

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E.2.036
Capitol Extension Building
1500 North Congress Avenue
Austin, Texas

Thursday,
June 14, 2012
10:15 a.m.

MEMBERS:

J. PAUL OXER, Chair
TOM H. GANN, Vice Chair
LESLIE BINGHAM ESCAREÑO
LOWELL KEIG
JUAN S. MUÑOZ
J. MARK McWATTERS

STAFF:

TIM IRVINE, Executive Director

ON THE RECORD REPORTING
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P R O C E E D I N G S

MR. OXER: Good morning everyone. I would like to welcome you to the June 14th meeting of the governing board of the Texas Department of Housing and Community Affairs. We will start with verification of the quorum here. Okay, roll call. Ms. Bingham?

MS. BINGHAM-ESCARENA: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Mr. McWatters.

MR. McWATTERS: Here.

MR. OXER: Dr. Munoz, not present. He is having some intestinal problems today. Stomach illness. And I am here. We have five present. That constitutes a quorum. Okay. All right. If you would please stand with us, and salute the flags. Lead us, Tim.

(Whereupon, the Pledge of Allegiance to the United States Flag and Texas Flag was recited.)

MR. OXER: Before we get started today, I would like to take a few minutes to recognize formally that June is Home Ownership Month in Texas. So this is an important occasion for reasons that I think would be apparent to

everybody there. For all of us on the governing board, we signed a resolution that I would ask Tim to read into the record. Tim.

MR. IRVINE: Whereas June 2012 is Home Ownership Month in Texas. Whereas, Home ownership has a significantly positive impact on individuals, families and communities in the Great State of Texas. Whereas, Home ownership is the intangible force that binds neighbors and communities together.

"Whereas, the Texas Department of Housing and Community Affairs, the Texas State Affordable Housing Corporation and the State of Texas are dedicated to supporting affordable, responsible, long term home ownership through the provision of safe financing options and homebuyer education;

"Whereas, the Texas Department of Housing and Community Affairs, the Texas State Affordable Housing Corporation and the State of Texas are committed to collaborating with the private and non-profit sectors to help as many low to moderate income Texans as possible purchase a home and maintain home ownership;

"Whereas, the goal of the Texas Department of Housing and Community Affairs is to ensure that all Texans have access to safe and decent affordable housing; and

"Whereas the Texas Department of Housing and Community Affairs reaffirms the importance of home ownership in the lives of the Texans we serve, and in the Texas economy;

"Therefore, be it resolved that in the pursuit of the goal and responsibility of providing affordable home ownership opportunities for all, the governing board of the Texas Department of Housing and Community Affairs does hereby celebrate, and join Governor Rick Perry in proclaiming June 2012 as Home Ownership Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of Home Ownership Month."

MR. OXER: Great. Thanks, Tim. I think the Board and certainly the Department are not alone in recognizing and acknowledging the many benefits of home ownership as the cornerstone of creating good citizenship.

So this is supported by Governor Perry in his proclamation declaring June 2012 as Home Ownership month in Texas. So Tim, please read the Governor's proclamation.

MR. IRVINE: The Governor's proclamation. For Texans, a home is more than shelter from steamy summers and cold winters. Symbolizing success, security and

independence, home ownership is a major milestone on the path to the American dream. When achieved through education and responsible lending practices, home ownership offers benefits for both the homeowner and the neighborhood.

Homeowners often increase the value of their own and neighboring properties through improvements, form strong community ties, and build mutually beneficial relationships with local businesses and schools. However, purchasing a home remains a logistical and financial challenge for many Texans.

During the month of June, the Texas Department of Housing and Community Affairs will conduct a campaign to promote the benefits of home ownership across the Lone Star State. The annual observance of Home Ownership Month provides an opportunity for federal, state, regional and local public and private organizations to work together to offer families the tools and information they need to make informed decisions about buying a home.

Ownership, the information about Home Ownership Month can be found on TDHCA's website. At this time, I encourage Texans to learn more about financial management, and to explore the numerous home ownership resources available. The steps you take today can make a difference

for yourself, your family, and the Great State of Texas.

Therefore, I, Rick Perry, Governor of Texas, do hereby proclaim June 2012 to be Home Ownership Month in Texas, and urge the appropriate recognition thereof. In official recognition whereof, I hereby affix my signature this the 8th day of June 2012, Rick Perry, Governor of the State of Texas.

MR. OXER: Good. Thanks, Tim. Let's see. Along those lines, we have several lenders and loan officers who helped us in 2011, helped a lot of home buyers get into their first home through the Department's First Time Texas Homebuyer Texas Mortgage Certificate programs. All of them have demonstrated an ongoing commitment and dedication to this process, of providing affordable housing.

And we are glad to have several of them with us today. So we are going to recognize each one of them. And a little later, we are going to be taking a break, and we'll have a small commemoration out in the hall.

Hold your applause as we recognize each of them, and then we will celebrate them all together. But when I call your name, please raise your hand, so we will be able to identify you.

First of all, Mr. Bob Heckler. Mr. Heckler.

Okay. Senior Vice President and Regional Manager here on behalf of Cornerstone Mortgage Company. We have earned the Texas First Time Homebuyer Program Lender of the Year award, originating 623 mortgage loans, totaling over \$76 million.

Ms. Kim Lewis. Ms. Lewis, Special Programs Director here on behalf of NTFN, doing business as Premiere Nationwide Lending. Earned the Department's Texas Mortgage Credit Program's Lender of the Year Certificate for issuing 109 mortgage credit certificates on mortgage loans totaling over 13 million.

She is also here to accept the Loan Officer of the Year award. She closed 151 mortgage loans under the Texas First Time Homebuyer Program, and was responsible for, as we said, 109 certificates under Mortgage Credit Certificate Program.

Let's see. Ms. Miranda Anderson. Ms. Anderson here. I would like to welcome you, and appreciate you being here. She is Senior Mortgage Originator here on behalf of DHI Mortgage Company, which also earned the Department's Texas Mortgage Credit Program's lender of the year, certificate for the issuance of 107 Mortgage Credit Certificates on mortgage loans totaling \$16 million.

Mr. Dan Reagan. Mr. Reagan, there he is.

Senior Vice President and area manager of Cornerstone Mortgage Company in Houston, who is accepting the Department's Loan Officer of the Year on behalf of Andy Woodside, who could not be here with us today. Mr. Woodside actually closed 101 mortgage loans under the Texas First Time Homebuyer Program.

So please join me in celebrating and thanking each of them for all of their hard work. 2011 was a great year for us.

(Applause.)

MR. OXER: And as I said, Michael has got something organized for us here in a little while. We will take a break and go out and have a little commemoration of that event in just a little bit, when we take our first break.

MR. IRVINE: If I might, Mr. Chairman, just to clarify on the record, that the Board has signified its adoption of the resolutions regarding Home Ownership Month by all executing and adopting that resolution. Let the record reflect that. And each of the recipients of these awards will also receive certificates that will be commemorated at the photographic ceremony.

MR. OXER: Right. Okay. As I am sure that some of you anticipate, we are here for some extended

discussion on a couple of items. Before we begin, let's see. There are some clarifications on 1(o). I want to clarify it.

And that is on the consent agenda for us. I want to clarify that the definition of children is on 13, or (b) under 18. Except for the -- let me see, 19-year-olds can be claimed as children.

On the appeals, we are going to move those up in the agenda. So if you are an appellant, or someone wishing to testify, or be involved in that discussion, I advise you to remain close.

We are one short with Dr. Munoz being unable to be here, to join us today. We are one short, and we may have to -- we may lose another Board member here in midafternoon. So I wanted to make sure that the appeal items were heard by as many as possible. So to do that, we need to manage our workload to assure quorum and full discussion.

Let me see. On the subject of the materials submitted on appeals, the statute under which we operate, which is 2306, essentially creates a blackout period. We can only post those meetings in accordance with our three-day statutory requirement, which does not include the day of the meeting. So you have to back up three ahead of

that, even more.

So any materials that don't make that have to be addressed by handouts, which you can -- which actually really places us in a difficult position, because managing the workflow we have up here, we have to stop and read all of that, and be able to digest it and engage it. And that doesn't give you the benefit of the forum discussion on that particular issue, that we think that you, the community, deserve.

So we will look at any of the possible solutions we have, through some amendments either to our public comment, which you -- our public comment rule, or the appeals rule, or both of them. But we will make sure that you have information that needs to be heard on an item. We will see that it gets there eventually.

Let's see. Michael, do you have anything to add to this? Or do we want to put your letters in? Do we want to put your letters in, as they come up for the agenda items? We will do that on the agenda items, as they arise.

MR. IRVINE: Brooke would like actually, to read onto the record a couple of other clarifications on the consent agenda items.

MR. OXER: Okay. And we will -- Brooke.

MS. BOSTON: Brooke Boston with the Agency.
Just to clarify, the word --

MR. OXER: Can you make sure that your
microphone is on.

Penny, is her mic on? Okay . We can't hear you
here very well.

MS. BOSTON: Okay. The reworded definition
would be in the rule under 1(o). It would say children in
the definition, is household dependents under the age of
18, except for DOE Weatherization, where it is under the
age of 19. So just to clarify, that is a change we would
be making from what is in your book.

Also, and thank you Mr. Keig for catching that
for us. We want to correct that the small purchase
threshold for procurement would be 5,000, not 500. And
then one other thing, under Item 1(I) would be relating to
an RFA. We mentioned, we list a batch of counties that
would be subject to that RFA.

And I want to clarify that Maverick County
would only be needing the RFA for CEAP, which is the
Comprehensive Energy Assistance Program. They have a
CSBG-eligible entity. And we would not be putting that
out for RFA. Thank you.

MR. OXER: Clarified. I guess the DOE thinks

that children have the capacity to get warmer in that year between 18 and 19. Is that what that is?

Is this a good time to move to adopt the consent agenda. I was going to request, is there a motion to move to adopt? Unless there is any member of the Board that wishes to pull any item from agenda?

MR. KEIG: So moved.

MR. OXER: Okay. Motion by Mr. Keig to adopt the consent agenda.

MR. GANN: Second.

MR. OXER: Second by Vice-Chairman Gann.

Is there any other discussion?

(No response.)

MR. OXER: Okay. Motion to adopt. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Unanimous. Okay. That included all of the report items we have.

The first thing I want to do is program services. And what we are going to do is, we are going to move the appeals component, we are going to deal with it.

The program services on our AI development. Anybody who

has got anybody out here who is an appellant or knows somebody who is not here, I recommend you contact them, and have them show up. Okay. Jennifer.

MS. MOLINARI: Good morning, Chairman Oxer and Board members. My name is Jennifer Molinari, and I'm TDHCA's Fair Housing coordinator. Today, we are here to give you a brief update on the analysis of impediments, Phase II development. As has been our practice, we update you quarterly on what we have been doing, and where we are heading.

I also have today with me, Sherry Holland, who is going to give you a few of the details about the specifics on where we are, and how the analysis is progressing. A highlight of activities. We did meet with HUD in April. Whom we have been meeting with quarterly to make sure that we are on target for what they expect to see. And they are pleased with our progress today.

Also, during Fair Housing Month, we did attend several events around the state; Dallas, Austin. We went to Belton, El Paso. A lot of that was to promote the Phase Two of the AI, and make sure that as many people as possible around the state were aware of our activities.

We have also completed some of our residence surveys, and our stakeholders surveys that were only via

telephone. We are starting others online. Sherry is going to give you some details about that.

As far as next steps, during the month of July and August, we will be doing stakeholder meetings around the state. They will be open to the public. By the time that we have our next update to you, those will have been wrapped up.

We will be talking about those more in September. And then by November, we should be starting to talk about the results of the analysis so far, and start reporting on what the Phase Two analysis will include. And with that, I am going to turn it over to Sherry Holland, unless you have any other questions for me at this moment.

(No response.)

MS. MOLINARI: Okay.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Okay. Good morning, Sherry.

MS. HOLLAND: As Jennifer said, I am Sherry Holland. As Jennifer said, there is still some data collection going on. Some of it has been completed. The resident telephone survey has been completed.

And there is an online survey that remains

open. And there are resident focus groups, as Jennifer said, that will be occurring throughout the state in July and August.

Stakeholder activities. There is a stakeholder survey; 536 surveys have been received to date. From that survey, continuing the development of a stakeholder database, and conducting interviews and focus groups with stakeholders. And the stakeholder focus groups will primarily be online.

There has been a review of the public finance structure in Texas, and the effect on municipalities' ability to raise revenue. And that review has been completed and the analysis is beginning. Complaint data from HUD and a collection of legal cases from two different databases have been collected, and are being reviewed.

The research on Sundown Towns and NIMBYism has been started. Collected information through stakeholders, through newspaper articles, and those are being compiled for review.

Housing market analysis has been completed. One piece of that, that was added was looking at the use of TDHCA programs by county, by minorities, and seeing if that matches the representation of those minorities in

those counties. Data from the Home Mortgage Disclosure Act has been collected. Looking particularly at subprime mortgages in Texas.

And maps have been collected from TCEQ, and overlaid on minority concentration maps to look for any patterns with environmental issues. And those are the highlights of what is underway right now. And I am happy to answer any questions.

MR. OXER: Is the mapping with respect to the TCEQ considered what they call environmental injustice data? Okay. Do you want to give us some more detail about that, or can you at this point?

MS. HOLLAND: Well, I do know that they -- that in looking at that, there are no -- there is nothing that is standing out right now in the analysis. But the analysis is not complete. We are looking for patterns.

MR. OXER: Mr. Keig. Yes. You said you received the online survey. There are 286 surveys you received to date. Is there anything that is precluding a higher response to that?

MS. HOLLAND: In additional responses from residents?

MR. OXER: Right.

MS. HOLLAND: It is still open. And --

MR. OXER: How long has it been open?

MS. HOLLAND: I don't know when it opened.

MS. MOLINARI: I believe we opened that in early May. And it will stay open through August.

MR. OXER: So essentially, through the entire work period of your -- until you get to the point you have to digest the data.

MS. MOLINARI: Right. Until we have to stop for an analysis.

MR. OXER: What are you doing to encourage, apart from the online survey, are you making any effort to encourage greater use of that online survey?

MS. MOLINARI: Jennifer Molinari. We did. We have, actually do have some tangential evidence that the word is getting out. And so we are expecting to receive a lot more.

In fact, one of our own employees, through outside kind of connections heard about our survey. So we certainly know that the word is kind of getting out, and we are happy about that. Our stakeholder database have been solely also talking to residents, letting them know about it.

And having the 286 responses, and then the total of 586 through the other -- through the stakeholder

survey, means that we are certainly getting -- the word is getting out. And a lot of people are interested in giving us that feedback.

So we will continue that all the way through August. Hopefully, after we have the online -- I am sorry -- the onsite visit throughout July and August. We expect that we would have a lot more feedback, too.

MR. OXER: Okay. Because we are making some substantial decisions with regard to the housing programs in the State. And it is worthy of a robust dataset on which to make those decisions.

So that is one of the questions we are going to keep asking until we see that number start coming up. So any other questions from the Board?

(No response.)

MR. OXER: Thanks, Sharon. Thanks, Jennifer.

Okay. We are going to basically going to move the appeals, Item 7 up, and begin now.

Don't anybody worry. If somebody shows up, or it turns out that the appellants or respondents for a particular item aren't here, we will move that and get them into the system or get them into the process.

But we expect that there is going to be some considerable discussion on this. And we want you to have

the benefit of having all members of the Board that are available here this morning present for that discussion, so we don't lose, or we don't shorten our quorum this afternoon. So with that, we have -- what's here?

Good morning, Cameron.

MR. DORSEY: Good morning. Cameron Dorsey, Director of Multifamily Finance. So you know, leading up to this meeting, when we were meeting internally, I really advocated for a chair. And it appears that I lost. So if I faint --

MR. OXER: But I am here already, Cameron.

MR. DORSEY: I tried to prevent it. At any case, okay. We have several appeals on the agenda today. I guess I will lead off by saying, you know, we have got a handful today. And we expect a handful at least --

MR. OXER: Can anybody get in a call to building services and get Cameron a bar stool up here?

MR. DORSEY: We expect at least a handful of appeals at the June meeting. We had our challenge deadline yesterday. And based on a just quick count, we got 53 challenges, which is a pretty high amount. It is almost double of last year, I believe.

So when one point makes a difference, and you can't do forwards, you know, there is definitely some

protecting one's territory going on. So we will probably ultimately hear a handful of appeals related to those challenges at the next meeting as well.

The first challenge we have got today is for Cadillac Apartments. This is a challenge, or I am sorry -- this is an appeal related to the leveraging of private, state or federal resources point item. You can get up to seven points under this item for leveraging of private, state or federal resources, obviously. And however, you can only get six points if you are doing so within -- if your development site is within a qualified census tract.

It is a pretty black-and-white issue. You either are, or you are not, in a qualified census tract. And this development, in staff's determination, is inside a qualified census tract. So the applicant elected seven.

We awarded six. And they would like that additional point, and have posited an argument that they should not be designated as being within a QCT.

The issue here is really kind of a data availability issue. You know, we have the decennial census every ten years. And in developing the new census, a bunch of changes happened to census tracts; the boundaries of census tracts.

Because the method of drawing census tract boundaries is in part population driven, so it is population changes, they respond by dividing census tracts or combining census tracts. And their goal is to have census tracts around 4,000 persons, although you will see variations for much less, all the way up to you know, over 10,000 in some cases.

But the QCT designation uses census tracts, and uses the data available from the census. And so every ten years, we have kind of an anomaly or a unique situation which is, HUD comes out -- or I am sorry, the Census Bureau comes out with these new census tracts. But not every one has time to adopt and utilize the data from those new census tracts.

And so HUD has, in this case, utilized the census tract boundaries from the 2000 in census. It is more current data. But the boundaries are from the 2000 census to determine what is a 2012 QCT.

Now, I had a couple of email exchanges with HUD on this subject, and they confirm that the 2000 census tract numbers and boundaries are the appropriate boundaries and numbers to use for determining if you are within a 2012 QCP. And in this case, the site is within a QCT, according to HUD.

The applicant in this case has said well, because these new census tract numbers came out, and my new census tract number is not on the list, the 2012 QCTs, I shouldn't be considered within a QCT. Well, it doesn't make sense. Because that census tract number, that new census tract number wasn't part of the universe of possible tract numbers to be considered a QCT in the first place.

So you know, it is a fairly black and white issue. I will go ahead and let the applicant speak. But suffice it say, that staff recommends denial of the appeal.

MR. OXER: Thanks, Cameron. All right. In keeping with our public comment, okay, there is going to be -- anybody who wishes to speak for it or against it, we can do as many as four.

But we will keep this first row up here, in the row where you are, sir, right there. Okay. That will be our on-deck circle. So anybody that wants to speak on each issue as it comes up, we will be happy to hear you. But that just gives us an idea of how many we are going to --

VOICE: I would like to speak towards the end.

MR. OXER: Well, and that is fair. Okay. All

right. Okay. Are there anyone -- I am certain there is someone who would like to speak on behalf of this appeal?

So what you will need to do is go to the microphone, identify yourself, and -- hold on just a second. In keeping also with our policy with the public comment, and consistent with statutory rule, we have to have -- questions from the Board, of Cameron. Are there any Board members, any questions of the Board?

(No response.)

MR. OXER: Okay. In that case, we have to entertain a motion on the floor before it can be considered.

(Pause.)

MR. OXER: Okay. All right. We have got to have a motion on the floor. And then we have to -- then we will take public comment according to what the statute requires of us. So to the Board, we have to entertain a motion with regard to staff's recommendation.

MS. BINGHAM-ESCARENA: I move staff's recommendation.

MR. OXER: Okay. Motion by Ms. Bingham to proceed with staff recommendation, which is to deny the appeal.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Now it is your turn.

MR. ENOCH: My name is Craig Enoch. And it is my honor to represent Cadillac Apartments. This is the Agenda Item 7 moved up. And it is the docket number 121062. We are here. I think there are two principles that I would like to call the Board's attention, and urge that the motion to deny the appeal be overruled, and that the appeal be granted.

The two principles are simply this. The first principle; the whole object of the point system is to encourage affordable housing outside, keep it from congregating in depressed areas of communities. So the encouragement of the point system is to reward those developments that are moving outside of historically impoverished areas. That is principle number one.

The second principle here is, you don't change the rules in the middle of the game. Where is the proposed project? Cadillac Apartments, you may not be able to see this, the pink dot right there.

It is north of Interstate 30. There is a loop of freeways around downtown Dallas; 45 on the east, Will Rogers on the north, 35 on the west, 30 on the south.

That is the downtown area. You can call it zip code 75201.

The project is five blocks from one of the hottest condo apartment areas in downtown Dallas. It is two blocks from the Convention Center in Dallas. It is two blocks in the other direction from Farmers Market, which is one of the hottest items, redevelopment items going on in Dallas right now.

What does that mean about that zip code? Zip code 75201 has one of the highest median housed condo averages in the state, 288,000 versus the state average of 127,000. Real estate property taxes per housing unit is \$5,000 versus the state average of \$2,300.

The average reported return on the tax return, the adjusted gross income is 95,000 versus the state average of 47,000. The deduction for charity is 20,000 versus the state average of 4,700. The taxable interest for individuals is 17,000. The state average is 2,200. Taxable dividends to those who live in 75201 is 65,00 versus 4,200 for the state.

These are the people who live north of 30, south of 45, east of I-35 and west of 45. That is the demographics of those folks that live there.

Another telling issue, the Dallas Housing

administration that circulates the vouchers, that awards the vouchers for citizens living in affordable housing. The highest value of the vouchers in the entire Dallas Fort Worth Metroplex is that area of Dallas.

The lowest value of vouchers issued for affordable housing is in the same census tract, but south of I-30. I-30 is a significant boundary for development purposes. It is a significant boundary for the wealth of the community that lives there.

The second chart is the new census tract 2010, census tract number 204. This is not the census tract that existed in 2000. This is not the census tract that was designated as a qualified census tract. This tract will not be designated as a qualified census tract until 2013.

At the time of the application in 2012, by Cadillac Apartments, census tract 204 was not designated as a qualified census tract. And today, it is not designated as a qualified census tract. Let me be clear.

In the response that you received from staff on the agenda, they do not identify this as the census tract as a qualified census tract. They give you the census tract number 32.01, where there was a census back in 2000.

Census tract 2000 is no longer in existence. Census tract 204 is smaller than census tract 2000.

The reason that the Board avoids arbitrary decisions about how it makes its awards is by adopting rules. You adopted Rule 50.9(b)(12). There is an extra point. Actually, just seven points get awarded as opposed to six if the development is not in a qualified census tract.

The rule is very explicit. Who determines what a qualified census tract is? It is the Secretary of the Department of Housing and Urban Development. It is the HUD Secretary who determines. He has determined, I suggest to you, coincidentally that 204 in the year 2013 will be a designated tract.

But it is only a coincidence. And we will discuss that in a little bit. If the Board follows its own rule, as it exists, was the application made? Was the project in a certified -- in a qualified census tract at the time the application was made. And if it was not, you get seven points. If it was, six points.

If this Board simply follows its rule in place, then the award would be seven points. And we think the Board ought to grant the appeal.

What happens is by employing its own rule, the

Board's principle number one, diversifying geographically affordable housing, works in this case. It provides for incentive to build affordable housing in one of the highest valued areas of the City of Dallas and the entire Metroplex, inside the freeway loop.

Now let's talk briefly about the rule. The rule that the staff is talking about, and I appreciate, Cameron. We agree, they found an anomaly. They found an anomaly.

But what is the anomaly? The anomaly is, that it takes HUD a while to look at all of the data in all of the new census tracts to determine whether they ought to be qualified. I agree, there is a window.

I say coincidentally, because on the areas of the old census tract 32.01, there are no longer in this census tract. But the territory, the property may in fact not ever be again in a qualified census tract simply because the demographics have changed.

