

# **SUPPLEMENT FOR THE JUNE 13, 2013 BOARD MEETING**



## Barron's Branch (#13187), Waco

(Posted to correct errors in the initial posting which includes the omission of relevant information submitted by the Applicant and a correction to the write-up.)

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JUNE 13, 2013**

Presentation, Discussion, and Possible Action on Timely Filed Appeals under any of the Department's Program or Underwriting rules

**RECOMMENDED ACTION**

**WHEREAS**, a 2013 competitive housing tax credit scoring notice was provided to the Applicant for Barron's Branch (#13187);

**WHEREAS**, staff identified two (2) points that the Applicant elected but that the Application did not qualify to receive under §11.9(c)(6) of the 2013 Qualified Allocation Plan related to locating in an Underserved Area (10 TAC §11.9(c)(6)); and

**WHEREAS**, staff also deducted one (1) point under §11.9(f)(1) for failing to document eligibility for the points elected in the Application self score form for locating the Development in an Underserved Area; and

**WHEREAS**, the Applicant appealed the scoring notice and requests that the Board award two (2) points under §11.9(c)(1) and not deduct the one (1) point under §11.9(f)(1);

**NOW, therefore, it is hereby**

**RESOLVED**, the Applicant's appeal of the scoring notice for Barron's Branch (#13187) for awarding of the two (2) points under 10 TAC §11.9(c)(6), Underserved Area points, is hereby denied; and

**FURTHER RESOLVED**, the Applicant's appeal of the scoring notice for Barron's Branch (#13187) for assessing a one (1) point deduction under 10 TAC §11.9(f)(1), is hereby \_\_\_\_\_.

**BACKGROUND**

At the May 9, 2013 Board meeting, the Board considered action on an agenda item relating to the awarding of points for location in an Economically Distressed Area (EDA). An EDA qualifies as an Underserved Area for purposes of the awarding of points under 10 TAC §11.9(c)(6)(B). The issues revolve around how an Applicant that elected points can sufficiently document eligibility for the point item and whether a point deduction should be applied in instances where the Applicant is not found to be eligible for the elected points. The Board ultimately directed staff to allow each of applications that elected these points come before the Board through the appeal process such that the Board could handle them on a case by case basis. Following is a more robust description of the issues surrounding this point

item followed by a description of the documentation provided by the Applicant for Barron's Branch to document eligibility. The Applicant's full appeal follows the write-up.

### Summary of Issues

The multifamily rules define an EDA as, "An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.921." (10 TAC §10.3(a)(40)) This section of the Texas Water Code is referenced several times in Chapter 2306 of the Texas Government Code when citing economically distressed areas and is defined in the Texas Water Code for the purpose of administering water infrastructure funding by the TWDB. Moreover, the definition in the Water Code reserves the designation of EDA for the TWDB. The EDA definition in the Texas Water Code is as follows:

"Economically distressed area" means an area in which:

- (A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;
- (B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and
- (C) an established residential subdivision was located on June 1, 2005, as determined by the board.

Texas Water Code §17.921(1)

\*The "board" is defined in §17.001(1) of the Texas Water Code as the "Texas Water Development Board."

Staff initially provided applicants guidance that one clear way to support an election of points under the QAP for being located within an EDA was to provide a letter from the TWDB reflecting that the site is located within an EDA as defined by §17.921 of the Texas Water Code. However, the TWDB does not have an established process for designating EDAs in any instance other than for the explicit purpose of evaluating an application for TWDB funding. Many applicants contacted the TWDB and were unable to obtain such a letter. As the March 1, 2013, application deadline approached, staff received several calls from the TWDB and met with the staff of the TWDB on multiple occasions in an effort to identify a process by which an applicant could establish whether or not their development site was located within an EDA. However, no workable solution was identified. Staff provided guidance that applicants should exercise caution in electing points under this selection criterion due to the absence of another known and clear method of establishing that a site is within an EDA.

Generally, an Applicant that claims points for a particular selection criterion but is unable to provide any supporting documentation would be subject to a 1 point deduction under §11.9(f)(1) of the QAP. This deduction was established for the purpose of discouraging applicants from electing points for items in which an applicant had no solid basis for claiming the points. In the preamble to the rules presented to the Board in November 2012, staff provided the following reasoned response relating to the penalty deduction:

Staff recommends keeping the point deductions in place for the 2013 program year for those items that the developer applicant should clearly know are not properly supported, despite the changes to the QAP. Because staff performs full reviews on applications that appear to be competitive, it is imperative that applicants accurately self-score their

applications. If applicants elect points in good faith and those points are ultimately not awarded, staff will not deduct additional points. However, staff wants to discourage applicants from requesting points for which they have no reasonable assumption of qualifying.

In response to commenter (58) regarding the points associated with underserved areas, particularly the economically distressed areas, staff will make it clear in the multifamily programs procedures manual what evidence will be acceptable in order to qualify for points. In that specific case, staff will require a letter from the Texas Water Development Board. If the applicant requests these points and is not able to produce such a letter, then staff would deduct points. In addition, should the original calculation for leveraging points be inconsistent with the requested points, staff would not deduct points, even if after underwriting that score may change. Staff appreciates the support of commenter (46).

While applicants were clearly on notice that a point deduction might be assessed in instances in which a TWDB letter was not submitted to support an election for location in an EDA, staff is posing, on a case by case basis, whether the Board believes, in light of the way applicants seeking to claim this scoring item encountered unanticipated obstacles, a 1 point deduction is warranted. At the time, staff believed that a letter from the TWDB was a reasonable method to support an election for location in an EDA. However, a clear process for obtaining that letter was not available prior to the application deadline and some applicants attempted to find alternative supporting documentation despite no change in guidance from staff regarding such alternative evidence. Staff appreciates that some applicants may have chosen to not elect these points even though they may have also obtained alternative supporting documentation; these applicants chose not to risk any assessment of a point deduction by deviating from staff's guidance by claiming the EDA point with some alternative supporting documentation not consistent with staff guidance. Their decision to not elect points may have been different if no risk of a point deduction had existed. However, staff also believes that the Board has sufficient discretion, given the preamble language that good faith point elections would not result in a point deduction, to direct staff to not apply the point deduction to applications electing the EDA points in cases in which some supporting documentation was provided, even if such documentation is insufficient for the points to be awarded.

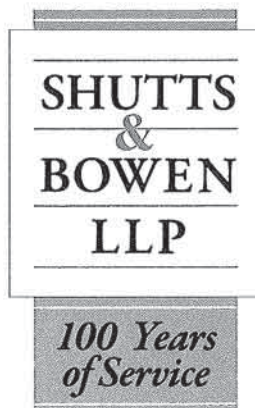
#### Documentation provided by Applicant

In this instance, the Applicant for Barron's Branch provided several pieces of documentation to evidence eligibility for the two (2) Underserved Area points elected in the Application but was unable to provide a letter from the TWDB.

A legal opinion from McGinnis, Lochridge & Kilgore, L.L.P. was provided to document that the area meets the Water Code definition. However, the opinion is conditional. In several instances the letter "If the TWDB interprets its Rule 363.503," is used and this condition is followed by an affirmation of how the site meets the applicable standard. These conditions are precisely the problem and point to the concerns that TDHCA staff have had in the administration of this point item. The applicable definition in the Texas Water Code reserves such determinations for the Texas Water Development Board.

A letter from the city was also provided but is insufficient to demonstrate that the Water Code Definition is met.

The Applicant's appeal does not provide other evidence of eligibility for the points but point out that in light of the fact that no one was able to obtain a letter from TWDB, the applicant believes they met a good faith standard and that the two (2) elected points should be awarded. It also asserts that, whether the Board awards these two (2) points or not, the one (1) point deduction is not warranted. Key in the appeal is the assertion that staff created an "impossible" documentation requirement that precluded any applicant from accessing the points. Moreover, the appeal points out that the documentation requirement was not a part of the rule itself and that alternative documentation should be acceptable since the rule is controlling. The full appeal is attached hereto.



GARY J. COHEN  
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March 1, 2013

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Economically Distressed Area

Dear Mr. Irvine:

I am writing on behalf of Barron's Branch, LLC, and its 2013 LIHTC application for the development of Barron's Branch Apartments to be located in the City of Waco, Texas. In particular, I am writing in respect to that portion of the application being submitted today pertaining to the award of 2 points for location within "an Economically Distressed Area" ("EDA") pursuant to Section 11.9(c)(6) of the Qualified Allocation Plan. Under Section 11.9(f)(1) of the QAP, failure to provide Staff with sufficient documentation to award points which were elected by an applicant on its self score form results in a 1 point deduction.

Section 10.3(a)(40) of the 2013 Uniform Multifamily Rules defines an EDA as "An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, Section 17.921." Page 25 of the 2013 Multifamily Programs Procedures Manual (referencing Tab 8 of the application) requires that an applicant "... provide a letter confirming the Development is within the boundaries of a Colonia or Economically Distressed Area from the Texas Water Development Board as well as a map indicating the location of the Development Site within the identified underserved area." Similarly, the application itself, on the page titled "Supporting Documentation for the Site Information Form", requires (in order to receive the above-described two points) a "letter or correspondence from Texas Water Development Board".

Section 17.921 of the Texas Water Code provides a definition of an "Economically Distressed Area"; it is defined as an area in which: (i) water supply or sewer services are inadequate to meet minimal needs of residential users, (ii) financial resources are inadequate to

Mr. Tim Irvine  
March 1, 2013  
Page 2

provide water supply or sewer service that will satisfy those needs, and (iii) an established residential subdivision was located on June 1, 2005.

It is my understanding that, due to miscommunication between TDHCA and the Texas Water Development Board ("TWDB"), TWDB is unwilling to issue any letters in this regard, even if an area is qualified under the Water Code. The Water Code does not impose any responsibility on TWDB to respond to inquiries from private developers (or political subdivisions working with private developers) to give the letter being sought by TDHCA as part of its application process. We have been in contact with TWDB, and they have indicated that they will not write letters regarding this issue for otherwise qualifying sites until there is an agreed upon process established between TWDB and TDHCA.

My client had submitted comments to the QAP in October 2012 (attached hereto) pointing out that "... 'Economically Distressed Area' is not something that can be confirmed by a list and may be subjective in determination ... I am concerned that there will be confusion about what would qualify under this item. There is also no clarity on what documentation would be required and what should occur if TDHCA staff requested more information."

It is my client's understanding that no one will be receiving these letters by today's application submission deadline. We are advised that TDHCA and TWDB are working on a process for the issuance of such letters, but this has not occurred as of today's date. The situation at hand has in no way been caused by my client or by others similarly situated. My client has been pressing TDHCA for some time, beginning in October 2012 through two weeks ago, for a resolution of this issue, but to date none has been forthcoming.

Attached hereto are the following documents in support of classification of the subject development site as being located within an "Economically Distressed Area":

1. February 27, 2013 letter from the City of Waco.
2. Letter from McGinnis, Lochridge & Kilgore, L.L.P. dated March 1, 2013.

The foregoing documentation demonstrates that the development site is in fact located within an "Economically Distressed Area". In light of the fact that TWDB is unwilling to issue any letters in this regard until resolution of administrative issues between itself and TDHCA, we strongly believe that TDHCA should find the supporting documentation sufficient for award of the two points referenced above. We encourage TDHCA to follow up and confirm this analysis with TWDB.

As you know, the intent of the scoring item is to "give priority through its housing program scoring criteria to communities that are located wholly or partly in an Economically Distressed Area or Colonia." See Texas Government Code Section 2306.127(3) of TDHCA's governing statute. Not providing a method by which substantiation of a site as being "Economically Distressed" can occur undermines the intent of the foregoing Statute and appears to be in violation thereof.

