

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Texas Capitol Building
Capitol Extension
Room E2.028
1100 Congress Avenue
Austin, Texas

October 11, 2018
8:03 a.m.

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

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P R O C E E D I N G S

1
2 MR. GOODWIN: Good morning. I call to order
3 the Texas Department of Housing and Community Affairs
4 Governing Board meeting for October 11, 2018, and we'll
5 begin with the roll call.

6 Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. GOODWIN: Mr. Braden?

9 MR. BRADEN: Here.

10 MR. GOODWIN: Ms. Reséndiz?

11 MS. RESÉNDIZ: Present.

12 MR. GOODWIN: Ms. Thomason?

13 MS. THOMASON: Here.

14 MR. GOODWIN: Mr. Vasquez?

15 MR. VASQUEZ: Here.

16 MR. GOODWIN: Okay. We have a quorum.

17 If you will all rise and join as Tim leads us
18 in the Pledge of Allegiance.

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

21 MR. GOODWIN: We'll begin the morning with
22 Michael. We have a resolution recognizing October as
23 Hispanic Heritage Month.

24 Michael, if you'll read that resolution into
25 the record.

1 MR. LYTTLE: Yes, sir.

2 The resolution reads as follows:

3 "Whereas, September 15, 2018, through October
4 15, 2018, is Hispanic Heritage Month, and has a nationally
5 designated theme of "Hispanics: One Endless Voice to
6 Enhance our Traditions," to reflect Hispanic Americans'
7 traditions, history, and cultures by using their voices to
8 continue to share with the world the contributions of
9 Hispanic Americans and their rich legacies of cultural
10 tradition;

11 "Whereas, September 15th was chosen as the
12 starting point for the celebration because it is the
13 anniversary of independence of five Latin American
14 countries: Costa Rica, El Salvador, Guatemala, Honduras
15 and Nicaragua. All declared independence in 1821. In
16 addition, Mexico, Chile, and Belize celebrate their
17 independence days on September 16th, September 18th, and
18 September 21st, respectively;

19 "Whereas, the Texas Department of Housing and
20 Community Affairs (the "Department") recognizes the
21 significance of Hispanic Heritage Month as an important
22 time to celebrate the contributions and achievements of
23 American citizens whose ancestors came from Spain, Mexico,
24 the Caribbean, Central America, and South America in Texas
25 history, American history, and world history;

1 "Whereas, the Department recognizes the deep
2 historical importance of generations of Hispanic Americans
3 to the American story and how Hispanic American history,
4 cultures and traditions shape our character, define our
5 beauty, strengthen our patriotism, and enhance our future;
6 and

7 "Whereas, the Department recognizes that the
8 contributions and achievements of the diverse cultures
9 within the Hispanic community enrich and strengthen our
10 nation as one diverse community of Americans;

11 "Now, Therefore, it is hereby resolved that the
12 Texas Department of Housing and Community Affairs —

13 "(1) recognizes the significance of Hispanic
14 Heritage Month as an important time to acknowledge,
15 appreciate, and celebrate the history of Hispanic
16 Americans, and encourages the continued celebration of
17 this month to provide an opportunity for all Texans to
18 learn more about Hispanic American history, culture, and
19 tradition, and their significance in the past, present,
20 and future of our Lone Star State, the United States, and
21 the World; and

22 "(2) recognizes that in the pursuit of the goal
23 and responsibility of providing equal housing
24 opportunities for all, the Governing Board of the Texas
25 Department of Housing and Community Affairs does hereby

1 celebrate September 15, 2018, through October 15, 2018, as
2 Hispanic Heritage Month in Texas and encourages all Texas
3 individuals and organizations, public and private, to join
4 and work together in amplifying our voice to continue to
5 observe Hispanic Americans' history, cultures, and
6 traditions and the importance of equal housing treatment
7 and opportunity for all."

8 MR. GOODWIN: Thank you, Michael.

9 Do I hear a motion to approve this resolution?

10 MS. BINGHAM ESCAREÑO: Move to approve.

11 MR. GOODWIN: Move to approve. Second?

12 MR. VASQUEZ: Second.

13 MR. GOODWIN: Any discussion?

14 (No response.)

15 MR. GOODWIN: All those in favor say aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: The resolution is passed.

20 Moving to the consent agenda, are there any
21 items any Board members would like to have pulled from the
22 consent agenda?

23 (No response.)

24 MR. GOODWIN: I have one request from someone
25 in the audience to pull item 1(1) number 18422, Elysium

1 Grand in Austin, so we will pull that off of the consent
2 agenda. And with that being the only adjustment, I will
3 accept a motion to approve the consent agenda and the
4 consent agenda report items.

5 MR. VASQUEZ: So moved.

6 MR. GOODWIN: It's been moved. A second?

7 MS. THOMASON: Second.

8 MR. GOODWIN: Okay. Moved and seconded. Any
9 discussion?

10 (No response.)

11 MR. GOODWIN: All those in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Okay. So we will move on to the
16 action items and we will start with item 1(1), Elysium
17 Grand. I assume we know a little bit about why it's been
18 pulled.

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

22 This item is presentation, discussion and
23 possible action on a determination notice for housing tax
24 credits with another issuer, application 18422 for Elysium
25 Grand in Austin.

1 The proposed development is new construction of
2 90 units with 12 units rent and income restricted at 30
3 percent of AMI, 40 of them at 50 percent of AMI, and 17 of
4 them at 60 percent of AMI, with the remaining 21 at market
5 rate. Twenty-five project-based HUD Veterans Affairs
6 supportive housing vouchers have been awarded to the
7 project and it will serve the general population. The
8 certificate of reservation will expire on December 8. The
9 proposed issuer of the bonds is the Austin Housing Finance
10 Corporation.

11 The proposed development site is located within
12 500 feet of an active railroad tract, and the applicant
13 submitted an ordinance from the City of Austin that
14 regulates proximity to a railroad easement which staff
15 finds to be acceptable mitigation. The applicant's
16 compliance history is designated as an extra large
17 Category 3 and was deemed acceptable by EARAC. The
18 Department has received two letters of opposition from
19 members of the community and no letters of support.

20 Staff recommends that the site for Elysium
21 Grand be found eligible and recommends the issuance of a
22 determination notice in the amount of \$391,757 in 4
23 percent housing tax credits be approved.

24 MR. GOODWIN: Okay. Any questions?

25 (No response.)

1 MR. GOODWIN: Any discussion? Did you want to
2 speak, ma'am?

3 MS. DEEDS: Good morning.

4 MR. GOODWIN: Good morning.

5 MS. DEEDS: Good morning, Chairman and Board
6 members. I'm Farida Deeds, representing the neighborhood.
7 Thank you for this opportunity to speak.

8 Hopefully you've had a chance to consider the
9 information presented to you last month, some of which is
10 also provided in the current board book. I will be happy
11 to answer any questions you may have.

12 Our neighborhood has been berated because we
13 have not supported this project with the fact being we
14 would be opposed to any project of this stature at this
15 site. The City of Austin seems to have some self-run
16 initiative to have affordable housing west of MoPac
17 Expressway, but is this desperation so blinding that all
18 other considerations are to be overlooked?

19 Note that recently one mile south of this site
20 and also just west of MoPac another project, Waters Park
21 Studio, was recommended for the 9 percent housing tax
22 credits in 2018. Our mayor referred to an Austin bargain
23 in January 2017 where "We will not force density in the
24 middle of neighborhoods." During a mayoral candidate
25 forum this week, the mayor said, "We need to work on what

1 that transition is then between the corridors and the
2 neighborhoods."

3 A five-story apartment building is hardly an
4 appropriate transition between one- and two-story
5 commercial and rental residential and single family homes.

6 Refer to page 41 of 47 of your board book. I think it's
7 a supplemental attachment. You'll be able to see the size
8 of housing that's being proposed and the surrounding
9 neighborhood.

10 As for the site, the city itself concluded that
11 the site has a low walkability score. The state
12 representative did not support the 9 percent application
13 in 2016, one reason being the lack of adequate access to
14 public transportation. Even one city council member
15 questioned why we continue to place people in situations
16 where they will be care dependent. This site is a few
17 hundred feet from an active railroad track and the
18 elevated MoPac Expressway. The sole access is on a
19 neighborhood street that is known to flood. The site is
20 in the 100-year flood plain, critical water quality zone
21 and karst terrain. The current site plan had to resort to
22 an adjusted critical water quality and has structures
23 abutting a critical environmental feature that requires a
24 50-foot buffer perimeter. If you want to refer to your
25 board book, that's about page 45.