Urban pioneers moved in. They are moving in right now, south of I-30. Urban pioneers. Raising the value of property. Raising the rents of property. The reason HUD takes a while, after the new census tract, is to do what will get the certification as a qualified tract. And what will not.

Until HUD makes that determination, we don't know whether 204 will be a qualified census tract or not.

As I say, coincidentally, that 204 will be in 2013. But the reason the Board has the rules is so everybody knows how the game is played.

I would like to talk a little bit about what happens. If the Board holds with the decision of the Department, you have established a rule of decision. There is not a factual dispute here, about where the property is located.

There is not a factual dispute about the census tract in '10, 2010. There is not even a factual dispute about whether it is designated as a certified, as a qualified census tract. What the Department said, because of the anomaly, we need to figure out what is the best answer to this.

Their answer is, and they rely on HUD to say, HUD says go ahead and use the old census tract designation. That is their answer. If all new census tracts in Texas are this way, which Cameron has said they are -- all 2010 census tracts are this way.

Then the Board's determination to uphold this appeal is to set a rule that during the 18-month period it takes for HUD to look at all of the new census data on the

new census tracts, and make a determination whether it is a qualified census tract or not to be qualified census tract, in that 18-month period, all housing developments will come to a halt. Because you cannot make a determination that they might get seven points or six points for that 18-month period.

And in fact, when this area, say ten years from now, they find out that above 30 doesn't belong in this lower portion, and they carve it back out, this will not be a qualified census tract 20 years from now. Maybe ten years from now, simply by the demographics changing.

What you have is the staff making a rule by which to decide whether seven points will be awarded or six points be awarded. And their rule is this; if there is a new census tract and the Department HUD doesn't make its determination immediately, then we are going to just arbitrarily decide to keep the same designation as the old tract.

And it is coincidental that point, that pink point, stays in a subset of a larger tract that was at one time a qualified census tract. That is the only thing that gives the Department any sort of notion if it is a qualified census tract. The point would be, you can satisfy principle number one, creating affordable housing

within a more affluent area of the City, avoiding compiling everybody in an underprivileged part of the city.

Principle number one, you can accomplish that simply by saying the rule is what the rule is. If you think in the future, because of the 18-month waiting period, the better rule would be, to say an applicant in this 18-month period, you are not going to get seven points, if where your property is located was in an original census tract that was qualified that can be the rule.

And we will play by those rules going forward. But I urge the Board to consider, after the game has started, after the rule has been applied, it is not appropriate for the Board to say, we now adopt a new rule. And based on this rule, you now only get six points.

We urge you to overrule the appeal. I mean, to grant the appeal and award the seven points.

MR. OXER: Good. Thank you for your comments.

Are there any questions from the Board?

(No response.)

MR. OXER: Okay. And it occurs to me, just as a passing thought here, two things. One, your comment that this comes to a screeching halt for 18 months every

ten years. I think between now and the next ten years, we will probably figure out a way to fix this, or to straighten this out.

We have got a rule that applies now. My sense is, is something is what it is until it is defined as something else by those who have the definition. So thank you for your comments.

Put it right up here. I think we can -- you can set it against the -- set it down where you had his. There you go. Like that. Can you see that, Leslie?

MS. BROWN: Honorable Chairman Oxer, members of the TDHCA Board. My name is Linda Brown. I am the experienced HUB developer and general partner for a proposed 2012 tax credit application, 1400 Belleview, TDHCA number 12098 in downtown Dallas. We are in support of the TDHCA's staff recommendation and request that you deny the Applicant's request for their appeal.

I am going to take a little side note here, and the representative of the Applicant pointed out, or defined downtown Dallas as that area that is within the loop, when in fact, downtown Dallas is actually redefined by the Dallas City Council in 2011 from a downtown Dallas 360 plan that was recommended in downtown Dallas as actually defined as an area that is made up of districts.

Just a side note.

You may remember me speaking to you last year about 1400 Belleview, a proposed new 164-unit family, mixed use, four-story development with structured parking, just 900 feet from a DART commuter light rail station. You may recall, we were the highest scoring new multi family project in Region 3 last year. That unfortunately, was not awarded, because of the shortage of credits.

We are again, the highest scoring project proposed in the City of Dallas, and are presently in a position for a credit award. This year, our application, as you can see on this presentation board is uniquely competing with two other applications directly. Because all three applications are within two miles of each other.

And as the QAP requires, only one, if competitive in the region will be awarded.

1400 Belleview followed the rules and procedures to complete an application, that after a very detailed review by the TDHCA staff, received the same number of points we anticipated in our self score. We worked very hard last year, and again this year to present to you an application worthy of a tax credit allocation.

We respected the QAP and other material providing guidance and direction on its completion. And

now, 1400 Belleview is in a competitive scoring position because we submitted a strong application on an excellent site for working families in downtown Dallas, and which is supported by the neighborhood organization, the City leadership, private companies seeking employees, and many other organizations.

The Cadillac application shares the same census tract with us, as well as the other application. And even though our 2010 census tract number is a combination of two census tracts, as you can see on our board, we, like the other competitor, correctly identified the census tract as a qualified census tract.

TDHCA staff early in the application process provided guided assistance to all of us on how we determine whether or not a census tract is a qualified census tract. In fact, according to IRS Section 42(d)(5)(C), the census tract where the Cadillac site is located has been a qualified census tract since the year 2000.

Ultimately, it is the developer's responsibility to understand the rules and procedures. And if there is any doubt about a particular item, the developer should request clarification and/or verification from the staff prior to the submission of their

application.

The bottom line is that this census tract is a qualified census tract. If the Board approves the Applicant's request for appeal, 1400 Belleview will not only lose its leading position, but will lose the opportunity for a 2012 award altogether, because we are within two miles of each other.

Therefore, on behalf of the 1400 Belleview development team, I strongly and respectfully urge the Board to support the staff recommendation and deny the appeal request for Cadillac Apartments. Thank you for your consideration of this important decision.

MR. OXER: Thank you for your comments. Hold on a second. Any comments? Any questions?

(No response.)

MR. OXER: Okay. Ms. Dula.

MS. DULA: Good morning, Tamea Dula with Coates, Rose here on behalf of 1400 Belleview. This is a pretty simple issue. There was a question concerning QCTs that staff saw coming down the line.

They put on the application web page a tool for ascertaining where your project was located; whether it was in the QCT or not. They gave instructions, because they anticipated that the changes in numbering of some

QCTs might create some confusion.

You have two projects here in the QCT that followed the rule; claimed six points, got awarded six points. One project in the same census tract did not follow the rule, and is seeking to get an additional point on the basis of an argument that the census tract didn't have a number, and wasn't recognized as a census tract for the year 2012.

It was a qualified census tract in 2011. It is a qualified census tract in 2013. And it is also a qualified census tract this year, under the rules established by the staff, for taking care of this transitional period. Thank you.

MR. OXER: Any questions of Ms. Dula?

(No response.)

MR. OXER: Thanks, Tamea. Cameron, I have a question.

MR. DORSEY: Yes.

MR. OXER: Explain if you would please, the mechanism that Ms. Dula just referred to about how to determine that. Because we are in a unique period where the census was taken, and these tracts are now being evaluated. So what was the tool that you made available on your side?

MR. DORSEY: Sure. We made available what is called the site demographics. And it is an Excel workbook that basically, we do -- we try to do as much of the data crunching that might be helpful for an applicant up front.

And part of that data crunching that we do is with respect to QCTs and making sure that we put those out there. We put, at the top of each spreadsheet, instructions on how to use that spreadsheet.

And this year, because of the confusion, the potential confusion with regard to census tract numbers, each spreadsheet identifies whether you need to use your 2000 census tract number, or your 2010 census tract number. So that is the tool.

MR. OXER: And that was available when?

MR. DORSEY: December 1st.

MR. OXER: Okay. Any questions from the Board?
Any comments?

(No response.)

MR. OXER: Okay. We have a motion on the floor, by Ms. Bingham.

MR. McWATTERS: I have a question.

MR. OXER: Mr. McWatters has a question. I didn't hear anything.

MR. McWATTERS: Cameron, is there any doubt in your mind about this tract and where it falls today?

MR. DORSEY: No. I can read very quickly a short email exchange with HUD.

MR. McWATTERS: I think that would be helpful.

MR. DORSEY: This is the second or third email in a series of emails with HUD USER and HUD USER help desk. The help desk with HUD USER. HUD USER is a website. And they are the source for this documentation.

"Can you please confirm that the correct census tract number to use in determining whether a site is in a 2012 qualified census tract is the 2000 census tract number and not the 2010 census tract number, which is different?" The data is using the 2000 census tract number. So that pretty much confirms that it relied on the 2000 census tract numbers in determining 2012 QCTs.

MR. McWATTERS: If you accept that email, will that be consistent with prior practice? I mean, I am not sure if this is a case of first impression, or if this issue has arisen before. But is it consistent with the way you have handled this before?

MR. DORSEY: Certainly.

MR. McWATTERS: Okay. One other thing I would

like to say is that a prior speaker seemed to give an implication that if the Board does not grant the appeal, then somehow the Board might not be in favor of granting awards to communities outside the QCTs. The implication being that let's keep the tax credits going into QCTs.

I just wanted to say for the record, I disagree with that. That is an inappropriate reference. This has, in my way of looking at things, this has nothing to do with that issue whatsoever. It has to do with construction of our rules. And our rules should be applied consistently.

It sounds like Cameron has support from HUD. And it sounds like he is acting in accordance with prior practice, objective prior practice. Thank you.

MR. OXER: Thank you. All right. Any other questions?

(No response.)

MR. OXER: Okay. We have a motion by Ms. Bingham and a second by Mr. McWatters. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous. The appeal is denied. Okay. The next one. Cameron?

Barron's Branch.

MR. DORSEY: I have got that one.

MR. OXER: Come on. You know better than this.

Don't --

MR. DORSEY: All right. Barrons Branch is the second appeal. This is more than likely very familiar to you all.

This is the Waco transaction that has been before you for a waiver at the two prior Board meetings. After that waiver request was denied by the Board at the previous month's meeting, staff took action to actually terminate based on the denial of that waiver, and the resulting ineligibility of that application.

In response to that termination, the Applicant appealed the termination, which is why it is back before you today. Not for -- well, perhaps for a waiver. I am not exactly sure what Ms. Andre will say. But it has been dealt with before, but in this capacity, it is more of an appeal than a waiver issue.

MR. OXER: Okay. Thank you. Ms. Andre.

MS. ANDRE: Are you going to do your motion?

MR. OXER: Yes. We do. We will. I am giving you a shot at this. All right. Okay. Motion from the Board?

MR. KEIG: Move staff's recommendation.

MR. OXER: Okay. Motion by Mr. Keig, move staff recommendation to deny the appeal. I need a second.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Now Ms. Andre, good morning.

MS. ANDRE: Hi. Good morning. I just thought you all might have changed your mind in the past month.

MR. OXER: Well, we appreciate you asking. But we are trying to be consistent. You understand that.

MS. ANDRE: Of course. Just kidding. For the record, my name is Sara Andre. And I am here representing the City of Waco and the developer for Barrons Branch. We are asking that -- our appeal today is that our application for Barrons Branch not be terminated.

I understand that our waiver request was denied. And I would like to say, for the record, that our waiver request was made in accordance with the rules. There has been some implication that it was not. And it was made in accordance with the rules.

And in fact, other applications that will be awarded this year are not complying with the unit mix requirements of the QAP. So what we asked for is not out of the ordinary or unusual.

The reason that we would like you to keep our application in the mix is because we don't feel like the fair housing issue that we brought forth had been addressed. And in fact, HUD as you probably know is looking into the Fair Housing element of this application.

And if in fact, HUD does make a finding that there is a Fair Housing issue, and that the unit mix should stand, we would like our application to still be able to be considered. We are not here asking for funding.

We are not here saying that our application will be funded, if it stays in. We are merely asking for you to allow our application to be reinstated, and to stay in the mix, in the event that there is a determination that this unit mix needs to stand.

MR. OXER: Are there any questions from the Board?

(No response.)

MR. OXER: Okay. The unit mix, Cameron? Make a quick review of this, so that we know. Because there was a unit mix issue associated with it.

MR. DORSEY: Yes. So effectively, we have a rule that has some limitations on the number of units of different sizes. In this case, the -- for developments

inside a central business district, the number of the three-bedroom units is limited to 20 percent.

And this one went over. It was 26 or 27, I think. It was right in there. And therefore, would be deemed ineligible, and subject to termination under the rules.

They requested a waiver. And we brought that before you. You all denied the waiver, which leaves the application ineligible. And so, I am not really sure how we would leave it in the cycle per se.

MR. OXER: It is not that it was just ineligible. It is not that it was just not points that were awarded for it. It is actually deemed ineligible as a consequence of the unit mix?

MR. DORSEY: That is right. In fact, not terminating it would probably require a waiver in and of itself. Because the QAP requires that we terminate it. So --

MR. OXER: Okay. For the record, I am going to read something in here. Just so we have got it on the record.

This is -- yes, 50.4(d), part 7. And that is Ineligible Developments. It says, "Any development (excluding supportive housing developments) proposed in a

CBD with more than 70 percent one bedrooms and/or efficiency units, or 70 percent two bedrooms or more than 20 percent three bedrooms. An application may reflect the total of units for a given bedroom size greater than these percentages to the extent that the increase is only to reach the next highest number divisible by four."

Okay. So the bottom line is, the waiver was denied based on the unit mix. And that makes it fundamentally ineligible, as opposed to not scoring the points for the application.

MR. DORSEY: That is right. Yes. This isn't a point issue at all.

MR. OXER: Correct. Okay. Any other questions of the Board? Professor McWatters?

MR. McWATTERS: I note in the materials, Cameron, that there is an opinion, a legal opinion of Munsch Hardtt Law Firm that says that our rule, our 20 percent rule violates Fair Housing Act.

So I am to gather -- the attorney who wrote this, I am not sure if he is here -- it would be helpful if he was -- that 20 percent is bad. But somehow, 26.7 percent, which is what the applicant has, that is okay. That doesn't violate the Fair Housing Act.

So somewhere between 20 percent bad, you morph

into something that is good at 26.7 percent. Okay. Fine.

Can anyone speak to the authority behind that determination? What guidance? What legal precedent? What judicial opinions? What went on in rendering this opinion?

I don't like this opinion. It looks like we are not complying with the Fair Housing Act. I don't think that is the issue at all. So I need to understand if anyone can help me, how you go from 20 percent to 26.7 percent, and 26.7 percent is okay.

MS. JACKSON: Good afternoon. My name is Tony Jackson with Coates, Rose. Robert Voelker [phonetic] is the one who actually wrote the opinion for us, to provide for us.

However, this was written based on the limitations that were in this development. And so that is why the determination of the 26 percent versus the 20 percent has made the difference of why it will impact the Fair Housing guidelines.

MR. McWATTERS: I am not sure if I find that that persuasive, legally. I mean, you may have wanted 26.7 percent to be okay. It may be an argument for an appeal. But I am not sure if it is a legal argument under the law.

MS. JACKSON: In this particular development, based on the unit mix that has been presented, the issue is that because of the number of one bedrooms that you have, the ability for families to be able to move into the development at the same rate has been limited. And Fair Housing, the Fair Housing is impacted because you have adversely impacted families to be able to move into the development. And that is what the concern here is; that it makes it --

MR. McWATTERS: So the possibility exists then that other developments which are up and running now, which have complied with this 20 percent rule could also be in violation of Fair Housing if more people show up to rent apartments, but only 20 percent of them are three bedroom.

MS. JACKSON: In this particular case, what has been looked at by HUD and by our guidelines is the fact that we were being responsive to what the market is in this particular development. So it is not that you can take 26 percent across the board.

We are saying that in this particular case, the market rate -- the market analysis showed that there was a need for a higher number of three-bedroom units. And that is why we are requesting a change of the bedroom mix, in

order to be able to be responsive to the families that need to come back to the development.

MR. McWATTERS: Let me ask Cameron. Has that been the course of dealing in the past; to deal with facts on the ground, or these rules set forth? And people comply with the rules and generally don't ask questions?

MR. DORSEY: I think, you know, these rules go through a very public process. And so I think the decisions with regard to unit mix limitations get discussed through that process. And then obviously, codified through that process. And this is the outcome of that process; the 20 percent limitation.

I will say that the market study documented the need for in excess of the number of units being built in this development at pretty much all unit sizes. So it just indicated demand across the board. So I don't know that that --

MR. OXER: Professor McWatters.

MR. McWATTERS: Have we looked at the HUD issue?

MR. DORSEY: We have, I believe, looked at the --

MR. McWATTERS: The Fair Housing Act issue, I should say.

MR. DORSEY: We have looked at the arguments presented, and the opinion submitted to the Department. And I suppose we could have Barbara again speak to it. But effectively, they concur with staff's recommendation. There is not sufficient documentation to conclude that this is a Fair Housing violation in this particular case, at a minimum.

MR. McWATTERS: Okay. But for the record, people who are knowledgeable about these statutes and requirements have reviewed them, had discussions, done whatever they need to do to reach a conclusion here? This is not just arbitrary?

MR. DORSEY: Yes.

MR. McWATTERS: Okay. Due diligence was done. Thank you.

MR. OXER: Mr. Keig, did you have a question? Comment?

(No response.)

MR. OXER: Okay. Okay. I would add that while it is laudable that the Applicant is making an effort to respond to the market needs as determined by its own market study, the QAP defines the unit mix that we are financing; that we are providing resources for. And while I understand that they may wish something different, then

there are other sources of financing.

So I am hoping that it is fairly clear from the QAP that we have a unit mix that we are willing to put these -- or a process to put these credits toward. And that is the one we put these credits toward. So any other questions from the Board?

(No response.)

MR. OXER: Okay. We have a motion. Who was the original motion? By Mr. Keig. And a second by Professor McWatters to -- moves staff recommendation to deny the appeal. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. It is unanimous. The appeal is denied.

MR. DORSEY: All right. The next appeal is for Application 12112.

MR. OXER: Hold on a second, Cameron. Cameron, hold on a second.

MR. DORSEY: Yes. Right.

MR. OXER: I need a quick note, or a word here. Just hold on. There is an opinion that was annotated that the Appellant added to the information on this appeal

that Professor McWatters referred to.

And it was outside counsel. And I would say, on advice of counsel, but were we to get a ruling from HUD, specifically from HUD, a HUD counsel ruling to consider reinstatement, we would be willing to hear that request at a later date.

MR. IRVINE: Prior to allocation.

MR. OXER: Prior to allocation. So you know, we have got six weeks here, and the game is over, folks.

MR. DORSEY: Can we just say award instead of allocation? Because technically --

MR. OXER: That is right. This is -- right. Okay. They are attorneys. Words are their life. So Professor McWatters, does that sit with your interpretation? Good. Okay, Cameron.

MR. DORSEY: All right. Inez Tims is a 9 percent application. This is a points issue, not an eligibility issue, such as the one before. We have an appeal of two items.

We took -- a total of nine points are under appeal. Six of them are associated with one item, and three associated with another item. So I am going to walk through each one.

The first one is for preapplication incentive

points. You all know we have a preapplication process. Preapplications were due January 10th, this year. And we received 388 of those.

And we posted by law within three days, with a summary of information on those preapplications. And we also posted each preapplication to the web. The purpose of that process is to provide competitors an idea of whether or not they want to go spend tens of thousands of dollars putting a full application together to submit that full application by March 1.

So we provide incentive points for those who submit a preapplication and maintain consistency in certain aspects, between that preapplication and the submission of the full application. One of the things that must remain consistent in order to get six preapplication points is the target population.

MR. OXER: Hold on a second, Cameron.

MR. DORSEY: Okay.

MR. GANN: Mr. Chairman, I need to recuse myself from this particular item.

MR. OXER: Okay. As I understand the recusal requirements, you have to be out in the hall getting coffee, or something like that.

MR. GANN: Good idea.

MR. OXER: Okay. Cameron, I am sorry. Thank you.

MR. DORSEY: Okay. So the preapplication was submitted. And it identified the population, the target population as elderly or seniors. And then when the full application was submitted on March 1, it identified the target population as -- hold on. Did I get that backwards? I think I got it backwards.

Originally, the preapplication was submitted with the target population as general. And then the full application identified the target population as elderly. Okay. We have got that straight.

Now when we got the preapp in, we reviewed it, and we found no reason to question the target population as general. And so when we got the full app in, we did see a reason to say hey, what is the deal with the elderly target population. That is different from what was in the preapp.

And you guys are subject to losing points, if in fact, you are changing the target population. And so the response was, well we incorrectly identified the target population in the preapplication. We would like to change that at this point, and identify the correct target population in that preapplication that was submitted a few

months ago.

Allowing that to be done would undermine the point of the preapplication process entirely, because we would provide the same option to those who identified other things and then changed them, and therefore, there would be no effective difference between a preapp and app at the end of the cycle. You know, in making a strategic decision, it would be, you know, pretty much impossible to really make a great strategic decision if the applicant can change anything that was identified in their preapp and then not ultimately be held accountable for that.

In this case, it is a little bit unique, because the property is an existing development that by regulatory agreement can only lease to elderly tenants. However, that documentation isn't submitted or reviewed as part of the preapplication. We rely on the applicant to identify it correctly at preapp.

And so they are saying, well because there is this documentation out there that it was elderly at the time of preapplication, and it is an existing property, it is clearly a mistake. The problem is, that that is not necessarily the case. We do in fact have existing developments that change their target population.

Wynnewood is a transaction that was awarded a

couple of years ago. And they are an existing tax credit development that also has HUD financing on it. And they went through a process of changing their target population for a portion of the property that was to undergo reconstruction.

So again, there was still no reason to question it, even if we had had the regulatory agreement. It probably would have been an issue that we wanted clarification on. But it is not something that we would have suspected was incorrect on its face.

So, and Mr. Palmer just let me know that they intend to drop the second issue of appeal, which is repositioning of existing developments. So only the six preapplication points are in play. Staff recommends denial.

MR. OXER: Okay. Are there any questions of the Board for Cameron at this point?

(No response.)

MR. OXER: Okay. Fair?

MR. KEIG: I move staff's recommendation.

MR. OXER: Okay. Second? Motion by Mr. Keig.

MS. BINGHAM-ESCARANA: Second.

MR. OXER: Second by Ms. Bingham to approve staff recommendation to deny the appeal. A point of order

here, to consider, even with the recusal, even with our quorum at four, I would like clarification, Ms. Counsel, that a majority constitutes three out of the four present.

Is that correct?

VOICE: Right.

MR. OXER: Okay. So even if we are shorthanded here, a majority is represented by three of the four that we have, with Tom recused. So, Mr. Palmer.

MR. PALMER: Good morning. My name is Barry Palmer with the Coates, Rose Law Firm. And I am here on behalf of the developer of the Inez Tims Apartments in Lufkin to appeal the denial of the preapplication points.

The preapplication points were denied because the developer mistakenly listed in the preapplication that it was to serve the general population, when in fact, it is an elderly project. It has been an existing elderly project for some time. There are deed restrictions in place. And it has always been the intent to rehab this property as an elderly project.

And all of the notifications that were sent out, the extensive notifications that are required on the application process, that were sent out in connection with the preapplication show that the project is elderly. The

inconsistency between the notices and the box checked in the preapplication for the population served was a mere oversight that should be allowed to be corrected as an administrative deficiency.

The QAP provides, and I quote, "the administrative deficiency process is to allow an applicant an opportunity to provide clarification, correction or non material missing information to resolve inconsistencies in the original application." That is exactly what the case was here.

We had an inconsistency between the notices that went out in connection with the preapplication which showed the project to be elderly, and the box that was checked in the preapp that showed the project serving the general population. This is clearly a mistake. But it is the kind of minor clerical administrative deficiency that the QAP allows to be corrected.

There was never any question that this project would be elderly because of the deed restrictions that are in place that require it to remain as an elderly project.

So we ask that the Board grant this appeal and grant the preapplication points.

MR. OXER: Okay. Thanks, Barry. Any questions from the Board?

(No response.)

MR. OXER: Okay.