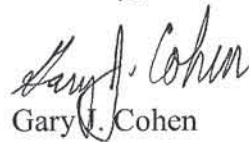


Mr. Tim Irvine  
March 1, 2013  
Page 3

Consistent with the foregoing, if it is ultimately determined by TDHCA that the application does not qualify for the 2 points, no penalty points should be assessed, since this situation (i) is outside of the control of the development community and has arisen due to disagreement/miscommunication between two State agencies, having nothing to do with any particular applicant, and (ii) was identified and warned against by applicants (such as my client) during the QAP comment period.

Thank you for your attention to this matter.

Sincerely,



Gary J. Cohen

GJC/mar  
Enclosure  
MIADOCS 7327320 1



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Waco, Texas 76702-2570  
254 / 750-5640  
Fax: 254 / 750-5880  
[www.waco-texas.com](http://www.waco-texas.com)

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February 27, 2013

Timothy Irvine  
Executive Director  
TDHCA  
221 East 11th Street  
Austin, TX 78701

RE: Economically Distressed Area

Dear Mr. Irvine:

This letter is provided in support of the Barron's Branch, LLC, 2013 LIHTC Application for the development of the Barron's Branch Apartments, in the City of Waco, Texas. The new development will be built on an underserved 10.961 acre site located at N. 9<sup>th</sup> Street and Colcord Avenue (1201, 1401 and 1500 N. 9<sup>th</sup> Street). The site is made up of two tracts (6.021 acres and 4.940 acres) that are divided by Colcord Avenue.

The land was previously improved as affordable housing (four percent tax credit/bond) built in the early 1970s and was known as the Parkside Village Apartments. The site was foreclosed upon and conveyed to the City of Waco by HUD with the requirement that the existing property be demolished within nine months from the date of the Deed. The terms of the conveyance also required redevelopment of the site with 150 affordable units.

While in the process of redeveloping the site, it has become apparent that the water and wastewater infrastructure is inadequate to meet the needs of proposed development. Specifically, the 4" water main that runs from Colcord to Tennessee along 9<sup>th</sup> Street is undersized to meet fire protection requirements and is in poor condition. There have been a dozen repairs on the undersized line since 2006. Additionally, the 4" main is inadequate to support fire protection. The City has not allowed water mains less than eight inches in diameter since about 1980. The existing lines do not meet current City of Waco minimum construction standards.

The 6" sewer main on Indiana is undersized to serve the development in question and is a clay line adjacent to the creek. To properly serve the proposed development, this line would need to be replaced with an 8" main with less potential to allow inflow and infiltration. From our work order records, there have been at least eight line cleanings of this segment since September 26, 2000. This is reason for concern due to the fact that it is a clay line. Mechanical cleaning equipment can inadvertently cause the pipe to crack and weaken during cleaning events. The proximity of this line to Barrons Branch also raises the concern for inflow and infiltration

through any cracks or line defects that might be present. Similar to the eight inch minimum size requirement for water mains, the City has had an eight inch minimum size requirement for wastewater mains for about the same length of time. As such, the existing sewer main also does not meet current City of Waco minimum construction standards.

The site also has a median household income that is not greater than 75% of the median state household income.

Attached are work order records and the water and wastewater layers from Geographic Information System that illustrates the location of the lines relative to the site in question. Also, attached is a survey of the site and Census Data showing the median household income for the area to be served.

Sincerely,



Larry D. Groth, P.E.  
City Manager

tm

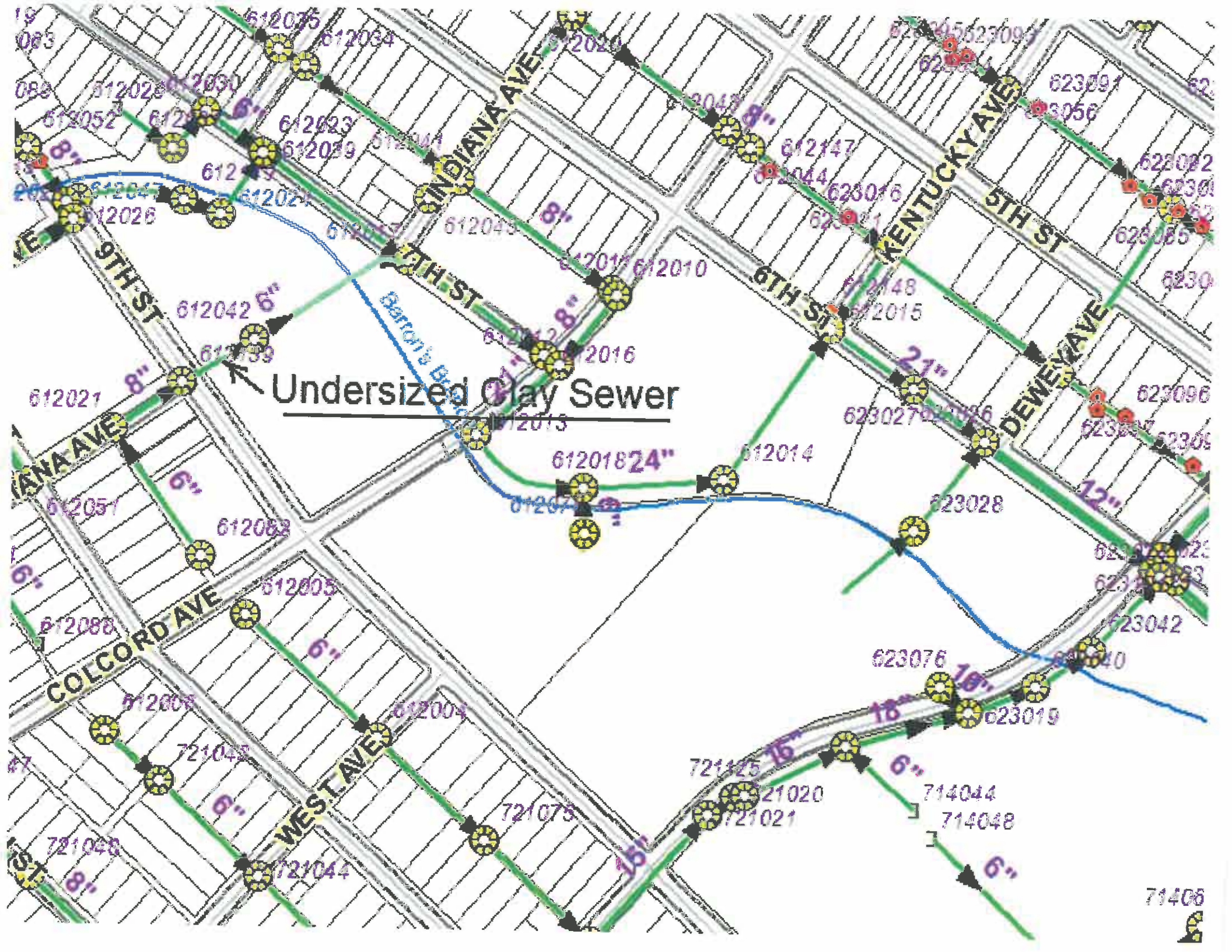
Attachments

**Work Order History - Water 4" line on 9th St from Colcord to Tennessee**

W/O #	START DATE	COMPLETED DATE	TASK CODE	JOB DESCRIPTION	Comments	STATUS	Costs
			<b>Valve</b>				
WF0610919	12/14/2006	12/14/2006	Replacement	901 Colcord - water leak - heavy flow down the Street	Replaced valve @ 9th & West	CL	3911.4
			<b>Water Main</b>				
WF0610919	12/9/2006	12/10/2006	Repair	901 Colcord - water leak - heavy flow down the Street	Repaired water main	CL	
WF0742073	12/10/2007	12/11/2007	Water Main Repair	1323 N 9TH STREET / WATER LEAK	Repaired water main with 2 clamps and pipe	CL	1825.75
WF0978275	11/23/2009	11/23/2009	Water Main Repair	9TH ST & INDIANA / AFTER HRS - WATER COMING UP OUT OF STREET	Repaired water leak	CL	517.69
WF0979598	11/28/2009	11/28/2009	Water Main Repair	9TH & INDIANA / AFTER HRS - WATER LEAK	Repaired water main	CL	871.37
WF0983680	12/9/2009	12/9/2009	Water Main Repair	1424 N 9TH ST / AFTER HRS - WATER LEAK	Repaired 1st leak and line blew again. Fixed 2nd leak also.	CL	1119.87
WF1023709	4/10/2010	4/10/2010	Water Main Repair	1420 N 9TH ST / AFTER HRS - POSSIBLE WATER LEAK	Repaired leak with 4x10 clamp & returned valves to open position	CL	704.79
WF1179975	6/25/2011	6/25/2011	Water Main Repair	N 9TH & TENNESSEE / AFTER HRS - POSSIBLE MAIN BREAK	Repaired leak with 4x10 clamp	CL	846.74
WF1179978	6/25/2011	6/25/2011	Water Main Repair	N 9TH & INDIANA / AFTER HRS - WATER LEAK	Repaired water leak with clamp	CL	749.48
WF1320043	2/12/2012	8/12/2012	Water Main Repair	1424 N 9TH ST / AFTER HRS - WATER LEAK COMING FROM THE STREET	Repaired water leak with 2 clamps and returned valves to open position	CL	1047.3
WF1371532	1/4/2013	1/4/2013	Water Main Repair	1424 N 9TH ST / POSSIBLE WATER LEAK	Repaired 4" water leak and returned valves to open position	CL	584.4
WF1376254	1/18/2013	1/1/2013	Water Main Repair	1500 BLK N 9TH ST & TENNESSEE / POSSIBLE WATER LEAK	Repaired water leak and returned valves to open position	CL	860.01