1 Incompatible zoning of these taller residential
2 structures near rental residential and single family homes
3 and shorter structures that's being called for, affordable
4 housing should not be the justification for incompatible
5 zoning. Even apartments on major nearby streets are only
6 three stories tall, and with this 4 percent application,
7 this for-profit developer is attempting to forego paying
8 property taxes. Please refer to page 72 and 73 of your
9 board book.

10 And very recently it asked for the issuance of
11 an even higher bond amount when just on August 23 the city
12 set a public hearing for a bond amount not to exceed \$10
13 million, and yet the hearing on September 20 was for an
14 amount not exceeding \$13 million.

15 I've got one more.

16 MR. GOODWIN: You keep going.

17 MS. DEEDS: Thank you very much.

18 With all these shortfalls, how much is a
19 prospective resident really benefitting and at what cost
20 to the city, state and taxpayer, especially if this for-
21 profit developer needs a property tax exemption to make
22 this project feasible?

23 We request that you deny the funding.

24 MR. GOODWIN: Any questions?

25 (No response.)

1 MR. GOODWIN: I've got a question for you.
2 Having a little experience developing property in the City
3 of Austin, how did they ever approve this? I mean, I'm
4 not sure we have the authority to stop it. It seems like
5 it should have been stopped at the city council from the
6 zoning perspective level. I've known this area for 30
7 years. After you testified the last time, I drove out and
8 took a look at it. There's no question in my mind this is
9 an inappropriate use. I mean, commercial buildings aren't
10 allowed that front onto MoPac to be as tall as what this
11 is and it backs right up to houses.

12 How did this happen with the city? I assume
13 you opposed it. That tract has been there for 30 years,
14 we sold houses in that neighborhood when they were first
15 being built. One of my best friends bought the second
16 home built in the neighborhood.

17 MS. DEEDS: I don't know how to really answer
18 that other than we're a little surprised too. I don't
19 know if we all got on the wrong track or not, but
20 originally when the application was going to be submitted
21 for the 2016 application, the city wants to approve that,
22 and at that time we had already seen the site plan and we
23 could just tell so much of it was near that critical water
24 quality zone, so at that point we kind of knew that the
25 initial plan was not going to be feasible. Then they

1 ended up changing that plan, maybe because of that reason,
2 and so to achieve the number of units they wanted they did
3 seek now taller buildings and that was what the now
4 requested zoning request was for.

5 So really, all along we have been opposed to
6 this zoning. Now that the zoning is passed, now we're
7 just trying to also be opposed to any funding to promote a
8 project of this stature.

9 MR. GOODWIN: Do you believe if this wasn't
10 affordable housing the city would have ever approved this
11 structure to go in this location?

12 MS. DEEDS: So when we met with Marni Holloway
13 and Tim Irvine, I think we were trying to express we can
14 never know now. Right? We won't know. The way it was
15 presented to the city was from this developer for an
16 affordable housing project and it got approved. I'm not
17 really sure. Again, we would have been against this
18 whether it was affordable housing or otherwise, a
19 commercial structure, even a single family five-story.
20 It's not feasible.

21 MR. GOODWIN: So just to make sure I understand
22 properly and the other Board members that don't live here
23 might understand properly, if I'm a 30-percent-of-AMI
24 tenant in this building, I have to walk down Oak Creek
25 Boulevard, across a railroad track, it's not completely

1 sidewalked to get to MoPac, then I have to walk up about
2 two-tenths of a mile to Parmer Lane, which is a six-lane
3 road with traffic coming in each direction and two turn
4 lanes, and then walk across MoPac to get over to where the
5 bus might pick me up, over to the H-E-B.

6 MS. DEEDS: There's one bus route there,
7 there's another bus route that is across Parmer where you
8 wouldn't necessarily have to take that exact same route,
9 but to go to the grocery store, certainly what you were
10 stating, even though Parmer Lane is six lanes, you know
11 when you cross at an intersection it's going to be more
12 because there's left turn lanes, there's right turn lanes.

13 I mean, I really don't know what to say other than it's
14 also not accessible to the public transportation. I know
15 the developer claims, and it's true, the rail station is
16 one mile away, but in reality, if you look at Google Maps,
17 it's a 1.4 mile travel distance by walking or cycling, and
18 if you do decide to walk or cycle to that Howard Lane
19 station, you will be doing it along a sidewalk along 55
20 mile per hour traffic coming, and again, it's now 1.4
21 miles, and I think the smart housing was in a half a mile
22 of public transportation.

23 MR. GOODWIN: Any other questions?

24 MS. DEEDS: I appreciate you pointing that out.
25 We've tried to point out some of these things too, but

1 again, even if it was a luxury apartment complex, even if
2 it was one person's home being four or five stories, it
3 really wouldn't matter, we would still be opposing such a
4 development.

5 MR. GOODWIN: With my experience with the City
6 of Austin, you wouldn't have to oppose it if it were a
7 luxury apartment building because they don't allow
8 anything to be built at that height next to a neighborhood
9 that's that restricted off of a major thoroughfare.

10 MS. DEEDS: So what kind of recourse do you
11 think we have from here?

12 MR. GOODWIN: I don't know. I'm not sure that
13 we have any as well because all the i's have been dotted
14 and the t's have been crossed and they've got the zoning.
15 We don't have the right to go back in, but I think that's
16 where a fight would have been won had you wanted to wage
17 that fight. I'm going to vote against it because it's a
18 place that, in my opinion, affordable housing just has no
19 business being in that location.

20 MS. DEEDS: And I believe the state
21 representative was stating the same thing in 2016, another
22 city council member had stated something similarly.

23 MR. GOODWIN: Right.

24 MS. DEEDS: Thank you. Anybody else have any
25 questions?

1 MR. GOODWIN: Any other questions?

2 (No response.)

3 MS. DEEDS: Okay. Thank you very much.

4 MR. GOODWIN: Thank you.

5 Anybody else want to speak?

6 MS. LASCH: Hello. My name is Megan Lasch. I
7 am with O-SDA and one of the owners, and I'll start by
8 saying I don't feel good so I'm not going to touch
9 anything. The reason why I am here versus some of my
10 other partners is because I am the one that's been working
11 tirelessly with the neighborhood and with the city for the
12 past three years on this development through the approval
13 process, and yes, I said three years and we haven't even
14 broken ground.

15 I appreciate the fact that you took time to
16 drive to the site. It is easy to hear five-story and get
17 scared, but I will tell you that this particular zoning
18 case was heavily sought out by the city. We went through
19 numerous council hearings. The site plan itself, where
20 you say five-story, we meet all compatibility
21 requirements. We're really not that much difference in
22 height than the commercial building next to us, so the
23 five-story building that we have is actually right to our
24 buildable property limits to the storage facility, and so
25 the larger component of our development is away from the

1 neighborhood. We have a 75 foot setback for the two-story
2 building that exceeds compatibility standards.

3 We've agreed to provide a restrictive covenant
4 on the site per the communications and meetings that we've
5 had with other members of this neighborhood association,
6 so we're putting that restrictive covenant on the site as
7 our effort to work with the neighborhood association.
8 We've worked with them for years, the other folks that
9 have agreed and provided these items as part of the
10 restrictive covenant that we've all said we're here to
11 work with you. I don't know what else I can do to work
12 with them other than go away, and the city has made it
13 clear they wanted to see affordable housing here.

14 Yes, the state rep didn't support it in 2016
15 but she did in 2017, and that's important, she did in a
16 large way. It was supported unanimously by council for
17 the zoning case, unanimously by planning and zoning, and
18 they're issuing the bonds and have supported it all the
19 way through.

20 There is a protected sidewalk on MoPac, so
21 there is a sidewalk from our site. A portion of it is not
22 there, we will be building it as part of our development,
23 so there will be a sidewalk all the way to Howard Station,
24 so it really concerns me when people say there's not
25 public transportation, we're roughly a mile from Howard

1 Station. There's not that many stations in Austin to
2 begin with; this is a prime location for affordable
3 housing.

4 We've also offered to partner with a car share
5 group in Austin if there are residents that need it, but
6 this development is also partnered with the housing
7 authority so that's part of the tax abatement that the
8 resident mentioned.

9 I'm sorry I'm rambling but I'm doing my best to
10 stand up here because I've been out all week. So if
11 there's an other questions I'm happy to answer them, but I
12 will tell you that this site has been heavily vetted by
13 the city, they've heard it so many times I think they're
14 sick of hearing it, but they want to see affordable
15 housing here, as do we, otherwise, we wouldn't be doing
16 it.

17 MR. GOODWIN: Any questions?

18 (No response.)