MR. AKBARI: Mr. Chairman, Board, Mr. Irvine, my name is Ike Akbari. And I really thank you for the great job you are doing, in helping, in being on the Board and for helping our industry of affordable housing.

I am not here to make a -- to actually tell them we did not make a mistake. Obviously, you know, when you are preparing an application, especially in the preapp, and you see those boxes, as you may have noticed, and you have done in your business, sometimes you make an error.

And we have said, this is a project -- it is an elderly project. And presently actually, there is 70 families that live in the project. They are over 50 years old. And really, sometimes, approximately 40, maybe 50 years old.

And it is a 202 HUD project, elderly project. In fact, even if this project were to go into bankruptcy, we still could not be able to make it out as a family. We cannot change it. It is a big difference between the project Cameron mentioned.

It was a tax credit project, and it was built under tax credit. Elderly or family, and you can go

change it later on. This is not the same situation. This is a 202 elderly project. And we have seen all of the notifications to everybody, this is going to be developed, this is going to be rehabbed under elderly.

Unfortunately, as you are aware, and this happens many times, in your business. You know, I have had the conference of agreement, one complex, it had somebody else's complex on it. It is just a mistake, a common mistake.

This is the reason you are going to deny housing for 70 elderly people, who are actually, they are all waiting for this units to be repaired and be rehabbed. And they could be able to spend the rest of their life in a decent housing. I think you need to reconsider. I think this is not in a situation that the previous two applications.

This is not a mistake of trying to change it, one general to elderly. Because there was no additional point here. Actually, there is no benefit for this application to apply for general as is, or elderly. We didn't get additional points for that. Taking the seven points obviously is just, you know, basically killing the project.

We ask you, please reconsider. Because it was

a minor mistake. It was just basically marking a box, two boxes next to each other. And when you are doing more than one application, in this situation, we had two or three applications. That second page, we was preparing the application.

Unfortunately, marked the wrong box. And we didn't notice that. But when we did the application, we corrected that. And when that question was raised, we sent them all of the information. We told him this was what we sent the letters to all of the officials. We met with everybody in the county.

In fact, one of our Board members, I am sure you are going to be able to -- you know, he knows about this project. And this a project for many, many years. There is no changes.

There was no reason for us to change this project from elderly to general. There is no additional point. Now there would be a problem if we were building a new project. The purpose of that general, elderly. Yes, it makes a difference when you are building a new project. There are additional points involved.

In this situation, no law was broken. Basically, it was a minor mistake by X-ing that. If we had, obviously, we should probably call you that it was

posted. But as you know, you don't think those -- I mean, you don't look at it after it is posted. Basically, look at where your application is. You don't look at the detailed preapp.

You know, you know you have to make the full application later on. And I have seen many changes in fact, on the application. Yes, there are changes. Because I have seen the number of units change. For example, the preapp, it goes from 100 units and for the application filed, it changes to 80.

Or sometimes, other changes from preapp to application, change is allowed. And if you take it and deny, just this minor change, which was done basically at the error of -- by our secretary.

And I think, in denying this application, I think really it is going to be killing, and it is going to taking hope from over 70 people who have been waiting for this project to be rehabbed. And I thank you very much.

MR. OXER: Thank you, Mr. Akbari.

Any questions of the Board?

(No response.)

MR. OXER: Mr. McWatters, do you have a question?

MR. McWATTERS: I have one for Cameron.

Ticking one box from another box certainly seems very minor, very modest. In ticking the box that says general, in that preapp that is filed, then other potential competitors presumably look at that. And they say, okay. This is a general population project. Is that important knowledge?

MR. DORSEY: It can be. Yes. There is a point item for no existing developments within the same census tract. And there are also points associated with no existing developments serving the same population within the same census tract.

In this particular case, I don't think that those issues were at play. But from a larger perspective, it can certainly matter, which is why it is specifically identified as something that can't change in order to be awarded points.

MR. McWATTERS: Okay. Suppose a developer ticked the wrong boxes in this case. And suppose another developer who wanted to do a project decided not to do a project, based upon that. I mean, is that a possibility?

MR. DORSEY: It is probably unlikely that that was the case in this particular situation.

MR. McWATTERS: Well, I am talking broader,

sort of policy perspective.

MR. DORSEY: Yes. Broader, that is exactly why this exists. This, the fact that you can't achieve these points if you change the target population is done in order, is done because it can influence the submission of an application.

MR. McWATTERS: So another applicant then can detrimentally rely on the preapp. And decide to take one action, or not take an action which could be otherwise, if the correct box was ticked.

MR. DORSEY: That is right.

MR. McWATTERS: Okay. So I think that is one concern here, is that detrimental reliance by third parties.

And also, the diligence element here. I mean, if drafting these applications is delegated to a third party, that is great. But perhaps the principals should carefully review the applications line by line, and make sure they are right, and boxes are ticked.

Because I am sympathetic to mistakes, because I make them all of the time. But I am also sympathetic that other people may rely on my mistakes and the mistakes here, and spend money in a way that cannot be recouped. Thank you.

MR. OXER: Mr. Akbari, did you have a comment that you wanted to make?

MR. AKBARI: Yes. I did. I can wait --

MR. OXER: Just to underscore what Professor McWatters has said, there is an old rule in risk management. And the risk management means something different here to the bankers, versus some of the things that I have done in toxicity, toxicology.

And risk is a product of probability versus the toxicity. The more toxic, the more dangerous the outcome is, the lower the probability that you want to have that that outcome would occur.

Which means that the higher the risk, or the higher the probability, or the higher the impact of the decision, the more diligence you want to give it, by somebody who can make an authoritative decision. Is that a fair statement from your position, Professor McWatters?

MR. McWATTERS: Yes. Absolutely.

MR. OXER: Okay. So I guess I would point out that this process is -- we have made an extraordinary effort to have a set of rules that are stated and clear. And these rules have been in place for some time.

And we have had other -- a consistent application of our rule, the rules, the rule of rule,

would be -- while I consider, it would be considered a mistake. It is one of those things that say, if you are going down the plant kingdom versus the animal kingdom, which is two different tracks on this.

So we have to be making an effort to see that we have -- the Agency and the process is respected for consistent application of rules. So are there any other questions from the Board?

(No response.)

MR. OXER: Did you have another comment you would like to make, Mr. Akbari?

(No response.)

MR. OXER: Barry?

MR. PALMER: Just one thing I would like to point out is, the whole concept of the administrative deficiency process was introduced into the QAP a number of years back. Because prior to that time, we didn't have that. And there would be cases where developers spent a lot of time and money on a very worthy application.

And there would be some minor glitch or minor deficiency, or check a wrong box-type thing that would cause an application to get terminated. And so this concept of an administrative deficiency was brought into the QAP several years back. And I read some of the

language from that earlier in my testimony. And I won't go back through that.

But it allows applicants to fix minor mistakes or omissions or inconsistencies in their application, rather than it just being a straight, you make a single mistake in this 500-page application, and you are terminated. We have gone away from that to allow administrative deficiencies to be fixed.

And we view this as one of those minor administrative deficiencies that was an inconsistency between the notice letters that were sent to all of the community, all of the public officials, putting everyone on notice that this was an elderly project, as opposed to this the box checked in the preapplication showing it as general.

MR. OXER: Thank you. Cameron.

MR. DORSEY: I just wanted to say, I mean, I agree. You know, we have lots of minor errors. And when we can identify that as a potential error, we would send an administrative deficiency.

So for example, if the notification letter was something that we reviewed in detail, and we noticed that at the time of preapplication, as part of our review, that it identified elderly. And then another piece identified

general, we would have sent an administrative deficiency, and allowed that to have been corrected.

However, the problem is, is that we don't review all of the notifications. We rely on a certification that the applicant did what they were supposed to, and retain the right to request those actual notices if need be. But in this case, there was no apparent need.

And there was no apparent discrepancy or error in the preapplication. And while that error is now apparent, it wasn't apparent when it mattered, which is prior to other applicants being provided notice of what was being submitted.

MR. OXER: Okay. Any other questions of the Board?

(No response.)

MR. OXER: Okay. We have a motion on the floor by Mr. Keig and a second by Ms. Bingham to deny the appeal. Moved, staff recommendation. Any other clarification? All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

The appeal is denied. Okay. Let's do one more, Cameron.

MR. DORSEY: One more and then a break?

MR. OXER: Right.

MR. DORSEY: Okay.

MR. OXER: Or do you want to take a break? Do you need a break now?

VOICE: I can wait one more.

MR. OXER: I don't know. All right. Let's do this. Since we have a small little event we want to do, take some pictures outside for our bankers and lenders of the year, we are going to take a break now.

Okay. We are going to break for executive -- we are going to break now so some of us don't embarrass ourselves up here. So we are going to break now. Go outside. Go into executive session for lunch. Let's be back in our seats here at 1:15, which is an hour and a half.

MR. OXER: The Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act to discuss pending litigation with its attorney under Section 551.071 of the Act, receive legal advice from its attorney under Section 551.071 of the Act, discuss certain personnel matters under the Section

551.074 of the Act.

Discuss certain real estate matters under Section 551.072 of the Act. And discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code. Closed session will be held in Room E 1.020. The current time is 11:49.

(Whereupon, the Board adjourned into executive session at 11:49 a.m.)

MR. OXER: Good afternoon. The governing board has been in closed session. We are now out. The Board is now reconvened in open session at 1:18. I would point out that we did not make any decisions. We only discussed items requiring legal counsel. And no decisions were made in closed session. All right.

Before we get too involved in this, because this is going to be involved this afternoon. Summer is upon us, as everybody here in Austin recognizes. So there has been a request to have a request for a show of hands amongst everybody here who would like to go for the next two meetings, which would be our allocation round, of course, rather than being quite so formal, go to boots and jeans, in honor of the fact that we are in Texas.

Show of hands? All right. Cutoffs and flip flops, Bobby Bowling, are not available. All right. So

watch your posted agenda. But I can see, nice boots and jeans. That would be a good thing to do. I think the Governor wears his boots every day anyway, doesn't he?

So all right. Mr. E.D., is there any of these that we should take up to complete the other items before we continue on number seven on the appeals? Or is there anything we can get out of the way right quick, because this goes --

MR. IRVINE: I could probably knock them off real quickly if you like.

MR. OXER: Commence slamming.

MR. IRVINE: With respect to Item 5, the Housing Resource Center, staff absolutely believes that we need to pursue the application for the 811 project based rental assistance demonstration program. There is certainly some uncertainty about how we will actually execute on that.

But I am completely confident that if we are successful in obtaining an award, we will find a way to get her done. We would recommend adoption.

MR. OXER: Then is Elizabeth here? Yes, of course. She is here. So do you have any comments you want to make. We always appreciate Elizabeth here. She does such a fabulous job.

MS. YEVICH: Staff certainly is behind it. Elizabeth Yevich, Director of the Housing Resource Center. I certainly agree with Mr. Irvine.

And also I just wanted to remind, last fall I was before you with the fact that we had were awarded 330,000 from the Centers for Medicaid, Medicare. We have partnered with DAD. That was in preparation for this grant.

And staff has been working very hard all year, preparing for this NOFA, which was supposed to come out last fall. But it just came out May 15th. It is due July 31st. And in fact, we are getting ready to start a series of round tables next week, into the end of the month in preparation to gather even more information. So staff definitely feels that we should move forward.

MR. OXER: Do we have any action on this, that we need to execute? This is informatory. Okay. Well, we are certainly in favor of going after that.

MS. YEVICH: Okay.

MR. OXER: We encourage you to get on it. Okay. Now let's do the -- right. There is an action item? Okay. Hold on a second. Let's get to the back.

MR. IRVINE: There is a propopsed resolution in the book that just authorizes us to move forward.

MR. OXER: Make sure you are right.

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

MR. OXER: Okay. Motion by Mr. Keig.

MS. BINGHAM-ESCARENA: Second.

MR. OXER: Second by Ms. Bingham to approve staff recommendation to approve a resolution to pursue the grant. Any questions?

(No response.)

MR. OXER: Any other public comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

Thank you.

MS. YEVICH: Thank you.

MR. OXER: Thanks, Elizabeth. Okay.

MR. IRVINE: Chairman, the only other item I would like to suggest you go ahead and take action on, with regard to Item 6, the Multifamily Finance Division. This is the list of all parties that have been -- that have applied for tax credits. Obviously, since we have

already begun the appeals resolution, we would ask that the Board modify its adoption to reflect that it is consistent with the disposition of each of the appeals.

MR. OXER: That would be your --

MR. IRVINE: Because there are some items that is on this list that would come off, because they lost their appeals.

MR. OXER: Correct.

MR. DORSEY: One thus far, just Barrons Branch. The other ones are point appeals.

MR. OXER: Okay. And they are still on. Michael, do you have a letter to read in?

MR. LYTTLE: Yes, sir. I do. This is a letter addressed to Tim Irvine from State Representative Charlie Geren. It reads as follows.

Dear Mr. Irvine, please allow me to submit this letter of support for the proposed Reserve at Western Center affordable rental housing development at the corner of Western Center Boulevard and Watauga Smithfield Road. There is a need for affordable housing in Fort Worth, and the Reserve at Western Center development will offer 120 rental housing units to residents of the city.

If I may provide additional information, please let me know. Thank you for your consideration.

Sincerely, Charlie Geren.

MR. OXER: Good. Thank you. Anything else on that?

MR. DORSEY: If I may, just real quickly. That one was intended to be on the agenda for an appeal today. And it will be likely heard next month. And my guess is that that was intended to be read in conjunction with the appeal to be heard.

MR. OXER: If it is on for next month, we will make sure that those comments that were germane to that discussion will be available then also. So okay. Multifamily Finance. There is the list. So, entertain a motion.

MS. BINGHAM-ESCARENA: Move staff's recommendation for resolution and do, sir, do I need to modify to acknowledge any appeals?

MR. IRVINE: The removal of Barrons Branch.

MS. BINGHAM-ESCARENA: Move to resolve as staff recommended with the exception of Barrons Branch to be removed.

MR. OXER: And pending the result of the decisions with respect to appeals.

MR. IRVINE: Could you have a second, while I confer with Counsel on one?

MR. OXER: Sure. While he is conferring, meanwhile, to our boots and blue jeans discussion. As you may have noticed, I am always, as a consequence of the fact that we meet here in our Capitol, the former Capitol of the Republic of Texas, it has been my interest in showing a measure of respect to the -- simply if nothing else, for the building we are in, and that housed our state government. That is why I always dressed this way. But I could be talked into going into boots and jeans. Okay.

MS. DEANE: There are some actions that have gone on today, throughout the day. So I would just approve the list contingent upon, and subject to any appeals, terminations and so forth.

MR. OXER: For, and ongoing.

MS. DEANE: Yes.

MR. OXER: Okay. Leslie, do you want to restate it?

MR. IRVINE: And just to approve the list as stated. And that way, you would not preclude the possibility that Barrons Branch is an issue.

MR. OXER: Whatever.

MS. BINGHAM-ESCARONA: Yes. I have got you.

MR. OXER: Okay.

MS. BINGHAM-ESCARENA: Am I moving to approve the list as presented or contingent upon future appeal decisions or changes?

MR. IRVINE: As presented, but it is contingent, or subject to --

MS. BINGHAM-ESCARENA: Okay.

MR. IRVINE: -- those other matters as listed.

MR. OXER: And it is subject to other matters as occur throughout the rest of the process as well.

MR. IRVINE: Being on the list doesn't mean you got an award.

MR. OXER: Leslie, just tell me what you want. Okay.

MS. BINGHAM-ESCARENA: Move to approve the list as submitted, subject to other matters as they occur.

MR. OXER: Do I hear a second?

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig, under duress, apparently. Is there any other discussion?

(No response.)

MR. OXER: Are there any questions from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

Thank you. Okay. So 5 and 6 are out of the way. That is one that had to be on there.

See, number 3 and number 4 are essentially internal committee works for the Board. Okay. Well, that is right. The -- we will go backward on the order here. Let's take number 4 next. Tom.

MR. GANN: Okay. The Strategic Planning and Budget Committee did meet. And the minutes summary was presented. And in fact also the internet, et cetera. And it was unanimous, and all members were present on that Committee. And we are asking that this group --

MR. OXER: Juan wasn't there, was he?

MR. GANN: This was yesterday.

MR. OXER: Oh, that is the last one. Okay. So this is the meetings. Okay.

MR. GANN: And we are just asking that the Board approve it as presented.

MR. OXER: I have got it. Okay. Any comments or clarifications from staff, or from the public?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It is unanimous.
Okay. Perhaps Elizabeth does the strategic plan?

MS. YEVICH: Elizabeth Yevich, Director of the Housing Resource Center. The next item, item 4(b) is the Agency's strategic plan for fiscal years 2013 through 2017. And this plan communicates the Agency's goals directions and outcomes to various audiences, including the Governor, and the Legislature and the general public.

And the plan outlines the Department's approach to addressing affordable housing and community service needs of lower income Texans. It is due every biennium. And the plan is developed within the context of the State's overall goals and budgets to generate specific outcomes that tie directly to the Department's budget structure.

And the plan provides a high level of review of issues that may affect the ongoing accomplishments of the Department's mission over the next five years. And examples of internal issues the report considers,

including the Department's budget, workforce characteristics, technological assets and projects, organizational structure, and existing performance measures.

External factors that may change over time are also studied. Such factors include the Department's available funding resources, service population characteristics, service area boundaries, economic, legal and environmental conditions in which it operates.

The plan is due July 6th to the Governor's Office, and the LBB. And staff, until submittal, would like to request permission to make any minor changes to the plan.

And thank you, Mr. Keig, for your edits yesterday. They have already been incorporated. So, and any other small clarifications and editing for consistency, and minor stylistic changes. And we recommend approval of this plan.

MR. OXER: Good.

MR. KEIG: Just one question.

MR. OXER: Yes, sir. Mr. Keig.

MR. KEIG: I think the only substantive one I have was trying to add something to the effect of our contract for deed study.

MS. YEVICH: Okay.

MR. KEIG: Did you all discuss that?

MS. YEVICH: And, I am going to introduce Ashley Schweickart, who works in the Housing Resource Center. Also she is coordinator for our Counsel. And she has been working tremendously on the strategic plan.

MS. SCHWEICKART: Hi. Ashley Schweickart, Housing Resource Center. Yes, we have an explanation of variance section for each of our riders within the strategic plan. And so the rider that is regarding contract for deed conversions, we added into the explanation of variance.

But currently, we are conducting that contract for deed study that is ongoing. But I believe will come before this Board after the work is done by our vendor.

MR. OXER: Great. Thanks. Okay. Any other questions?

(No response.)

MR. OXER: Is there any comment?

(No response.)

MR. OXER: Okay. All in favor? Wait. Back up. Did we have a motion? We didn't have a motion. All right. We will need a motion. I guess I will have to have a motion to do this.

MR. GANN: I'll make that motion.

MR. OXER: Okay. Vice-Chairman Gann will make the motion to approve staff recommendation of the resolution to that effect. Is there a second?

MS. BINGHAM-ESCARENA: Second.

MR. OXER: Second by Ms. Bingham. Any other discussion?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

Thank you. Okay.

Sandy, the audit. Just a thought. We can hold this in here for a minute. I want to hold this one for a bit, because I want to make sure we get to the balance of the appeals while we have a full quorum. Okay. Cameron.

MR. DORSEY: One of the folks that is on the agenda for appeal, the Hamilton Apartments requested to -- well, asked if they could go before the next couple that we have, because Mr. Ford is going to be flying to his daughter's wedding in Colorado after, at 3:00 or so.

MR. OXER: I understand that. We will give him -- before then.

MR. DORSEY: And I asked the other folks that are in line in front of him, and they said that that was fine.

MR. OXER: Okay.

MR. DORSEY: So the Hamilton is application 12192. And this is the appeal of a termination. So it is not points. It is that the application is no longer in play unless you all grant the Applicant's appeal.

The issue at hand is the one-mile three-year rule. This is a statute, a statutory provision that is repeated almost verbatim, in our QAP threshold section. And the purpose is to -- or what it is, is basically within one mile, a one-mile radius of an application, if we find that there was another tax credit application approved within the prior three calendar years, then they need to take action to -- they need to do various things to be eligible to participate.

One of those options is a resolution from the local governing body that effectively supports the submission of an application, despite the fact that there was another development awarded within the last three years, within a mile. And if that option is chosen, the

resolution this year would have been due April 2nd. We, on this particular development, we did not receive such a resolution. There are a couple of other options.

But I am going to focus primarily on the one that pertains to this specific application, which is the subject of appeal. And that is, it reads, "An application is not ineligible under this paragraph if the development is using Federal HOPE VI funds received through the United States Department of Housing and Urban Development, locally approved funds received from a public improvement district, or a tax increment financing district, funds provided to the state under the Cranston Gonzales National Affordable Housing Act, or funds provided through the state and participating jurisdictions under the Housing and Community Development Act of 1974."

In this particular case, the Applicant is pointing to the funding, CDBG funds, which are provided under the Housing and Community Development Act of 1974. They did apply for local funding from the City of Houston.

That application was identified in our application as a HOME application.

However, the Applicant, I think, has correctly indicated that in the application to the City of Houston, it actually doesn't distinguish between particular

sources. And you may end up with, even though they indicated HOME in our application, they may end up with CDBG funds at the end of the day. In which case, they would be eligible.

The problem is that, one, as submitted, the application identified the City of Houston funding potentially as HOME funds. Two, the application has been made; but there is no commitment to funds. The funds are not in place.

It is -- you know, it would effectively be an issue where, if we accepted an application as meeting the requirement at this point, we would have to check later down the road. The Applicant has pointed to one of the scoring criteria for funding from a unit of general local government. Under that scoring criteria, this funding source isn't required to be proven up until tax credit commitment, which occurs about a month after the award, and so, early August.

However, that date, and the fact that those, for that point item, it can be proved up at commitment is effectively irrelevant for the purpose of this threshold item. There is no connection between the two. At least, there is no connection stated in the rule itself.

So basically, staff's position is that mere

submission of an application to the City of Houston is insufficient to document compliance with this Rule. And that it really would need to be a commitment that the funding was actually going to be in play, be available for use for this development.

So I will go ahead. And staff recommends denial. I am going to go ahead and let the Applicant and their representative speak, unless you all have questions.

MR. OXER: Okay. Does the Board have any questions of Cameron?

(No response.)

MR. OXER: Okay. We will entertain a motion to begin.

MS. BINGHAM-ESCARANA: I will move staff's recommendation.

MR. OXER: Okay. Motion by Ms. Bingham to deny the appeal, which is staff recommendation.

MR. GANN: I will second.

MR. OXER: A second by Vice-Chairman Gann. Okay. Those who are -- I assume that back to our on deck circle here, if you have a --

VOICE: We were the ones in front of them.

MR. OXER: Okay. So you are on time out for right now. You are on deck.

VOICE: Time out.

MR. OXER: Time out. It means something different. Okay. Mr. Palmer.

MR. PALMER: Good afternoon. My name is Barry Palmer with the Coates, Rose Law Firm. And I am here on behalf of the developer of the Hamilton Place Apartments in Houston, Texas. And we are here to appeal the decision for a termination because of the one-mile three-year rule.

As Cameron pointed out, there are exceptions to ineligibility for the one-mile three-year rule, one of which is if you are receiving funding of either CDBG or TURS [phonetic] funds. And I don't believe there is any dispute between the developer and the staff of the fact that this project would not be subject to termination if it is receiving funding of TURS funds, or CDBG funds.

The disagreement lies when you have to provide proof in terms of a commitment for those funds. And staff has taken the position that you have to provide the commitment at the time when you apply.

We believe that the QAP does not say that. And in fact, the QAP provides that local government funding commitments are required to be provided after the allocations, after the commitment notices are issued; 30 days after the commitment notices, you have to provide

your commitment of government financing.

I would suggest that all of the applicants that we have before us, all of the applications in this current round have taken points for local government funding. And not one of them has provided a commitment of that funding yet.