**Work Order History - Wastewater 6" line on Indiana from 9th to 7th Streets**

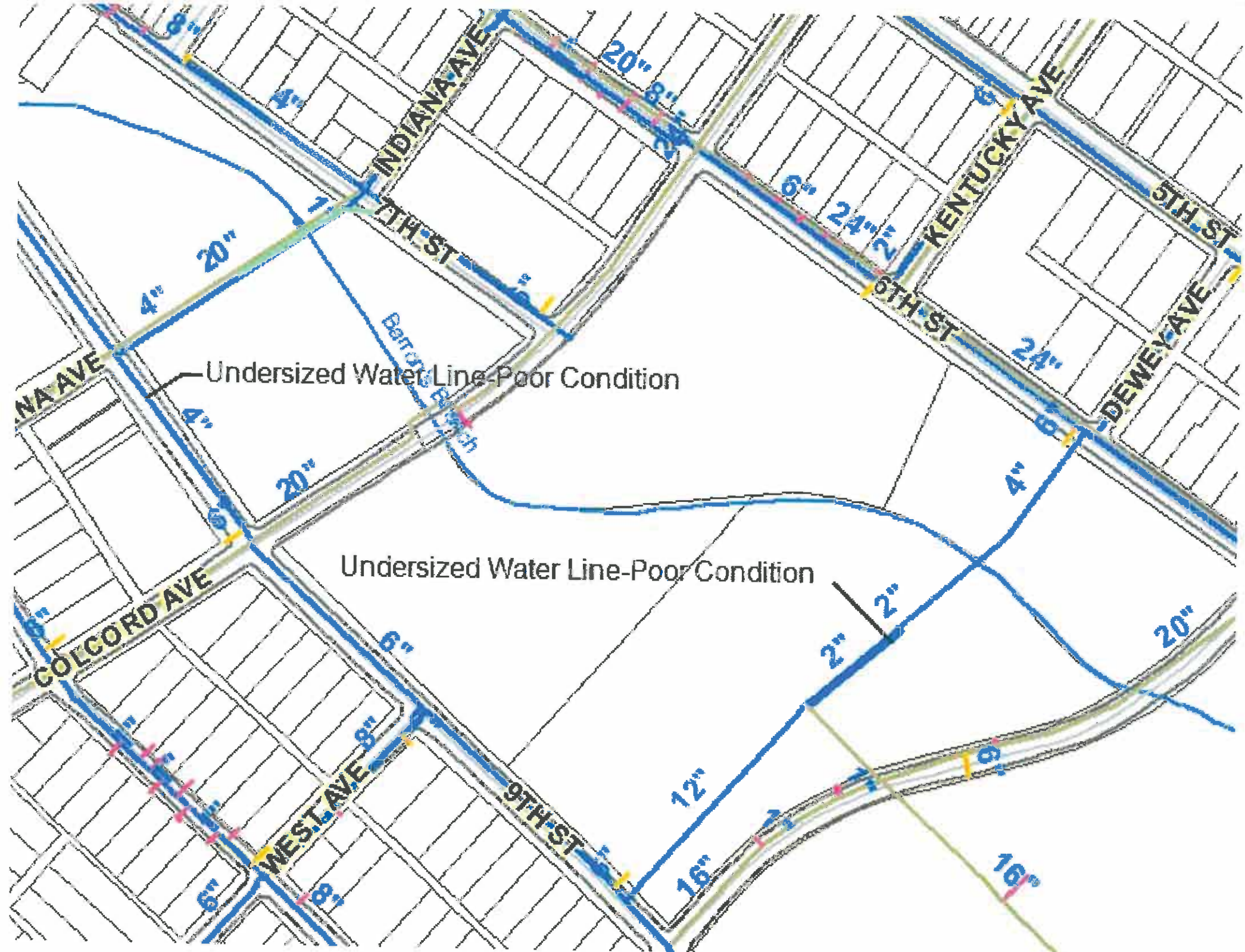
W/O #	START DATE	COMPLETED DATE	Repair or PM	TASK CODE	JOB DESCRIPTION	Comments	STATUS	Costs
WF0110337	9/26/2000	9/27/2000	Repair	Stop Up Grease	1323 n 9th- west side of property- behind bldg on	Unstopped line - stoppage due to grease	CL	Not gathered
WF0683007	6/13/2007	6/13/2007	Repair	Stop Up Customer Side	1323 N 9TH ST, STOP UP ONLY ON HALF APARTMENTS	No city clean out and main was flowing fine. Stoppage on customer side.	CL	139.22
WF1212506	10/26/2011	10/26/2011	Repair	TV to Locate Tap & Kill Sewer Services	1401- 03 N 9TH ST/TV TO LOCATE TAP THEN KILL TAP PER ROBERT PIRELO 379-2798	TV'ed to locate tap and killed out service per request	CA	2841.42
WF1214368	10/4/2011	10/4/2011	Repair	Main Line Cleaning	1401 N 9TH ST/ TV SEWER MAIN SEGMENTS	Cleaned sewer segments for Parkside Rehab Project	CL	1628.46
WF1216413	10/12/2011	10/12/2011	Repair	Sewer Service Investigation	1401 N 9TH ST(PARKSIDE APTS)DYE TEST AREA IN CLEAN CUTS TO ENSURE FLOW	Dye tested area prior to killing services	CL	866.61
WF1330467	9/11/2012	9/11/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found medium grease	CL	51.02
WF1262046	4/9/2012	4/9/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	176.36
WF1371307	1/9/2013	1/9/2013	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	82.36
WF1353836	11/13/2012	11/13/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	85.86
WF1122482	11/17/2011	11/17/2011	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	167.46
WF1092882	11/8/2010	11/8/2010	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found medium grease	CL	139.95



Undersized Clay Sewer

Barren's Branch

71406

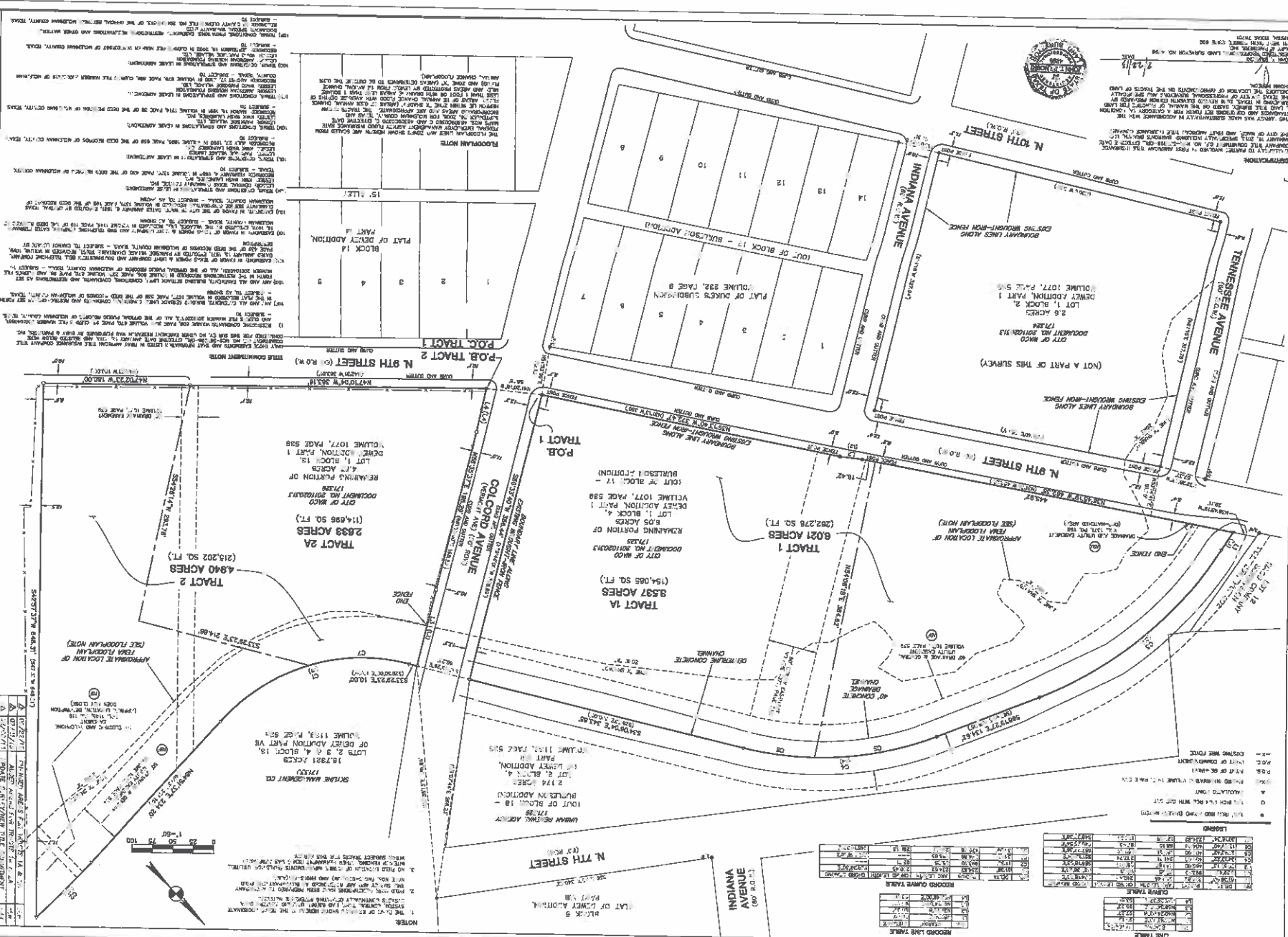


Undersized Water Line-Poor Condition

Undersized Water Line-Poor Condition



THIS SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACT OF 1909 AND THE RULES AND REGULATIONS THEREUNDER. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS.



**FLOORPLAN NOTE**  
 THE FLOORPLAN SHOWS THE LAYOUT OF THE BUILDING AND THE LOCATION OF THE WALLS, DOORS, WINDOWS, AND OTHER FEATURES. THE FLOORPLAN IS A REPRESENTATION OF THE BUILDING AS IT APPEARS ON THE DATE OF THE SURVEY. THE FLOORPLAN IS NOT A CONTRACT AND DOES NOT GUARANTEE THE ACCURACY OF THE DIMENSIONS OR THE LOCATION OF THE FEATURES. THE FLOORPLAN IS SUBJECT TO CHANGE WITHOUT NOTICE.

**NOTES**  
 1. THE SURVEY WAS MADE IN ACCORDANCE WITH THE SURVEYING ACT OF 1909 AND THE RULES AND REGULATIONS THEREUNDER. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS.  
 2. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS.  
 3. THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE STATE OF TEXAS.

**LAND TITLE SURVEY**  
**BARBONS BRANCH, LLC**  
**BARBONS BRANCH - WACO, TEXAS**  
 LOT 1, BLOCK 4 & LOT 1, BLOCK 13 OF DENVER ADDITION, PART 1, SITUATED IN THE CITY OF WACO, McLENNAN COUNTY, TEXAS

**RECORD QUOTE TABLE**

BOOK	PAGE	DATE	DESCRIPTION
100	100	10/10/10	ORIGINAL SURVEY
100	100	10/10/10	ORIGINAL SURVEY
100	100	10/10/10	ORIGINAL SURVEY

**UNIT TABLE**

UNIT	DESCRIPTION	AMOUNT
1	ACRES	8337.00
2	SQ. FT.	358112.00
3	SQ. FT.	358112.00

**CHECK**  
 Drawn by: K.V./A.V./A.  
 Project No.: 101010101010

Date: 02/27/2024

Scale: 1" = 100'

North Arrow

Surveyor's Name: [Name]

Surveyor's License No. [Number]

Surveyor's Signature





B19013

**MEDIAN HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2010 INFLATION-ADJUSTED DOLLARS)**

Universe: Households

2006-2010 American Community Survey 5-Year Estimates

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, for 2010, the 2010 Census provides the official counts of the population and housing units for the nation, states, counties, cities and towns. For 2006 to 2009, the Population Estimates Program provides intercensal estimates of the population for the nation, states, and counties.

	Texas		Census Tract 12, McLennan County, Texas	
	Estimate	Margin of Error	Estimate	Margin of Error
Median household income in the past 12 months (in 2010 inflation-adjusted dollars)	49,846	+/-145	17,857	+/-4,112

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

The methodology for calculating median income and median earnings changed between 2008 and 2009. Medians over \$75,000 were most likely affected. The underlying income and earning distribution now uses \$2,500 increments up to \$250,000 for households, non-family households, families, and individuals and employs a linear interpolation method for median calculations. Before 2009 the highest income category was \$200,000 for households, families and non-family households (\$100,000 for individuals) and portions of the income and earnings distribution contained intervals wider than \$2,500. Those cases used a Pareto Interpolation Method.

While the 2006-2010 American Community Survey (ACS) data generally reflect the December 2009 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2000 data. Boundaries for urban areas have not been updated since Census 2000. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau, 2006-2010 American Community Survey

Explanation of Symbols:

1. An "\*" entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
2. An "!" entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
3. An "L" following a median estimate means the median falls in the lowest interval of an open-ended distribution.
4. An "U" following a median estimate means the median falls in the upper interval of an open-ended distribution.
5. An "!" entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
6. An "\*\*\*\*\*" entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is

not appropriate.