19 MR. GOODWIN: I want to clarify something that
20 I said earlier, and that is that it's not the right site
21 for affordable housing, I think it's not the right site
22 for a five-story building in a neighborhood. I clarified
23 that that is the thing.

24 But I'll also say to you, unconditionally,
25 anyone without a car, that might be the most dangerous

1 walk to go get groceries you could have in the City of
2 Austin, so I just disagree with you as to its
3 appropriateness.

4 MS. LASCH: We honestly find that most of our
5 residents have cars. It's more about getting roofs over
6 their heads than cars. I mean, I find that day in and day
7 out, and we have a good portfolio where we keep track of
8 how many residents live with us, how many cars we have.
9 It's about getting a roof over their head that they can
10 afford, and that's why we do what we do.

11 But the five-story component, it's one building
12 and the height limitation is 48 feet. That is not that
13 much difference than that commercial building that we're
14 adjacent to. So it sounds scary when we say five-story
15 next to single family, but it's over 100 -- I can't
16 remember if it's 125 --

17 MR. GOODWIN: Which building are you talking
18 about?

19 MS. LASCH: That Texas Health building. So
20 their floor plates are higher.

21 MR. GOODWIN: You're talking about at the
22 front, that fronts onto MoPac?

23 MR. LASCH: Yeah. Right basically across from
24 us there's a Texas Health center commercial building, so
25 there's a storage facility and then there's a Texas Health

1 building.

2 MR. GOODWIN: And the church?

3 MS. LASCH: And the church is behind the Texas
4 Health. Texas Health faces MoPac.

5 MR. GOODWIN: Right. I'm familiar with that
6 and the zoning that went on that and the height
7 restriction. One of my closest friends owned that
8 property and sold it.

9 MS. LASCH: Our height restriction is actually
10 48 feet, 52 for the five-story building, 48 for the four-
11 story building.

12 MR. GOODWIN: Just for the benefit -- and I
13 don't mean to be argumentative with you, but for the
14 benefit of the other Board members, because I hear this
15 all the time when people are doing projects in Austin
16 about we've worked with them for years and years and
17 years. To give you an example for the other Board members
18 of how difficult it is to do something in Austin, I had
19 three three-quarter acre lots that I combined into one
20 2.25 acre lot to build a house my son and daughter-in-law
21 and it took me three years to get through the City of
22 Austin and Travis County. So that's combining three lots
23 into one, so your experience here is not something that
24 every homeowner and every person that owns property in
25 this county doesn't experience when they're trying to deal

1 with the city and the county and this community itself.

2 MS. LASCH: Yes. I do a lot in the city so I
3 understand that. But I will tell you, this site, our
4 height limitations and where we're building meet all
5 compatibility standards. We didn't get a variance, they
6 meet all city compatibility standards for proximity to
7 neighborhoods.

8 MR. GOODWIN: Okay.

9 Anybody else that wants to testify?

10 MS. JACKSON: Good morning, Board members. My
11 name is Toni Jackson with Jones Walker.

12 I represent the developer, and I just wanted to
13 stand to again reiterate to the Board, a my client has
14 indicated, that when we did bring this project forward
15 first we did have some issues with the state rep and the
16 city, but we have worked with the city, we have worked
17 with the community, and the city very much wants to see
18 this development. And so, as we know, we have been asked
19 by the QAP to look at areas to make certain that we are
20 developing across the board, and so I just want to again
21 reiterate that the City of Austin does want this
22 development and we have worked with the community in
23 Austin and we have met all the criteria as required.

24 Thank you.

25 MS. ANDRÉ: I like to build the suspense a

1 little bit, you know, what is she going to say.

2 Sarah André, and I'm here just speaking solely
3 as a citizen of Austin and an affordable housing advocate
4 which I have been for 25 years back before I even knew a
5 thing about tax credits.

6 We have a dire shortage of affordable housing
7 in Austin. Recently published studies show a need for
8 60,000 units. People in a bond development who earn 60
9 percent of the median income are working people. Dare I
10 say they may work for the state or the city, they may be
11 public employees, they have cars. This is an excellent
12 location close to jobs, close to places where people can
13 get around, where they can go to the store. You should
14 definitely approve the development.

15 MR. GOODWIN: Any questions?

16 (No response.)

17 MR. GOODWIN: John, did you want to speak?

18 SPEAKER FROM AUDIENCE: No. I think it's all
19 been said.

20 MR. GOODWIN: Okay. Do I hear a motion?

21 MR. VASQUEZ: I have a question internally
22 here. So this has already been approved by everyone in
23 the city and county that needs to be done?

24 MR. GOODWIN: Marni, do you want to answer
25 those questions?

1 MS. HOLLOWAY: I am trusting what the applicant
2 is telling us about what they've gone through with the
3 local process. What I can tell you is that for our
4 process, as the chairman mentioned, all the t's are
5 crossed, all the i's are dotted, we did not find a reason
6 to make a recommendation other than approval for this
7 application.

8 MR. IRVINE: And if I might chime in just for
9 sort of a view from 50,000 feet of the way that this
10 process works, the statutes that create private activity
11 bonds basically leave with the issuer the decision of
12 whether to issue or not. When a development is funded
13 with private activity bonds that provide half of the
14 financing, then it becomes basically entitled once it's
15 completed and it's gone through cost certification to seek
16 the 4 percent credits.

17 What we are going through right now is the
18 exercise of determining what that appropriate amount of
19 credit would be. It is possible that after final
20 construction is complete and 8609s are being sought that
21 that number may move a little one direction or the other,
22 but what we're doing right now is making a determination
23 of the appropriate amount of credits that they would be
24 legally entitled to based on their bond structure.

25 MR. GOODWIN: Does that answer your question?

1 MR. VASQUEZ: The first part. So other than
2 the segment of the community that doesn't want this, dare
3 I say, in their backyards, there's no other impeding
4 legal. Again, the i's are dotted and the t's are crossed
5 as far as the Department is concerned.

6 MS. HOLLOWAY: Correct.

7 MR. IRVINE: Our governing statute has in it a
8 requirement that you cannot move forward with a bond
9 application that will be augmented with 4 percent credits
10 unless you've received a resolution of no objection from
11 your local government, and they have that resolution.

12 MR. VASQUEZ: Okay. So even if some of us
13 don't want it or don't like it, it's --

14 MR. IRVINE: It's a local decision.

15 MR. VASQUEZ: -- the i's are dotted and the
16 t's are crossed. Okay. That's what I need to know.
17 Thanks.

18 MS. HOLLOWAY: Thank you.

19 MR. IRVINE: And I would also say that we, I
20 think, take a lot of pride in the fact that our program
21 encourages developments like this and all of the others to
22 do things that address the situations of the people who
23 live there and really help the residents have access to
24 good amenities and to be successful. So whether you would
25 question and come to a different conclusion on the zoning

1 process or not, I think that this ideally, by meeting the
2 requirements of our rules, will be a good project for the
3 people that live there.

4 MR. GOODWIN: Do I hear a motion?

5 MR. BRADEN: I'll make a motion to accept
6 staff's recommendation to find the site eligible and
7 approve the issue of the determination notice for the 4
8 percent housing tax credits.

9 MR. GOODWIN: Second?

10 MR. VASQUEZ: Second.

11 MR. GOODWIN: Any further discussion?

12 (No response.)

13 MR. GOODWIN: All in favor say aye.

14 (Ayes: Members Bingham, Braden, Reséndiz,
15 Thomas, and Vasquez.)

16 MR. GOODWIN: Opposed? Me.

17 (Nay: Chairman Goodwin.)

18 MR. GOODWIN: Okay. Moving on, the next thing
19 we have on our action item is a report on the recent
20 voucher application activity.

21 Brooke. Good morning.

22 MS. BOSTON: Good morning, Chairman Goodwin,
23 Board members. My name is Brooke Boston. We put this
24 item on the agenda so we could brief you on two items that
25 you had authorized previously relating to housing

1 vouchers.

2 In May of this year you approved staff to
3 submit an application in response to a notice of funding
4 availability from HUD for something called Mainstream
5 Housing Vouchers -- we call them MVP -- which were
6 specifically for use only by non-elderly disabled persons.

7 As you have heard from staff in the past, the program
8 also operates a program called Project Access which
9 provides vouchers for people with disabilities existing
10 institutions. We operate Project Access through our
11 Housing Choice Voucher Program and collaborate with an
12 existing partnership with Texas Health and Human Services.

