent required by the Fair Housing Act Design Manual, there must be an accessible exempt route from common use facilities to the affected units, do you think it really says that now?

MS. HOLLOWAY: I believe it does. Apparently there isn't agreement around that.

MR. BRADEN: Would that be more acceptable?

MR. GOODWIN: Would that be acceptable?

MR. ASARCH: Yes. I think if we added maybe a sentence -- I just drafted this really fast -- when we've been talking with our lawyers about these issues, they said, no, the way this new rule is drafted would create different obligations, so if we could add a sentence maybe at the end of the rule or the beginning of the rule, something to the effect of nothing in this rule should be construed to impose any additional or greater requirement than exist under the Federal Fair Housing Act, that would cover it. I think if we had some clear language like that.

MR. GOODWIN: That's a little broader than what I think he proposed.

MR. IRVINE: I think that nothing external to the unit over and above what's required by that act is accurate. We are looking for something inside the unit, we're looking to codify in rule -- take credit for what you're already doing, you're making units that are visitable. That's a good thing.

MR. ASARCH: No doubt. And we're all in favor

of accessibility, it's just there are practical limitations.

MR. IRVINE: Sure, absolutely.

MR. ASARCH: And there's a significant amount of concern among the development community that the way that this rule is drafted is imposing requirements that are going to, in some cases, make it impossible to build certain types of units or renovate certain types of units. So if we could clarify that that's not the intent, that would be acceptable.

MR. GOODWIN: So does Mr. Braden's proposal do that, at least give you that in some form or fashion?

MR. BOWLING: For the external, yes.

MS. HOLLOWAY: I would add that -- and this question hasn't been asked or answered -- none of these comments were received during the public comment period.

MR. GOODWIN: None of them were received during public comment?

MS. HOLLOWAY: And I think that staff has no concern with that clarifying change, but no, those comments were not received.

MR. GOODWIN: Okay. Any other questions?

MR. VASQUEZ: Wait, wait, wait. Yes.

MR. GOODWIN: You have another question. All

right.

MR. VASQUEZ: Just so I understand the phrase "regardless of building type" is new language?

MS. HOLLOWAY: Yes. This whole section was new for the draft, it was new for the staff draft, we had it posted up on forum for quite a while and did a lot of refining of it. The only change here between the draft that we brought you in September and this one is under romanette (iii)(B) where we took out where it used to say "at least one visitable bathroom" and we just have "at least one bathroom or half bath" and then it goes on to address the Fair Housing Design Manual. So we took out that word "visitable" because it's not a defined term.

MR. VASQUEZ: It's showing on mine that it's still here.

MR. GOODWIN: It's showing that "visitable" is still in.

MS. HOLLOWAY: Okay. It's showing struck on mine, that it's struck.

MR. BRADEN: No offense, but we're the ones adopting it, so let's make sure we have the language right here. What's showing on ours is that second sentence is struck: "The layout of this bathroom or half bath must comply --"

MS. HOLLOWAY: I believe that you're looking at the public comment and not at the rule itself, because we did receive public comment suggesting that that entire line come out. In the rule itself -- and I apologize, I don't know the page in your Board book, but it's page 18 of 19 in the rule itself, not in the public comment. 783.

MR. BRADEN: On a going forward basis, we might want to work on the presentation to the Board book.

MS. HOLLOWAY: So it's organized with the public comment and the reasoned response and then the rule itself follows. Especially since you all are on laptops, we could do hyperlinks or something like that that might make it a little easier to work through.

MR. GOODWIN: 783.

MR. VASQUEZ: And it's leaving in the second line that was struck on 737.

MR. GOODWIN: Okay. Any additional questions?

MR. VASQUEZ: I have a broader set of questions here. The Fair Housing Act Design Manual, the Department agrees that that's the standard that must be met by all of our developers?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: So that's the base standard that must be met.

MS. HOLLOWAY: Yes.