They are required to provide that commitment within 30 days of the time that they get the commitment letter, after the allocations are made. And the reason that it is that way, is because the cities and the counties who provide these commitments don't want to commit funds to projects that may not receive a tax credit allocation.

And so, and it has always been the practice of the Department to require those commitments for funding to be submitted after the allocations are made. There is no reason to treat this application any differently than all of the other applications that are before you, that don't have commitments of government financing yet.

This project is a project in downtown Houston. The developer has spent hundreds of thousands of dollars at this point on architect and engineering work so they would be ready to close later this year. And they have relied on the language of the QAP that says that there is

an exception for the ineligibility, if you are going to get money from the city for CDBG funds, or TURS funds.

And nowhere in that language, if you read the language of the exception from ineligibility, does it say a commitment of funding for TURS or CDBG funds. It says that you have to use CDBG or TURS funds in your project. And so what is typically the case is that you issue tax credit commitment notices.

And this is what you will be doing on all of the other projects that have applied, and it will have a condition in that tax credit commitment notice that they have to provide you, if they took the points, where they have to provide you their commitment of local government financing within 30 days of the commitment notice. And if they don't, then the credits get recaptured, and they go to the next person on the waiting list.

So we are just asking to be treated the same way as every other application that is in right now, that doesn't have to provide their commitment of government financing until after they have received a credit allocation. Thank you.

MR. OXER: Any questions from the Board? Mr. Keig?

MR. KEIG: Let me just clarify. You all have

applied for the funds that meet an exception?

MR. PALMER: That is correct. We have applied for the funds. And the next speaker is going to be Neal Rackleff from the City of Houston, who will talk about that application and where it stands.

MR. KEIG: And that does -- does our staff agree that if you have that funding, that meets an exception?

MR. PALMER: I believe that they agree. That if we have that funding, that it meets the exception. I think that they have taken the position that you had to have had the commitment already at the time, back in March, when you applied.

MR. KEIG: Okay. All right. Cameron, do you want to clarify that?

MR. DORSEY: Sure. Barry is correct. If the commitment for either CDBG funding or some other source reflected as an option for an exception in this particular threshold item would have been submitted with the application, then I don't think that we would have had an issue with it. It is just that that didn't happen.

MR. OXER: So that commitment letter would have been due when? At that application?

MR. DORSEY: At application. What we have got

here is an item where there are a couple of different options. One is, you have these funding kind of options, where if you get a certain local source of funds, then it is kind of presumed that the City supports your transaction, even though it is located within a mile of another transaction approved in the last three years.

The alternative is to get a resolution and submit that by April 2nd. You know, the problem here is that the whole idea of having a deadline of April 2nd for this resolution and but then -- you have this other deadline way down the road for getting the local funds kind of undermines -- we wouldn't provide any April 2nd deadline if we had intended to allow the approval of funds way down the road.

I mean, the Applicant is linking up the scoring criteria and a threshold issue that is tested, basically at the time of application unless the QAP provides otherwise. And it does, for the resolution.

But for the sources of funds, there is no exception that says you can go do this down the road. They are not being treated differently than any other applications, because the other applications that have local funds don't otherwise violate this provision of the threshold requirement.

MR. OXER: They are not requesting an exception for the one-mile three-year rule.

MR. DORSEY: They don't need an exception, because they don't violate it.

MR. OXER: Right.

MR. DORSEY: So they are not --

MR. OXER: So the consequence, they don't have to worry about their funding until later. Whereas if you are here, it violates that rule in the positioning of it.

MR. DORSEY: That is it. Right.

MR. OXER: So you would have to have that resolution by April 2nd to not have that violation occur at the front end of the application process.

MR. DORSEY: Right.

MR. OXER: Okay. Professor McWatters.

MR. McWATTERS: Cameron, this is an interpretive issue where perhaps some ambiguity does exist. So I am going to ask this.

MR. DORSEY: Sure.

MR. McWATTERS: Has this issue been presented before? Have you dealt with this? And if so, how have you dealt with it?

MR. DORSEY: I am certain it has been dealt with before. But I would have to rely on someone else's

memory. No. We almost always, the resolution is the route folks go. And so it is rarely do we end up in this situation.

Actually, in this case, I don't think the applicant knew that there was another development that would get them in this situation, until I called them on April 2nd and said hey, aren't you submitting a resolution. And it was like, uh-oh.

But nonetheless, I mean, they did apply for it. I mean, that is a fair statement. They did apply for the funds. The application, or our application is a play for HOME funds which wouldn't get them this exception.

But like I said, the City of Houston's process is such that it doesn't mean that they wouldn't get CDBG funds. It is just, there is nothing on its face, on its face in the application that would suggest that they were even applying for funds that would meet this requirement.

MR. McWATTERS: Okay. So to your knowledge, this is a case of first impression? Okay. In other words, it has not been presented before, these facts? To your knowledge.

MR. DORSEY: To my knowledge; yes.

MR. McWATTERS: Okay. Now let me ask one more question. This one-mile three-year rule, how difficult is

it to determine whether or not a conflict exists? Is this burdensome on the Applicant, or not?

MR. DORSEY: You know, it is part of the due diligence process. You know, with the preparation of these applications, I would argue that there has got to be some division of labor here, in testing of the various rules.

For any one person, it would be burdensome. But for a development team with capacity, it theoretically shouldn't be, it shouldn't be overly burdensome. There is no one else in this situation this year, that I am aware of.

MR. McWATTERS: Okay. So if someone went to our website, would that information be available?

MR. DORSEY: The --

MR. McWATTERS: The location.

MR. DORSEY: Yes.

MR. McWATTERS: If I said I want to build here, then I could look at a map on a website of this Agency and determine that?

MR. DORSEY: We don't have a map on the website. We have an inventory, which is in Excel, which provides the addresses. You can sort it by zip code. You can sort it by census tract number.

MR. McWATTERS: Well, I mean, I can go into Google Maps, and I can put in two locations.

MR. DORSEY: Yes.

MR. McWATTERS: And then I can get a map.

MR. DORSEY: That is right.

MR. McWATTERS: Even I can do that.

MR. DORSEY: That is right.

MR. McWATTERS: Okay.

MR. DORSEY: That is right.

MR. McWATTERS: I mean, it took me a long time, but I can do it. And then I can measure and see the one linear mile. Okay.

MR. DORSEY: Yes. That is right. And this one was identified, this other property was identified in the market study. I think that it is kind of a unique property.

I mean, this isn't the subject of their appeal, but just in all fairness, it is kind of a unique property.

It has some supportive housing units.

So I think the market analyst just wasn't under the impression that it was a direct -- directly going to be a competitor with this transaction. And so it wasn't the subject of --

MR. OXER: But it is essentially an HTC

transaction within a mile.

MR. DORSEY: Right. Yes. It is half a mile or so away.

MR. OXER: Okay. I will have another question or two in a minute. But we have somebody else that would like to be heard.

MR. RACKLEFF: Good afternoon, Mr. Chairman and members of the Board. My name is Neal Rackleff. I am the Director of the Housing and Community Development Department for the City of Houston. This project, before I get to the technical issues at hand, is very important to the City of Houston.

Also, I want to take a moment just to thank the Board for the great partner that you have been with the City of Houston over the years. We have been the recipients of a tremendous amount of tax credit equity in our city, that has generated many units of affordable housing. And we really appreciate your efforts.

This particular deal is extremely important to us for several reasons. We have been trying to get an affordable housing development accomplished in the downtown Central Business District for years.

I have been involved in this industry. I have worked at the City of Houston in numerous capacities over

the years. I have been in the Comptrollers Office, the Mayor's Office, the City Attorney's Office, and now Housing and Community Development.

And throughout those years, I have been involved in revitalization. And we have wanted this kind of development to happen in the CBD for 15 years. The downtown tax increment financing district has gone through our fee processes and has tried to incentivize and attract this kind of development, and has never been successful in doing it so far.

I will tell you also that in terms of working, we have been working very closely with Texas Low Income Housing Information Service and Texas Appleased to make sure that we affirmatively further Fair Housing. One of the real benefits of this is that this particular development would not be in an area of minority or poverty concentration, but rather, would be in one of the very areas that John Hennenberger and other folks in his movement have been urging us to do, which economics often make very difficult if not impossible. So we would really like to see this transaction happen.

I will also tell you that the concentration rule, in my opinion, much of that is designed to make sure that the local communities and officials don't feel like

they are getting too much affordable housing concentrated in the same area. Well here, we have the State Rep, the State Senator in support, and the City of Houston in support.

Now to the issue at hand, with all due respect to the good counselor here, there is no way that the City of Houston will make financial commitments before there is an award of tax credits. We will not do it.

We haven't done it. We won't ever do it. Okay. So what you are suggesting is, in my humble opinion, reflects a lack of understanding of how municipalities work in their funding of these projects, and in particular, the City of Houston.

We get numerous requests for support for tax credit developments. And there is no way we are going to do all of the underwriting necessary to decide what kind of money we would give to those developments if they were financially viable.

Also when you think about the math, we have got a limited amount of resources. And we couldn't divvy that up. We have for example, seven requests for support this year.

Well, if we were going to try to do all seven of those deals, we would have to split the pie in a very

different manner, than if there are only two or three or one, which actually gets an award of credits. So we just can't do what is being suggested that should have happened on the front end.

I will also say that I completely disagree with the fact, with the notion that there is no connection between the timing of this funding and the timing evidence that is discussed in the QAP regarding local funding from political subdivisions. The reason that that provision which Mr. Palmer pointed to is structured the way it is, as I remember historically, is precisely for this reason, because cities are not going to give funding commitments until they know you have got the credits.

This would be fiscally irresponsible for us to do that. It would be somewhat -- there is no way politically, that I could get our City Council to approve a funding commitment when somebody doesn't even have their equity lined up, and doesn't have an award of credits.

So from our perspective, what is being asked is untenable. It is unfair. It just doesn't make any sense whatsoever. And we really hope that a technicality this minor will not torpedo this deal that is really important to the City of Houston. And so my humble request for you would be that you grant this appeal, and that you look

past this particular issue.

Putting my lawyer guy hat on, I would say, too, that typical rules of statutory construction would suggest that an interpretation that would be impossible to achieve is not a valid interpretation of a statutory requirement.

Right. There is no way that we would have made that financial commitment before that threshold deadline. And so we would not. There is no way that they could have complied with that.

So thanks very much for your time. I would be happy to entertain any questions that you might have. And again, we appreciate all of the good work that you are doing.

MR. OXER: Thank you. Are there any questions?
Mr. Keig?

MR. KEIG: The other project that is close by, is the City supporting that project as well?

MR. RACKLEFF: I don't believe that we are supporting the other project that is nearby.

MR. KEIG: What is the installation date on that project?

MR. DORSEY: The other transaction, I think, was a 2010 deal. And so it is either placed in service, or will be soon. It has to, by the end of this year.

MR. RACKLEFF: And I believe, factually, that part of the confusion on the part of the development here was, that this was a pretty old deal, but had languished, and just didn't appear on the radar screen. I don't think it was for lack of them doing their due diligence.

MR. OXER: All right. Cameron -- and I understand your points are about the lack of -- it is not a reasonable expectation to think that the City would make a commitment of funds until the project is demonstrated to be successful in the tax credit round. And we certainly agree with that.

The question is, if you knew you were in a zone, that was in this one-mile three-year restraint circle, okay, that means you need a Get Out of Jail card. You need a pass to walk across that circle. Is that fair, Cameron?

MR. DORSEY: Right. I mean, I expected to get a resolution before April 2nd. You know, if you can't get the financing commitment, then you go the resolution route, and then --

MR. OXER: And understandably, the financing is not a viable commitment on that. But given that that is the case, and they knew it was in one-mile three-years, then a resolution would be the alternate. It is not like,

we are not like -- we are not interpreting this solely as being a consequence of the financing unavailable from the City.

MR. DORSEY: Yes. You have other options to pursue, in case you can't get a commitment. That is probably one reason the resolution option exists.

The other thing I would point out is, just that that was a really broad brush. I mean, we administer our HOME funds similarly.

We wouldn't make a commitment of HOME funds prior to an award of credits. We actually try to make them at the same time. That is not true of every city in Texas.

And each source is also very different. You know, HOPE VI funds, for example, we generally do see a commitment of HOPE VI funds as part of the application submitted to the Department, because it is so fundamental and oftentimes, it creates a no debt transaction.

So that was a really broad brush. I don't disagree with the rationale behind not awarding funds. I am just saying, there were other options provided. And it is not -- we can't paint the whole state that way.

MR. RACKLEFF: And may I make another point that I neglected to bring up, please? One is that when

applicants apply for funding from the City of Houston, we don't look at just HOME funding.

We look at all of the different pots of funding that we have. Our RFP is open to all of those different sources, which includes Community Development Block Grant funding and tax increment financing funding. And in this case, we would look very favorably on using tax increment finance districts funding.

I also would note that the language doesn't -- in the exception in the QAP, it doesn't say that you have to have a commitment of funding. It says, the development is using any one of these different types of funding sources. And that, it would clearly be the case here.

MR. DORSEY: The problem is, it is not clearly the case. I mean, that is precisely the problem. First off, the application indicates they applied for HOME funds.

And secondarily, we don't know that the funds are available. It is a threshold item. We need some level of reasonable certainty. That is the function of threshold items.

MR. OXER: Cameron, on the resolution, you talked about a resolution that you expected by April 2nd. What would that resolution have said? Or some generic

version of it?

MR. DORSEY: The governing body of the unit of general local government where the development is to be located has by vote specifically allowed the construction of the new development located within one linear mile or less from a development, described blah blah.

MR. OXER: So that is not a commitment of funds. It is just saying, okay. We are not opposed to the concentration issue.

MR. DORSEY: Right. But it would have to acknowledge --

MR. OXER: It requires a formal acknowledgment by the City or the entity --

MR. RACKLEFF: And if I could respond to that, please.

MR. OXER: May I, for process purposes, you have to identify yourself, every time you speak.

MR. RACKLEFF: Neal Rackleff, Director of the Department of Housing and Community Development, City of Houston.

MR. OXER: I am taking care of Penny over here. Okay.

MR. RACKLEFF: Okay. Thank you. We did approve a resolution that supported this development. And

the facts were, we all know now that there is another development within one linear mile of that.

So the City of Houston -- the City Council, by resolution, did approve the development and construction of this development within one linear mile. Now they didn't spell out that yes, this is within one linear mile.

I will grant that. But I think that there is more that sufficient ambiguity --

MR. OXER: But they did approve the --

MR. RACKLEFF: They did approve it.

MR. OXER: They did recognize that it was to be built on that location.

MR. RACKLEFF: Yes, sir. Yes, sir, they absolutely recognized it. And they were aware of construction of other developments in the area. And with all of that, you know, again, State Senator, State Rep, the City. I don't know how we could have more support for this deal.

And we also have the Director of the downtown management district, Bob Yuri who -- his whole goal in life is to improve the Central Business District. And he strongly supports this development. So if there is some ambiguity within which you could find it in your collective hearts and minds to extend some mercy, we would

be very grateful.

MR. GANN: I'd like to know what the date is on that letter.

MR. OXER: Yes. Exactly.

MR. RACKLEFF: On the resolution?

MR. GANN: Yes.

MR. RACKLEFF: That was dated March 21st. Well before --

MR. OXER: Mr. Keig, do you have a question?

MR. KEIG: Has that been submitted to TDHCA?

MR. RACKLEFF: Yes, it has been. It had to be submitted to TDHCA to get over the fact that we have the twice per capita rule in the city.

MR. DORSEY: Yes. It was submitted for another purpose. A resolution is required for this particular transaction on a couple of threshold-related issues. And when we get this kind of resolution, because the resolution would cover multiple statutory threshold issues, we needed to identify what their support is, despite the fact that there is this other development located within one mile.

MR. OXER: What you are saying is, they have to -- your expectation is that they would say, we support this, you know. And essentially, you are offering their

waiver, their waiver of the one and three, the one-mile three-year rule, any of the other rules that would be suggested under the QAP.

MR. DORSEY: We need it to -- in order to meet the requirements. Because there are often multiple, overlapping reasons for a resolution, or the need for a resolution. We needed to identify what the purpose of the resolution is. We kind of can't really do without that, actually.

And just really quick, I don't disagree that the City supports this, by any means. Or I knew that the City supported it, when I terminated the application.

It is just technically speaking, you know, there was an issue in play. And there are many developments in line behind this that have the support of their local jurisdiction as well as the state representatives and/or senators that --

MR. KEIG: The QAP says there has to be a vote by the governing body. Was there a vote by the governing body, the council of the City of Houston to approve this?

MR. OXER: Please, Neal.

MR. RACKLEFF: Neal Rackleff, Housing and Community Development, City of Houston. I am going to make it easy on you over there. Right. Yes, there was a

vote. The vote, the City Council accepted a resolution. They voted on that.

And in fact, it went to our City Council housing committee beforehand. It was vetted there. And then it went to the full city council. The Mayor supported putting it on the agenda.

And I will note too, that in terms of the concentration issue, the reason this resolution went before the Board was because of concentration. It was because the City of Houston has more than twice the state average of units per capita supported by low income housing tax credits or private activity bonds.

So the language of the resolution itself does address the question of concentration. And despite that, acknowledging that, the City Council voted to approve this. So I understand counsel is doing a good job in trying to make sure that we follow every jot and tiddle of the law, and kudos to him.

But in this case, I think understanding municipal law and how cities work, I think we fit under the exception for the financing commitment of tax increment finance funding. And I think when you dig into our resolution, that it fits the requirements that Counsel has outlined for you.

MR. KEIG: Okay. I am a little confused. First, I thought it was a letter. Is it a resolution?

MR. RACKLEFF: It is a resolution. Yes.

MR. KEIG: March --

MR. RACKLEFF: You can read it if you would like. I have got a copy.

MR. KEIG: Yes. I mean, we don't have this in the Board book, right.

MR. OXER: No. And let me -- may I --

MR. KEIG: Yes. Go ahead.

MR. OXER: For our collective edification here, if I can. Our general counsel has offered, on the threshold criteria, which is 50.8 subsection (b)(4). Now there are two components of this.

One which addresses the funding, and one which addresses your issue, Mr. Keig, of the vote. It says -- let's see. I have to read some more of this.

"he applicant proposes to construct a development proposing the construction or adaptive reuse that is located one linear mile, measured by a straight line on a map, or less, from a development that the governing body of the unit of general local government where the development is to be located has by vote specifically allowed the construction of the new

development, located within one linear mile or less from a developer that is described under this clause." So the interpretation seems to be that the vote has to say they are specifically addressing the one-mile three-year issue.

MR. RACKLEFF: And I would agree that you can read it that way. But I would also suggest that there is significant ambiguity in there. And I think it would be completely logical and reasonable to read that in light of the fact that we do have a resolution supporting that development, while there was that factual scenario.

And the purpose of this resolution is to make sure that we don't unduly concentrate affordable housing in the City. So that is what this whole resolution was for. And the City Council understood that.

They didn't know that it was specifically going to be utilized to overcome an exception. Nevertheless, the intent of the City Council was that, despite the fact that Houston has got some level of concentration, they wanted to support this deal.

MR. OXER: Cameron?

MR. DORSEY: I just want to add a point of caution. We get resolutions for all kinds of reasons. And I would much prefer you guys go the route of the whole funding thing not being in place, but allowed to be in

place later, than the resolution route.

Because we have got to have resolutions that identify the purpose of the resolution, specifically because of the fact that we need resolutions for various reasons under the QAP. There are other consequences to accepting resolutions that don't specifically address the purpose of the resolution.

MR. KEIG: Wait, I want to ask Mr. Dorsey. So I don't know timing-wise with our application process. But if we were to table this for them to go get the proper resolution that met the exception, would that be possible? Or the timing is such that we cannot wait at this point.

MR. DORSEY: I think you could probably -- that could be done under the waiver process. Basically, allowing an extension to that April 2nd deadline to allow them the opportunity to submit a resolution that is late. If you wanted to go that route, I think that would be possible.

Depending on -- I think we would have to table this issue. Because the waiver isn't at play. But I think we would have to check with regard to when City Council meetings align, and whether or not that would be possible.

MR. OXER: For purpose of -- may I understand

the interpretation, that there is some latitude that defends each of our respective interpretations on this, Mr. Rackleff. I think that is fair to say.

MR. RACKLEFF: Yes. Yes, I agree.

MR. OXER: For purposes of clarification, there was a vote. There was a resolution. It is there. The question is, do we -- is it -- is there any directive in the QAP, Cameron, that tells a potential entity, government entity, that it has to address the issue at hand? That the resolution must address the issue at hand?

MR. DORSEY: In the QAP, I don't believe that there is. But I do believe that does exist in the manual that is used to compile. But I can only fit so much in my brain. And I don't have that at my fingertips at this moment. So I --

MR. OXER: Okay.

(Pause.)

MR. KEIG: Can I just make a comment?

MR. OXER: Yes, indeed.

MR. KEIG: Yes. While I -- in trying to be accommodating with my questions, at the same time, we turned down the other applicants because they didn't get their ducks in a row before they filed their applications. So I am weighing that in terms of, you know, do we really

want to give somebody a second bite at the apple, when other people, we didn't give them a second bite at the apple today?

MR. RACKLEFF: And might I suggest that we maybe adopt a major and minor duck rule? And that this be considered a lesser fowl?

MR. OXER: That is an F-O-U-L in your case. Since we are talking about fowl. A foul fowl. Sorry.

Would there, and this appears to hinge on clarification that the resolution did in fact address the -- on intent of that board, or that governing body's vote did address the one-mile three-year rule issue. Did -- would there be in the minutes of the council any indication that that issue was addressed in the discussion surrounding that resolution?

MR. RACKLEFF: No. There wouldn't be. I mean, this resolution --

MR. OXER: Well, I am giving you as much line as I can give you here.

MR. RACKLEFF: You know, being honest about it, which is critical --

MR. OXER: That is very important for the record.

MR. RACKLEFF: But that issue was not discussed

at City Council in the context of this, one might say, rather arcane and obscure provision of the QAP, that folks on the City Council and our Mayor never get down to the level of digging through.

But they did very clearly know that this resolution was to indicate that, despite a concentration, a certain level of concentration of affordable housing in the City of Houston, they were being asked to specifically approve this.

And for me, I think that you do have a lot of line, and a lot of latitude here to work with, because you know, if we are going to be -- it is -- I am telling you, it is getting so difficult for us to be able to get good deals done in the City, given the pressure we have got from affirmatively, furthering Fair Housing camp, which we are working very closely with.

And in my mind, this would really be splitting hairs to deny something of this magnitude and benefit to us, when there seems to be clearly latitude for --

MR. OXER: You understand of course, we have halves of hairs laying all over the place in here. Right.

MR. IRVINE: When the City Council is presented with decisions, it is obviously provided with extensive back-up and supporting data, that it may not actually

discuss or enter onto the record. Nonetheless, there is a record that that data was made available to them.

Is that the case with your city council? And is there anything on the record prior to the vote that shows that the City Council was given notice of the fact that the other development had been developed within this limitation within the prior year?

MR. RACKLEFF: I don't believe that there is. I can go back and look. But I don't believe that there is.

But I still think we got the funding aspect, which is a pretty good duck to look at. We are getting it right in line. Which I don't know if that makes any sense. But you know, I can only talk up here so long and make sense.

MR. OXER: I am at a -- now, we have had a couple of appeals that have come up, and we split some hairs. And we have made people be diligent.

You know, set an expectation that their diligence be more substantial, and more detailed. I am trying to figure a way to be fair and consistent.

MR. RACKLEFF: I understand.

MR. OXER: Any of you out there that think that you can do this better, I would love to hear the offer.

Any suggestions. I am open for suggestions.

MR. PALMER: Barry Palmer, Coates, Rose. Just one comment on the Chair's statement, about -- I know that you have tried this session, this cycle, to be very fair, and to follow the letter of the QAP as closely as you can.

And to not get into interpretations of what was intended, or what it should say, but rather, what it does say.