13 Because the Department's Project Access Program
14 had a waiting list exceeding 200 individuals, the
15 Department pursued the NOFA for MVP vouchers specifically
16 to allow us to issue the MVP vouchers to waiting list
17 clients on the Project Access waiting list. I'm happy to
18 let you know that on September 5 the Department was
19 notified by HUD that we would be receiving roughly
20 \$396,000 to fund 50 of the MVP vouchers. We were thrilled
21 and have actually already reached out to 50 clients on the
22 Project Access waiting list and let them know that they
23 can begin looking for a unit.

24 The other item I wanted to brief you on relates
25 to vouchers. In June of this year you granted authority

1 for staff to follow up with a HUD notice that had
2 announced availability of HUD VASH vouchers. VASH
3 vouchers are solely eligible for veterans experiencing
4 homelessness who are being provided case management and
5 clinical services by a local Veterans Assistance Medical
6 Center, VAMC.

7 The Department' Housing Choice Voucher Program
8 has a 34-county jurisdiction, and we have reached out to
9 all of the VAMCs in that area to see if any of them wanted
10 to partner with us to pursue the VASH vouchers. There was
11 such interest for Fort Bend and Galveston counties, and in
12 response to that you had allowed us to register our
13 interest with HUD. HUD and the VA then work together and
14 look at all the submissions and decide who they want to
15 offer vouchers to. We were again very happy to hear in
16 September that we would be awarded \$124,533 to provide
17 approximately 20 VASH vouchers for Fort Bend and Galveston
18 counties.

19 So I want to thank the Board for having granted
20 us the authority to go after that. I want to thank Andre
21 Adams who is our Section 8 manager. He is very excited
22 and committed to doing all of this. And also to our
23 Housing Resource Center who put together the MVP
24 application on our behalf.

25 Thank you.

1 MR. GOODWIN: Great job, Brooke.

2 Any questions for Brooke?

3 (No response.)

4 MR. GOODWIN: Do I hear a motion to accept
5 Brooke's report?

6 MS. THOMASON: So moved.

7 MR. GOODWIN: Moved. Second?

8 MR. VASQUEZ: Second.

9 MR. GOODWIN: Moved and seconded. Any further
10 discussion?

11 (No response.)

12 MR. GOODWIN: All those in favor say aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Okay. Next we have the quarterly
17 report on Texas Homeownership Division activity.

18 MS. GUTIERREZ: You see my anxiousness to get
19 up here and report to you.

20 MR. GOODWIN: I saw you.

21 MS. GUTIERREZ: Good morning, Chairman Goodwin,
22 Board members. I'm Cathy Gutierrez, the director of the
23 Texas Homeownership Division, presenting to you on item
24 3(b), Quarterly report on Texas Homeownership Division
25 activity.

1 I'll start off by saying it's a really exciting
2 time for Texas homeownership, and I'd like to take the
3 opportunity to summarize the last three years'
4 performance. When the quarterly reports were first
5 introduced to you in 2016, the homeownership programs were
6 doing well and keeping a pretty steady amount of volume on
7 an annual basis, serving on average 747 households per
8 quarter, ending fiscal year 2016 with a total of 2,988
9 Texas households served and \$454 million in single family
10 mortgage loan activity.

11 The homeownership programs went through some
12 significant structural changes in early fiscal year 2017.

13 These changes provided long-term cost savings in the
14 Department which were passed along to the borrower through
15 lower interest rates and fees. Shortly after
16 implementation of the changes, the programs began to see
17 an increase in activity, closing out the fiscal year with
18 5,870 Texas households served and \$958 million in related
19 mortgage loans, pretty much doubling the activity for the
20 previous year.

21 Fast forward one year to fiscal year 2018.
22 Illustrated on page 2 of the Board item, the fiscal year
23 began with a much higher amount of volume in comparison to
24 the start of fiscal year 2017. A typical seasonal decline
25 in volume occurred during the fall-winter months but

1 quickly rebounded in the spring and summer. By fiscal
2 year-end the TDHCA homeownership programs had reached a
3 record volume, assisting 8,018 Texas households with a
4 benefit of a low rate first mortgage loan, down payment
5 and closing cost assistance, and/or a mortgage credit
6 certificate. The mortgage loan activity totaled \$1.3
7 billion, an increase of 32 percent from last year's record
8 activity of \$958 million.

9 Additionally, something really important to
10 note, although the programs allow for household incomes up
11 to 115 percent of the area median family income, year
12 after year the majority of funds continue to assist
13 households that fall into the 80 percent or below income
14 range. On average 67 percent of those served are low
15 income first-time homebuyers.

16 8,018 Texas households served. I say that over
17 and over because it's remarkable. \$1.3 billion in
18 mortgage loan activity. As I said, the growth is
19 remarkable and we have no intention of slowing down.

20 Not included in today's report is the activity
21 generated through the 2018 Series A bond transaction.
22 Item 2(b) provided in your board book by the Bond Finance
23 Division gives a detailed summary on the structure and
24 pricing of the bond transaction. The 2018 Series A bond
25 issue totaled approximately \$143 million in bond proceeds

1 and was split into two options: 80 percent of the funds
2 provided four points of down payment and closing costs
3 assistance to the borrower and offered a mortgage rate of
4 5.43 percent; the remaining 20 percent of the funds
5 provided an extremely attractive below market interest
6 rate of 3.75 percent, but offered no assistance for down
7 payment and closing costs.

8 The no assistance option was one that had not
9 been offered by the Department in almost ten years due to
10 a combination of unfavorable market conditions and the
11 increasing demand for funds that would assist borrowers
12 with the down payment requirements of a mortgage loan. To
13 gauge interest and demand, staff surveyed participating
14 lenders on the option of a below market rate with no
15 assistance. Based on their interest, approximately \$27
16 million in unassisted funds was released on August 3.

17 There was somewhat of a learning curve for
18 those loan originators who had not been in the business
19 ten-plus years ago when tax exempt mortgage revenue bonds
20 were the primary funding source for the housing finance
21 agency programs. The concept of a below market interest
22 rate without significant added cost to the borrower was
23 initially somewhat difficult for some lenders to grasp,
24 however, it didn't take long for lenders to recognize the
25 benefit in terms of affordability that a 3.75 percent

1 interest rate in today's market could provide to a
2 homebuyer, specifically a low to moderate income first-
3 time homebuyer.

4 The unassisted allocation was fully committed
5 within 18 business days. The re-introduction of this type
6 of structure has been very well received by the lending
7 community, with requests and interest coming in daily for
8 additional funds using the same structure. The entire
9 2018 Series A bond issue was fully originated within two
10 weeks from bond closing. Loans originated under the bond
11 issue will be included in the next quarterly report.

12 And in closing, I want to take the opportunity
13 to give a shout out to some of the key players in the
14 recent success of our programs: our network of
15 participating lenders and Realtor partners for their
16 continued commitment, support and appreciation of the
17 programs offered by TDHCA, our TDHCA DPPA staff who
18 assists with our ongoing efforts in generating awareness
19 and effectively marketing the programs, and the biggest
20 thanks to our Homeownership and Bond Finance teams who
21 have felt and dealt with the growing pains of the
22 increased volume and who continue every single day to give
23 all that they have and making TDHCA programs the very best
24 and most affordable options for Texas homebuyers. \$1.3
25 billion in volume assisting 8,000-plus Texas homebuyers

1 could not have been achieved and managed without the
2 passion, commitment and all around team effort by all of
3 those mentioned.

4 We will be making modifications to the format
5 of the quarterly reports. If there's anything that you
6 would like to see or added to the reports, please let me
7 know. And with that, I'll take any questions.

8 MR. GOODWIN: Well, first of all, I want to
9 congratulate you. I have not been around many programs
10 where you've seen in a two-year period a 400 percent
11 increase in the number of people served and an almost 300
12 percent increase in the dollar volume. So you and your
13 staff, and Monica -- where is Monica, I know she's here --
14 stand up, and all the staff that's had a hand in this if
15 you would stand up, let us show you our appreciation.

16 (Applause.)

17 MS. GUTIERREZ: Thank you.

18 MR. GOODWIN: Those numbers are astounding.

19 MS. GUTIERREZ: They are astounding. We have a
20 great team, and we appreciate the support from the Board
21 and executive team as well.

22 MR. GOODWIN: Any questions from any Board
23 members?

24 (No response.)

25 MR. GOODWIN: Thank you, Cathy.

1 MS. GUTIERREZ: Thank you.

2 MR. GOODWIN: So do I hear a motion to accept
3 this magnificent report?

4 MS. BINGHAM ESCAREÑO: So moved.

5 MR. GOODWIN: So moved. A second?

6 MS. THOMASON: Second.

7 MR. GOODWIN: A second for a magnificent
8 report. And all those in favor of accepting this
9 magnificent report please say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed? Not even me.