7. An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.

8. An '(X)' means that the estimate is not applicable or not available.



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# QUALIFIED CENSUS TRACTS

The 2013 Qualified Census Tracts (QCTs) are effective beginning January 1, 2013. The 2013 designations use data from the 2010 Decennial Census and the 2010 to 2012 American Community Survey (ACS) 5-year tabulations. The 2012 designations for American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands will remain in effect because data from the 2010 Decennial Census is not available for those areas. Maps of 2012 QCTs, which are 2010 census tract boundaries, are available at <http://qct.huduser.org/QLTGIS/US/Map.aspx>.

48500001200

Go

Select a State

Select a County

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QCT Legend:  Tract Outline

Qualified Census Tracts (2013)

LIHTC Project

### QCT Options

- 15 Current Zoom Level
- Show Tract Outline (Zoom 11+)
- Show LIHTC Projects (Zoom 11+)
- Color Qualified Tracts

Marion's Branch



Map data ©2012 Google

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March 1, 2013

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. BOX 13941  
Austin, Texas 78711-3941

Re: Census Tract 12 in McLennan County meets the Criteria for an Economically Distressed Area under Section 17.921, Texas Water Code

Dear Mr. Irvine:

As a part of the application (the "Application") for housing funds affecting the above referenced tract, we respectfully submit this brief analysis on behalf of Barron's Branch LLC ("Applicant") addressing whether the application complies with applicable statutory and regulatory criteria of the Texas Water Development Board (the "TWDB"). Subject to the way in which the TWDB interprets its rules, as more fully discussed below, we believe that the application should meet such criteria.

As set forth in its Rule 11.9(c)(6), the Texas Department of Housing and Community Affairs (the "Department") provides that an application for housing funds may receive additional points if the proposed development is located in an economically distressed area. 10 TEX. ADMIN. CODE §11.9 (2013). An "Economically Distressed Area" is defined by Section 17.921 of the Texas Water Code to mean an area in which (A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by [Texas Water Development] board rules; (B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and (C) an established residential subdivision was located on June 1, 2005. TEX. WATER CODE ANN. § 17.921 (West 2012). The Texas Water Development Board ("TWDB") rules provide additional guidance in determining whether an area is economically distressed. *See* 31 TEX. ADMIN. CODE § 363.503 (2009). For your convenience, the complete text of Rule 363.503 is attached to this letter as Appendix A.

The Applicant, in accordance with the Department's rules, requested confirmation from the TWDB that the Application meets the above-referenced criteria pertaining to an Economically Distressed Area. Unfortunately, the TWDB will not be in a position to make any determination as to the Application's compliance with its rules until it has time to enter into a mutually agreeable program with the Department to make such an evaluation. Accordingly, the

Applicant has requested that this firm review its Application and, more specifically, the development site related to the Application, within the context of the statutory and regulatory criteria of the TWDB.

As part of our analysis, we have reviewed the following documents:

(1) The February 27, 2013 letter from the City of Waco attesting to the current conditions of the water and wastewater infrastructure in the project area and the existence of the subdivision as of the date specified in the statute (Appendix B); and

(2) The demographic information about the project area from the U.S. Census Bureau (Appendix C).

Based upon the foregoing, and subject to the limitations below, we conclude that:

(1) If the TWDB interprets its Rule 363.503, which requires that the area not meet “applicable drinking water standards of any other governmental unit with jurisdiction over such area” to include local construction standards in addition to state drinking water standards, then the water service to the relevant area, which is in Census Tract 12 in McLennan County, is inadequate to meet the minimal needs of the residential users in an economically distressed area because it does not meet current City of Waco construction standards.

(2) If the TWDB interprets its Rule 363.503, which requires that the area not meet “applicable wastewater standards of any other governmental unit with jurisdiction over such area” to include local construction standards, then wastewater service to the relevant area, which is in Census Tract 12 in McLennan County, is inadequate to meet the minimal needs of the residential users in an economically distressed area because it does not meet current City of Waco construction standards.

(3) The financial resources of the residential users in the area to be served by the proposed project are inadequate to provide the needed services because Census Tract 12 in McLennan County has a median household income that is not greater than 75% of the median state household income for 2010, the most recent year for which statistics are available.

(4) As more fully described, below, an established residential subdivision was located in the economically distressed area on June 1, 2005.

With respect to Item (4), above, we note that a former housing development, known as the Parkside Village Apartments” (“Apartments”) at this location was demolished a little more than one year ago pursuant to the City of Waco’s compliance with an order from the U.S. Department of Housing and Urban Development. TWDB Rule 393.503(4) states that the board may determine that a residential subdivision was located in an economically distressed area if, among other conditions (*See Appendix A*), “at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005.” Given that the Apartments were occupied

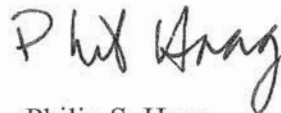
Mr. Tim Irvine  
March 1, 2013  
Page 3

and were located in an economically distressed area on June 1, 2005, this Application and the development should meet the statutory and regulatory criteria required by the Department. We also note that the Apartments were occupied and located in an economically distressed area until the federal government abandoned the project and sold it to the City of Waco and conditioned the sale on the demolition of the Apartments.

Subject to the conditions above, we believe that the Application should be considered as application for an economically distressed area as defined by the TWDB. Our above analysis is subject to the manner in which TWDB interprets its rules and to the information provided to us as described above. In addition, we note that the language of the governing statute and administrative rules authorize the TWDB to consider other factors deemed relevant by the TWDB in making a determination whether the Application complies with the TWDB requirements. Any factors not listed specifically in the text of the statute or rule which may be deemed relevant by the TWDB have not been considered in this analysis.

If we can provide any other information, please feel free to contact us.

Sincerely,



Philip S. Haag

PSH

Cc: Ms. Lisa Stephens  
Barron's Branch LLC

## APPENDIX A

<<Prev Rule

# Texas Administrative Code

Next Rule>>

TITLE 31

NATURAL RESOURCES AND CONSERVATION

PART 10

TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363

FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER E

ECONOMICALLY DISTRESSED AREAS

DIVISION 1

**ECONOMICALLY DISTRESSED AREAS PROGRAM**

**RULE §363.503**

**Determination of Economically Distressed Area**

To determine that an area is economically distressed, the board shall consider information and data presented with the application or otherwise available to the board to determine that the water or sewer services are inadequate to meet the minimal needs of residential users; that the financial resources of the residential users of the services are inadequate to provide water or sewer services that will satisfy those minimal needs; and that an established residential subdivision was located in the economically distressed area on June 1, 2005.

(1) Water service is inadequate to meet the minimal needs of the residential users in an economically distressed area if the board determines that water service:

(A) does not exist or is not provided;

(B) is provided by a community water system that does not meet drinking water standards established by the commission;

(C) is provided by individual wells that, after treatment, do not meet drinking water standards established by the commission; or

(D) does not meet applicable drinking water standards of any other governmental unit with jurisdiction over such area.

(E) The water service is considered inadequate if the project area is identified in the water plan as having a water supply need and the project to address that need is identified as a recommended strategy in the state and regional water plan. Projects brought under this subparagraph shall follow the procedures outlined in Subchapter A of this chapter (relating to General Provisions) and paragraphs (3) and (4) of this section and §363.504 of this subchapter (relating to Required Application Information).

(2) Sewer service is inadequate to meet the minimal needs of residential users in an economically distressed area if the board determines that sewer service:

(A) does not exist or is not provided;

(B) is provided by an organized sewage collection and treatment facility that does not comply with the standards and requirements established by the commission;

(C) is provided by on-site sewerage facilities that do not comply with the standards and requirements established by the commission; or

(D) does not meet applicable wastewater standards of any other governmental unit with jurisdiction



over such area.

(3) The financial resources of the residential users in the economically distressed area are inadequate to provide the needed services if the board finds that the area to be served by a proposed project has a median household income that is not greater than 75% of the median state household income for the most recent year for which statistics are available.

(4) An established residential subdivision was located in the economically distressed area on June 1, 2005, if the board determines the following:

(A) either a plat of the area is recorded in the county plat or deed records; or a pattern of subdivision, without a recorded plat, is evidenced by the existence of multiple residential lots with roads, streets, utility easements, or other such incidents of common usage or origin;

(B) at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005, and

(C) such other factors as may be determined relevant by the board.

(5) The boundary or limits of a water or sewage project to serve an economically distressed area may be determined by:

(A) a subdivision plat prepared by a registered engineer, whether recorded or not;

(B) a metes and bounds description, natural boundaries, roads, or other natural features that delineate an unplatted area within which a feasible cost-effective project can be developed; or

(C) inclusion of occupied dwellings with inadequate water or wastewater services in close proximity to an economically distressed area determined as provided in paragraph (4) of this section when such dwellings can be feasibly served by the proposed project.

**Source Note:** The provisions of this §363.503 adopted to be effective January 4, 2000, 24 TexReg 12070; amended to be effective November 7, 2001, 26 TexReg 8847; amended to be effective January 2, 2007, 31 TexReg 10804; amended to be effective December 25, 2007, 32 TexReg 9721; amended to be effective February 4, 2009, 34 TexReg 669

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## APPENDIX B



**City Manager's Office**

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www.waco-texas.com

February 27, 2013

Timothy Irvine  
Executive Director  
TDHCA  
221 East 11th Street  
Austin, TX 78701

RE: Economically Distressed Area

Dear Mr. Irvine:

This letter is provided in support of the Barron's Branch, LLC, 2013 LIHTC Application for the development of the Barron's Branch Apartments, in the City of Waco, Texas. The new development will be built on an underserved 10.961 acre site located at N. 9<sup>th</sup> Street and Colcord Avenue (1201, 1401 and 1500 N. 9<sup>th</sup> Street). The site is made up of two tracts (6.021 acres and 4.940 acres) that are divided by Colcord Avenue.

The land was previously improved as affordable housing (four percent tax credit/bond) built in the early 1970s and was known as the Parkside Village Apartments. The site was foreclosed upon and conveyed to the City of Waco by HUD with the requirement that the existing property be demolished within nine months from the date of the Deed. The terms of the conveyance also required redevelopment of the site with 150 affordable units.

While in the process of redeveloping the site, it has become apparent that the water and wastewater infrastructure is inadequate to meet the needs of proposed development. Specifically, the 4" water main that runs from Colcord to Tennessee along 9<sup>th</sup> Street is undersized to meet fire protection requirements and is in poor condition. There have been a dozen repairs on the undersized line since 2006. Additionally, the 4" main is inadequate to support fire protection. The City has not allowed water mains less than eight inches in diameter since about 1980. The existing lines do not meet current City of Waco minimum construction standards.

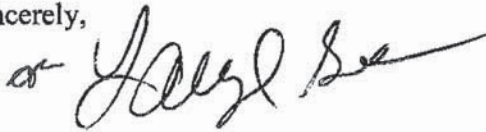
The 6" sewer main on Indiana is undersized to serve the development in question and is a clay line adjacent to the creek. To properly serve the proposed development, this line would need to be replaced with an 8" main with less potential to allow inflow and infiltration. From our work order records, there have been at least eight line cleanings of this segment since September 26, 2000. This is reason for concern due to the fact that it is a clay line. Mechanical cleaning equipment can inadvertently cause the pipe to crack and weaken during cleaning events. The proximity of this line to Barrons Branch also raises the concern for inflow and infiltration

through any cracks or line defects that might be present. Similar to the eight inch minimum size requirement for water mains, the City has had an eight inch minimum size requirement for wastewater mains for about the same length of time. As such, the existing sewer main also does not meet current City of Waco minimum construction standards.

The site also has a median household income that is not greater than 75% of the median state household income.