And in this case, what it does say is that there is an exception to the ineligibility if you are financing your project with some amount of CDBG and/or TURS funds. It doesn't say anything about a commitment being provided at the time of application. You have to read that in to get there.

So if we are going to be consistent and follow the language of the QAP, let's do it for everybody, and not read additional requirements in for some applicants. And that is what I sense is happening here.

Because the language of the QAP does not go in favor of termination. It goes in favor that we need an exception. We have said that we are financing the project with CDBG or TURS funds.

We have applied to the City. The City has said that they are going to provide those funds. But not until after we get a commitment for tax credits. So the only

way you get to termination is by reading additional language into the QAP that is not there.

MR. OXER: Okay. Any other questions from the Board.

VOICE: Whose motion is it?

MR. OXER: That is what I was going to ask. Who did this?

MS. BINGHAM-ESCARENA: I moved --

MR. OXER: And the second. Okay. It was a motion by Ms. Bingham, second by Mr. Keig to deny.

MR. KEIG: I withdraw my second.

MR. OXER: Okay. The second by Mr. Keig has been withdrawn. Is there another second?

MR. GANN: I can second.

MR. OXER: Okay. Now it is motion by Ms. Bingham and a second by Vice-Chairman Gann to support staff recommendation to deny the appeal. Is there any further discussion? Do we have any other sharper interpretation of this?

MR. McWATTERS: May I ask a question?

MR. OXER: I sure hope so.

MR. McWATTERS: Okay. Cameron, would you repeat, I think you have covered this. But help me out again. On the policy, why from your perspective, is it

important in this case, in the threshold criteria of 5.08(b), the one-mile three-year rule, why is it important there that the commitment be in place on April 2nd, as opposed to other instances where the commitment needs to be in place a month after the award?

MR. DORSEY: Sure. We have extremely limited circumstances where an a applicant is allowed to prove something up later. Those instances are specifically identified within the QAP.

April 2nd is specifically identified as a date later than March 1st, which is the application deadline that you are allowed to submit a resolution. Commitment, the time of commitment is specifically and explicitly identified as a point in time where you can prove up funding for points under 50.9(b)(5). Those do exist.

But it is explicit in that applicable section of the QAP, that those issues can be proven up at a later date. Funding is one that is highly fluid, how a deal is ultimately financed. Lenders change, syndicators change. Funding sources change.

Even the government funding source is allowed to change for the purpose of points up until commitment. Because those issues are so fluid and ever-changing at this point in the process. However, we have got a

statutory concentration issue that is part of our threshold requirements.

And we apply those threshold requirements at a very explicit point in time with reasonable evidence that you can meet those threshold requirements. And in the case of financing, we look for commitments, unless otherwise explicitly stated. And even in those cases, we generally look for them at a later date that is provided for.

MR. McWATTERS: Okay. That means, if you are a lender, then, the possibility exists that you would be less inclined to finance a project due to concentration. In other words, you may say, this may not be an economically great deal, just because there is so much low income housing around.

My project I am financing may have less of a competitive advantage. And therefore, the chances of being repaid are less. So is that one of the reasons it is important to get a commitment up front?

MR. DORSEY: Yes. As well as, functionally, the implementation of this item is to protect the ability of cities to weigh in to this process, when there are concentration issues at play. I understand that the City certainly supports this deal. The weighing in just didn't

happen in accordance with this particular threshold requirement.

MR. McWATTERS: Does the City support other projects in this cycle, in the City of Houston? Are there other applicants on the books?

MR. DORSEY: Yes.

MR. McWATTERS: There are? Okay. Are those other applicants in a way where one is going to take all? Or is it possible there could be grants to awards to multiple applicants?

MR. DORSEY: From us?

MR. McWATTERS: Yes. I mean, just --

MR. DORSEY: Yes. There is definitely an applicant in the City of Houston that is in line behind this one, hoping that this appeal doesn't win. I can state that pretty unequivocally, since someone walked up to me before the meeting and said that.

MR. McWATTERS: Okay.

(Pause.)

MR. DORSEY: Yes. Fifteen. Well, in Urban Region 6. In Houston, it is probably a smaller number. In the City proper, it is probably a smaller number, like six or seven. Four that asked for resolutions. Everyone would need a resolution, if they were in the City, for at

least the two times per capita. So four, presumably.

MR. McWATTERS: And are those applicants, did they file for appeal? Or did they dot all the i's, cross all the t's?

MR. DORSEY: I am not sure exactly which ones those are.

MR. McWATTERS: Thank you.

MR. OXER: Hold on a second. To the extent that you had no other appeals, because you didn't bounce whoever they were, they apparently met their requirements for resolution.

MR. DORSEY: Everyone that I -- we have gotten resolutions for everyone on the two times per capita issue. This issue is a different issue. And this is the only one that I know of that would need a resolution for this particular issue.

MR. OXER: Did the other ones address in their resolution the two times per capita?

MR. DORSEY: Yes.

MR. OXER: Okay. So the City filed those resolutions, addressing the two times per capita for those projects?

VOICE: Correct.

MR. OXER: So they had a resolution on this

end, but they simply did not address the issue at hand?

The one year --

MR. RACKLEFF: I agree with the facts, but not your conclusion. I would argue that we did address concentration. That was the thrust of that resolution.

MR. OXER: Do we have the resolution?

MR. RACKLEFF: I have a copy of it right here, if anybody would like to --

MR. OXER: How long is it?

MR. RACKLEFF: It is not very long.

MR. OXER: Then let's hear it.

MR. RACKLEFF: Okay. "This is a resolution supporting and approving the proposed construction of The Hamilton, a multifamily affordable housing development to be located in the 1800 block of St. Joseph Parkway in Houston, Texas, and authorizing the allocation of 2012 low income housing tax credits to such development by the Texas Department of Housing and Community Affairs, containing findings and other provisions relating to the foregoing subject.

"Whereas, The Hamilton Apartments, LP, has proposed the construction of a 148-unit multifamily affordable housing development known as The Hamilton be located in the 1800 block of St. Joseph Parkway in

Houston, Texas. And whereas the applicant intends to submit an application to the Texas Department of Housing and Community Affairs for 2012 for low income housing tax credit for the development.

"And whereas, pursuant to Texas Government Code Section 2306.6703(a)(4), the City of Houston acknowledges that it has more than twice the state average of units per capita supported by LIH, TC, or private activity bonds, and the developer must obtain the approval and a written statement of support from the City, and submit the same to TDHCA, along with its application for the development to be considered for the award of low income housing tax credits. And whereas, developer has requested, and the City has agreed to provide a written statement of support for the development, now therefore, be it resolved by the City Council of the City of Houston, Texas, that the City Council hereby acknowledges the recitals set forth above, that the City Council hereby supports and approves the proposed development, and votes to authorize an allocation of 2012 low income housing tax credits for the development.

"That this resolution shall take effect immediately upon its passage, and approval by the Mayor. However in the event the Mayor fails to sign this

ordinance, within five days after its passage and adoption, it shall take effect in accordance with Article 6, Section 6, Houston City Charter. Passed and adopted this 21st day of March, 2012."

And it is executed by the City Secretary. And it was voted for unanimously by the City Council.

MR. IRVINE: Excuse me. What was the section of 2306 that was cited in the resolution?

MR. RACKLEFF: 2306.6703(a)(4).

VOICE: Twice is the state average of the provision.

MR. RACKLEFF: I would call it twice the state concentration provision.

MR. OXER: Okay. Are there any other questions of the Board?

(No response.)

MR. OXER: Is there any other public comment?

MR. FORD: Since I am the guy with the target on his back by the next guy in line --

MR. OXER: Well, you have to also identify yourself as the target. Okay.

MR. FORD: I am sorry. And actually, he is -- Cameron is really not mean. Actually, I have a hard time disliking Cameron. It comes and goes, folks kind of like

nausea.

MR. OXER: What, you too?

MR. FORD: That is why I don't eat anymore.

Let me give you a little clarification on this whole one-mile three-year. The developer of that project originally, the other project. The one that is unnamed, and nobody knows about, came to us, and asked us to help him develop the project after he got it.

It is an older guy in Houston who has a big financial statement, but no money. He worked on it, and worked on it for about a year. And kept coming back. We said no. I thought the deal was dead.

Then we then heard that it had become, it had been taken over by another group that we -- are going to do some specialized housing. Some SRO or some special use housing. When I finally went by the project, which was -- let's say it is about a month ago. It is a podium style.

And they actually -- they just poured the slab.

And I think there is a lot of question as to whether he can place the project in service by December 31. Which means, his tax credits are gone.

But after discovering it, I said, well, you know, basically, we still have the money. The City money.

And the City money requires, is the waiver. When I started doing this program in 1989, the application was one page. The application is now 400 pages.

It is impossible to have it be 100 percent objective. As much -- we went through the period when it was all subjective. And the Board just gave credits wherever they wanted. And everybody yelled. And that was a bad thing. And then we went through the period when there was --

MR. OXER: I understand there was some legal trouble associated with that.

MR. FORD: I told her not to do it. Anyhow, they went through this period. And now we have moved over to, we want everything as objective as possible, so therefore, we can't -- we have no criticism.

I can't be criticized if it is this way. Well, virtually everybody now today, out of all the appeals, and the ones previous, there is always a gray. There is some area in there that is not quite as clear. And I think this is a perfect example.

If the City wants a project, the whole premise of the one-mile three-year rule was to save cities some concentration of affordable housing in one area. It is clear that that is not a problem here. It is clear the

City wants the project.

It is clear we have resolutions. It is clear that if we had to have a specific resolution, we could get it. And it is clear we are going to get the money. So this is one of those areas, where if there is anything subject to interpretation, it is not either the need, the desire, the City's desire.

So really and truly, it is like everybody is favor of this, except the guy behind me. And it seems to me when it is not absolutely black and white, then the direction ought to be in favor of what everybody actually would want again, with the exception of the guy back behind me in line.

MR. OXER: We'll mark that as a majority.

Okay.

MR. FORD: Yes. I am sure.

MR. OXER: As opposed to a consensus.

MR. FORD: Feeling cold on the back of my neck.

Anyhow, if you don't have any other questions, I will sit down. I have taken enough time. And I appreciate your letting us move into this spot. I have to go to a wedding.

MR. OXER: Okay. Are there any questions of the witness?

(No response.)

MR. OXER: Okay. We have a motion by Ms. Bingham. And an original second by Vice-Chairman Gann as it were, according to the records. So any other discussion from the Board? The motion is to move staff recommendation to deny the appeal. There is no more discussion?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

MR. KEIG: Nay.

MR. OXER: Okay. The motion passes to deny the appeal with the opposition by Mr. Keig.

(Pause.)

MR. OXER: Okay. Cameron, let's hear the next one.

MR. DORSEY: All right. The next one --

MR. OXER: Let's see. We got him out of here, so he can get to his daughter's wedding. Okay. All right. Let's have the next one.

MR. DORSEY: All right. Royal Garden is 12174. There are a couple of Royal Gardens. So just for the record, this one is in Rural Region 3 in Mineral Wells.

The applicant of this transaction elected the four points for a general population transaction located in a high opportunity area. In order to be considered in a high opportunity area, I will just jog everyone's memory real quick. You have to be three of four factors.

Two of the factors are absolutely required. You have to be in a census tract that has below a 15 percent poverty rate. You have to be in a census tract that has a higher median income than the county median income.

And you have to have one of two other options.

Either you are located within the elementary school attendance zone, which has a TEA, a Texas Education Agency, rating of Recognized or Exemplary. The other option is that you are located within half a mile of a public transportation stop.

In this case, the application submitted evidenced that the elementary school which the kids would attend is recognized. And that evidence was basically a print-off from the website of the elementary school. However, our staff, because we rely exclusively on the TEA rating, we go to the TEA's website to determine that rating.

In this case, the rating was not there for this

school. The rating for this school, my understanding is rolled into another school, because this school only has Pre-K through first, and doesn't do the testing in order to gain a TEA rating. They used to get the TEA rating. And the last rating, I believe was 2010. And it was Recognized.

And so that is why it was reflected on the website. I certainly understand that. But it isn't rated at this point, according to TEA. And therefore, we determined that it didn't meet that prong of the requirement.

In response to staff questions about this, they did submit some evidence indicating that they were within half a mile of a public transit stop. The problem is, that they are relying on a rural transportation service. It is called Public Transit Services.

And the vast majority of rural areas in the state actually are served by one or another rural transit service. I counted 38 of them statewide. The one public transit service serves three counties for a total of 371 square miles. There is another one in West Texas. I only clicked on a couple. But there is another one in West Texas that serves 22 West Texas counties.

So in guidance, we put out there, on January

25th, a question, many rural areas do not have a bus or other transit system with defined stops and a regular schedule. Would a transit service that can be contacted to schedule pick up qualify? The answer is no. The requirement is for an accessible transit stop.

And the requirement is for a bus or transit system that has regularly scheduled service routes, and defined stops for public use. The real concern here was that we would undermine the high opportunity area definition, at least the third prong of that definition in rural areas, if we accepted public transit services that serve vast swaths of the state.

And so we determined that they did not meet the higher opportunity area definition, both because they are not in the attendance zone of a recognized elementary school, and because they don't have a public transit stop within a half a mile of the development site. Staff recommends denial of the appeal.

MR. OXER: Okay. Question from Mr. Gann.

MR. GANN: The second element, these elementary schools, I hate to think that I didn't know this, they are paired with another elementary school?

MR. DORSEY: Yes.

MR. GANN: And one just feeds into the other.

It is the same kids.

MR. DORSEY: Right.

MR. GANN: So what did that -- repeat what that school had, that is fed into it. So if the first one was A, what is B's, exemplary schools?

MR. DORSEY: B's rating, once they are out of first grade, and they go to second grade, I believe that that school also does not -- that school doesn't have a recognized or exemplary rating. Claire can provide more detail. I think they have done tons of research on this.

But suffice it to say, they aren't in an attendance zone that would meet the requirements.

MR. OXER: Okay. Policy says we will have to entertain a motion, and then consider public comment.

Okay. Turn it on so you can hear me. Policy says, we will entertain a motion, and then engage public comment. Does the Board have any questions for Cameron?

Do we have a motion, Mr. Gann?

MR. GANN: I was kind of wondering what the answer was to that question first. I am going to have to hold my deals, until I find out the real answer.

MR. OXER: That is fair. Okay.

MR. KEIG: Let me just, to get the discussion going on, move to accept staff's recommendation.

MR. OXER: Okay. Motion by Mr. Keig to move staff recommendation which is to deny the appeal. Okay. Is there a second.

MS. BINGHAM-ESCARONA: Second.

MR. OXER: Second by Ms. Bingham. Now we can engage in public comment. Recognize, as I hope you do, we are trying to keep some process.

MS. PALMER: Honestly. My name is Claire Palmer, and I represent the developer of 1500 MLK, LLC, on this project. And just -- I wasn't going to start here, but I will start with the school.

When the Applicants put together, this is a non-profit application, they took the four points. It should have been three. We are only asking that three be reinstated. Because it is a senior project and it is being developed by a non-profit developer in conjunction with a for profit developer. And we are in the non-profit set-aside, just to kind of clarify what this project is about. It is a senior project, not a family project. So this whole elementary school system thing is a little odd to me, anyway.

That being said, when they put together the application, they went to the website of Lamar Elementary, which is the closest elementary school. It has on their

website that they are a TEA Recognized campus. If you went to their website today, it would still say, we are a TEA Recognized campus in giant letters.

In the fall of 2011, Mineral Wells ISD redid their entire school system, and developed a policy of having one elementary school that is pre-K, first grade, then second and third, fourth through sixth. Each of those are at different campuses.

Lamar Elementary, which was the only recognized school in the entire Mineral Wells school district, because they became pre-K through first grade, don't have a TAKS test in those grades. So there is no way to rank them. Their last true rating as an elementary school was as a Recognized school, which they have been either Recognized or Exemplary for a number of years.

Anyway, the Applicant took what was on the website. And based on that, and because they were in, they met the first two criteria of a high opportunity area, they took the high opportunity area points.

When we got the deficiency, we sent a letter to the Mineral Wells ISD and asked them for confirmation. Because in my mind, TEA can get it wrong too, just like we can all make a mistake. We agree that the TEA website says that it is an Acceptable school. But we were not --

we did not take that at face value, since the school itself calls itself Recognized.

Mineral Wells ISD sent us a letter confirming that it was a Recognized school, which we provided to staff. But because -- they went back to TEA. And because this school is not in a testing grade system, it is rolled to the next elementary school, which provides second through fourth, I think, grades, and it has an Acceptable rating.

So they have, on their website, they consider this school to now be an Acceptable school. Which means that in Mineral Wells, there is no Recognized or Exemplary school. And so, there would be no way to qualify, even though there are several census tracts that meet the high opportunity criteria.

Based on what we were told by staff, we went back and we looked at the transit system that they have for rural Texas. On the Texas Department of Transportation website, if you pull up public transportation services, which is what is required by the QAP, you get a list of all of the transportation services available from Cap Metro, to DART in Dallas, to Public Service Transit, which is the service in Mineral Wells.

They -- TxDOT considers that public

transportation. TDHCA doesn't have a definition of public transportation in the QAP, or in the definitions section.

I agree that staff posted frequently asked questions and said that it was implied that it met scheduled stops.

I disagree that it implies scheduled stops. That is not what the QAP says. The QAP says that the property has to be located within half a mile of an accessible transit stop for public transportation. That is the whole definition.

I would argue that the rural transportation service, particularly in the situation of a senior development, meets that definition and more because you can schedule service. Public transit service in Mineral Wells and Palo Pinto County is even more scheduled than some of the other rural transportation services.

You can actually schedule them to pick you up and take you to work, and pick you up, and bring you home every single day. Which is almost like a chauffeur service. So we would argue that because this property meets the first two criteria, and was filed in good faith, believing that we also met the school zone, but certainly meet the transportation, that we should be given the high opportunity points.

MR. OXER: Okay. Thank you.

You have a comment. Next?

MR. JOOMA: My name is Noora Jooma. And I would like to start off, I do like Cameron. Talking about transportation, one of the things that Cameron mentioned, that it has to be accessible. Every bus that the public transit system has is handicapped accessible, every bus.

Secondly, the property adjoining the proposed site is owned by the City. And the City is very willing to put a transit stop, should TDHCA require that, to meet the requirements. And I am here to answer any questions.

MR. OXER: And when you say they are willing to put a transit stop, what does that mean in their mind? A bus queue?

MR. JOOMA: Yes.

MR. OXER: Basically a weather shelter?

MR. JOOMA: And a sign saying, Transit Stop.

MR. OXER: Okay. Let's have it, Cameron.

MR. DORSEY: I mean, they put a transit stop there, and they put a thing that protects you from the weather, or whatever. But you still have got to call them up and get them to come, and to wait in the lobby, too. But it is really not what was intended whatsoever.

Also on the list of public transportation, there is also public transportation that is exclusively

for the elderly, or exclusively for persons with disabilities. So you can't click on that link, and just assume that all of them were intended to count as public transportation.

And having a transit stop is something of significance in my mind. You go there, and you wait for a bus, and one comes.

MR. OXER: Or at least you have some sense of when they should be there.

MR. DORSEY: That is right. And so we made sure to post an FAQ to just clarify that perspective.

MR. OXER: And so rather than scheduled, you are talking about routing.

MR. DORSEY: Right.

MR. OXER: Right? I mean, that is the clarification you are making, Cameron.

Okay. Claire, do you have a follow-on?

MS. PALMER: I do have a follow-up to that.

MR. OXER: Okay.

MS. PALMER: Number one, we have been talking about narrowly we interpret the QAP, and the language that is actually there. The QAP says nothing about regularly scheduled stops or routes, or anything else.

And the fact that these rural transportation

systems cover large areas, 371 miles, as Cameron noted, in that area, there are only four census tracts -- in that 371 miles, there are four census tracts that meet the high opportunity definition. So it is not as though by giving a point for this public transportation, you are giving every applicant the chance to get the high opportunity points in rural Texas.

It is, the fact of the matter is, there are very few rural census tracts that meet the first two criteria of high opportunity area, much less the school or the transportation. So the fact that you have a transportation system that is an-on demand service available, doesn't mean that you are automatically going to qualify for the high opportunity points.

And one of the other things I wanted to point out, because I was the one that raised the FAQ question for another developer who decided not to do a project. But there is no methodology under the QAP for disagreeing with FAQ responses that staff gives, other than to take the points, get a deficiency, get a denial of your appeal, and come before the Board.

And I would just like to say that hopefully you can come up with a better way. Because it is not that I don't like Cameron. But sometimes, I do disagree with

Cameron. And there is no mechanism short of what I am doing today to bring an issue like this one, that I think is really clear in the QAP, to the Board's attention.

MR. OXER: And to address your question, that is an important point with respect to our interest in engaging public comment. You know, if it was clear on every one of these issues, you probably wouldn't need us. Okay.

We are here, we are calling balls and strikes on these things. Right. You know. So we try to paint this, so there is as little bit of gray area as we can.

Now owing to the fact that we are in a constantly evolving state of affairs, the QAP is going to get rewritten again. You know we have got to continue to evolve that. There is going to be little spots in there.

But one of the issues that comes up, the very fact that we have appeals here that come up and come on is not lost on the fact that we go back in the next version.

And I think everybody would say that this version over the prior year's version is considerably refined.

Refinements occur in saying hey, this generated a lot of appeals. We need to clarify these things.

So as much as we can, we take the -- accept the

admonition of our Chief of Compliance. There are things that go black and white. We need as little gray as possible. Right, Chief?

So what we are trying to do, is keep -- admittedly, there are some gray areas. Okay. But we would like to have them light moderate gray and not the dark gray.

So we try to keep this one side or the other. But to your point, if you have an issue like that, we have to have some way for the round for using whatever the interpretation that we have, with the knowledge that, for those areas that created, or generated a source of appeals, which there have been several, those are going to be areas that we will focus on in the QAP in the next version.

So that doesn't help you out right now. But I want that on the record, that you know, we do take this into account.

So, Cameron? Another comment? Another thought? Okay, Professor McWatters.

MR. McWATTERS: Just a couple of questions, Cameron. The actual wording in the QAP regarding Exemplary or Recognized schools, what does it key off of? Does it key off of school websites, or is there a

specific reference to the TEA itself?

MR. DORSEY: It is in definition 15, subsection D. And it keys off with TEA.

MR. McWATTERS: Okay. So, if I go to the TEA website, which I have done, and after fumbling around, I even was able to figure it out. And if I saw something there that said, you know, whatever the status is below Recognized. Okay. And then I knew the school website said Exemplary, I think that would key me into a due diligence obligation to try to figure this out. And start making some phone calls. Because I don't think -- I don't know. I can't speak for them.

But I suspect that TEA may not be happy if they have a rating for a school which is below what the school district is posting on its website. So it seems to me that if the statute is clear, and it refers you to TEA, you should start there, and you should see what it says.

And then if you want to, go to the school website. And then reconcile those two. And you find out the school is right and TEA was wrong, get the TEA to change the website. Which I think they would be happy to do. That doesn't strike me as being a huge burden here.

The second question, you may not be able to answer this. But does the State of Texas have a

definition of public transportation with regular bus stops, to your knowledge?

MR. DORSEY: Not that I am aware of.

MR. McWATTERS: Okay. Is anyone aware of the State of Texas definition of that?

(No response.)

MR. McWATTERS: Okay. So there is none. Okay. Thank you.

MR. OXER: Anything else, Cameron?

MR. DORSEY: No, sir.

MR. OXER: Okay. Any other questions from the Board? So we have a motion by Mr. Keig and a second by Ms. Bingham to approve staff recommendation, which is to deny the appeal. Are there any other comments by the Board?

(No response.)

MR. OXER: Are there any other public comments?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: It is unanimous. The appeal is denied.

MR. DORSEY: Just to -- I did want to mention, I don't think it is a good thing if we are providing guidance out there that is inconsistent with the rule, and there is no mechanism to cure that, prior to spending a lot of money.