MR. VASQUEZ: And that addresses interior and the topographical exterior items?

MS. HOLLOWAY: Yes, it does.

MR. VASQUEZ: Okay. Are we, Texas, now trying to impose greater rules over and above that Fair Housing Act Design Manual?

MS. HOLLOWAY: Yes, we are. In the Fair Housing Act Design Manual, townhomes, so two-story structures, are considered to be exempt, they're called exempt units, so they're exempt from some requirements. What we are attempting to do is have those townhomes meet these requirements for at least a half bath on the first floor. Yes, actually it is, in fact, more than the federal requirements.

MR. ECCLES: To add on to that question is it exceeding the Fair Housing Design Manual as it relates to exterior routes from the common facilities to the affected units?

MS. HOLLOWAY: No, it is not, and that is not our intent.

MR. VASQUEZ: But it is our intent to increase the requirements on the two-story townhomes?

MS. HOLLOWAY: Yes, for units accessed by

ground floor or by elevator. Yes.

MR. GOODWIN: Other questions?

MR. BRADEN: And that's a change from past practice?

MS. HOLLOWAY: Past practice was for townhome units 20 percent of them had to have a bedroom and a bathroom on the first floor.

MR. BRADEN: That's a change from past practice?

MR. VASQUEZ: No, we're not changing that.

MS. HOLLOWAY: The 20 percent is going away, the 20 percent is gone. All we're saying is all of them must have these requirements, the zero step entrance, a bathroom or half bath that meets the Fair Housing Act Design Manual on the first floor, blocking for installation of a grab bar if it's needed later, an accessible route from the entrance to the bathroom or half bath, and the doorway must have a usable width, light switches, electrical outlets and thermostats on the entry level must be at an accessible height.

MR. BRADEN: What were the comments for this whole change? You had a comment process and people didn't comment?

MS. HOLLOWAY: So the comment process between

the draft rule in September and the current rule is the section that we were looking at earlier. We had three parties comment. One of them addressed the properties that were not built compliantly in rehabilitation, and that's something that we can handle through the waiver process. The other two comments wanted to strike the design specifications for "each item must comply with the standards of the Fair Housing Act Design Manual" and sought to strike "the layout of this bathroom or half bath must comply with the specifications set forth in the Fair Housing Act Design Manual."

MR. BRADEN: The red lines.

MS. HOLLOWAY: Right. And those are the changes that we said, well, wait a minute, we are in a better place if we have this standard to point to so that there are no questions later.

MR. GOODWIN: Do you have another question, Leo?

MR. VASQUEZ: Again, I just want to make sure I'm fully understanding that the rules that we are proposing are exceeding the Fair Housing Act Design Manual that everyone else uses.

MS. HOLLOWAY: Yes, they are.

MR. VASQUEZ: And that we've used heretofore.

MS. HOLLOWAY: What we've done before exceeded the Fair Housing Act Design Manual by quite a bit.

MR. GOODWIN: In my opinion it was more restrictive because there are a lot of two-bedroom townhome units that don't have a bedroom on the first floor. So this actually makes it better, not as good as what I think they're saying they'd like to have, but makes it more palatable than what it was in the past.

MR. BOWLING: I agree with that.

MR. GOODWIN: Do you agree with that? Because you've done away with the requirement for a bedroom to be on the ground floor, which not many units of that size have a bedroom on the ground floor.

MR. VASQUEZ: And then you're saying that separately the Section 504 statute affects the rehabilitation?

MS. HOLLOWAY: So Section 504 is actually a federal standard that is adopted by statute, and what it requires is that 5 percent of the units within a development, whether it's rehabilitation or construction, must be accessible to persons with disabilities, and that 2 percent of the units have to be modified for sight/hearing. That is a separate requirement, that's something that our statute 306.6722 says we have to do

this, and that's a separate requirement entirely and we are not going beyond that part.

MR. VASQUEZ: So for the preservation/renovation type of situation, this rule does not impact that, it doesn't create a higher burden.