Attached are work order records and the water and wastewater layers from Geographic Information System that illustrates the location of the lines relative to the site in question. Also, attached is a survey of the site and Census Data showing the median household income for the area to be served.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Groth". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry D. Groth, P.E.  
City Manager

tm

Attachments

**Work Order History - Water 4" line on 9th St from Colcord to Tennessee**

W/O #	START DATE	COMPLETED DATE	TASK CODE	JOB DESCRIPTION	Comments	STATUS	Costs
WF0610919	12/14/2006	12/14/2006	Valve Replacement	901 Colcord - water leak - heavy flow down the Street	Replaced valve @ 9th & West	CL	3911.4
WF0610919	12/9/2006	12/10/2006	Water Main Repair	901 Colcord - water leak - heavy flow down the Street	Repaired water main	CL	
WF0742073	12/10/2007	12/11/2007	Water Main Repair	1323 N 9TH STREET / WATER LEAK	Repaired water main with 2 clamps and pipe	CL	1825.75
WF0978275	11/23/2009	11/23/2009	Water Main Repair	9TH ST & INDIANA / AFTER HRS - WATER COMING UP OUT OF STREET	Repaired water leak	CL	517.69
WF0979598	11/28/2009	11/28/2009	Water Main Repair	9TH & INDIANA / AFTER HRS - WATER LEAK	Repaired water main	CL	871.37
WF0983680	12/9/2009	12/9/2009	Water Main Repair	1424 N 9TH ST / AFTER HRS - WATER LEAK	Repaired 1st leak and line blew again Fixed 2nd leak also	CL	1119.87
WF1023709	4/10/2010	4/10/2010	Water Main Repair	1420 N 9TH ST / AFTER HRS - POSSIBLE WATER LEAK	Repaired leak with 4x10 clamp & returned valves to open position	CL	704.79
WF1179975	6/25/2011	6/25/2011	Water Main Repair	N 9TH & TENNESSEE / AFTER HRS - POSSIBLE MAIN BREAK	Repaired leak with 4x10 clamp	CL	846.74
WF1179978	6/25/2011	6/25/2011	Water Main Repair	N 9TH & INDIANA / AFTER HRS - WATER LEAK	Repaired water leak with clamp	CL	749.48
WF1320043	2/12/2012	8/12/2012	Water Main Repair	1424 N 9TH ST / AFTER HRS - WATER LEAK COMING FROM THE STREET	Repaired water leak with 2 clamps and returned valves to open position	CL	1047.3
WF1371532	1/4/2013	1/4/2013	Water Main Repair	1424 N 9TH ST / POSSIBLE WATER LEAK	Repaired 4" water leak and returned valves to open position	CL	584.4
WF1376254	1/18/2013	1/1/2013	Water Main Repair	1500 BLK N 9TH ST & TENNESSEE / POSSIBLE WATER LEAK	Repaired water leak and returned valves to open position	CL	860.01

**Work Order History - Wastewater 6" line on Indiana from 9th to 7th Streets**

W/O #	START DATE	COMPLETED DATE	Repair or PM	TASK CODE	JOB DESCRIPTION	Comments	STATUS	Costs
WF0110337	9/26/2000	9/27/2000	Repair	Stop Up Grease	1323 n 9th- west side of property- Behind bldg on	Unstopped line - stoppage due to grease	CL	Not gathered
WF0683007	6/13/2007	6/13/2007	Repair	Stop Up Customer Side	1323 N 9TH ST, STOP UP ONLY ON HALF APARTMENTS	No city clean out and main was flowing fine. Stoppage on customer side.	CL	139.22
WF1212506	10/26/2011	10/26/2011	Repair	TV to Locate Tap & Kill Sewer Services	1401- 03 N 9TH ST/TV TO LOCATE TAP THEN KILL TAP PER ROBERT PIRELO 379-2798	TVed to locate tap and killed out service per request	CA	2841.42
WF1214368	10/4/2011	10/4/2011	Repair	Main Line Cleaning	1401 N 9TH ST/ TV SEWER MAIN SEGMENTS	Cleaned sewer segments for Parkside Rehab Project	CL	1628.46
WF1216413	10/12/2011	10/12/2011	Repair	Sewer Service Investigation	1401 N 9TH ST(PARKSIDE APTS)DYE TEST AREA IN CLEAN OUTS TO ENSURE FLOW	Dye tested area prior to killing services	CL	866.61
WF1330467	9/11/2012	9/11/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found medium grease	CL	51.02
WF1262046	4/9/2012	4/9/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	176.36
WF1371307	1/9/2013	1/9/2013	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	82.36
WF1353836	11/13/2012	11/13/2012	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	85.86
WF1122482	11/17/2011	11/17/2011	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found light grease	CL	167.46
WF1092882	11/8/2010	11/8/2010	PM	Grease Line Clean - P.M.	Grease Line Clean - P.M.	Cleaned main line - found medium grease	CL	139.95









610013

**MEDIAN HOUSEHOLD INCOME IN THE PAST 12 MONTHS (IN 2010 INFLATION-ADJUSTED DOLLARS)**  
 Universe: Households  
 2006-2010 American Community Survey 5-Year Estimates

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, for 2010, the 2010 Census provides the official count of the population and housing units for the nation, states, counties, cities and towns. For 2006 to 2009, the Population Estimates Program provides intercensal estimates of the population for the nation, states, and counties.

	Texas		Census Tract 12, McLennan County, Texas	
	Estimate	Margin of Error	Estimate	Margin of Error
Median household income in the past 12 months (in 2010 inflation-adjusted dollar)	49,846	+/-145	17,857	+/-4,112

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

The methodology for calculating median income and median earnings changed between 2008 and 2009. Medians over \$75,000 were most likely affected. The underlying income and earning distribution now uses \$2,500 increments up to \$250,000 for households, non-family households, families, and individuals and employs a linear interpolation method for median calculations. Before 2009 the highest income category was \$200,000 for households, families and non-family households (\$100,000 for individuals) and portions of the income and earnings distribution contained intervals wider than \$2,500. Those cases used a Pareto Interpolation Method.

While the 2006-2010 American Community Survey (ACS) data generally reflect the December 2009 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2000 data. Boundaries for urban areas have not been updated since Census 2000. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau, 2006-2010 American Community Survey

Explanation of Symbols:

1. An "X" entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
2. An "E" entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
3. An "L" following a median estimate means the median falls in the lowest interval of an open-ended distribution.
4. An "U" following a median estimate means the median falls in the upper interval of an open-ended distribution.
5. An "N" entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
6. An "C" entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is

not appropriate.

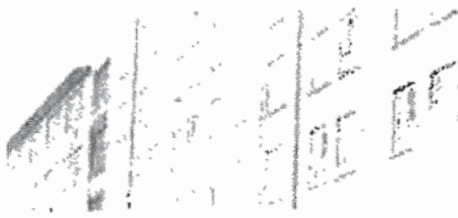
2. An 'N' entry in the estimate and margin of error column indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.

3. An '(X)' means that the estimate is not applicable or not available.



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### QUALIFIED CENSUS TRACTS

The Qualified Census Tract (QCT) program is a HUD initiative that provides additional funding for the development of affordable rental housing in distressed areas. QCTs are designated through a process that involves HUD, the U.S. Department of Housing and Urban Development, and the U.S. Department of Justice. The QCT program is authorized by the Housing and Economic Recovery Act of 2008 (HERA) and the Housing and Economic Recovery Act of 2009 (HERA II). For more information on the QCT program, please visit the HUD website at <http://qct.huduser.org/QLTGIS/Us/Main.aspx>.

QCT0001200

Go

Select a State

Enter a ZIP Code

Go

Map Style  
Aerial

Tract Outline

Qualified Census Tracts (2012)

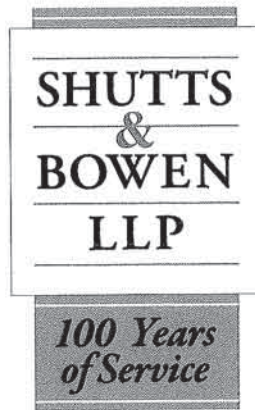
LIHTC Project

Map Options

- 5 Current Map Level
- Map Style: Aerial (Zoom 14)
- Show LIHTC Projects (Zoom 14)
- Color Qualified Tracts



Map data ©2012 Google



GARY J. COHEN  
(305) 347-7308 Direct Telephone  
(305) 347-7808 Direct Facsimile

E-MAIL ADDRESS:  
gcohen@shutts.com

May 17, 2013

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Barron's Branch, LLC; TDHCA No. 13187

Dear Mr. Irvine:

I am writing on behalf of Barron's Branch, LLC (the "Applicant"), and its 2013 LIHTC application for the development of Barron's Branch Apartments to be located in the City of Waco, Texas. In particular, this letter constitutes an appeal filed pursuant to Section 10.902 of the Uniform Multifamily Rules of TDHCA's scoring notice issued May 10, 2013 to the Applicant.

The Scoring Notice deducted two points from Applicant's score because Applicant did not submit a letter from the Texas Water Development Board ("TWDB") indicating that the development site is located in an economically distressed area ("EDA"). Further, TDHCA determined that the Applicant should receive a one point deduction because "The Applicant did not submit sufficient documentation for staff to award points under Section 11.9(c)(6). (1 point deduction)." These section references are to the 2013 State of Texas Qualified Allocation Plan ("QAP").

TDHCA cites Section 11.9(c)(6) of the QAP as support for deducting two points for failing to qualify as an EDA. The rationale given for the denial of the two points was that "The Applicant did not submit a letter from the Texas Water Development Board indicating that the development site is located in an economically distressed area. (Requested 2, Awarded 0)". There is no requirement in the QAP that a letter from TWDB be provided in order to receive the two points for site location within an EDA. The reference in the Scoring Notice to Section 11.9(c)(6) as support for the proposition that a letter from TWDB is required is misplaced. There is no such requirement in the QAP.

Mr. Tim Irvine  
May 17, 2013  
Page 2

It is my understanding that, under TDHCA process, the provisions of the QAP are controlling, and “trump” the provisions of the Uniform Multifamily Rules and the Multifamily Programs Procedures Manual (the “Manual”).

Section 11.9(a) of the QAP identifies the scoring criteria used in scoring applications (including the award of two points for a site located within an EDA), and requires that an applicant “provide supporting documentation in good faith” in order to support its election of points. Similarly, Section 11.9(f)(1) provides for a one point deduction if an applicant “... is unable to provide sufficient documentation (emphasis added) for Department staff to award those points ...”. As such, the applicable requirement as set forth in the QAP is that “sufficient documentation” be provided in order to receive the EDA points in question, and that such “sufficient documentation” be provided “in good faith” in order to avoid the imposition of a penalty reduction.

Page 25 of the Manual is the only provision/notice from TDHCA as to the requirement of a letter from TWDB in order to receive points for being located in an EDA. The Manual was promulgated and issued at such time as TDHCA reasonably believed that a process or mechanism existed (or would exist) pursuant to which TWDB would in fact issue such letters. In the staff recommendation/writeup of this issue at the May 9, 2013 Board meeting (where consideration of this matter was deferred by the Board), staff cited to its statements given at the November 2012 TDHCA Board meeting (pages 57 and 58 of 64, copies attached) (“... staff will require a letter from the Texas Water Development Board. If the Applicant requests these points and is not able to produce such a letter, then staff would deduct points”) as support for its position that Applicant was on notice that failure to provide the TWDB letter would result in no award of the two points for EDA and would result in imposition of a one point penalty reduction.

This position (never formally published by TDHCA) was undermined by the subsequent inability of TDHCA and TWDB to agree on a process for issuance of letters verifying EDA status by TWDB. The impossibility of obtaining a TWDB letter removes any rationale for TDHCA requiring such letter.