12 (No response.)

13 MR. GOODWIN: Next we move to item 3(c) which
14 we're going to move to the end of the agenda, so we're
15 going to move on to item 4(a).

16 Teresa.

17 MS. MORALES: Good morning, Mr. Chairman and
18 members of the Board.

19 MR. GOODWIN: Good morning.

20 MS. MORALES: Teresa Morales, manager of
21 Multifamily Bonds.

22 As it relates to item 4(a), staff, if it
23 pleases the Board, would like to request that this item be
24 moved to the end of the agenda, as we work through some
25 last-minute issues to try to get those resolved.

1 MR. GOODWIN: Okay.

2 MS. MORALES: And instead we'd like to move on
3 to item 4(b).

4 MR. GOODWIN: 4(b).

5 MS. MORALES: Okay. Chairman Goodwin and
6 members of the Board.

7 Item 4(b) involves the issuance of multifamily
8 housing revenue bonds, Series 2018A and taxable
9 multifamily housing revenue bonds Series 2018B for
10 Forestwood Apartments, Resolution No. 19-008, and a
11 determination notice of housing tax credits. Forestwood
12 Apartments involves the new construction of 220 units in
13 Balch Springs and all of the units will be rent and income
14 restricted at 60 percent of the area median income.

15 Under the proposed financing structure the
16 Department will issue unrated tax exempt bonds in the
17 amount of \$20 million and taxable bonds in the amount of
18 \$3 million. The bonds will bear interest at a variable
19 rate for the first 30 months, and there will be a forward
20 starting swap in place at closing that will commence once
21 the property has reached stabilization. The borrower will
22 pay a fixed interest rate to the swap counterparty, and
23 the counterparty will pay a variable rate in return. It's
24 important to note that the Department is not a party to
25 the swap agreement.

1 The interest rate on the bonds is as reflected
2 in the bond resolution, along with the specific terms and
3 the maturity relative to both the tax exempt and the
4 taxable pieces

5 Staff recommends the bond issuance and adoption
6 of Resolution 19-008, as presented in your materials for
7 Forestwood Apartments, and the issuance of a determination
8 notice of \$1,422,455 in 4 percent housing tax credits.

9 MR. GOODWIN: Okay. Do I hear a motion to
10 accept staff's recommendation?

11 MR. BRADEN: I'll make a motion to accept
12 staff's recommendation.

13 MR. GOODWIN: Okay. A second?

14 MR. VASQUEZ: Second.

15 MR. GOODWIN: Okay. Now any discussion, any
16 questions?

17 (No response.)

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

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: That's passed.

24 MS. MORALES: Thank you.

25 MR. GOODWIN: We're going to Item 5 that has

1 been pulled on Multifamily Finance, so we're going to move
2 to item 6, Rules.

3 MS. BOSTON: Chairman Goodwin, Board members,
4 I'm presenting on item 6 relating to the Community Affairs
5 rules. Brooke Boston, for the record.

6 MR. ECCLES: Brooke, if I could bust in. I
7 know that there was another rule that was on the consent
8 agenda that was item 1(r) that the Board passed, but there
9 were revisions that were proposed and a handout was placed
10 in the back of the room. I just wanted to be clear to the
11 Board if they had any questions, since it's already been
12 passed, if they wanted to go back and have any discussion
13 on item 1(r) since there were changes that were put into
14 that proposed rule that are not reflected in the board
15 book but are reflected on this handout.

16 MR. GOODWIN: Any questions any Board member
17 have about that?

18 (No response.)

19 MR. GOODWIN: Hearing none, we will move on.
20 Thank you.

21 MS. BOSTON: Good. I didn't bring those notes
22 up here.

23 At the Board meeting of May 24, 2018, the Board
24 approved proposed revisions to our administrative code at
25 Chapters 2 and 6 relating to our Community Affairs

1 programs to improve clarity, to remedy discrepancies
2 between rules, to correct identified areas of concern, and
3 to provide changes needed to address findings and concerns
4 identified by one of the Department's federal oversight
5 entities, the U.S. Department of Health and Human
6 Services, during a monitoring visit.

7 The rules were then released for public
8 comment. Comments were received from seven organizations
9 and reasoned responses have been provided to those
10 comments. While quite a few subjects were covered in the
11 rule that was proposed, the majority of comments were
12 focused on one issue that I'd like to expand on a bit for
13 you.

14 Within the LIHEAP Program -- which is the Low
15 Income Home Energy Assistance Program; that program funds
16 utility assistance and weatherization -- within that
17 program an issue exists that's been a challenge for the
18 Department and our subrecipients. This issue at the macro
19 level comes about because of several different federal
20 regulations.

21 So there's a federal LIHEAP regulation that has
22 a preference that LIHEAP funds be assigned to CSBG
23 providers. CSBG federally has a preference for
24 nonprofits. Under the Personal Responsibility and Work
25 Opportunity Reconciliation Act of 1996, which we call

1 PRWORA, nonprofits cannot be required to verify lawful
2 status of persons assisted. But -- and here's the
3 challenge -- U.S. Health and Human Services has determined
4 that the legal status of any member of a household must be
5 determined and assistance adjusted accordingly in the
6 LIHEAP program to ensure that benefits are not provided to
7 non-qualified aliens.

8 So the result of this interplay of federal
9 regulations is that more than 70 percent of the current
10 LIHEAP providers are nonprofits and cannot be required to
11 determine lawful status but are running the Department's
12 largest grant program which requires that the Department
13 ensure if lawful status has been confirmed. In a state
14 such as Texas in which LIHEAP program data is kept at the
15 local level and not centralized at the state, and based on
16 the volume of people that we serve, this has really put
17 the Department in a tough spot, as well as the
18 subrecipients.

19 So HHS clearly expects the Department to assure
20 compliance with this requirement, so after looking at all
21 of our options, our initial conclusion was that we felt
22 like we had two choices: to have the Department provide
23 the verification directly or through a third party
24 provider, which could only occur if we actually received
25 the client information from the nonprofit subrecipients,

1 so therefore, they would need to gather and still transmit
2 that to us or a third party contractor; or the other
3 alternative would be rebidding the portions of the network
4 that are unable to perform the verifications to ensure
5 that we're working with subrecipients who can perform the
6 verifications for us.

7 Both of those are really big major decisions,
8 so to be sure we were thinking all of this through
9 carefully and correctly, we worked with HHS on this.
10 Additionally, staff met with key members of the Texas
11 Association of Community Action Agencies that came into
12 Austin and met with us -- most of them are back there --
13 to try and find a solution to this issue.

14 One option suggested by TACAA was that
15 households self-certify their legal status which would
16 negate the need for any documentation to be gathered,
17 transmitted or verified. TDHCA, on TACAA's behalf, did
18 request this specifically of HHS, however, they indicated
19 that doing such self-certifications, TDHCA and the
20 subrecipient would still both be fully accountable for any
21 disallowed costs for an ineligible household. That's
22 clearly not a position we are comfortable putting the
23 state in, we don't have the resources to do that, so that
24 financial risk mad this an infeasible option.

25 I'd also like to mention several other kind of

1 considerations going on with this whole thing. First,
2 having the state permanently handle the verifications in
3 the long term is a pretty inefficient approach. Not only
4 would it slow down the approval process for clients,
5 because a current subrecipient who is doing these
6 verifications in-house it could take an extra 15 to 20
7 minutes, to outsource and do it with TDHCA or someone
8 else, it could take as long as a week, so we don't want to
9 see that delay on behalf of the clients. It would also
10 require the state to hire FTEs. It would also direct
11 funding that would have been channeled part way through
12 the year to program expenditures so that we could help
13 more people, it would basically drive back to
14 administrative expenses.

15 Second, I had noted an option about the idea of
16 the nonprofits gathering and transmitting information, and
17 HHS had originally proposed that to us as an acceptable
18 strategy, and we thought that sounded great as one option
19 potentially, or at least a good middle ground. But we
20 have asked HHS to confirm that to have private nonprofits
21 gather that information and transmit it is in fact
22 consistent with interim guidance that's been issued by the
23 Department of Justice on this issue. Our reading seems to
24 be a little bit in conflict so we were concerned that that
25 was not permissible, so we have not heard back from HHS on

1 that yet.

2 So because this issue is still under discussion
3 with HHS, the rules being proposed for adoption reflect
4 several changes to address this issue, and keep in mind
5 that the bulk of all these changes you're approving have
6 nothing to do with this. You know, if you skim through
7 the rule, a lot of these were kind of benign changes that
8 we just needed fixes for and the network was supportive
9 of.