MS. HOLLOWAY: It does not create a higher burden on the 5 percent issue. Am I not answering your question properly? You're looking like I'm not answering your question.

MR. VASQUEZ: In a rehab project, a preservation project from an older structure that clearly can't be modified.

MS. HOLLOWAY: The Fair Housing requirements actually came about on March 13 of 1991, so anything built after that was supposed to have met Fair Housing Act design requirements. What we've heard from Tracey -- and I completely get that probably some of them did not, and there's a waiver process for that. If we are looking at rehabilitation of a townhome, so it would be that otherwise exempt unit, and there isn't a bathroom of some kind on the first floor, then I would imagine that we would be looking at a waiver process there.

MR. VASQUEZ: Okay.

MR. GOODWIN: Any additional questions? Any

other comments?

MS. MURPHY: Patricia Murphy, chief of Compliance.

So a property that was built after March of 1991, a new construction property built after March of 1991 must meet the Federal Fair Housing requirements, that's a federal law. So as Tracey Fine has pointed out, there are definitely properties out there that were not built in compliance. Should one of our developers select that as a property that they choose to do a rehabilitation on, there's no waiver of the Fair Housing requirements. That property, when we come out to do the final construction inspection, it must meet the Fair Housing guidelines, it's a federal law.

In addition, it's going to have to have 5 percent of its units be accessible under the ADA standards, 2 percent for visual and hearing impaired, and whatever you guys decide today about this 20 percent or 100 percent. But there's no waiver for something that was built after March of 1991.

MR. GOODWIN: Any questions?

(No response.)

MS. HOLLOWAY: I very much appreciate it. So refinement from the expert, I think that our rule that

exceeds the federal standard, so the part about townhouses is something that could be waived through this process. Fair Housing Act Design cannot be waived, period, so that's a separate question, that's a separate issue. But the parts where we exceed the federal standard could be subject to waiver.

MR. VASQUEZ: And I've got my thoughts a little bit more straight. So where we currently exceed the federal standards, does that apply to 100 percent or only apply to 20 percent?

MS. HOLLOWAY: It applies to 20 percent of the townhome units.

MR. VASQUEZ: We're backing of exceeding the federal standard, but we are then applying to 100 percent instead of the 20 percent.

MR. VASQUEZ: Thank you. Now I understand.

MS. HOLLOWAY: And I think it was Tim who pointed out, I don't think anybody is out there building townhomes right now that don't have at least a half bath on the first floor. And we actually had a development a couple of years ago that was townhomes that didn't have any kind of bathroom on the first floor, and they just came back and said, Hey, we've got to do this because we can't lease up these units.

MR. VASQUEZ: And I'm sorry, I don't want to hog it all here, but is there any way that we can adjust the language to reflect the one bathroom or half bath but only applying it to the 20 percent rather than the 100 percent?

MS. HOLLOWAY: I think that that could happen.

MR. VASQUEZ: So essentially, instead of changing both the exceeding the federal requirement, we're talking about ramping that back a little bit, which almost everyone is building them that way to begin with, but I think the real crux of the matter from what I've been hearing is applying that rule to the 100 percent versus the 20 percent. Are we currently applying it to the 20 percent? Is there a way we can maintain that 20 percent rule, which complies with the federal statute. Right?

MS. HOLLOWAY: It exceeds the statute.

MR. VASQUEZ: The 20 percent exceeds the statute?

MS. HOLLOWAY: The 20 percent exceeds.

MR. VASQUEZ: So not to change our rules, everyone seems to be living okay with the 20 percent.

MS. HOLLOWAY: No. This Board has seen a number of waiver requests and issues that have come up regarding questions of unit mix and how are they meeting

the 20 percent, and just flat-out waivers.

MR. VASQUEZ: So when we go to 100 percent, I can imagine the number of requests for waivers and analysis.