Note further that, on that same page excerpt from the November 2012 TDHCA Board meeting, staff stated that “If applicants elect points in good faith and those points are ultimately not awarded, staff will not deduct additional points. However, staff wants to discourage applicants from requesting points for which they have no reasonable assumption of qualifying.” See also the attached excerpt from page 25 (of 64) from that same Board meeting, wherein staff indicates that other alternative forms of proof of location in an EDA may be acceptable (“Staff is not aware of other forms of verification for location in an EDA, although other acceptable forms may exist. Staff would be happy to review any such document and provide feedback.”). These statements are inconsistent with the later staff statements at the same Board meeting referenced in the preceding paragraph.

Clearly staff was attempting to discourage applicants from self-scoring points for which they had no reasonable basis of qualifying. Obviously, that was not the case with respect to Applicant’s application.

Applicant submitted with its application a letter from the City of Waco and a letter from McGinnis, Lochridge & Kilgore, L.L.P. (a law firm specializing in Texas water development issues), both evidencing and supporting the position that Applicant's development site met the criteria for EDA. Applicant submitted such documentation because it reasonably believed that "sufficient documentation submitted in good faith" was the standard for both the award of points and the avoidance of penalty reduction. This was particularly true in light of the fact that, under Texas Government Code Section 2306.127(3) (governing TDHCA's operations), TDHCA was required to "give priority through its housing program scoring criteria to communities that are located wholly or partly in an Economically Distressed Area or Colonia." Applicant reasonably (and in good faith) believed that TDHCA would accept alternate supporting documentation, particularly in light of the above-referenced statutory mandate and the fact that (i) there was no possibility of obtaining a letter from TWDB, (ii) TDHCA's statement at the November 2012 Board meeting that "other acceptable forms may exist" to receive the two EDA points, and (iii) the primacy of the provisions of the QAP over the Manual.

Attached is an email strand wherein the Applicant had been advised (verbally) that the TWDB letter had been drafted and that the only issue was whether TDHCA and TWDB could agree on a process for releasing such letter. Obviously, Applicant believed (in good faith) that its site was located within an EDA based on such email.

As further evidence that the Applicant acted in good faith, attached are emails forwarded by me to you dated February 26, 2013 and February 28, 2013. Also attached is a letter I sent you on March 1, 2013. Each of these items of correspondence requested confirmation that an alternate form of "sufficient documentation" be permitted to receive the two points for location in an EDA, and that no penalty points be assessed in connection herewith. On February 28, 2013, I received a response from Ms. Barbara Deane (attached) acknowledging my request for guidance on behalf of Applicant, and advising that TDHCA staff would review whatever information was submitted with the application. Applicant received no other guidance or response from TDHCA. Applicant clearly disclosed to TDHCA that it would be submitting alternate documentation (and not a TWDB letter); Ms. Deane (in her response) acknowledged Applicant's intention and indicated TDHCA would review whatever information was submitted. Neither she nor anyone else from TDHCA copied on my e-mails made any mention of assessment of a penalty reduction, notwithstanding that my prior e-mail requests specifically addressed this issue and indicated that no penalty reduction should be assessed. In light of the foregoing, Applicant reasonably and in good faith believed that no penalty reduction would be assessed. To summarize, Applicant in good faith attempted to obtain guidance with respect to this matter prior to submission of its application, but no such guidance or response was forthcoming from TDHCA. In the absence of any such guidance (or a warning from TDHCA that submission of documentation other than a TWDB letter would result in the imposition of penalty points), Applicant proceeded in good faith with the submission of alternate "sufficient documentation" which it believed to be sufficient to merit award of the two points, particularly in light of the fact that TDHCA had acknowledged that no letter could be obtained from TWDB.

If TDHCA's position is that failure to submit a letter from TWDB automatically results in two points not being awarded and the imposition of penalty points, such position is not

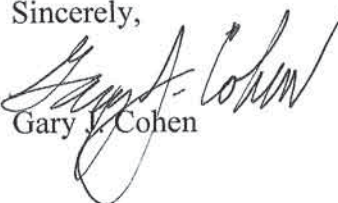
Mr. Tim Irvine  
May 17, 2013  
Page 4

supported by the QAP. The QAP requires TDHCA to review the alternate documentation submitted in order to determine whether it is "sufficient" and submitted in "good faith". As stated earlier, Applicant notified TDHCA of its intent to submit alternate documentation and of its belief that such submission would not in any case warrant imposition of a penalty reduction, and TDHCA (acknowledging receipt of such request for guidance) advised Applicant that it would review such alternate documentation. TDHCA could have warned that submission of such alternate documentation would potentially give rise to a penalty reduction, but instead advised that it would consider such documentation. In light thereof, imposition of a penalty reduction seems highly inappropriate. It does not appear from the language in the Scoring Notice that TDHCA considered Applicant's documentation; rather, it appears that TDHCA automatically denied the points and imposed a penalty reduction due to absence of the TWDB letter. This position is not supportable under the QAP.

In light of the fact that TDHCA adopted a procedure (in the Manual) that was fundamentally flawed and impossible to satisfy, and that Applicant in good faith submitted documentation sufficient to demonstrate that its development site was located in an EDA, Applicant should be awarded two points for location in an EDA. Further, no penalty reduction should be imposed.

Even if you determine that the documentation submitted by Applicant is not sufficient to merit award of the two points, Applicant should not be subject to penalty reduction. The purpose and intent of the penalty reduction rule (as noted in staff's statement in the November 2012 Board meeting) is to discourage applicants from requesting points for which they have no reasonable assumption of qualifying. In light of the fact that (i) TDHCA implemented a process (in the Manual) that ultimately became impossible to comply with (which TDHCA was aware of and could have notified the development community of prior to application submission, but chose not to do so), (ii) Applicant, in good faith and in reliance on the requirement of the QAP (which only requires submission of "sufficient documentation", not a TWDB letter) submitted a letter from the City of Waco and a letter from a reputable law firm establishing that the development site in question was located in an EDA, and (iii) Applicant repeatedly requested guidance (on February 26 and February 28, 2013) after it became clear that the TWDB letter could not be obtained, yet TDHCA chose not to advise Applicant (or the development community at large) of this fact, it is clear that Applicant should not receive a penalty reduction.

Thank you for your consideration of this matter.

Sincerely,  
  
Gary J. Cohen

GJC/bjc  
Enclosure

MIADOCS 7631462 2



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 9, 2013**

Presentation, Discussion, and Possible Action concerning the assessment of point deductions under 10 TAC §11.9(f)(1) to applications electing points for location in Economically Distressed Areas pursuant to 10 TAC §11.9(c)(6)(B)

**RECOMMENDED ACTION**

**WHEREAS**, §2306.127 of Texas Government Code requires the Department to give priority to communities that are located wholly or partly in economically distressed areas (EDAs);

**WHEREAS**, this statutory requirement is accomplished for the Competitive (9%) Housing Tax Credit program through §11.9(c)(6)(B) of the Qualified Allocation Plan (QAP), which provides up to 2 points for an application proposing a development site within an EDA;

**WHEREAS**, the Uniform Multifamily Rules provide that an EDA is defined in §17.921 of the Texas Water Code and is administered by the Texas Water Development Board (TWDB);

**WHEREAS**, the Department worked with TWDB to establish a system for TWDB to confirm EDAs for the purpose of awarding points under this QAP selection criteria but TWDB was not in a position to issue determinations outside the context of actual funding requests;

**WHEREAS**, several applicants have elected these points despite the difficulty surrounding the establishment of a process and may or may not have provided sufficient documentation for the Department to award the points elected; and

*requires consideration of submitted documentation*

**WHEREAS**, staff seeks Board guidance concerning the assessment of point deductions under §11.9(f)(1) of the QAP, which requires a one point deduction in instances in which points are inappropriately elected by an applicant.

**NOW, therefore, it is hereby**

**RESOLVED**, the Governing Board directs staff to assess the penalty point in instances in which an applicant inappropriately elects points for location within an EDA;

**OR**

**RESOLVED**, the Governing Board directs staff, for any applicant electing points for location in an EDA and providing some level of documentation, to consider such election

as having been made in good faith and thus not warranting any point deduction under §11.9(f)(1) in this limited instance due to the difficulty in establishing a clear process for claiming the point(s) and providing sufficient supporting documentation.

### BACKGROUND

The multifamily rules define an EDA as, "An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, §17.921." This section of the Texas Water Code is referenced several times in Chapter 2306 of the Texas Government Code when citing economically distressed areas and is defined in the Texas Water Code for the purpose of administering water infrastructure funding by the TWDB. Moreover, the definition in the Water Code reserves the designation of EDA for the TWDB. The EDA definition in the Texas Water Code is as follows:

"Economically distressed area" means an area in which:

- (A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;
- (B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and
- (C) an established residential subdivision was located on June 1, 2005, as determined by the board.

Staff initially provided applicants guidance that one way to support an election of points under the QAP for being located within an EDA was to provide a letter from the TWDB reflecting that the site is located within an EDA as defined by §17.921 of the Texas Water Code. However, the TWDB does not have an established process for designating EDAs in any instance other than for the explicit purpose of evaluating an application for TWDB funding. Many applicants contacted the TWDB and were unable to obtain such a letter. As the March 1, 2013 application deadline approached, staff received several calls from the TWDB and met with the staff of the TWDB on multiple occasions in an effort to identify a process by which an applicant could establish whether or not their development site was located within an EDA. However, no workable solution was identified. Staff provided guidance that applicants should exercise caution in electing points under this selection criterion due to the absence of another known and clear method of establishing that a site is within an EDA.

Generally, an Applicant that claims points for a particular selection criterion but is unable to provide any supporting documentation would be subject to a 1 point deduction under §11.9(f)(1). This deduction was established for the purpose of discouraging applicants from electing points for items in which an applicant had no solid basis for claiming the points. In the preamble to the rules presented to the Board in November 2012, staff provided the following reasoned response relating to the penalty deduction:

Staff recommends keeping the point deductions in place for the 2013 program year for those items that the developer applicant should clearly know are not properly supported, despite the changes to the QAP. Because staff performs full reviews on applications that appear to be competitive, it is imperative that applicants accurately self-score their applications. If applicants elect points in good faith and those points are ultimately not awarded, staff will not deduct additional points. However, staff wants to discourage

applicants from requesting points for which they have no reasonable assumption of qualifying.

In response to commenter (58) regarding the points associated with underserved areas, particularly the economically distressed areas, staff will make it clear in the multifamily programs procedures manual what evidence will be acceptable in order to qualify for points. In that specific case, staff will require a letter from the Texas Water Development Board. If the applicant requests these points and is not able to produce such a letter, then staff would deduct points. In addition, should the original calculation for leveraging points be inconsistent with the requested points, staff would not deduct points, even if after underwriting that score may change. Staff appreciates the support of commenter (46).

While applicants were clearly on notice that a point deduction would be assessed in instances in which a TWDB letter was not submitted to support an election for location in an EDA, staff would like to ask the Board whether this situation, now in hindsight, warrants an assessment of a 1 point deduction. At the time, staff believed that a letter from the TWDB was a reasonable method to support an election for location in an EDA. However, a clear process for obtaining that letter was not available prior to the application deadline and some applicants attempted to find alternative supporting documentation despite no change in guidance from staff regarding such alternative evidence. Staff appreciates that some applicants may have chosen to not elect these points even though they may have also obtained alternative supporting documentation; these applicants chose not to risk any assessment of a point deduction by deviating from staff's guidance by claiming the EDA point with some alternative supporting documentation not consistent with staff guidance. Their decision to not elect points may have been different if no risk of a point deduction had existed. However, staff also believes that the Board has sufficient discretion, given the preamble language that good faith point elections would not result in a point deduction, to direct staff to not apply the point deduction to applications electing the EDA points in cases in which some supporting documentation was provided, even if such documentation is insufficient for the points to be awarded.