We try and post our FAQs very early in the process. And would be happy to consider any waiver request prior to submission of an application, on anything that an applicant has concerns about, within our FAQ.

MR. OXER: Expand on that a bit, Cameron. Because if you have something, and you haven't issued an FAQ, or if they have a question and there is no guidance in the FAQ, you would offer the waiver because it is a gray zone. Is that what you are saying?

MR. DORSEY: We would bring it to the Board and allow the Board to determine if in fact our guidance was overreaching, or off-base in some manner. And that a waiver was or was not necessary, based on the rule itself. We would allow that process for sure.

MR. OXER: Okay. As a housekeeping rule here for everyone, including all of us up here, we are potentially in danger of losing a quorum, simply because we have a couple of members that may have to be -- that have travel requirements.

So what I was going to say is, to the extent that we can, we are going to stay and go on this, and stay as hard as we can. But if you have to take a quick pit stop, to the Board members, to recognize that. Don't be gone while anybody else is gone. We can't afford to lose more than one of you at a time.

MR. GANN: I am going to leave pretty soon, so I can get back.

MR. OXER: I hope so. Yes. You don't have a hall pass yet. You sit still.

Okay. Cameron.

MR. DORSEY: The next appeal is 1701 Canton, Evergreen Residences. Application number 12182. This is an application in Urban Region 3. We heard the Cadillac appeal earlier.

This is one of the three developments located within that two-mile area. And so two of them have appeals in front of the Board today. This is the second one of those three developments, that are highly competitive.

This one, we identified 25 points that the Applicant did not qualify for. The first area is under the cost of development by square foot. The cost limitation applicable to this particular development would

be \$95 per square foot as submitted on March 1st. The cost per square foot is \$101.

I do believe that this was in part due to a misunderstanding about what was actually included in that calculation. I think that Applicant initially thought that off sites weren't included. And then, in fact, they are, under the rule, included.

MR. OXER: Question on this. Who is -- the misinterpretation is the consequence of what? You not being clear, or them not being clear in the reading.

MR. DORSEY: I think that they just weren't initially clear that off sites were included in the calculation.

MR. OXER: Did they inquire of you, if they were?

MR. DORSEY: No. I will tell you, I understand some of the reason for the confusion. In fact, we posted an FAQ to clarify this issue, because the language requires you to go to, like three different places to figure out what is included in the calculation. So we went ahead and put an FAQ out there, in January, to make sure folks understood, this is actually how they are going to calculate it.

MR. OXER: But you did that in January.

MR. DORSEY: That is right.

MR. OXER: Okay.

MR. DORSEY: So --

MR. OXER: Which is before the application is made in March.

MR. DORSEY: That is right. March 1. That is right.

MR. OXER: Okay.

MR. DORSEY: So the application as submitted had construction costs that exceed the \$95 they were -- 101 per square foot. We did ask the applicant, provide the applicant the due process. And allowed them to explain or otherwise clarify what the issue was.

We do that as a matter of course. It is not intended to mean that whatever you submit will be accepted, or what have you. In this case, the applicant submitted a pretty extensive explanation for why off sites were included in the application in that manner.

But explained that those offsite costs were going to be paid for by the City of Dallas and that those sites, off sites were going to occur in such a manner that they shouldn't be included in the development costs schedule. And rather, those should be imbedded, I believe, in the acquisition price.

Like I said, this is a very complex issue that I am trying to summarize. We looked at that. And what we do, when we get that type of response is, we try to look at the information provided and see if there is anywhere in the original submission that really supports that kind of clarification.

And I think the Applicant has pointed to one sentence in the state control portion of the application that says something to the effect of the City will provide so much in CDBG funds. And will, for performing the off site costs, and will transfer, or ground-lease the site to the Applicant.

However, that is the extent of the kind of discrepancy. CDBG funds which are going to pay for the off sites, are included in the summary of sources and uses. Those were actually submitted with the intent for those to count for points under one of the scoring items.

And so arguing that they should be excluded from the cost schedule altogether would be a very difficult pill to swallow. And then imbedding them in the site work is -- or I am sorry. Imbedding them in the actual acquisition costs is tough, just because the commitment of funds is from the City to the Applicant.

In the commitment, there is no indication itself that in and of itself, that the City was going to be performing any of the work. By all appearances, the Applicant would be performing the work, based on the application as submitted.

Except for that one statement, which arguably could be entirely overlooked, just because of the overwhelming evidence that the funds are intended for the Applicant. And that there wasn't an error in including them as an offsite cost.

Now, like I said, this is kind of complicated. And the concern here is, this is a very difficult item to administer when there are deficiency responses that want to clarify anything in the development costs. And there is a good reason that it is difficult.

And that is because the construction costs are something that we can't very readily verify changes to. We have to accept the Applicant's expertise in crafting a development cost schedule that makes sense, and discloses all of the costs available, or that are going to be incurred.

We don't know how much it costs to do all of the site work. We do get some verification, third party. But off sites are very similar. Direct construction

costs, we go, and we have a tool. And we try to get within a reasonable threshold.

But a correction to a development cost schedule is a difficult thing to accept when it comes to this item, because you can send out a deficiency. It could be over the limit. And they reduce costs by \$100,000. All of a sudden, it is under the limit. And we don't have a real good rationale for why it was wrong, and we can't verify that information.

Therefore, what we generally do accept a response to is something that is incredibly clear. For example, you have a development, or you have a rent schedule. And the square footage of a unit is 800 square feet. And in the architectural plans, it is 802. It is, like choose. Which one is correct? Very clear. It is already imbedded in the original submission of the application.

So when I looked at this issue, and I looked at it very closely. And I tried to look at all of the components, the point I got to was if I cannot make this decision sitting in my office upstairs on the third floor of this building and in a non-transparent manner, I felt that it was absolutely necessary that I not award the points, and that it be discussed in a public setting.

I will also say that this item is routinely determined, the qualification for the site is routinely determined based on the original submission of the application, because of the gaming that can occur after the fact. And so we almost exclusively look at that original submission. That is one item.

Another item is preapplication incentive points. I would suggest that this should just be a function of the Board's actions on the other items. Because the only reason they are losing preapplication points is that the score we came up with was more than nine points different than their self-score preapp.

If the Board awards any of these other appeal items, then it might get them within the nine points. And then those would be automatically be a reinstated type of thing.

Another issue is length of affordability period. This was four points. This year, this item was changed a little bit. And rehabilitation developments were excluded from being able to qualify for these points.

We put out an FAQ on this, explaining that well, it says if I am proposing to rehabilitate a ten-building development but reconstructing one building, do I qualify for these points? No. Every building in the

development must be reconstructed to be eligible for these points.

The concern there with this item is, if you are doing rehab, we don't want you to qualify for these points, even if, technically speaking, you qualify as a new construction development. Now let me explain that real quick.

If you go out, and you rehab a 30-unit development and at the end of the day, you are still going to have 30 units, that is classified as a rehab. If you go rehab a 30-unit development, and if at the end of the day, you are going to have 31 units, under our rules, you are new construction.

And so we put out this FAQ to say, no. You can't just add a unit. You can't just tear down one building. You basically, this needs to be full on, total reconstruction, or full on from the ground up, new construction. That is how you get these points.

In this particular case, it is a very complicated transaction. Pretty unique. They have got a lot of moving parts. One building is going to be rehabilitated. That building happens to be a community building.

Another building -- that for all intents and

purposes looks like the same building as the other one, to me from an aerial, but they have indicated it is a separate building -- will be reconstructed. Those -- that is the one that contains the existing 30 units on the site. They will then, I believe, be doing some demolition.

And then new construction of some additional units, above those current 30 units adjacent to the 30-unit building. And so you have got kind of a new construction. You have got some reconstruction.

And you have got some rehabilitation, if you think about it from a common sense perspective. And so it is kind of complicated. This development is really is just kind of poking out every side of the box just a little bit.

MR. OXER: And one of these days, you are going to bring us one of these, and it will be easy, Cameron. Okay.

MR. DORSEY: This one, it really is a tough one. It is kind of pushing out the boundaries of the box. It is not clearly outside of it. But you know, that is why we try to provide the FAQ to provide some guidance on this.

You really needed to be tearing down everything

on your site. Again, I want to clarify, because I know the Applicant will. The building that is being rehabilitated doesn't have any units in it. It won't have any units at the end of the day.

But the FAQ doesn't make any distinction in that regard. So in accordance with the FAQ, I didn't feel like I had the ability to go against it. So we took the points away. So that is that item.

In addition, there is repositioning of existing developments. This is a three-point item. We took all three points away for this one.

This item is for substantial rehabilitation or reconstruction of an existing non-affordable development constructed during the 1980s. Now the QAP specifically says, it must contain residential buildings originally constructed between 1980 and 1990. The applicant has pointed to the contained residential buildings originally constructed between 1980 and 1990, and said we have a building. It became a residential building during the 1980s, and therefore, it qualifies.

The problem is, again, you know, they are poking out of the box a little bit. The building underwent an adaptive reuse in the 1980s, and so was effectively rehabbed and converted to a building with

residential units. Prior to that, it was not a residential building.

So when we looked at the rule, we said all right. It says contains residential buildings. That is true. It contains a residential building originally constructed between 1980 and 1990. The original construction date of the existing residential building was 1947, I believe. So that is out --

MR. OXER: Originally, meaning when they poured the slab on the bottom floor?

MR. DORSEY: Yes. They poured the slab in 1947. That is right. And the exterior walls are from 1947. The Applicant indicates, well, you know, this was really a pretty substantial adaptive reuse. We are talking about gutting the building.

But you know, that is a tough thing. You could have -- a lot of existing residential deals undergo rehab, underwent rehab in the 1980s. And that doesn't effectively mean that you get to reset your original construction date.

And so that is the issue at play on that particular item. So in summation of this part, I will just say that staff recommends denial, and let the next folks speak, unless you all have additional questions

right now.

MR. OXER: Okay. Any other questions from the Board of Cameron?

(No response.)

MR. OXER: Okay. Policy says we will engage, we have to have a motion.

(No response.)

MR. OXER: We do have to act on this, for the record.

MR. KEIG: Okay. Then I will move to approve the appeal.

MR. OXER: Which is to deny the staff's recommendation. To approve the appeal. Okay. Is there a second.

(No response.)

MR. OXER: Okay. There being no second, you will have to withdraw that.

MR. KEIG: It just fails.

MR. OXER: Okay. It is laying there by itself.

MS. BINGHAM-ESCARANA: Yes. I will move staff recommendation. It is just all like twelve of them. I count one, two. I move staff recommendation. I will move staff recommendation.

MR. OXER: Okay. Motion by Ms. Bingham to

approve staff recommendation to deny the appeal, which -- okay. Is there a second?

MR. GANN: Well, I will second for discussion reasons.

MR. OXER: That is reasonable purpose to discuss. Reasonable. Okay. Second by Vice-Chairman Gann. All right. Ms. Brown. Okay.

We have got somebody here that wants to speak. We are going to work from this side over? Is that what this is? Okay. You guys are -- okay. All right. Let me get this clear. Okay.

I can see you checking your weapons up here, making sure there is plenty of ammo. So okay. You all are in favor. You all are opposed. Okay. How many of you are going to speak over here? Four.

Well, let me tell you this. Four of you are going to speak. You get to decide what that four is. Okay. So four of you. And you are?

MS. HERZ: I am Jill Herz.

MR. OXER: And you are?

MS. HERZ: I am the Board Chair of Family Gateway in Dallas.

MR. OXER: And you are thumbs up or thumbs down?

MS. HERZ: I am double thumbs up.

MR. OXER: Okay. You only get to vote once.
Okay.

MS. HERZ: Mr. Chairman, Board members, Jill Herz, a Board chair of Family Gateway, a non-profit in Dallas, Texas. It is my privilege to be here to speak on behalf of 1701 Canton. Our group also appreciates your time today to hear this appeal.

This project is truly unique for several reasons. 1701 Canton will serve the fastest growing segment of the homeless population, children and their families. 1701 Canton is sponsored and owned by two non-profits.

1701 Canton is strongly supported by the City of Dallas, which already owns and leases a portion of the site to Family Gateway. Our local competition, the Cadillac Apartments, and 1400 Belleview will not serve the same segment of the population that we will.

Cadillac Apartments is designed to serve the chronically homeless adult. It is an SRO. 1400 Belleview is simply workforce housing. Our project addresses the most underserved, invisible segment of the population; homeless children and their families.

Our competition are for-profit developers; we

are two non-profits. Family Gateway was founded 25 years ago by then--Mayor Annette Strauss to serve homeless children and families. We have a history of a partnership with the City of Dallas 25 years ago.

The City gave us the two buildings that currently comprise the Annette G. Strauss Center. We are also located next to City Hall. We also have a partnership with the First Presbyterian Church, located in downtown Dallas.

First Presbyterian Church has been there for over 150 years. First Presbyterian Church also serves through its Stewpot, it serves 1,500 meals a day to homeless people. It also provides about 2,000 people every month with services such as case management, counseling, job training and extensive youth programs.

1701 Canton will also have a community service center. It will have a police substation. It will have a Montessori School in it, that will not only serve the children that live at 1701 Canton, but children in the community.

So Family Gateway, First Presbyterian Church, and the City of Dallas have joined forces on this project to serve the most at risk segment of the population, the most salvageable segment of the population, homeless

children. This is truly a rare opportunity. This is the Halley's Comet of projects, the likes of which you probably have never seen before, and you may never see again.

This project aligns like the planets aligning. Family Gateway, First Presbyterian Church, the City of Dallas, the Stewpot, Dallas Housing Authority, who have committed vouchers to this project. We have the support of our neighborhood.

We have Farmers Market, and all the adjacent property owners in support of us. We also have the support of the community, both residential and business.

This opportunity will be lost after this year. The homeless children and families that we'll serve will remain underserved, invisible. There are issues beyond our control, including land control issues that will not likely align again.

This is our one and only chance, because there are no forward commitments. Our competition, they have been here before. They will be here again. This is our one chance.

In closing, I would like to talk about the hereafter, and that is what we are here after. Personally, I am here after ending childhood homelessness

in Dallas in the next five years. Family Gateway CEO and the First Presbyterian Church, they are here after saving souls. What are you here after? Why did you accept this appointment?

MR. OXER: I have asked myself that regularly here, recently.

MS. HERZ: Was it to do good? Was it to make a difference? Was it to make certain that our precious resources are being invested wisely. Was it to improve the lives of your fellow Texans, in particular, the least among us.

In a few minutes, when you approve our appeal, you will know that you have provided hundreds of homeless children with a warm, safe place to lay their heads at night. Thank you for your reconsideration.

MR. OXER: Thank you, Ms. Herz. Any other comments?

(No response.)

MR. OXER: Okay. We'll hear -- who is next over here?

MS. MITCHELL: Members of the Board, my name is Bernadette Mitchell. I represent the City of Dallas. And I am here to speak on behalf of the Appellant, 12182, 1701 Canton. Specifically as they relate to the City's

intended financial investment, the intentions there. And if the project were to get tax credit awards, and as the appeals relate to the actual site where we own two buildings.

It is very important to clarify. I think the City of Houston did a good job of touching upon some of the complexities that go on within the cities in trying to accommodate the schedule of the state, and allow all of our applicants to have a level playing field. So it is important to know that we start with you all in January.

We also receive a preapplication from all of the developers, for as much information as they can provide at the time. We brief our Council in February. We actually go through two successive briefings. And then accommodate, again, the TDHCA schedule by providing a resolution from our Council of support.

And we in Dallas do include all of the technical information for one-mile three-year, and all of the other QAP requirements for each of our applicants. That comes out so that they can meet the deadline for the state application, March 1st.

With the need for large amounts of gap financing in many of the deals, not only due to the market conditions but particularly, when you are dealing with

permanent supportive housing, we at the City also, like Houston, look to see who is going to move forward in the round. Who will continue and pursue the tax credits. Who is going to score well, obviously.

And then we, too, have scarce resources. We want to plan those carefully. And so we will move forward with you all as those applicants get support letters from the community, as they get state -- or Representative letters to you all.

And we will move forward then, in May and June, usually to update the City Council on where the scoring is. Who has moved forward in the round. And then also to make recommendations on funding. We look at funding in a bigger picture. Obviously, even if the City is going to undertake an obligation, we will add that to the ask of the development itself.

So in this particular case -- well, let me step back. During the process, all developers that provide applications to us are provided very standard letters. And so, those go forward to the state staff, and they basically say this applicant is supported.

Here is your resolution with all of your QAP references. And then if there are deficiencies, and if there are clarifications to the City's position, we move

to write those letters as the deficiencies are pointed out.

So in the case of 1701 Canton, the Dallas City Council did provide a resolution on February 22nd with the acknowledgment that the project would need funding of about \$4.6 million if the tax credits were awarded. As we move forward to underwrite, and look at the project, and as a permanent supportive housing project, and as a site that we owned, that we lease back to Family Gateway, the City of Dallas provided an intention letter to the TDHCA staff, and the developer on April 12, of 2012, that the City would be the purchaser of the property, and that we would provide off site and on site improvements to the tune of \$2.6 million.

The City would then lease back the site to the developer for this particular project, given the tax credit award. So although the staff comments in your briefing material sort of suggest that that was an unknown, we provided that clarification letter directly from the City in April, April 12th.

So with those intentions, the staff will move forward with a June 27th City Council action, a formal action, that will provide a loan to the developer and that will set aside the funding, the \$2.6 million, for the City

to move forward in acquisition and site improvements. As I mentioned, they will vote on that on the June 27th meeting. It is on their addendum.

And as we -- as I shift gears and talk just about the property itself, we own two buildings on that site. Some of the materials suggest that that would be considered one building. We at the City consider our property two buildings.

One is a community service center. And one is a 30-unit permanent supportive housing building that houses families with children. It was a 1987 conversion of a commercial building. And I think that aside from your regular residential properties that may have been rehabilitated in the '80s, I think you will face at some point a question about downtown commercial reuse buildings as you move forward.

And there have been quite a number of those obviously, in Dallas. And as I mentioned, the City of Dallas currently leases to Family Gateway under our agreement.

Then I believe that the staff received a copy of the plat for the site, showing our two buildings and two parcels. And also, that there was a certificate of occupancy provided for the 1987 conversion. So with that,

I will leave it open.

MR. OXER: Okay. Any questions of Ms. Mitchell?

(No response.)

MR. OXER: Okay. Do we have another speaker in favor? Okay. Do we have another speaker in favor?

VOICE: [inaudible]

MR. OXER: We have a couple up here, for the record. Cameron has got one right over there, if you like him.

MS. SISAK: Don't make me take out my QAP, Cameron. Okay.

Good afternoon, everyone. My name is Janine Sisak. I am the Senior Vice President and General Counsel of Diana McIver and Associates. We served as consultants for this application.

I want to thank you for the opportunity to speak today. I get to speak on the technical issues. You have a long version in your Board book. So I will try to be brief.

I do want to say that these issues involve a couple of gray areas which we have talked a lot about today, as well as an area where I feel that staff hasn't really applied the rule consistently amongst the

applicants in this funding round. In all of these cases, our interpretations of these sections are simply different than staff's. And we ask that you use your discretion to acknowledge that our interpretations are equally permissible under the QAP.

I also want to note that we took all of these points in good faith. I expect that you will hear from some of our for profit competitors that we didn't follow the rules, while they followed the rules. This is not the case.

We did follow the rules to the best of our ability. But in this case, two of the rules were vague, and one wasn't applied consistently.

That being said, I will start with the most complicated of the three issues; cost per square foot. Our position here is that the rule hasn't been applied consistently amongst the applicants.

On this item, we received a deficiency because we doubled-counted our offsite costs, which took us over the limit. We were then invited by staff to cure this deficiency by submitting revised exhibits.

At that point, we realized that we should not have included offsite costs at all, because as Ms. Mitchell testified, the agreement between the developer

and the City was always first, that the City was going to assume two of the land contracts. They already had the other third parcel under state control.

Then they were going to conduct certain onsite and offsite work. And finally, they would lease it back to the Applicant for a nominal lease fee. This was always the deal. This has always been the deal since 1987.

So because state acquisition and offsite costs are City costs, and not development costs, they should not have been included on the development cost schedule, nor included in the calculation for purposes of this point category. It is important to note that the structure was carefully laid out in the application, which I will quote.

"The City of Dallas has committed \$2,603,720 for this project to assist with state acquisition and state improvements. The City will use those funds to purchase parcels 1 and 2, make site improvements, and then we will lease it back to the Applicant for a dollar a year."

So on deficiency, to correct this inconsistency, which is allowed under the administrative deficiency process, we simply deleted these costs, which did not result in additional review by staff. It did not change our numbers. It did not change our tax credit

request. It changed nothing.

We did not change our numbers slightly to get below the cost per square foot threshold. Going back to a point that was discussed on one of the earlier appeals, all -- every applicant takes these points. No one was relying on us not to take them, to take them. It affected no one else's decisions in moving forward with their application.

Bernadette testified about the City process. And Cameron kind of brought some of that up. And I wanted to address it. In an effort to be completely transparent on our application, we had a form letter from the City of Dallas that said that they granted \$4.6 million for this project.

We put it as a source. We put it as a use in site acquisition. And then we double-counted our offsite costs, in part because the QAP has some language to the extent that if offsite costs are imbedded in site acquisition costs, you have to fill out an offsite cost breakdown. And then you have to include those offsite costs on your development costs.

So in this kind of last minute scramble to reconcile this form letter with all of the other information that was coming in, we overrepresented our

costs. We overrepresented our costs. So that is kind of how we got to this place.

Our main point on this issue is that at least two other applications in this funding round, in this same region. And this is the crazy part; the two other applications that I found that had a similar project are sitting right here. It is Belleview and Cadillac.

And in both of those situations, if you take the development cost schedule, and you take their square foot on the application on March 1st date, they are both over the limit. I did an Open Records request.

And in one case, I think it was Belleview, they were allowed to deduct their retail and commercial costs from their calculation. And then I think on the Cadillac there was some clarification about square foot. I couldn't really follow it. But pretty much, here is the deficiency. This is how we are correcting it. Great. Move on.

There is also Board precedent for granting this appeal. Last year, this Board decided in favor of the Applicant in the Villas at Tuscany, application 11074 on a very similar issue. In that case, the Applicant was allowed to submit new plans with different square foot numbers to cure this deficiency item.

So I really want to make clear here. You know, we might have made a mistake in how we represented things.

That mistake was made at our extraordinary efforts to tie everything together at the last minute. And our position here is that other people had similar problems, and they were allowed to cure it.

Regarding the repositioning points, this is a new point category that was created to give a point advantage to housing stock built in the '80s. The QAP requires that the development "contain residential buildings originally constructed between 1980 and 1990."

In this case, the building was an office building that was gutted and rebuilt as residential in 1987. This situation fits squarely within the language of the QAP. These residential units were constructed and placed in service for the first time as residential in 1987. Prior to that, the residential units did not exist on this site.

Cameron mentioned certain residential developments being placed in service several times. That does happen. You can have a residential development that is placed in service, it is rehabbed, it is placed in service again. We distinguish our situation because it was placed in service as residential for the first time in

1987.

The last point category might be affordability. This is four points. For this point category, the QAP clearly permits points for reconstruction and new construction projects. That is what this project is. We are new construction, plus reconstruction.

The only development, only developments that propose rehabilitation are not eligible for these points.

This was added because long term affordability can only be ensured if all the units are new. Here, there is no unit or building that meets TDHCA's own definition of rehab.

All of the proposed units here are brand new. Staff is focused on the community service center as the basis for denial. But this building does not meet TDHCA's definition of rehab, which is, "the improvement or modification of an existing residential development."

Several people have testified; there are no units. It is a community service center. There are no units in this building. This building was renovated several years ago.

And at this point, as part of the proposed development, needs cosmetic improvements, the residential units in the adjacent building, on the other hand need

full demo and reconstruction since they have not been touched since they were originally constructed in 1987. Again, new construction, new units. Reconstruction, new units.