MR. BRADEN: Just to be clear, and correct me if I'm wrong, what we're talking about is the final rule here, so what we have to deal with is, I guess, we can go back to the original rule without making any changes, or we have to put the draft rule that we put out there, we have to make nonmaterial changes which have been published out there, so any changes we're talking about, we have to work within those constraints.

MR. GOODWIN: Correct.

MR. VASQUEZ: I think just getting rid of the "regardless of building type."

MS. HOLLOWAY: So if we take out the "regardless of building type" then this section is really meaningless.

MR. GOODWIN: Explain what you mean by meaningless.

MS. HOLLOWAY: So the building type, this rides on the building type question.

MR. VASQUEZ: Where does it say 20 percent in the current rules?

MS. HOLLOWAY: It does in the 2017 rules.

MR. VASQUEZ: But I'm saying in our existing rules, so was that in this section before?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: Why can we not leave those words in there, the 20 percent?

MR. IRVINE: This may not be relevant, but wasn't the 20 percent and the concept in the prior rule really not just an accessibility and a visitability issue, but a unit distribution issue, and wasn't that why we were hearing waiver requests?

MS. HOLLOWAY: We had waiver requests for all sorts of reasons because of that rule. They came before construction, they came after construction when someone got dinged because they didn't have a bedroom on the first floor. It went to unit mix questions, so is a 1,000 square foot, three-bedroom townhome equivalent to a 1,000 square foot, three-bedroom flat, are those equivalent units. It has created a number of issues over the last several years to have that rule in place.

MR. GOODWIN: Any other questions?

MS. HOLLOWAY: I think, though, that the comment that was made earlier -- are you building any townhomes without some kind of bathroom on the first

floor?

MR. BOWLING: (Speaking from audience.) So all of the design issues are not really as big a cost issue, they're just design issues, and I can design a unit from scratch. That's not my issue. I agree with Mr. Irvine on that, that's not a burden, that's not an issue, except for rehab it's different. The issue that we had was with the topography.

MS. HOLLOWAY: With the external route.

MR. BOWLING: (Speaking from audience.) And I'm satisfied with Mr. Braden's language. Maybe yours was okay, Marni, and I apologize with the exempt route, because to me exempt route means go through the waiver process and get it declared exempt, because that's the way the Fair Housing Act Design Manual speaks of exempt routes. I think Mr. Braden's language solves the problem.

MR. GOODWIN: Remember your language?

MR. BRADEN: I do.

MR. GOODWIN: Okay. Any other questions, comments?

(No response.)

MR. GOODWIN: We don't have a motion, so I think Mr. Braden has been down there writing away.

MR. BRADEN: So I would make a motion to

approve the amendments to 10 TAC Chapter 10 as presented, except with the following changes, and so in Subchapter A, definitions, the supportive housing definition, I would change -- let me get to the right section to make sure I'm looking at it correctly -- the current additional sentence that reads, "Debt meeting this criteria may be provided by an affiliate" I would change that sentence to read, "In addition, permanent foreclosable cash flow debt provided by an affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds."

And I can give this to you, Marni, if it passes. It's not mine, somebody gave it to me, but I played with it a little bit.

And then the other change I would make would be to 783 of our Board book, so again, Subchapter B 10.101(b)(8), development accessibility requirements, and under (8) it would be (B)(ii), and so it kind of like rewords the beginning and moves the phrase up, so that phrase would begin "To the extent required by the Fair Housing Act Design Manual, there must be an accessible or exempt route from common use facilities to the affected units."

MR. GOODWIN: So I hear a motion. Do I hear a

second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: We have a motion and a second.
Any additional comment or questions?

MR. VASQUEZ: I still have discussion. So by approving this motion, we're still accepting the change where we're applying this to 100 percent of units instead of 20 percent of units.

MR. GOODWIN: Correct.

MS. HOLLOWAY: Yes.

MR. BRADEN: But we just heard from the industry saying the design is not the big issue, it's the accessibility that's the issue.