*Excerpts from Nov. 2012 Board  
meeting adopting QAP*

Commenter (46) recommended this scoring item be given more weight so that more developments can be built and suggested it be worth 5 points.

Commenter (56) suggested the size of a development should be a function of market demand and financial feasibility and recommends this scoring item be eliminated.

**STAFF RESPONSE:**

The scoring item as drafted was based on public comment related to the difficulty of developing housing in small rural communities in Texas. Staff believes that the scoring item will provide that additional incentive to work in the more difficult and smaller rural communities in Texas. Additionally, offering one point (as opposed to more than one point) is consistent with incentivizing without turning the point item into a virtual threshold requirement. Where development of more than 50 units is economically viable and more efficient, staff believes that the one point item as structured will not become a barrier to submission of applications for development of 60 to 80 units.

Staff also does not recommend changing the evaluation from a flat credit request to a calculation of credits per unit. Staff believes that the \$500,000 limit is generous given the 50 HTC unit size limitation and believes it is unnecessary to complicate the scoring item. The credit limitation tied to \$500,000 also incentivizes applications requesting no more than is available in smaller rural regions of the state. Staff recommends no change based on these comments.

**27. §11.9(f)(1) – Point Deductions (32), (46), (58), (66)**

**COMMENT SUMMARY:** Commenter (32), (66) suggested the selection criteria has substantively changed from prior years; therefore, the point deduction associated with applicants that elect points for a scoring item on their self score and are unable to provide sufficient documentation for those points will receive a one point deduction per scoring item in their final score should be removed for the 2013 program year.

Commenter (58) recommended that §11.9(c)(6) – Underserved Area be exempt from consideration of point deductions. Commenter (58) stated the Underserved Area scoring item lacks concrete data for many of the categories. Specifically, economically distressed area is not something that can be confirmed by a list and the Department recently changed the definition of such area which is inconsistent with what is provided on the Texas Water Development Board's website. Moreover, commenter (58) stated this scoring item allows for points based on existing tax credit developments and argued that while there is a need for applicant due diligence there should be some ability to rely on the Department's data. Commenter (58) noted instances where the Department's property inventory is not accurate; specifically, there are tax credit developments that have opted out of the program or are no longer affordable and such properties are no longer on the inventory. Additionally, developments may be included that initially received an allocation; however, the credits were ultimately returned and such developments are not on the inventory. Commenter (58) contends the language in the Underserved Area scoring item would include awards that never got built and properties that are no longer on the property inventory.

Commenter (58) also contended that §11.9(e)(4) – Leveraging of Private, State and Federal Resources should be exempt from consideration of point deductions because the circumstances surrounding this item are similar to that of §11.9(e)(2) – Cost per Square Foot which is exempt from point deductions. Commenter (58) stated the award of points under cost per square foot

will be determined based on what is in the actual application with no indication that this will be recalculated based on administrative or underwriting changes. In contrast, the points for the Leveraging scoring item will be based on forms in the application that are subject to an administrative deficiency and could result in a new calculation and adjusted score. Commenter (58) recommended the leveraging item should be calculated based on original numbers and not be recalculated based on underwriting review and changes that result from an administrative deficiency.

Commenter (46) expressed support for penalizing applicants that claim points for which they clearly did not qualify for and suggested the penalty seems like a reasonable deterrent to such application practice. Alternatively, commenter (46) suggested that so long as good faith efforts are made to secure the points then the penalty should not be attributed to the application.

**STAFF RESPONSE:**

Staff recommends keeping the point deductions in place for the 2013 program year for those items that the developer applicant should clearly know are not properly supported, despite the changes to the QAP. Because staff performs full reviews on applications that appear to be competitive, it is imperative that applicants accurately self-score their applications. If applicants elect points in good faith and those points are ultimately not awarded, staff will not deduct additional points. However, staff wants to discourage applicants from requesting points for which they have no reasonable assumption of qualifying.

In response to commenter (58) regarding the points associated with underserved areas, particularly the economically distressed areas, staff will make it clear in the multifamily programs procedures manual what evidence will be acceptable in order to qualify for points. In that specific case, staff will require a letter from the Texas Water Development Board. If the applicant requests these points and is not able to produce such a letter, then staff would deduct points. In addition, should the original calculation for leveraging points be inconsistent with the requested points, staff would not deduct points, even if after underwriting that score may change. Staff appreciates the support of commenter (46).

Staff recommends the following clarifying language:

“(f) Point Deductions.

(1) Any Applicant that elects points for a scoring item on their self score form and is unable to provide sufficient documentation for Department staff to award those points will receive a one (1) point deduction per scoring item in their final score. This ~~penalty deduction~~ shall not be applied to these scoring items regardless of points elected: §11.9(d)(1), (4), and (6) and §11.9(e)(2) and (3).

(2) Staff will recommend to the Board a ~~penalty deduction~~ of up to (5 points) for any of the items listed in subparagraph (A) of this paragraph, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of ~~penalties deduction~~ by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the

does not lie in accessing educational quality and opportunity, and the legislature has charged the Texas Education Agency with developing academic ratings, staff believes that relying on the Texas Education Agency's ratings is appropriate.

Staff recommends the following clarifying language:

“...Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zone of a public school with an academic rating of recognized or exemplary (or comparable rating) by the Texas Education Agency, as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment and only one elementary, middle or high school (as applicable) are acceptable an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2011 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.”

**14. §11.9(c)(6)(B) – Selection Criteria – Underserved Area (6), (33), (46), (47), (66)**

**COMMENT SUMMARY:** Commenter (33) suggested clarification for the economically distressed areas under this scoring item. Specifically, they contend that the Texas Water Development Board has two distinct and different definitions for what constitutes an economically distressed area. Commenter (33) stated that one definition was based on the median income for an area and another had to do with the availability and the financial ability for an area to provide water and sewer service. Moreover, commenter (33) indicated there were two different areas regarding qualification outside the definition; that there are some areas that are available to receive assistance through this program and then there are areas that have actually received assistance through this program. Commenter (33) requested clarification on whether both would be acceptable in order to claim the points or if it was one over the other. Commenter (33) stated the time period associated with economically distressed areas needs to be clarified, e.g. if the Department will allow points if it was within five years or a variation thereof, or if it needs to currently be an economically distressed area.

Commenter (6) recommended that elderly developments located in a rural area census tract that has no other tax credit developments be allowed 2 points. If there is another tax credit development then the application would receive 1 point.

Commenter (46) suggested there needs to be a proximity associated with applications trying to achieve points under the colonia option in this scoring item. Specifically, commenter (46) recommended a distance of a 1 mile radius from a colonia designated area.

Commenter (47), (66) suggested this scoring item be revised to reflect the following:

“...An Application may qualify to receive up to two (2) points for proposed Developments located in one of the areas in subparagraphs (A) – (D) of this paragraph. ~~Points will be awarded based on the Development’s Target Population as identified in subparagraph (E) or (F) of this paragraph.~~

(C) A municipality, or if outside of the boundaries of any municipality, a county that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation in the past 5 years; or

(D) For Rural Areas only, a census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation in the past 5 years serving the same Target Population.

~~(E) General or Supportive Housing Developments (2 points); or~~

~~(F) Qualified Elderly Developments (1 point).”~~

#### **STAFF RESPONSE:**

Economically Distressed Areas are designated by the Texas Water Development Board (TWDB) and state statute provides the TWDB sole authority in this regard. The Department will rely on a letter or other correspondence from the TWDB to determine if a site is located in an Economically Distressed Area. Staff is not aware of other forms of verification for location in an EDA, although other acceptable forms may exist. Staff would be happy to review any such document and provide feedback.

In general, the structure and content of this scoring item is necessary to meet several statutory and Remedial Plan requirements. For example, expanding the point for location in a Colonia is not consistent with the Remedial Plan requirement to limit the non-high opportunity area scoring criteria. Likewise, the scoring differential for target population is consistent with the Remedial Plan as is the requirement to maintain the “never received a competitive tax credit allocation” language in subparagraphs C and D. However, due to the limitations of Department data, staff is recommending the following minor changes to this scoring item:

“(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive ~~up to two (2) points for~~ general or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the proposed Developments is located in one of the areas described in subparagraphs (A) – (D) of this paragraph. ~~Points will be awarded based on the Development’s Target Population as identified in subparagraph (E) or (F) of this paragraph.~~

(A) A Colonia;

(B) An Economically Distressed Area;

**From:** Ricky Garrett [<mailto:RickyG@ci.waco.tx.us>]  
**Sent:** Thursday, February 14, 2013 6:11 PM  
**To:** Ricky Garrett  
**Cc:** Wiley Stem; Jeff Wall; [sarah@sarahandersonconsulting.com](mailto:sarah@sarahandersonconsulting.com); Lisa Stephens; Alyssa Carpenter  
**Subject:** RE: EDAP letter request for Waco redevelopment opportunity; Barrons Branch application

I phoned Jeff this afternoon. Turns out the agency is debating on what they should or should not do with regard to these types of requests. Apparently the TDHCA criteria is spurring this action on the part of TWDB and some within the agency feel they should not be compelled to act on each request. Jeff said they have the letter drafted and will send as soon as he gets the green light. He said it's a policy within the TWDB that's being debated as far as helping with these responses.

I got the impression that we would likely get a letter but it's not a certainty. I'm not sure if there's anyone we can talk to on this. Carolyn might could help nudge this letter through. At any rate, I think we've done what we can.

Ricky

**From:** Ricky Garrett  
**Sent:** Thursday, February 14, 2013 11:47 AM  
**To:** 'Jeff.Walker@TWDB.texas.gov'  
**Cc:** Wiley Stem; Jeff Wall; [sarah@sarahandersonconsulting.com](mailto:sarah@sarahandersonconsulting.com); Lisa Stephens; Alyssa Carpenter  
**Subject:** EDAP letter request for Waco redevelopment opportunity; Barrons Branch application

Jeff,

Thanks for your response in helping us with a letter concerning an economically distressed area under the Texas Water Code. We took over a troubled HUD project and spent over \$1 million in demolition and are trying to redevelop with appropriate housing in our inner city. Tax credits are the only way this development will occur and your letter is critical to our success. From our phone conversation a few minutes earlier, you said you needed some documentation that the existing infrastructure was inadequate to meet the needs of the potential development and that the previous subdivision was in place prior to 2005.

Please see the attached image of our GIS layer that includes both the water and sewer layers. The 4" water main that runs from Colcord to Tennessee along 9<sup>th</sup> street is undersized to meet fire protection requirements and is in poor condition. The 6" sewer main in Indiana is undersized to serve the development in question and is a clay line adjacent to the creek. To properly serve the proposed development, this line would need to be replaced with an 8" main with less potential to allow inflow and infiltration. From our billing records, the former



apartments which were demolished have history at least as far back as 1997. Further documentation is available to substantiate my comments but time is of the essence. I will prepare the additional documentation and mail it to your attention. I've also attached a plat of the area to be redeveloped for your reference. Please let me know if you need further at this time.

If you could address the letter to; Mr. Larry Groth P.E., City Manager, P.O. Box 2570, Waco, Texas 76702-2570 incorporating the following sentence, we would greatly appreciate it. "Census Tract 12 in McLennan County meets the criteria for an Economically Distressed Area under Texas Water Code Section 17.921."

An e-mailed copy of the letter would be much appreciated.

Ricky Garrett P.E.,  
Waco Utility Director  
(254) 750-8040

**From:** Tim Irvine [<mailto:tim.irvine@tdhca.state.tx.us>]  
**Sent:** Friday, February 22, 2013 1:34 PM  
**To:** Jeff Wall  
**Cc:** Dean Roggia; Cameron Dorsey; Barbara Deane  
**Subject:** RE: Serious issue regarding inability to get a letter from Water Board

I have checked into it, and my understating is that there are ongoing discussions to see what can be done.