We have got a community service center with no units. So the fact that it is being renovated is irrelevant under this rule.

In closing, with regard to this point, we just think staff's position to deny this project, the opportunity to provide long term affordability on 130 brand new units in downtown Dallas that will serve 500 children, homeless children and their families, doesn't seem like the correct result here, from a policy perspective. Why wouldn't you want to encourage long term affordability in a project like this?

To deny it just because a community service center is getting, you know, a paint job, seems -- it just doesn't seem to make sense. So those are my comments. I am going to pass it off to Diana, I think. And I will be available for questions. I know there will be lots of them.

MR. OXER: Good.

MS. SISAK: I'll just --

VOICE: -- it appears that we have quite a few

speakers in opposition. Would I be allowed as the fourth speaker to go last?

MR. OXER: As in very last?

VOICE: Yes.

MR. OXER: Is that what you want? There has been three of you so far. Three of you.

Ms. Brown, have at it.

MS. BROWN: Good. My paperclip is still up here. Okay. Sure I have got this set up right.

MR. OXER: I would remind all of you who wish to speak. I would remind everybody who wishes to speak that we are under some time duress here.

To the extent that it is possible, make your points briskly and efficiently. I know, these are -- as some of the latitude that the Chair does retain is a certain amount of discretion in making sure that everybody has an opportunity to speak, which I think is important, particularly on a critical appeal.

MS. BROWN: Yes.

MR. OXER: That said, we have ultimately got to get to a point where we make a decision; there are others that are there. I can see now that, and anticipating we are going to have to have a -- shall we say, an extraordinary response to the last, to the rest of the

list.

Because it appears that we are not going to get to all of them. But I would like to make certain that we get through this one before four o'clock, which is in 25 minutes, so that the Board that you have here will be able to act. So with that, please identify yourself.

MS. BROWN: Thank you. Honorable Chairman Oser and members of the TDHCA Board, again, my name is Linda Brown. And I am the experienced HUB developer and general partner for a proposed 2012 tax credit application; 1400 Belleview, TDHCA number 12098 in downtown Dallas.

We are in support of the TDHCA staff's recommendation, and request that you deny the Applicant's request for their appeals. Evergreen Residences, TDHCA number 12182 is the other application we are directly competing with in Region 3, because we are within two miles of each other. Based on their self-score, the Evergreen application initially was the highest scoring urban application in Region 3. Today, they are in last position.

The 1400 Belleview team knows and respects the service the Family Gateway non-profit provides as a women's homeless shelter. In recognition of this much needed assistance, 1400 Belleview, as we proposed last

year will set aside units for victims of domestic violence.

The Evergreen application was reviewed by the TDHCA staff soon after submission. And many deficiencies were identified. The intent to provide permanent supportive housing is important. However, this application as submitted requires the Board to overturn many serious and important parts identified by staff in your Board material.

Tamea will speak in just a few minutes in greater detail about that. 1400 Belleview's application is a strong affordable housing proposed development in an urban downtown environment that has the full support by the neighborhood, downtown business community, the City, as demonstrated by its passage of the funding resolution in June 2011 and Mayor Pro Tem Pauline Medrano who traveled to Austin last year to personally share her support and deliver that resolution to you.

The Dallas City Council this year, to date, has not voted authorizing the City's financial commitment by entering into development agreements with Evergreen. The June 2011 Council Action by resolution remains effective today.

The Council voted and unanimously approved its

financial commitments and approved for the City to enter into the development agreements with 1400 Belleview, conditioned only on the award of tax credits. This resolution was provided in our application.

We are excited about the opportunity to construct the first affordable multi family mixed use, transit-oriented development this close to Main Street that will offer families one, two and three-bedroom units.

Our application received all of the points originally self scored after staff's careful review. We are ready to proceed.

Our environmental is clear. Our zoning is in place. Our engineering feasibility study is complete. And our funding is in place. We are, again, the highest scoring project proposed in the City of Dallas. And are presently in a position for a credit award.

The 1400 Belleview development and ownership team did follow the rules and procedures to complete our application. We worked very hard last year, and again this year to present to you an application worthy for a tax credit allocation.

We respected the QAP, and other material providing the guidance and direction on its completion. If the Board approves the Applicant's appeals, 1400

Belleview will not only lose its leading position, but will lose the opportunity for a 2012 award altogether, because we are within two miles of each other.

Therefore, on behalf of the 1400 Belleview development team, I strongly and respectfully urge the Board to support the staff recommendation and deny the Applicant for Evergreen Apartments appeals request. Thank you for your kind attention on this important decision.

MR. OXER: Thank you for your comments. Any questions from the Board?

(No response.)

MR. OXER: Okay. Good. Tamea?

MS. DULA: Good afternoon. Tamea Dula, Coates, Rose Law Firm on behalf of 1400 Belleview. The application for Evergreen Residences has been presented as a very complicated application.

It actually is not that complicated. After reading multiple deficiency notices, and responses obtained through the Open Records Act request, I have determined that the only thing that really complicates this particular application is the fact that there are three different parcels.

The Applicant has further created complications by trying to treat buildings on a per building basis, as

to whether or not they are new construction, reconstruction or rehabilitation. That is not the way it works.

It is the project that you look at. And this project, because it has new construction is a new construction project. This applicant is trying to qualify as a rehabilitation project and reconstruction project in order to qualify for some of the points here.

I need to reveal to you an issue that has come up, which I have discussed with your General Counsel. And that is, that yesterday we filed some substantial challenges with regard to this application.

I believe that to the extent that those challenges deal with things that are discussed today, Ms. Deane has advised that in all probability, the Board determination would preempt the challenge that would yet to be reviewed by the staff. However, we additionally have challenges that are not being discussed today, that are quite serious, and go to whether or not the project should be terminated.

Having reviewed the application extensively, I think that there are site control issues that have not been addressed. And that this project probably should be terminated for that purpose.

I would like to speak first with regard to the costs per square foot points, twelve points. Everybody needs them. There has been an effort of our devolution of multiple deficiency notices and responses to move certain costs to the City of Dallas in order to get them off the development costs schedule, for the purpose of making these points and qualifying for them. These include the costs of acquisition, demolition, building, offsite improvements.

And then the City of Dallas is going to ground lease back to the Applicant. There is a problem, though.

Three tracts, one of which is owned by the City of Dallas and currently under lease to a related entity, the Family Gateway group. Two tracts are owned by completely separate third parties, as far as I am aware.

Those tracts are assignable to the Applicant and have been assigned to the Applicant, but are not assignable to the City of Dallas under the terms of their purchase and sale agreements. There is nothing in the application that permits the City of Dallas to purchase those tracts.

Additionally, there is nothing in the application that permits the City of Dallas to enter into a ground lease with this applicant. There is no contract

for a ground lease. There is a conditional contract to ground lease the City of Dallas' tract. But it is at the City's discretion.

This does not comply with site control. And there is no contract that I could find in the application that requires the City to make these offsite improvements to do the demolition, in order to achieve the removal of these costs from the Applicant's development costs schedule, and make them obligations of the City of Dallas.

I now would like to address the repositioning of existing development points. These are three points. Also very critical. These points require that you have a rehabilitation of an existing residential development.

First of all, you don't have an existing residential development. An existing residential development requires residential Units with a capital U. A Unit with a capital U, is defined as a unit that contains all of the necessities for cooking, dining and sanitation.

We have provided in the challenge that has been filed evidence from the City of Dallas Building Inspection Department showing that the current plans of a quote residential building that is currently on the City of Dallas' tract, is for a 30-unit homeless shelter. The

residences, the units are bedrooms. There are community cooking areas, community dining areas. And community restroom areas.

The individual bedrooms do not appear to have any kind of sanitation facility whatsoever. It is like a dormitory. These do not qualify as units, which you have to have, to have an existing residential development. So number one, we don't have existing residential development.

Number two, we don't have a residential building that was originally constructed in 1980 to 1990.

Number one, the only building that has quote "residences" in it is the building for the shelter. That shelter building has 30 bedrooms in it, and communal facilities. It does not meet the definition of residential.

Number two, the City's zoning does not regard it as a residential development. Under the City of Dallas zoning, it is qualified as lodging. It is a boarding house.

The certificate of occupancy that was issued in 1986 has been submitted with a challenge. It regards it as a boarding house. All of these things in consideration, we think that you should deny the points requested for both the repositioning of the existing

development, since it isn't an existing development. Nor is it an existing residential development.

And also, deny the points for the cost per square foot. Thank you very much. If you have any questions, I am happy to respond.

MR. OXER: Thanks, Tamea. Any questions of the Board?

(No response.)

MR. OXER: Okay.

MR. GREEN: Mr. Chairman, members of the Board, Mr. Irvine. I am John Green, and I am Executive Director of Central Dallas Community Development Corporation. I am also part of the development and ownership team, and Cadillac was one of the three leading projects in this very competitive area of the City of Dallas.

I am going to try to limit my remarks to a couple of points. First, the repositioning issue. Repositioning points require residential buildings originally built between 1980 and 1990 to be repositioned.

These buildings don't qualify on either count.

They were not built as residential buildings. And they were originally built in 1947. I don't think any tortured reading of the language can take --

If the language had simply said, residential

buildings built between 1980 and 1990, maybe you could argue that conversion would qualify. But when you add that word "originally" into it, I can't imagine how the language could have been any clearer. The foundation needed to be poured in that ten-year period, and it wasn't.

And since much else has been covered, I am going to just address one other point. And that is the use of the deficiency process here, to try to correct the question of the cost per square footage.

Reading from the appeal filed by Evergreen, it says that the inconsistency was non-material because it did not rise to a level of material deficiency which is defined in the definitions in amenities for housing program activities 2012-2013, as quote, "any individual applicant deficiency which, if addressed, would require in the Department's reasonable judgment a substantial reassessment or reevaluation of the Applicant."

Here, I think that the Board has to find that a change of over \$2.6 million costs, well over 10 percent of the project, a change in the structure of the ownership. It requires that the City own it and lease it to it. It is a material difference.

And the deficiency project process is simply

not set forward to make material changes. It is to correct problems and consistencies, omissions. It is not to make wholesale changes in a projects nature. And that is really what is happening here.

And for that reason, I think it is improper to find that this deficiency has been corrected. Instead of what you have, in effect, is an amended application. And it is untimely, and it should not be considered to be timely. Thank you very much.

MR. OXER: Okay. Any questions of Mr. Green?
Diana?

MS. MCIVER: Diana McIver. I am President of Diana McIver and Associates. As you have heard, we are the consultants to the Applicant. Despite my respect for Tamea, I will say, this is a very complex transaction with lots of moving parts.

And for me, and we have done a lot of these, we recently a few years back were the developer for Seton Home, in developing transitional housing for teen moms with 23 sources of financing. So I have seen difficult transactions. And this is an extremely difficult transaction.

But what it does, and all of us were at those Board meetings last year. Not all of us, but most of us

were at those Board meetings last year. And we saw how difficult it is to do supportive housing for homeless families in the City of Dallas. We saw that opposition.

And so as a result of that, two premiere non-profits in the City of Dallas, Family Gateway and the Presbyterian church came together. And they came together to make this housing work. And they came together with their partners. And one of their partners is the City of Dallas.

The City of Dallas actually owns part of this parcel. And they have for 25 years, been leasing the land to Family Gateway, so that they could provide that transitional housing for families and kids who are homeless.

Now we also have the Dallas Housing Authority coming into this transaction. And that hasn't been talked about a lot. But if you are going to do supportive housing for families, and mind you, we are doing small units. On the housing side, we are actually doing one, two, three and four-bedroom units.

And why are we doing that? We are doing it because Family Gateway has recognized that particular need. There is a need. They have eight-person families who are homeless. And so we are not tackling the easy

stuff. We are tackling the hard stuff.

And so what they were able to get, which is nearly unheard of, is the Dallas Housing Authority is granting 100 project-based Section 8 vouchers because they are proposing to serve folks who can't afford those 50 percent rents. They can't afford those 60 percent rents.

And that is one of the moving pieces that actually makes this work.

The interesting thing is, and they have got neighborhood support. And they have got elected official support. But the interesting thing is, that they have been extremely transparent in this whole process. Remember, lots of opposition last year to downtown housing for homeless families.

And they actually put a blog up, and people could comment on it. I mean, they were so transparent. And because of this transparency, and because they were willing to work with the community, with the neighborhood, they were able to get the support of those neighborhood organizations.

Now what is going to be built, it is not vanilla. It is not even as good as a hot fudge sundae. I mean, this is extremely complex. But they are building 30 transitional units. And they are building new

construction, 100 apartment units, apartment-style units.

And so what we are doing, and we are doing it for some really good reasons. We are rehabbing that existing community center that serves the homeless. Now, we wouldn't even be talking about these affordability points if we had agreed to tear that building down.

But just a couple of years ago, they put a million dollars into that service center. Remember, that service center is being used to serve homeless folks in the community. Not just the folks who are there in their transitional housing program.

It is a community center, to serve homeless families. So it did not make any sense to tear it down. So we have that element of rehabilitation. And then we have reconstruction of the transitional housing, dormitory-style units.

And then we have new construction. And so basically, we didn't ask to do this. We are not gaming the system. You don't game the system for this kind of headache. We ended up with three styles of construction.

Not because we are gaming the system, but because that is what we had to do to make this work.

Now we are a little different, I think, than

previous appeals that you have heard today. Because this isn't a check the box category. This is a category where we really do see gray areas in the 2012 Qualified Allocation Plan. We are not asking for waivers of those rules.

We are asking you to look at this through our set of eyes, and our interpretations differ from staff interpretations on a couple of these issues. And that is not to say that they are wrong. It is not to say that we are wrong.

These two new categories were written without a lot of backup, and without a lot of description. And so you can literally look at it through Cameron's eyes. You can look at it through our eyes. And I believe you could literally say, you are both right. Or neither of you are wrong; whichever way you want to look at it.

But here is the key issues. And one, we get to that long term affordability point. I was part of last year's QAP. And I know when this change was made.

And the whole idea was that if you are going to do rehab, if you are going to slap some paint on a wall. If you are going to get a new refrigerator, then we don't want you to get extra points for long term affordability.

Because you are not really creating a new product that

deserves that affordability. That is where we were on that issue.

And so to simply look at what we have done, we have carved out -- as I have said, we could have torn it down. We have carved out that community service center for rehab, because if we do that, we can -- we save the million dollar investment, which was a good investment, and we allow Family Gateway through a rehab process, to continue serving homeless families while the rehab goes on. It makes a lot of sense.

But every single unit that you get with a tax credit, every single unit is going to be brand spanking new. And why wouldn't we want the Family Gateway and Presbyterian church? Why would we not want them to agree to 40 years of affordability on those units? Dallas needs that long term affordability on those units.

So it is not a black and white area of when it was put in the QAP last year. And we look at it as, what we felt the intent was. And staff looked at it as just having that little piece of rehab. You even heard Cameron saying, there is a little gray in that area.

We didn't -- you know, it wasn't addressed. It is not in the QAP. The second one is repositioning. And again, we really believe that the QAP is silent on when

the slab needed to be constructed.

It was an office building. The City of Dallas came in in 1987, repositioned it to this residential dormitory for homeless families. And we really believe that we are within the letter of the QAP on that issue as well.

And my third issue gets to fairness. And the fairness deals with the fact that our application, upon deficiency, submitted information which basically admitted to the fact that erroneously, we put offsite costs in the application not once, but twice. We put them in there twice. They were part of the City acquisition of the site.

We put them again on another line item. As part of going through that administrative deficiency process, we discovered that. We addressed it. And we felt that we would be given the opportunity to provide clarification.

As you have figured out, there are three of us in this two mile area of Dallas. And only one, because of the law, only one can be granted tax credits this year. We -- our competitors both got to clarify things with that very same issue in their QAP.

And last year, there was a precedent set by the

Board in allowing an applicant to clarify a similar type issue as part of the administrative deficiency. So all we are saying is that as far as fairness, we are asking you that you grant us the very same right to be able to provide clarification in our application, which will clearly bring us within that twelve points for the cost per square foot issue. So those are the issues before us today.

And I just wanted to echo that I think it is a wonderful opportunity for the City of Dallas to be able to provide housing for homeless kids and their parents. And we never played games with this QAP. And in fact, when you heard the qualified census tract issue this morning, we never gamed that one.

We knew from the outset, you guys, Cameron was going to say, we are in a qualified census tract. We are in a qualified census tract. So we just took the six points. We didn't pretend like we were going to take seven points for that.

So we really -- we have done all of this in good faith. And I really do ask your consideration of our request to grant the appeal. Thank you.

MR. OXER: Thank you, Diana. Okay. Are there any questions of the Board? Okay.

MR. DORSEY: I would provide one, just, thought. I am a little bit concerned by the pointing out the two other applications and perhaps changes were made.

So regardless of what kind of motion is made with respect to these issues, it would be nice to be able to bring this issue, the twelve points per cost per foot back if I go back to the office. And after talking with Tim and our General Counsel on the subject, with all of the other information on the other two applications, if we find that there is some kind of inconsistent treatment, I would like to be able to bring this back for potential reinstatement, if you took the points away today.

I do think consistency, particularly between three applications within a two-mile radius, and only one of them can get done is absolutely critical. And I think that is a fair thing to do.

MR. OXER: That is a fair point for you to point out. We want to -- certainly consistency and fairness is something we strive to achieve in a very competitive and difficult and detailed, emotionally charged at time process. And we know that each one of these projects are worthy.

I have to say again that we are looking at

projects that every one of which we assume would be appropriate for credit financing. So at this point, I have got your point, Cameron. Michelle has got a letter to be read in.

MS. ATKINS: Michelle Atkins, Executive staff for TDHCA. We have a few people who have -- would like to register opinion on this item, project number 12182, 1701 Canton, Evergreen Residences.

The following people are against the staff recommendation; Robert Alberts, Kristy Bowen, Buddy Jordan, Claire Palmer, Mike Sugrue, Victoria Sugrue. And that it is it.

MR. OXER: Okay. Thanks. Let me get back to you, Cameron. We have got a process question here.

MR. DORSEY: Sure.

MR. OXER: In the event that whatever direction this appeal goes on the points, this is not a termination of the application.

MR. DORSEY: That is correct.

MR. OXER: This is a point problem.

MR. DORSEY: That is correct.

MR. OXER: If it comes back, if in further review, you have the option to come in, and if it was a consistent process, then you have the capacity to bring

this back before us?

MR. DORSEY: I guess I am requesting that the cost per foot issue, that you provide staff the ability to bring that back at the next meeting. Maybe perhaps, part of your motion, if we find that there is some consistency issue there?

MR. OXER: Tim?

MR. IRVINE: It would seem to me that if we go back to the office, and identify issues of potential inconsistency, then as we work with the Chair to develop the agenda for the next Board meeting, we could as appropriate, place on the agenda reconsideration.

MR. DORSEY: Okay. Great.

MR. OXER: Just a second. Okay. The original motions was by Ms. Bingham who is no longer here. She is part of our quorum issue today. She had travel requirements.

(Pause.)

MR. GANN: I guess I could withdraw my second, and we could start over again. Is that possible? I withdraw my second.

MR. OXER: She doesn't have to be here to vote, even though she made the motion, does she? I don't know if Robert's addresses that. But to that extent, let's go

back. Withdraw.

MR. GANN: I withdraw my second.

MR. OXER: Okay. And Ms. Bingham not being here, we will --

MR. GANN: And I would make a motion, that we deny with the exception of your construction costs analysis. And that could be reconsidered later.

MR. OXER: As we develop the agenda for the next meeting.

VOICE: We need to restate the motion of the Chair.

MR. OXER: I am not sure I could, frankly. But you know. All right. The motion is to deny the -- move staff recommendation to deny the appeal for the points, with the effect of leaving them in the round. But less the points.

If on further review by staff, cost per square foot issue is found to be inconsistent by staff review, then it could be brought back, based on what we have determined. But under that determination, were it to be found consistent and there be not a problem, the denial of the appeal would stand.

MS. DEANE: So this is just a motion only on the cost component?

MR. GANN: No. It is on the whole package.

MR. OXER: The whole package, but with a review of the --

MR. GANN: We included it to be the cost, including the cost package in the -- what you said.

MR. OXER: Right. Okay.

MR. GANN: That is my motion.

MR. OXER: The motion by Vice-Chairman Gann is to deny the appeal, which is to move staff recommendation to deny the appeal, with further review for consistency by the staff of the single component of the cost per square foot question.

MR. KEIG: Move to table.

MR. OXER: To do that, we have to have either a second or a fault on the motion.

MR. KEIG: We haven't had a second yet.

MR. OXER: We haven't had a second yet. There being no second, do you care to withdraw your motion, Vice-Chairman?

MR. GANN: I withdraw the motion.

MR. OXER: Okay. Vice-Chairman Gann withdraws his motion to deny the appeal, to move staff recommendation. Let me unwind this thread here, for a second. Now, given that, Mr. Keig, do you have a -- and

let me, as a point of order, let me clarify.

We are back to clarifying. With the loss of Ms. Bingham from the quorum, because she had travel issues, the four of here represent a quorum. And a vote of three out of the four constitutes a majority of that quorum. Is that correct?

MS. DEANE: That is correct.

MR. OXER: Okay. Counsel advises us that is correct. So now, Mr. Keig, do we feel like --

MR. KEIG: Move to table.

MR. OXER: Motion by Mr. Keig to table discussion, for further review.

MR. McWATTERS: I will second that.

MR. OXER: Second by Professor McWatters. Is there any other discussion?

(No response.)

MR. OXER: Since we had all of the discussion on the first motion, is there any other public comment?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. The motion is tabled, or the

ruling is tabled. And I will tell you what we are going to do. We are going to take a ten-minute break.

We have the benefit of having modified Professor McWatters' travel schedule. We are going to take a few minutes here, and come back in our seats, and kind of get to the end of this. Ten minutes, be back.

(Whereupon, a short recess was taken.)

MR. OXER: Okay. Let's do it, folks. Ms. B, are you doing all right down there? You okay? Okay, Cameron. Let's go.

MR. DORSEY: All right. Cypress Lake Apartments. This is a --

MR. OXER: Time out. Where is Mark? He was right here.

MR. DORSEY: I am sorry.

MR. OXER: Oh well.

MR. IRVINE: We will reconvene in a minute.

(Off the record.)

(Simultaneous discussion.)

MR. OXER: All right. He can listen while he is walking. Go ahead, Cameron. We have got a time -- the clock is running on us.

MR. DORSEY: All right. The next appeal is Cypress Lake Apartments. This is application 12225.

Staff, the subject of this appeal is the community input, other than QCP point item.

And basically, you can get up to six points under this item for letters of support from civic organizations, and situations where there was no neighborhood organization, or where the neighborhood organization that was in existence expressed neutrality or expressed no opinion. In this particular situation, we awarded four points based on letters that we felt were valid, and met the requirements of the rule.

There was a third letter, that would have been worth two points. So to get from four to six, that was from a Harley owners' club. And staff determined that it was not a civic organization or a community organization that serves the community in which the development is located. And it wasn't able to provide really, a list of how it served the greater community.

MR. OXER: Are they in law enforcement, by any chance?

MR. DORSEY: What is that?

MR. OXER: Were they in law enforcement by any chance?

MR. DORSEY: I don't know.

MR. OXER: All right. It is my smart aleck

side coming out, because I am tired. Go.

MR. DORSEY: The initial letter we got did not provide any detail at all regarding what the club's purpose is. That was in the initial application.

Then we allowed them to cure that letter by submitting a subsequent letter that we hoped would clarify matters. It pointed primarily to the Flatlanders.com. I think it is actually a slightly different website.

But in any case, the Flatlanders website, which is a Harley owners club website. And it says, since Wolfforth is a suburb of Lubbock, we work extensively in both cities. When we go to the website, its primary goals are listed as promoting safe riding skills, sponsoring rides, providing safety information, increased participation and enjoyment of all members.