10 So references in the rule requiring that
11 private nonprofit subrecipients verify status have all
12 been removed, and while initially contemplated, no
13 language is being added that would require the
14 subrecipients to gather and transmit any documentation
15 needed for the state or a contractor. At this time the
16 Community Affairs rule is silent on the issue of how
17 verification will be performed by the private nonprofits.

18 This issue of how to handle verification for
19 programs that are required to secure the verification but
20 for which local nonprofits may be subrecipients is not
21 limited to only LIHEAP, this is a situation that can occur
22 in other programs as well. Therefore, the Department
23 expects to bring a draft rule to the Board, hopefully in
24 November, that will address how we're going to handle this
25 issue for any of our programs in which the PRWORA

1 requirements are in place that a federal agency has said
2 that those requirements are applicable and we have private
3 nonprofit providers. So we'll be bringing something back
4 that kind of is more in one of our overarching chapters to
5 address that.

6 Another issue which we received a lot of
7 comment on, and people may get up and speak with you
8 about, was received associated with how legal status
9 relates to determining household income, benefits and
10 vulnerable population status. A clear set of guidelines
11 is needed in this regard so that all mixed status
12 households are treated equitably. We want to be sure that
13 in a household of five and two of which are non-qualified
14 aliens that that's handled the same in one part of the
15 state as in another, both for benefit determination and
16 income and whether that household is considered
17 vulnerable.

18 So whether current subrecipients will have
19 verified the household members themselves because they are
20 public organizations, or they're private nonprofits and
21 they'll follow whatever process comes in our next ensuing
22 rule, it's important that this rule continues to have
23 clear guidelines about this issue. Therefore, the rule
24 continues to have provisions in it that relate to how
25 we're going to determine a household member's income,

1 vulnerable status and eligibility.

2 One last thing, in this regard the commenters
3 have asked that the income of the non-qualified alien
4 household members be excluded from the household income,
5 however, if a non-qualified alien lives within a house and
6 earns income, the income earned by that alien is in fact
7 being used by the household and can cause a household to
8 have over the qualified income, so if the income is not
9 considered, you would actually potentially be serving a
10 household who is over income.

11 An information memorandum from Health and Human
12 Services, dated December 12 of 2014, on this issue
13 specifically indicates that there is no authority to
14 exclude income relating to this issue, so while we
15 understand where the subrecipients are coming from, that's
16 not something we have the authority to grant based on the
17 HHS IM.

18 I think that lays out all the meaty issues for
19 you. In a nutshell, the rule presented for adoption today
20 specifies no requirement for the nonprofit subrecipients
21 as it relates to the verification process, it keeps in
22 language relating to how a household's benefits and income
23 need to be determined, and we plan on bring in you another
24 rule in about a month.

25 MR. GOODWIN: Okay. Any questions for Brooke?

1 (No response.)

2 MR. GOODWIN: It appears we have people that
3 want to speak to the issue, so before we do that we will
4 get a motion to accept Brooke's report.

5 MS. THOMASON: So moved.

6 MR. GOODWIN: Moved. A second?

7 MR. BRADEN: Second.

8 MR. GOODWIN: Okay. So it's been moved and
9 seconded. We have speakers that would like to speak to
10 this issue. Please, if you would, state your name and
11 sign in. Thank you.

12 MR. POWELL: Good morning, Mr. Chair, members
13 of the Board, Mr. Irvine. We appreciate the opportunity
14 to come and speak with you. My name is Bill Powell. I am
15 the executive director for South Plains Community Action
16 Association in Levelland, and I've served in that capacity
17 for nearly 30 years. Some of you may not have seen me in
18 the past but I've been here on occasion several times.
19 I'm also serving as the president of the Texas Association
20 of Community Action Agencies and I've managed to avoid
21 that for a number of years but I finally got caught on
22 that one too, so I am representing TACAA this morning.

23 Several proposed rules were triggered as a
24 result of a compliance review by the U.S. Department of
25 Health and Human Services, or HHS, however, we understand

1 HHS has not officially replied in writing to the
2 Department's response to the review. Overall, we're okay
3 with the rules proposed for adoption. Some of them will
4 be a little difficult for us to move forward with but I
5 think we can move out with them.

6 We agree with the Department staff in holding
7 off the adoption of one rule and we suggest another rule
8 also be tabled until further written guidance is received
9 from the federal office of HHS. First of all, the
10 verification of non-qualified aliens for the purpose of
11 LIHEAP benefits, we appreciate the staff's recommendation
12 to not take action today on rules requiring nonprofit
13 organizations to determine lawful status as it awaits
14 guidance from HHS.

15 As you may know, under the federal law the
16 Personal Responsibility and Work Opportunity Act, as
17 mentioned earlier, and the Department of Justice's interim
18 guidance specifically state that "Nonprofit providers of
19 LIHEAP benefits are not required to determine, verify or
20 otherwise require proof of immigrant's eligibility of any
21 applicant for benefits." An HHS memo dated December 12 of
22 2014 also states the same language and is referenced in
23 federal law. We recognize the Department must ensure non-
24 qualified aliens do not receive LIHEAP benefits and we
25 want to continue a joint dialogue to find solutions and

1 explore what other states might do to address this issue.

2 Two options suggested by the Department staff
3 are limiting, which are number one, provide verification
4 via a third party, and number two, to rebid the network of
5 LIHEAP providers. We suggest we continue the dialogue
6 between the Department staff and HHS, and probably we
7 would like to be included as a small group of providers to
8 ensure that all qualified applicants receive the LIHEAP
9 benefits. We all need some clarity and clarification from
10 HHS on this, and I know we are as anxious to find out what
11 HHS says about this as TDHCA.

12 We appreciate the opportunity Mr. Irvine has
13 afforded us in meeting with him a couple of weeks ago on
14 this issue. We hope to work in harmony with TDHCA staff
15 in trying to resolve these issues.

16 Ladies and gentlemen, that's all I have to say.

17 I do have two colleagues here, one colleague from El Paso
18 who would like to address certain portions of what we're
19 talking about this morning. We have two other people here
20 as resources so if you have specific technical questions,
21 we'll all be glad to respond to that. Do you have any
22 questions for me?

23 MR. GOODWIN: Any questions?

24 (No response.)

25 MR. GOODWIN: You mentioned tabling another.

1 Was it something that Brooke had proposed? I wasn't quite
2 clear on what you were talking about when you said, And I
3 suggest you table another.

4 MR. POWELL: Yes, sir. There is one portion
5 that, as I understand it, there's no opinion yet rendered
6 from HHS, and we'd like to see HHS render that opinion and
7 then that would give us a basis -- at least it would give
8 TDHCA a basis to begin formulating a --

9 MR. GOODWIN: Possibly I'm the only one that's
10 confused then, but that happens frequently, but in your
11 recommendation are we in conformity?

12 MS. BOSTON: Just to clarify, because we took
13 the information out of the rule, we don't need to table
14 anything today. You can act on the rule and the issues
15 that we're still waiting on for feedback will be in a
16 subsequent rule. So in effect, it is tabled, you're not
17 acting on it today, but it's not an official table.

18 MR. IRVINE: But I do believe the clarity is
19 quite valuable, and I think we have some clarity from HHS
20 on two points. One is that in the LIHEAP program there is
21 a requirement that the entire income of the household be
22 taken into consideration for eligibility purposes,
23 accompanied by a requirement that benefits be adjusted if
24 one or more members of that household do not meet either
25 citizenship or qualified alien status. They've been

1 pretty unambiguous on those requirements.

2 That has a financial impact. This is our
3 largest grant program. This is what, about \$150 million a
4 year? If it should happen that in subsequent monitorings
5 it is determined at any level that those requirements were
6 not met, the U.S. Department of Health and Human Services
7 will look to us on behalf of the State of Texas to repay
8 them. We do not have appropriated funds to repay them, we
9 would certainly look to the subrecipient for financial
10 indemnification or repayment, but there is a financial
11 risk here and HHS has been pretty unambiguous in
12 identifying both its programmatic requirements and the
13 potential for financial risk.

14 They have yet to be really specific on granular
15 issues about, you know, the ability to require, either
16 through rule or agreement, that nonprofits gather certain
17 information and transmit them which would facilitate our
18 determinations on these matters. There are technical
19 issues that they are working through, and it's very hard
20 to reconcile the language of PRWORA, the requirements of
21 the LIHEAP program and the Department of Justice guidance.

22 This is not a model of statutory or regulatory clarity.

23 We are in direct communication both with TACAA
24 and with HHS to get to the bottom of that and figure out
25 the most accommodating possible way to move forward, but

1 we as the staff are resolute, we cannot back off on the
2 requirement that we need to protect the state against
3 financial liability.