MS. HOLLOWAY: The topography was the concern.

MR. BRADEN: I understand what you're saying, what are we doing imposing more requirements than the federal law, but apparently we've been doing that.

MR. GOODWIN: Any other questions or comments?

MR. VASQUEZ: I just think we're opening ourselves for forever, or at least for the next cycle to just huge amounts of appeals and waivers from that 100 percent. It just seems unreasonable to me to expand it when it's not required. I would just see if there's some way to have a friendly amendment to the motion to maintain

the 20 percent language that is in the section that I think Beau has open there for you.

MR. BRADEN: If you want to try to draft something, I'm more than willing to listen.

MS. RESÉNDIZ: Mr. Chairman, is there a way that we can [INAUDIBLE]?

MR. GOODWIN: We've got to get it to the governor by November 15.

MR. VASQUEZ: Unless the consensus of the other three present and voting Board members is saying let's go for 100 percent.

MR. ECCLES: There's a motion on the table.

MR. GOODWIN: There's a motion on the table and it's been seconded, so unless you want to make an amendment to the motion, and you're open to making an amendment to the motion, that's why I haven't called for a vote.

MR. VASQUEZ: I would ask for an amendment to the motion which I think -- and Beau, help me out if I'm wrong here -- in (8)(b) where it says "regardless of building type, all units" instead say "regardless of building type, a minimum of 20 percent of units" instead of "all."

MR. ECCLES: I have some concerns with blending

of that concept into the rule as it's been proposed at this point. It's one thing to say --

MR. VASQUEZ: Or leaving it in the location that it's in in the current rule, so I'm saying not take it out of whichever section you just showed me.

MR. ECCLES: The 20 percent requirement is in 10.101(b)(8)(B) which reads --

MS. HOLLOWAY: In 2017, yes.

MR. ECCLES: -- in 2017, but it's not just 20 percent of each unit type, it's a long discussion of new construction of units that are normally exempt from the Fair Housing accessibility requirements, and then a discussion of unit types which is bedroom amounts.

MR. BRADEN: I'm a little concerned we're mixing and matching such that what's been published out there is not given adequate notice for comment. It seems like if we were going to revert back to the original rule, we'd almost have to revert back the whole thing to the original rule as opposed to trying to do much. I mean, I don't mind make a few changes, but I don't know, I'm not quite comfortable with mixing and matching so much without people talking about it beforehand.

MR. GOODWIN: So I hear that you're not accepting the friendly amendment?

MR. BRADEN: I'm not accepting the friendly amendment.

MR. GOODWIN: Any other amendment that you'd like to make? If not, I'm going to call for a vote on the question.

(No response.)

MR. GOODWIN: Okay. All those in favor of the motion as made and seconded, say aye.

(Ayes: Mr. Braden, Mr. Goodwin, Ms. Reséndiz.)

MR. GOODWIN: Opposed?

(No: Mr. Vasquez.)

MR. GOODWIN: So the motion is passed.

Any other presentation?

MS. HOLLOWAY: That's it.

MR. GOODWIN: We have hit a point in the meeting where we will take public comment for the purpose of effecting future agendas. We cannot discuss or entertain anything other than what you'd like to bring up.

MR. ASARCH: I just want to note that TDHCA staff, being part of the government as it's structured, is not capable of going out and lobbying, but just to make sure that everyone is aware of the private activity bond issue in the Tax Reform Bill, where the current version of the Tax Reform Bill would eliminate private activity

bonds.

And I know that other states that may not have the same restriction -- Kentucky is an example -- are meeting with their senators to urge them to retain the private activity bond program, and I don't know if there's a way for the TDHCA Board to perhaps make sure that the governor knows that that's an issue and maybe encourage the governor to raise that issue with the congressional delegation.

MR. GOODWIN: Okay. Thank you for that comment.

Any additional comments?