Tim

**From:** Jeff Wall [<mailto:JWall@ci.waco.tx.us>]  
**Sent:** Friday, February 22, 2013 1:25 PM  
**To:** Tim Irvine  
**Cc:** Dean Roggia  
**Subject:** Serious issue regarding inability to get a letter from Water Board

Tim – since 3/1/13 deadline is almost here, I was hoping you could give me some good feedback on how our city and others can achieve the 2 pts for being a Economically Distressed Area without being able to obtain a letter from the Water Board ( they refuse to do the letter) --- as we discussed yesterday morning. I am sure you agree this is unfair to Waco and others who need those points to be competitive and to have an equal/fair chance of competing.

Please let me know what your decision is as to how to make this fair to all and not penalize Waco for the Water Boards decision (not our fault).

Jeff Wall

Director of Housing & Community Development

City of Waco, TX

254-750-5652

**From:** Barbara Deane [<mailto:barbara.deane@tdhca.state.tx.us>]  
**Sent:** Thursday, February 28, 2013 4:22 PM  
**To:** Gary J. Cohen; [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us); Barbara Deane;  
[cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)  
**Subject:** RE: economically distressed areas

Gary, of course staff will review whatever information is submitted with the application, just as we will consider any legal arguments you have put forth in this and prior emails. We are mindful that written determinations could not be obtained from the TWDB. We look forward to receiving your submission.

**From:** Gary J. Cohen [<mailto:GCohen@shutts.com>]  
**Sent:** Thursday, February 28, 2013 1:47 PM  
**To:** [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us); 'Barbara Deane'; [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)  
**Subject:** FW: economically distressed areas

I am following up on the email below which I forwarded to you on Tuesday. At this point we have obtained a letter from the City of Waco (as to satisfaction of the criteria necessary to be classified as an “economically distressed area”) and an opinion from counsel expert on affairs involving Texas water issues as to the same issue, and plan to submit both in order to bolster our position that we are entitled to the 2 points for a development site located in an “economically distressed area”. As mentioned in my earlier email, we believe that (i) we are entitled to these points, and (ii) no penalty points should be assessed. We have tried mightily to obtain a letter from the Texas Water Development Board but, for the reasons set forth in the email below, have been unable to procure such letter. In the absence of further guidance from TDHCA, we believe that this submission should be found sufficient to obtain the aforementioned 2 points.

**Gary J. Cohen**  
*Partner*

**Shutts & Bowen LLP**  
1500 Miami Center, 201 South Biscayne Boulevard | Miami, FL 33131  
Direct: (305) 347-7308 | Fax: (305) 347-7808  
[E-Mail](#) | [Biography](#) | [V-Card](#) | [Website](#)

**From:** Gary J. Cohen  
**Sent:** Tuesday, February 26, 2013 2:38 PM  
**To:** [tim.irvine@tdhca.state.tx.us](mailto:tim.irvine@tdhca.state.tx.us); 'Barbara Deane'; [cameron.dorsey@tdhca.state.tx.us](mailto:cameron.dorsey@tdhca.state.tx.us)  
**Subject:** economically distressed areas

In this year’s cycle, two points are awarded for a “general” housing development located in “an Economically Distressed Area” (“EDA”), pursuant to Section 11.9(c)(6) of the QAP. Under Section 11.9(f)(1) of the QAP, failure to provide Staff with sufficient documentation to

award points which were elected by an applicant on its self score form results in a 1 point deduction.

Section 10.3 (a)(40) of the 2013 Uniform Multifamily Rules defines an EDA as “An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, Section 17.921.” Page 25 of the 2013 Multifamily Programs Procedures Manual (referencing Tab 8 of the application) requires that an applicant “... provide a letter confirming the Development is within the boundaries of a Colonia or Economically Distressed Area from the Texas Water Development Board as well as a map indicating the location of the Development Site within the identified underserved area.” Similarly, the application itself, on the page titled “Supporting Documentation for the Site Information Form”, requires (in order to receive the above-described two points) a “letter or correspondence from Texas Water Development Board”.

Section 17.921 of the Texas Water Code provides a definition of an “Economically distressed area”; it is defined as an area in which: (i) water supply or sewer services are inadequate to meet minimal needs of residential users, (ii) financial resources are inadequate to provide water supply or sewer service that will satisfy those needs, and (iii) an established residential subdivision was located on June 1, 2005.

It is my understanding that, due to miscommunication between TDHCA and the Texas Water Development Board (“TWDB”), TWDB is unwilling to issue any letters in this regard, even if an area is qualified under the Code. The Water Code doesn’t impose any responsibility on TWDB to respond to inquiries from private developers (or political subdivisions working with private developers) to give the letter being sought by TDHCA as part of its application process. We have been in contact with TWDB, and they have indicated that they will not write letters regarding this issue for otherwise qualifying sites until there is an agreed upon process established between TWDB and TDHCA.

My client had submitted comments to the QAP in October 2012 pointing out that “... ‘Economically Distressed Area’ is not something that can be confirmed by a list and may be subjective in determination ... I am concerned that there will be confusion about what would qualify under this item. There is also no clarity on what documentation would be required and what should occur if TDHCA staff requested more information.”

It is my client’s understanding that no one will be receiving these letters by the 3/1 application submission deadline. We are advised that TDHCA and TWDB are working on a process, but that it may not happen by the Friday deadline. The situation at hand has in no way been caused by my client or by others similarly situated. My client has been pressing TDHCA for some time, beginning in October 2012 through two weeks ago, for a resolution to this issue, but to date none has been forthcoming.

I would suggest that the criteria for the two points be deemed satisfied by provision of a letter from the local jurisdiction in which the proposed development site is located, indicating that the criteria for “economically distressed area” have been met, and that TDHCA (in order to award the 2 points) follow up with TWDB (after submission of applications on 3/1) confirming

same with TWDB. This will allow applicants to proceed with their 3/1 submissions and claim the points, notwithstanding the bureaucratic issues between TDHCA and TWDB. Ultimately, as per Texas Government Code Section 2306.127(3) of TDHCA's governing statute, the intent of this scoring item is to "give priority through its housing program scoring criteria to communities that are located wholly or partly in an economically distressed area or colonia." Not providing a method by which to actually substantiate the site as such would seem to be a violation of TDHCA's governing statute.

Consistent with the foregoing, if it is ultimately determined by TDHCA that the application does not qualify for the 2 points, no penalty points should be assessed, since this situation (i) is outside of the control of the development community and has arisen due to disagreement/miscommunication between two State agencies, having nothing to do with any particular applicant, and (ii) was identified and warned against by applicants (such as my client) during the QAP comment period.

Thank you for your attention to this matter. Time is of the essence, since the 3/1 application deadline is rapidly approaching.

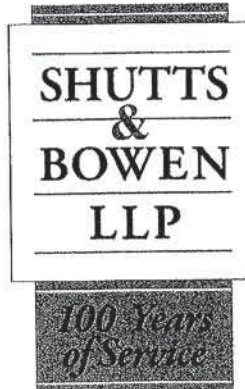
**Gary J. Cohen**  
*Partner*

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March 1, 2013

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Re: Economically Distressed Area

Dear Mr. Irvine:

I am writing on behalf of Barron's Branch, LLC, and its 2013 LIHTC application for the development of Barron's Branch Apartments to be located in the City of Waco, Texas. In particular, I am writing in respect to that portion of the application being submitted today pertaining to the award of 2 points for location within "an Economically Distressed Area" ("EDA") pursuant to Section 11.9(c)(6) of the Qualified Allocation Plan. Under Section 11.9(f)(1) of the QAP, failure to provide Staff with sufficient documentation to award points which were elected by an applicant on its self score form results in a 1 point deduction.

Section 10.3(a)(40) of the 2013 Uniform Multifamily Rules defines an EDA as "An area that has been identified by the Water Development Board as meeting the criteria for an economically distressed area under Texas Water Code, Section 17.921." Page 25 of the 2013 Multifamily Programs Procedures Manual (referencing Tab 8 of the application) requires that an applicant "... provide a letter confirming the Development is within the boundaries of a Colonia or Economically Distressed Area from the Texas Water Development Board as well as a map indicating the location of the Development Site within the identified underserved area." Similarly, the application itself, on the page titled "Supporting Documentation for the Site Information Form", requires (in order to receive the above-described two points) a "letter or correspondence from Texas Water Development Board".

Section 17.921 of the Texas Water Code provides a definition of an "Economically Distressed Area"; it is defined as an area in which: (i) water supply or sewer services are inadequate to meet minimal needs of residential users, (ii) financial resources are inadequate to

Mr. Tim Irvine  
March 1, 2013  
Page 2

provide water supply or sewer service that will satisfy those needs, and (iii) an established residential subdivision was located on June 1, 2005.

It is my understanding that, due to miscommunication between TDHCA and the Texas Water Development Board ("TWDB"), TWDB is unwilling to issue any letters in this regard, even if an area is qualified under the Water Code. The Water Code does not impose any responsibility on TWDB to respond to inquiries from private developers (or political subdivisions working with private developers) to give the letter being sought by TDHCA as part of its application process. We have been in contact with TWDB, and they have indicated that they will not write letters regarding this issue for otherwise qualifying sites until there is an agreed upon process established between TWDB and TDHCA.

My client had submitted comments to the QAP in October 2012 (attached hereto) pointing out that "... 'Economically Distressed Area' is not something that can be confirmed by a list and may be subjective in determination ... I am concerned that there will be confusion about what would qualify under this item. There is also no clarity on what documentation would be required and what should occur if TDHCA staff requested more information."

It is my client's understanding that no one will be receiving these letters by today's application submission deadline. We are advised that TDHCA and TWDB are working on a process for the issuance of such letters, but this has not occurred as of today's date. The situation at hand has in no way been caused by my client or by others similarly situated. My client has been pressing TDHCA for some time, beginning in October 2012 through two weeks ago, for a resolution of this issue, but to date none has been forthcoming.

Attached hereto are the following documents in support of classification of the subject development site as being located within an "Economically Distressed Area":

1. February 27, 2013 letter from the City of Waco.
2. Letter from McGinnis, Lochridge & Kilgore, L.L.P. dated March 1, 2013.

The foregoing documentation demonstrates that the development site is in fact located within an "Economically Distressed Area". In light of the fact that TWDB is unwilling to issue any letters in this regard until resolution of administrative issues between itself and TDHCA, we strongly believe that TDHCA should find the supporting documentation sufficient for award of the two points referenced above. We encourage TDHCA to follow up and confirm this analysis with TWDB.

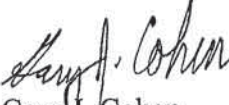
As you know, the intent of the scoring item is to "give priority through its housing program scoring criteria to communities that are located wholly or partly in an Economically Distressed Area or Colonia." See Texas Government Code Section 2306.127(3) of TDHCA's governing statute. Not providing a method by which substantiation of a site as being "Economically Distressed" can occur undermines the intent of the foregoing Statute and appears to be in violation thereof.

Mr. Tim Irvine  
March 1, 2013  
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Consistent with the foregoing, if it is ultimately determined by TDHCA that the application does not qualify for the 2 points, no penalty points should be assessed, since this situation (i) is outside of the control of the development community and has arisen due to disagreement/miscommunication between two State agencies, having nothing to do with any particular applicant, and (ii) was identified and warned against by applicants (such as my client) during the QAP comment period.

Thank you for your attention to this matter.

Sincerely,

  
Gary J. Cohen

GJC/mar  
Enclosure  
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