4 MR. GOODWIN: In light of all those comments,
5 do the other people still want to testify at this stage?

6 MR. POWELL: Yes, sir, I'm sure they probably
7 do.

8 MR. GOODWIN: Okay. Any other questions?

9 (No response.)

10 MR. POWELL: Thank you very much for your time.

11 MS. PONCE: Good morning, Mr. Chairman, members
12 of the Board, Mr. Irvine. My name is Laura Ponce, and I'm
13 the executive director of the El Paso Community Action
14 Program Project Bravo. I also serve on the executive
15 committee of the Texas Association of Community Action
16 Agencies.

17 I too wish to thank Mr. Irvine and his staff
18 for meeting with us a couple of weeks ago regarding this
19 agenda item. And as to your question you had for Mr.
20 Powell, I have a clarification for that which I'll talk
21 about at the end.

22 MR. GOODWIN: Okay.

23 MS. PONCE: If you please refer to Chapter 6,
24 Subchapter C, CEAP 6.307(f), page 46 and 55 of your agenda
25 item, and Subchapter D, WAP 6.406, page 53 of the 55-page

1 agenda item. These are changes requiring public entities
2 to verify immigration status of all household members.
3 Currently only the applicant is subject to the
4 verification process. We believe the requirement is
5 premature and we should wait for written guidance from
6 HHS. This is the requirement for the governmental
7 entities that are doing that, not the nonprofits.

8 And we think that that's going to have an
9 impact, you know, for all people in Texas, and it's not
10 really something that's just going to impact people who
11 are non-qualified aliens but people who are citizens who
12 cannot provide the verification documents to prove that
13 they are citizens.

14 As previously mentioned, PRWORA, the Personal
15 Responsibility and Work Opportunity Reconciliation Act and
16 the Department of Justice interim guidance reference the
17 applicant in the statements. "Nonprofit providers of
18 LIHEAP benefits are not required to determine, verify or
19 otherwise require proof of immigrant eligibility of any
20 applicant for benefits." So this is the language that's
21 coming from these entities, and it's not requiring it for
22 all household members. This is the change that they're
23 requiring, that instead of just verifying the applicant,
24 they want us to verify the citizenship status or alien
25 status of every person in the household.

1 A requirement of validating citizenship or
2 immigration status is not 100 percent achievable. So for
3 example, we have families with vulnerable household
4 members, so for example, if a family takes on foster
5 children, they do not have any legal right to get these
6 documents, even though these children are U.S. citizens,
7 as the foster parents. Grandparents taking care of
8 grandchildren, they also don't have a legal right to
9 request these documents to verify that those children are
10 U.S. citizens.

11 People that are recently homeless and they've
12 lost or had their documents stolen, we see this a lot with
13 homeless veterans that we're putting into rapid rehousing.

14 They're coming in and they don't have any documents to
15 verify that they're U.S. citizens but we know that they
16 are because, you know, they served in the military and
17 there is some documentation there but it's going to take
18 months, sometimes years, to get the documents to verify
19 that they're U.S. citizens, especially if they were born
20 outside of the U.S. to parents that are U.S. citizens.

21 May I go on?

22 MR. GOODWIN: Yes.

23 MS. PONCE: And also people who are very
24 elderly who may have difficulty trying to get those
25 documents because they had a fire, they lost them over the

1 years, these people who are U.S. citizens are going to
2 have a lot of difficulty getting those documents to prove
3 that they are U.S. citizens to receive these benefits.

4 The Department encourages LIHEAP providers to
5 expedite the processing of applications via mail, fax and
6 online. That's something that has been a directive from
7 Mr. Irvine and his group to have us have a more expedited
8 process, but it's not going to be possible when they talk
9 about the extra 15 to 20 minutes of verification. That
10 means that we're going to have to have people come into
11 our offices to provide these documents because it's not
12 safe to mail copies of your birth certificate, your
13 passport, all of these documents that are extremely
14 sensitive, and there's a lot of risk for people stealing
15 them and stealing your identity.

16 So we have provided the solution of self-
17 certification, and so this is something where the
18 household member certifies whether or not they are a U.S.
19 citizen or they are an alien who's a qualified alien, and
20 so really the verification and the onus is on that person,
21 and if there was some type of fraud, then the onus would
22 be on the person who has signed and said I am a U.S.
23 citizen or I am a qualified alien. To our knowledge,
24 there have not been any instances in Texas where Texas was
25 penalized for serving non-qualified aliens, and these are

1 rules that are almost 20 years old.

2 Regarding Subchapter C, CEAP 6.309, see page
3 47, and Subchapter D, Weatherization 6.406(e)(1), (2) and
4 (3), pages 53 of your agenda, counting the income of the
5 non-qualified alien and then excluding them from the count
6 to determine the benefit levels is a concern and a penalty
7 to the household. Implementation of this may cause
8 disparity in the delivery of services of vulnerable
9 populations.

10 We see this especially in grandparents raising
11 grandkids who they have a pretty comfortable income coming
12 in because they're just a couple and then they take on
13 their grandkids, so now they have a household of three or
14 four extra children in their household and so now they're
15 below 150 percent of the poverty level. They don't have
16 the documents to verify that these children are U.S.
17 citizens, these people are not going to be able to qualify
18 for these services even though the whole household has
19 U.S. citizens living in the household.

20 An undated compliance letter from HHS states
21 that the state ensure mixed status households are not
22 denied LIHEAP assistance based solely on the non-qualified
23 member of a non single person household, and the non-
24 qualified member could be a citizen who just cannot
25 provide their documents to verify that they're a citizen.

1 Counting income of the non-qualified person and
2 excluding them in the household size will minimize the
3 qualified member's household, and so just know that this
4 is a practice that goes away from established practices.
5 If you go to SNAP they don't count the income of the
6 person who is non-qualified into the household count.
7 Medicaid, other government programs, this is going to be
8 different from the way that other governmental entities
9 are counting income and counting the people or not
10 counting them within the household.

11 So we believe the requirement is premature and
12 the Department should wait for written guidance from HHS,
13 and I know that they've tabled this motion for the
14 nonprofit agencies, but we think that it should be tabled
15 across the board for the other entities until we have
16 written guidance, not verbal guidance, from HHS.

17 Thank you for the opportunity to provide you
18 these comments, and if you have any questions, please let
19 me know.

20 MR. GOODWIN: Any questions, Board members?

21 MS. RESÉNDIZ: Mr. Chairman, I have a question.

22 MR. GOODWIN: Okay.

23 MS. RESÉNDIZ: What is your relationship with
24 the consulate?

25 MS. PONCE: The consulate, I think that they

1 have a health fair once a year and we go there to provide
2 information about our programs and services because we
3 have various programs and services available.

4 MS. RESÉNDIZ: Is there an opportunity for you
5 to obtain the documentation necessary for citizens?

6 MS. PONCE: It can be very complicated.
7 Nowadays it's very difficult to provide birth
8 certificates, all of these documents because you have to
9 provide so much verification information to prove that you
10 were born in the United States or to prove that you are
11 who you are even though you've lost all your documents.
12 So for example, one of my colleagues, her mother lost her
13 birth certificate and in the State of Texas you have to
14 provide copies of all of your divorce decrees to be able
15 to prove who you are and the woman was divorced more than
16 once and so they had to go to multiple courthouses to go
17 grab these documents because they couldn't get a copy, it
18 had to be an actual certified copy, among all the
19 different documents they had to prove that she was born in
20 the United States. So it's very complicated to prove who
21 are and get these documents back once they've been lost.

22 MR. ECCLES: Excuse me. Let the record reflect
23 that Ms. Bingham has left the dais.

24 MS. PONCE: Thank you.

25 MR. GOODWIN: Any other questions?

1 (No response.)

2 MR. GOODWIN: Tim, do you want to comment on
3 this?

4 MR. IRVINE: Sure, I'll be glad to.

5 I believe that our proposed action on this rule
6 is in line with clear federal guidance and direction. I
7 believe that we have made an appropriate accommodation to
8 pull out the treatment of nonprofits, but I think it's
9 crystal clear what the federal expectations are on
10 governmental entities providing these types of assistance
11 and I wholly support moving forward on this rulemaking. I
12 would also note that under the Administrative Procedures
13 Act, we really need to take action or else we need to
14 restart the entire process because this is a process that
15 by state law cannot extend beyond six months.

16 MR. GOODWIN: Thank you.

17 Another speaker? No one else, no other
18 discussion?

19 (No response.)