MS. SISAK: Quick comment. I will keep it brief, and I appreciate you running the meeting in a very efficient manner, I love that.

On behalf of the TAAHP QAP Committee, I just want to make a few reflections on the last year and the QAP process. I think we made some progress, positive progress with regard to expanding the urban core definition to pick up some smaller municipalities, I think the supportive housing definition is an improvement, and I really appreciate the cleanup on some of the accessibility language within the high opportunity definition.

I think the big miss this year is cost. I

think we're going to see huge cost increases because of the Hurricane Harvey. But also, outside of that, these projects are just getting under-leveraged with tax credit equity because of what's going on with the looming corporate tax reform, so I think that's something we really need to look at in the coming year.

When I get out my kind of 9 percent crystal ball, I see a lot of bond deals, because, to Chad's comment, a lot of bond deals are going to be competing in the 9 percent round, so we're going to see a lot of urban deals. Because CRP has been broadened, we're going to see a lot of ties. The tiebreaker this year treats CRP and high opportunity on an equal footing, so it will kind of go down to this tiebreaker that is poverty rate of the census tract and how many tax credit units per capita there are.

And while those two items are definitive tiebreakers, I don't know if they're the tiebreakers that reward good real estate over bad. So we really need to work on that in the coming year and look at more meaningful ways to break ties.

You guys know in my ideal world we'd come up with a scoring criteria that was a little less flat and that rewarded good real estate and areas of greatest need.

I've talked about need a lot, I'd really like to work with staff on that, but we need to get back to a place where good developments in the right place with strong sponsorships are rewarded under this program, and I really do think there's work left to do in that respect.

So I will continue to be involved but I will not be involved as the QAP chair, this is my last day in that role, it's time for me to kind of step down and let someone else take over the reins. But I wanted to make that announcement and thank you all for your service to Texas and for listening to me for, I think, four years that I've served in this role. I know that I can get excited and I can gesticulate and make faces that you guys see and that these guys may not see. So I appreciate you putting up with me. I thank the staff also for the same thing.

But mostly the people in this room and the TAAHP membership who, you know, really most of them, if not all of them, really believe in what we do as an industry, work hard to create safe superior housing for their residents and really do care about this program.

And so I hope we continue to work together to make this program stronger. Especially in light of funding for the private activity bonds on the chopping

block, we need to kind of work together and work collectively on how we're viewed in this country in terms of this industry and really raise the bar for everyone.

So I thank you all.

MR. GOODWIN: Thank you. Thanks for your service and your comments and the number of years you've put into this program.

MR. BOWLING: Amen.

I'm Bobby Bowling. I just want to thank this Board for staying with me for an hour on that highly technical issue. I really commend you all. It's an in-the-weeds thing. I'm really happy that you all grasped this issue because in 2019 I think the problem that you have with the waivers -- I'm only a Texas developer and I've been in this program since 2000, and I know the 20 percent rule.

But you're getting more and more out of state developers coming in and they're pointing to that Fair Housing Act Design Manual and they're saying, wait, what do you mean, this is what I built, and they're doing it after the fact. I think the reach above that is what leads to all your waiver requests, and I'd like to revisit that again in 2019.

I think it's just much more reasonable to just

stop at the Fair Housing level and revisit this issue again, because I think that's where your waivers are coming from, not us Texas guys that know the 20 percent rule, but you're getting burdened by somebody who's coming from another state going I don't understand why you're telling me I have to do more than this, no other state is making me do that.

So again, I really appreciate you all sitting through that and grasping that. You're really to be commended because that's very monkish. So thank you.

MR. GOODWIN: Seeing no one else that wants to comment, I will entertain a motion to adjourn.

MR. VASQUEZ: So moved.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: We're adjourned. Thank you.

(Whereupon, at 11:40 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: November 9, 2017

I do hereby certify that the foregoing pages, numbers 1 through 145, 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) 11/15/2017
(Date)

On the Record Reporting
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