20 MR. GOODWIN: Okay. I'll entertain a motion,
21 minus Ms. Bingham, for this area.

22 MR. VASQUEZ: Move to accept staff's
23 recommendation to go forward with the rules as presented.

24 MR. GOODWIN: Okay. And a second?

25 MS. THOMASON: Second.

1 MR. GOODWIN: It's been moved and seconded.

2 Any further discussion?

3 (No response.)

4 MR. GOODWIN: All those in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Thank you.

9 Teresa, are we ready now? We are ready now so
10 we're going to move back to item 4(a).

11 MS. MORALES: Teresa Morales, manager of
12 Multifamily Bonds. Thank you for that.

13 Chairman Goodwin and members of the Board, item
14 4(a) involves the issuance of multifamily housing revenue
15 bonds for the related RD portfolio, Series 2018,
16 Resolution No. 19-007, and determination notices of
17 housing tax credits. This transaction involves nine
18 properties totaling 384 units located in various rural
19 cities across the state that are being treated as one bond
20 issuance. Your materials include a brief development-
21 specific summary for each of the nine properties.

22 Although the 9 percent housing tax credit
23 program has traditionally been the better avenue in
24 financing rural transactions, to get them to work on the 4
25 percent side there are often several developments that get

1 pooled together in order to achieve economies of scale
2 relative to issuance costs. At staff review of the
3 individual application, it was identified that two waivers
4 were needed. One is associated with the minimum threshold
5 cost per unit, and another pertains to undesirable
6 neighborhood characteristics.

7 One application, Bay City Village in Baytown,
8 did not meet the minimum threshold cost per unit pursuant
9 to the Uniform Multifamily Rules which requires rehab
10 developments funded through USDA to spend a minimum of
11 \$25,000 per unit in building costs and site work. Bay
12 City Village reflected approximately \$20,000 per unit.
13 There were recent repairs made to the property as a result
14 of damage sustained by Hurricane Harvey last year. Had
15 those repairs not been previously made, the development
16 would have met the Department's minimum amount required
17 under the rule. Staff recommends a waiver of this minimum
18 threshold amount for Bay City Village pursuant to 10 TAC
19 Section 10.207 be granted.

20 As it relates to the undesirable neighborhood
21 characteristics, there is a property in Evant where the
22 elementary school, which happens to be the only elementary
23 school in Evant, did not achieve the Met Standard rating
24 for the past two years. According to the rule, schools
25 that have not achieved the Met Standard rating for two

1 consecutive years are required to submit a letter from a
2 school official, and the applicant has been unable to
3 provide such letter. As further explained in your board
4 materials, staff is recommending a waiver of the letter
5 requirement and further recommends that the site be
6 considered eligible.

7 The financing structure for this transaction
8 involves a USDA Section 538 loan by Lancaster Pollard.
9 The mortgage loans will be originated by the Department
10 and made to each borrower on the closing date and funded
11 with bond proceeds. The proceeds will be 100 percent cash
12 collateralized at all times. In this regard, the
13 transaction mirrors FHA 221(d)(4) transactions previously
14 approved by the Board but instead just uses a different
15 funding source.

16 The Department will issue short term tax exempt
17 fixed rate bonds in an amount not to exceed \$20 million
18 With the specific amounts anticipated, there could be some
19 slight fluctuations allocated to each property as
20 reflected in your materials. Once the rehabilitation is
21 complete on the properties, the proceeds from the Section
22 538 loan will be used to pay off the bonds. The Section
23 538 mortgage loan is anticipated to carry a 5.12 percent
24 interest rate with a 40-year term and amortization.

25 Staff recommends the bond issuance and adoption

1 of Resolution No. 19-007, as presented in your materials
2 for the Related RD Portfolio, and the issuance of nine
3 determination notices.

4 Staff notes that after the board materials were
5 posted there were some last-minute adjustments made to
6 some of those credit amounts that were simply a staff
7 oversight in our rush to get everything finalized. I
8 would like to read into the record the correct tax credit
9 amounts associated with each of those properties.

10 For Bastrop Oak Grove the amount is \$157,787;
11 for Bay City Village the amount is \$118,454; Burke Village
12 \$102,278; Elgin Meadow Park \$78,192; Evant Tom Sawyer
13 \$47,076; Hondo Brian Place \$118,914; Hondo Gardens
14 \$80,082; Lampasas Gardens \$99,330; and Lantana Apartments
15 \$293,791.

16 MR. GOODWIN: Any questions for Teresa?

17 (No response.)

18 MR. GOODWIN: It doesn't appear that there are.

19 I'll entertain a motion to accept this recommendation
20 from staff.

21 MS. THOMASON: So moved.

22 MR. GOODWIN: It's been moved. A second?

23 MR. BRADEN: Second.

24 MR. GOODWIN: Moved and seconded. Any further
25 discussion?

1 (No response.)

2 MR. GOODWIN: All those in favor say aye.

3 (A chorus of ayes.)

4 MR. GOODWIN: Opposed?

5 (No response.)

6 MR. GOODWIN: Okay. That is passed.

7 So now we come to item 3(c). The Governing
8 Board of the Texas Department of Housing and Community
9 Affairs will go into closed or executive session at this
10 time. The Board may go into executive session pursuant to
11 Texas Government Code 551.074 for the purposes of
12 discussing personnel matters, pursuant to Texas Government
13 Code 551.071 to seek and receive the legal advice of its
14 attorney.

15 The closed session will be held within the
16 anteroom this meeting Room E2.028 but we're going to meet
17 in Room E2.024. This is not big enough back here. So the
18 date is October 11, 2018, and the time is 9:20, and I
19 would expect for us to be back -- I'm going to give an
20 earlier time but we may be longer than this -- at 9:45.
21 So at this point we will recess into executive session to
22 discuss item 3(c).

23 (Whereupon, at 9:20 a.m., the meeting was
24 recessed, to reconvene this same day, Thursday, October
25 11, 2018, following conclusion of the executive session.)

1 MR. GOODWIN: The Board is now reconvened in
2 open session at 10:11 a.m. During the executive session
3 the Board did not adopt any policy, position, resolution,
4 rule, regulation or take any formal action or vote on any
5 item, save and except for deliberations on personnel
6 matters pursuant to Texas Government Code 551.074.

7 So our next item on the agenda, which is the
8 last item on the agenda, the action item, is to report on
9 the process for appointment of a new executive director
10 and actions of the Executive Director Committee.

11 As you all know, Tim Irvine, our executive
12 director, distinguished, fantastic, unbelievable executive
13 director, will be retiring from TDHCA at the end of
14 November. This necessitated the creation of a Board
15 committee to begin the process of selecting a replacement
16 executive director. Last evening the Executive Director
17 Committee met in a public meeting. Pursuant to Texas
18 Government Code 551.074, the committee went into closed or
19 executive session for the purpose of deliberating matters
20 regarding the employment of a public officer or employee.

21 The committee deliberated and determined that
22 due to the time constraints of locating a suitable new
23 permanent executive director prior to Tim Irvine's
24 departure, the committee recommends not interviewing or
25 recommending to the Board the hiring of a permanent

1 executive director at this time. The committee recommends
2 appointing a current TDHCA employee, Mr. David Cervantes,
3 on an acting director basis only, which in accordance with
4 Texas Government Code 2306.038 will be done with the
5 governor's approval. The Board action to appoint an
6 acting director, along with the governor's consideration
7 will be made at the next Board meeting in November.

8 Do I hear a motion to receive the committee's
9 report?

10 MS. BINGHAM ESCAREÑO: Move to accept the
11 report.

12 MR. GOODWIN: I have a motion. Do I hear a
13 second?

14 MS. THOMASON: Second.

15 MR. GOODWIN: It has been moved and seconded.
16 Any discussion?

17 (No response.)

18 MR. GOODWIN: All those in favor please say
19 aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: Okay. So we have come to the
24 point in the agenda where we will listen to public
25 comments for the sole purpose of establishing topics for

1 future Board consideration meeting for Board agenda items.

2 Is there anyone that would like to speak at this time in
3 public comments?

4 (No response.)

5 MR. GOODWIN: If not, I would entertain a
6 motion to adjourn.

7 MS. BINGHAM ESCAREÑO: So moved.

8 MR. GOODWIN: It's been moved. Second?

9 MR. BRADEN: Second.

10 MS. THOMASON: Second.

11 MR. GOODWIN: It's been moved and seconded
12 several times. All those in favor please say aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Thank you all for coming.

15 (Whereupon, at 10:15 a.m., the meeting was
16 adjourned.)

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C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: October 11, 2018

I do hereby certify that the foregoing pages, numbers 1 through 71, 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.

DATE: October 17, 2018

/s/ Nancy H. King
(Transcriber)

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