It is a member, it is really a member organization. And it doesn't seem to provide services to the greater community. They indicate in their actual appeal, not within the deficiency time frame, but in the actual appeal, they provided a letter, even another letter, that said in addition to our membership, I am sorry.

In addition, our membership is committed to helping charitable organizations within Lubbock County.

And it lists Toys for Tots, Boys Ranch and several other organizations as recipients of funding raised by the Harley owners club. We looked at all of it.

But it is hard, first off, to accept the completely new additional letters with regard to the fundraising, because that wasn't received within the deficiency time period. But even if you were, categorizing them as a community, civic or community organizations for the purposes of this point item. It was very difficult to swallow. And we didn't award two points for that item, which resulted in just awarding four points. Staff recommends denial of the appeal.

MR. OXER: So this is two points only on this issue?

MR. DORSEY: This is two points. There are two points at play for whether or not the Harley owners club is a community or civic organization under the QAP.

MR. OXER: Okay. I have to entertain a motion to consider public comment. Do I hear a motion from a Board member?

MR. KEIG: Move to approve staff's recommendation to deny the appeal.

MR. OXER: Okay. Motion by Mr. Keig to move staff recommendation to deny the appeal. Second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. Good morning. Good afternoon.

MR. HOLDEN: Always a good afternoon.

MR. OXER: Always.

MR. HOLDEN: Let me tell you what. We need a little levity in here today. Everybody has been here a long time. And you have had some pretty tense conversations. Now Mr. Gann, I am assuming you are not a Harley rider, since you got a little giggle out of that.

MR. GANN: My best friend is a Harley right.

MR. HOLDEN: Yes. See, now that is good news.

MR. GANN: There are doctors and lawyers that are Harley riders.

MR. HOLDEN: Now, here is what happened, guys. I am going to be just cutting right through it. Because I am not going to take a whole lot of your time. The letters that were sent in, there were two letters. It is called the Flatlander Harley Owners Group.

MR. OXER: For the record, you need to tell us who you are.

MR. HOLDEN: I am Paul Holden.

MR. OXER: Okay.

MR. HOLDEN: Will White [phonetic] Property.

MR. OXER: You need to make sure she knows. We may know, but she needs to know.

MR. HOLDEN: Oh, she knows who I am.

MR. OXER: I know.

MR. HOLDEN: I don't come in front of you very often. I have been in this business since '95, and I have spoken in front of you three times. I don't come unless I have something I think I am right on. And we are right on this one.

And to go along with Steve Ford's comment, Cameron, I do like you too. I think you are a good guy. However, some of your staff can get like an alligator with lockjaw when they get an issue. And they don't seem to want to let it go.

Now we have sent them some information in. However, we haven't gotten a lot of response back from staff. Now Mr. Keig, do you have internet on that Gateway of yours?

MR. KEIG: On this?

MR. HOLDEN: Yes.

MR. KEIG: I don't know

MR. HOLDEN: All right. Maybe. Somebody help him out there, and see if you can cue up this website. It is called flatlanderhog.com. You can't?

MR. IRVINE: We can't. We are not hot here.

MR. HOLDEN: Well --

MR. IRVINE: And plus, we are in the bottom of a hole, and I've got it barely on mine.

MR. HOLDEN: All right. Well, I am getting it on mine. So I have got an Apple here, so that helps. Let me tell you what we have got. We sent two letters in. This is a group called the Flatlander Hog.com, Harley Owners Group. They cover all of Lubbock County. They are in Lubbock.

But as you know -- you may not know, the City of Wolfforth is a suburb of Lubbock. If it were any closer to the City of Lubbock, it would be in the city limits. It is in the southwest portion of Lubbock. And all of the development has grown together in these two cities.

So this particular group, they have members that live and work in the City of Wolfforth. One is the bank President in Wolfforth. They have meetings in Wolfforth.

Now what happens when staff, and the information you have in your Board package, it says, and staff's comment says, in the course of our staff's review of the organization letters, it was not clear that the

Harley owners group was active in the community. It says, while the organization is rather large, it has 500 members, it does not appear to be active outside of its own membership.

Well, you know what. The Freemasons are not active outside of their own membership. And that is the most closed member only organization in the whole United States, maybe the world. If you walk up to a Mason's meeting, and you try to come in and just sit down and tell them what is going on, they will escort you to the door. And you will have to come back another time.

So the fact that it is member driven, you accept letters from a lot of community organizations that are member only. You accepted one a couple of years ago, from the Oddfellows organization. That is not a real well known group. And they are closed to outsiders, and you accepted theirs.

So yes, this is a group of motorcycle enthusiasts that got together a long time ago, formed an organization. And yes, they do some charitable work here.

Now the other part of this was, my response back to them is this. In the QAP, it talks about community organization. Now the information you have in the QAP on community organizations is vague at best.

Thin, as in. There ain't nothing there, guys. You don't even have a definition.

But what it says is that a community organization must provide some documentation of its existence in the community. That is all it says, guys. You have to give some documentation of your existence. Their web page gives documentation of their existence.

The second letter that came in from this Harley owners group said, we do service the area of Wolfforth. Yes. We have members that live there. We have meetings there.

Now the documentation of existence could be but is not limited to a listing of services and/or members, brochures, annual reports, et cetera. Then it goes on to say that letters of support for organizations must provide reasonable evidence. Reasonable evidence, which we have done. All right.

Now here is what happened is, when the staff took a look at this, they took a look at the first letter.

They put it a deficiency notice and said, no. We need some more information. The Harley owners group sent another letter with additional information that should have been sufficient.

They also put a listing of their website. And

the staff members did get on that website, took a look at it. And after that, no one called me, by the way, to ask a question. No one called the Harley owners group to ask a question.

But they sent out the notice of the scores, and said we couldn't get comfortable. It is not clear that this is a community organization. Now on the website which the staff had access to -- it has a front page. Put on my glasses for this.

The front page of their website says, the Lubbock Chapter Harley Davidson owner group is a non-profit group. It means, they have a different agenda other than a bunch of guys out being Hell's Angels on the weekend, wouldn't you say?

Now when you go to the fourth page of that website, it is their calendar. The calendar talks about their events. Now within that calendar page, there is another page that you can go to on there, that talks about what they do, and what they have done.

Now when I pulled this off here, guys, I got tired of making a list here, so I am just going to give you a sample of what this says they do and have done. Sunday, November 18, 2012, they are having a Toys for Tots drive. So those toys go to children and families in

Wolfforth, Texas. Tuesday, May 15, 6:00 p.m. They had a fundraiser for the Texas Boys Ranch.

Tuesday, April 24th, they had a fundraiser at McAllisters that is called BRE. This is not recognizable.

Normally, this stands for the Breast Ride Ever. Or Breast Ever Ride. This is for a fundraiser for the Susan B. Komen Foundation. All of the money went to them, by the way.

March 6, 2012, at Fuddruckers, they had another Breast Ride Ever fundraiser. All of it went to Susan B. Komen Foundation. Saturday, October 1, 2011, 7:00 a.m., they were at the Race for the Cure at the Lubbock Civic Center. All of those funds went to the Susan B. Komen Foundation.

Monday, May 16, 2011. They had a cookout for the Susan B. Komen Foundation and raised funds for them. December 12, 2010, another fundraiser for the Texas Boys Ranch. It was a Christmas funding, so they got toys there also. And some of those toys went to the families in Wolfforth, Texas. November 21, 2010, Toys for Tots run. That is just a few of them.

Now this is on the web page. Now guys, come on. I lived in South Florida for a while. And I watched a bunch of Indians down there wrestle alligators. And

them alligators got the lockjaw every once in a while. But they knew how to get them jaws open, you know. Loosen up a little bit, for God's sake, guys.

It is on the web page. Take a look at it. If you didn't get through the whole thing, somebody call me.

I will tell you where it is at. If you still have a question, call the organization and ask them a question. They can tell you.

Nobody called them. Finally, there are motorcycle enthusiasts all through the State of Texas. One of them is City Manager of Wolfforth, Texas. And he is real bothered by this. Now I have a letter that I want to give to the Board.

This is from Representative Charles Perry. It is addressed to Mr. Ozer. You have gotten a copy of this in the mail.

"Dear Mr. Ozer. It has come to my attention that the applicant at the proposed Cypress Lake Apartments community, located within the City of Wolfforth included a letter of support within their original application from the community organization known as the Flatlander Harley Owner Group. It is my understanding this letter has been denied by staff of TDHCA because they do not consider this group a true community organization.

"And the Applicant has filed an appeal that will be considered by the Board members on June 14, 2012.

Please be advised that I am aware of this organization and their fundraising efforts for the charitable community throughout the County of Lubbock.

"After viewing the letters that were submitted, and the information on the web page, it appears to me that this organization has met at least the minimum standards established in community organizations as shown in the 2012 QAP. Due to the continued support of the City of Wolfforth City Council as well as need within the community, I continue to be in support of this application. I respectfully request that the Board members of the TDHCA give approval to this appeal that has been filed for this application.

"Thank you for your consideration. Sincerely,
Charles Perry, State Representative, House District 83."

Does anybody got any questions?

(No response.)

MR. HOLDEN: I mean, we are talking about some black and white. I mean, you guys write the rules. We abide by them. Now I honestly, I really played by the rules this year.

Now I thought seriously about bringing a couple

of letters in, one for the Topless Dancers Association of America, Local Chapter. But I thought maybe that would be pushing it a little bit too far, as well as the Funeral Directors organization. And I thought, maybe that is stretching it a little bit far.

But this one is not stretching it. It is on their webpage. These guys do community work. They also ride motorcycles. Now due to the movie that was made back in the 70s, Easy Rider, a lot of people have a little bit of an issue with somebody who rides a motorcycle, especially a Harley Davidson. And I just don't think that is fair.

And I am asking you to accept this, because of the information that is available to everyone. Questions?

MR. OXER: Any questions from the Board. I will, let me ask --

MR. HOLDEN: I told you I was going to lighten it up a little bit, didn't I?

MR. OXER: A little. Not like we all have plenty of live ammo.

MR. HOLDEN: You guys need to laugh a little bit more.

MR. OXER: Yes. The issue is not in my mind, is not whether or not people -- I happen to have had two

Harleys. So I am totally in favor of this. Okay. And to suggest they are a community organization. I am sure they are.

I would suggest, I would recall to you that the Marines also raise money for Toys for Tots and give those.

And my niece's second grade class had cookouts to generate money to run. But, I wouldn't consider them a community organization, the likes of which we are looking for support for a program like this.

So while I understand your point, I also have to understand what the point of the civic organization is.

And while I appreciate the organization -- say it again?

MR. HOLDEN: Community organization, as opposed to a civic organization. Now, but you need to take a look at what is in written in your QAP before you just say no.

MR. OXER: That is why we are here discussing this.

MR. HOLDEN: Okay. Good.

MR. OXER: So Cameron, have you got a response?

MR. DORSEY: We do our best on these types of issues. The expectation that we can go browse around on websites looking for evidence to support what the Applicant is not giving us is unreasonable at best. The reality is, is that the website they gave us in the letter

was wrong. It says flatlandersclub.com. It is actually flatlandershog.com.

And so we actually took the time to go figure it out. And when we looked at the purpose of the organization, its purpose, its primary function is to provide safe, you know, instruction on safe riding skills, et cetera. Enjoyment for all members, those types of things.

We didn't go browse around and see what they have done for the last five years, because first of all, that is not an obligation that we have. And secondly, we just don't have the time to do it. Particularly if it was for every applicant. Yes.

MR. KEIG: I would like to call the question.

MR. OXER: Okay. Your comments have just concluded, Cameron.

MR. KEIG: Yes.

MR. OXER: Okay. Mr. Keig has called the question. Motion on the floor to deny -- to move staff's --

MR. McWATTERS: May I ask a question. Is that okay.

MR. OXER: You are calling the question, or you offering -- asking --

MR. McWATTERS: I want to ask a question.

MR. OXER: Ask a question.

MR. McWATTERS: Okay. My question is, Cameron, what kind of organizations usually qualify for civic or community organizations? What do you look to? I assume things like Chambers of Commerce and things like that.

Because I think what is missing here, what I would think that -- to get these extra points, okay, there must be some nexus to the group. A group that you would naturally look to for input with respect to a low income housing issue.

I have a motorcycle license too. Okay. I have had one for a long time. I do not own a Harley, but you know, maybe some day. But I think there needs to be a nexus here.

Otherwise, we are going to have the Harry Potter book club in here, and we are going to have the Jerry Jeff Walker fan club. And I am a great Jerry Jeff Walker fan, particularly on a motorcycle. But I think there has to be more than just a club that is out raising money.

As the Chair said, there is a lot of groups out raising money. And I am not sure how I would look to them for input. These are serious issues.

I mean, someone is coming to a community and saying, we want to build low income housing here. Okay. What do you think about it? Give me your views. And why are your views informed, as opposed to being charitable? I think the Hog groups do a fantastic job.

MR. HOLDEN: They do a great job, Mr. McWatters. But what you have to look at is what you have in your QAP this year. Not next year.

MR. McWATTERS: No --

MR. HOLDEN: Listen, if you want to narrow this down and say we don't like you because you are not associated with affordable housing, great. Don't penalize me this year. Do it next year. I will even help you restructure your language.

But what good, let's say the Oddfellows group sends you a letter. The Oddfellows are an organization. They have nothing to do with affordable housing. They don't raise money. But you have accepted their letters before.

Now as I said, you have a very broad, vague and ambiguous few lines in the QAP that talk about this. Now if you are going to limit this down to somebody who deals with affordable housing, then you are not going to have Lion's Club. You are not going to have the Optimists

Club.

And in addition, I had a letter from the Chamber of Commerce in here, and they didn't want to accept it either, because and the rebuttal came back that said, we don't think that they are a local community organizations. For God's sake, it is the Chamber of Commerce. Now you are not splitting hairs, here.

MR. McWATTERS: No.

MR. HOLDEN: And I am not asking for another bite at the apple. What I am saying is that we sent the information in. This is under your definition, a community organization. You wrote the language.

MR. McWATTERS: No. We are not talking about civil code here. This is not Napoleonic law, okay. This is common law, where words that are used -- and they are given a general interpretation, not every word, every definition, every concept in the QAP can be defined. If it is defined, the QAP is bigger than a phone book now, and it would be much larger.

So I look at this, and I say, what is a reasonable definition of a group that could provide some input, some meaningful input as to constructing a low income housing unit. And as much as I like Harley Davidson, as much as I respect the riders, as much as I

respect the turnaround of that company over the last generation or more, I don't see the nexus here.

MR. HOLDEN: Well, which clubs fit into that category? Which ones do, and which ones don't.

MR. OXER: Just a moment.

MR. McWATTERS: That is not the point.

MR. OXER: I understand your point. We respect your comments and contribution. With respect to your comment that things were done years ago, which this Board in whatever configuration that it represented at the time, accepted letters, or something of that regard, you know, I can't speak to what they did before I got here. Okay.

There were also some things that were handed out. We used to hand out forward commitments like they were candy at a Christmas dance, too. There were some things then that we did, that we don't do any more. Now there are some changes being made. Yes, I understand that.

This has nothing to do frankly, with Harley Davidson owners. Because I love one. My brother is one.

You know, my sister-in-law rides a Harley. So you know, I love a woman who loves a Harley. Right.

MR. HOLDEN: Mr. Chairman, I don't think this has to do with that --

MR. OXER: No, it doesn't. And that is the point.

MR. HOLDEN: -- gets different organizations.

MR. OXER: Right. And then --

MR. HOLDEN: You say yes to one, and no to another that has clearly shown they are, I think that is not correct.

MR. OXER: The intent of that provision was to have input from somebody in the community organizations that had some reasonable administrative or oversight authority, and community positioning in there. So that they represented that particular area, we are looking for -- the Chamber of Commerce, which of course, would be there.

Not necessarily just civic clubs, but something from a Chamber of Commerce. A local citizens group, a residents group, that sort of -- that live right there. Okay.

Now granted, you have people that live there. But the issues -- you know, there is a different interpretation. You have one interpretation. And apparently, we have a different one.

MR. HOLDEN: All right. I won't argue with you any further. However, I can tell you that the

applications that are going to be funded this year, not all of those letters fit in your definition. Now that is all I am going to say.

MR. OXER: That is a fair admonition. And I respect that you have done that. And we will see to it that you know, Cameron --

MR. HOLDEN: Let me help you change the rules next year in the QAP, tighten it up.

MR. OXER: Well, we will make a point to tighten those. And there have been times that I think it is fair to day in our most recent edition, revision of the QAP -- that is the one we are working under now -- there was some considerable tightening, particularly with the latitude that was provided for the Board to grant waivers as an example.

That is extremely tight now. It needed -- it is a constant evaluate -- evolution that --

MR. HOLDEN: Yes. And I can --

MR. OXER: Okay. So that is one of those things that we are going to have to do. And yes, we are going to have to tighten some of the language. And you have brought up a point. It will apparently need to be tightened.

Okay. We respect your comments. We appreciate

that you have been -- that have been made. And we hope you recognize, we are making an effort to see that you have been heard.

MR. HOLDEN: Thank you very much.

MR. OXER: Okay. Mr. Keig, call the question. Are there any more comments from the Board?

(No response.)

MR. OXER: All in favor? And the Board, the motion was to deny the appeal to move staff recommendation. So all in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. The appeal is denied.

MR. DORSEY: The next one reflected on the agenda is 12271. Reserve at Western Center. This one kind of had a strange timing issue. And we didn't ultimately get the materials in the Board book. And the materials were provided just out front.

MR. OXER: Hold on, Cameron.

MR. DORSEY: Yes.

MR. OXER: Which one was that again?

MR. DORSEY: Reserve at Western Center.

MR. OXER: All right. We have had a request that that one be --

MR. DORSEY: That is right.

MR. OXER: Tabled and moved to the next meeting.

MR. DORSEY: That is right.

MR. OXER: Okay. So check that one off.

MR. IRVINE: Yes.

MR. DORSEY: The next one is Farm Labor Apartments. This is a transaction that was -- first off, this is a termination issue, not a points issue. This is an application that was submitted under the at risk set-aside. The at risk set-aside as you all probably know is 15 percent of our allocation goes to the at risk set-aside.

And the at risk set-aside is governed by statutory criteria. What type of financing you have to have in place to qualify under the set-aside. The purpose of the set-aside is kind of two fold. One is, to preserve existing affordable housing. And two, to preserve and retain the existing subsidy, existing federal subsidies that exist on a project for the State of Texas.

So basically, if those subsidies are about to expire or somehow at risk, the goal is to, through a

rehabilitation or reconstruction to retain that benefit for Texas, and not lose it. In this particular instance, this is a USDA 514 516 deal. That means that it is an existing USDA-funded transaction that targets farm workers.

The application was submitted. When it was submitted, it reflected no continuation of those existing subsidies. I think there was a little bit of debt left on the transaction. Is that right? Okay. Yes. There was like \$54,000 left in debt on the transaction.

Arguable whether or not continuation of that is either a benefit or takes away from the transaction. But the units did have ongoing rental assistance. And that was eliminated from the application when it was submitted. Effectively, the application presented an existing 514 516 deal that was going to, at the end of the day be a tax credit transaction without these existing financial benefits.

The rule in question reads as follows.
"Developments must be at risk of losing affordability from financial benefits available to the development and must retain or renew all possible financial benefit if available, and at least maintain existing affordability to qualify as an at risk development."

So what we are struggling with on this deal is the must retain or renew all possible financial benefit if available. That is a fairly conditionalized statement. If available, what does that exactly mean? In this case, the Applicant has basically said you know, the units in this deal are really difficult to lease, because there is insufficient demand from eligible tenants, farm workers. Eligible farm workers.

So they have indicated that that lack of demand should allow them to eliminate that subsidy, continue the affordability through the tax credit program but eliminate those financial benefits, and move forward without targeting farm workers, since that is the -- since there is just insufficient demand.

You know, I had an interesting conversation with some other staff about this, and the whole, should we ultimately remove this type of language if possible financial benefit, all possible financial benefit if available. And make it tighter. And I think it is not -- it is not a bad thing to have here. I think it was intended to deal with those existing developments that have regulatory barriers of some kind, in continuing the existing subsidy. For example, a development that needs to be reconstructed, but can't reconstruct the same number

of units back on the site, because zoning has changed. And the density requirements are less.

And so that is really what this is designed to deal with. I think we have a concern about it kind of swinging the door wide open, if we start accepting demand as a rationale for if available. And so I think that is the issue at play.

MR. OXER: Any Board questions of Cameron?

(No response.)

MR. OXER: Got a comment? Yes. Okay. We need a motion here first. True. Okay. All right. Don't all of you all talk at once.

MR. KEIG: Move to approve staff's recommendation to deny the appeal.

MR. OXER: Okay. Motion by Mr. Keig to deny the appeal and move staff recommendation.

MR. GANN: Second.

MR. OXER: Second by Vice-Chairman Gann. Is there any comments or questions from the Board of Cameron?

(No response.)

MR. OXER: Okay. Now you are up.

MR. BROWN: Good afternoon. My name is Doak Brown. I am with Brownstone Affordable Housing. We are the developer for Farm Labor Apartments. Farm Labor

Apartments is an existing 48-unit development located in Laredo, Texas, that is owned by the Laredo Housing Authority.

We obviously disagree with staff's interpretation of the QAP and feel that our application should be reinstated in the at risk set-aside. We believe that staff will agree that we have every item necessary to be in the at risk set-aside except that staff does not believe we are retaining or renewing all possible financial benefit if available.

We believe that we are. And we don't believe that our interpretation of this provision was unreasonable. On March 21st, staff sent us a deficiency notice. And in that notice, they said that they did not believe we were qualifying for the at risk set-aside.

We did not understand why staff was making this claim. So we requested a conference call to discuss the matter. In that call, staff explained that they did not feel we were meeting the requirements of the at risk set-aside. And that in order to remain in the at risk set-aside, we had to maintain some of the rental assistance and the low interest rate loan.

Well, we did not agree with the staff that these revisions were necessary to qualify in the at risk

set-aside. We revised our application to show Farm Labor keeping some rental assistance and the low interest rate loan. Staff then took the position that these revisions made to our application were more than should be allowed in the administrative deficiency process, and therefore, we could not qualify in the at risk set-aside.

So we have basically come full circle on whether or not what we originally submitted in our application meets the requirements of the at risk set-aside. Before I explained why our application is retaining or renewing all possible financial benefit if available, I think you need to understand a little more about the existing development.

This development was financed through USDA's Farm Labor Housing program. This program requires all units to be occupied by domestic farm labor. When the project was originally developed, all 48 units had rental assistance associated with them.

Currently, there are only 38 units that still have rental assistance associated with them. And each year, they continue -- the reason for the lost rental assistance is that there are fewer and fewer occupants meeting the domestic farm labor requirement.

Migrant farm workers used to be all of the

tenants occupying this development. And over the past decade, the number of migrant farm workers has decreased. And the number of farms in the Laredo area has decreased.

The issue is whether or not our interpretation of the meaning of what retaining or renewing all possible financial benefit if available means. We believe that our proposed application was meeting these requirements.

First, and most importantly, is it impossible to maintain the existing rental assistance with the declining number of domestic farm labor workers residing in Laredo. Therefore, we do not consider it impossible to retain or renew rental assistance, when we know that we cannot maintain the existing rental assistance long term.

Second, the remaining balance on the low interest rate loan associated with the existing development is only \$54,000. There is really not any financial benefit associated with keeping such a small loan in place of the subordinate mortgage. By the time the necessary paperwork is processed at USDA to keep this loan as subordinate mortgage, and all parties spend monies on attorneys to draft the documents necessary to keep this small loan a subordinate mortgage, there really isn't any

financial benefit associated with it.

Well, we acknowledge that our application is a bit unusual compared to other at risk developments proposed in past years. And that the proposed development is not retaining or renewing any type of rental assistance or retaining a low interest rate loan. We are still meeting the requirements of the QAP.

In fact, we would argue that what we propose with our application is exactly why the at risk set-aside was created. Here you have a development that is continuously losing subsidy associated with the development, because of the occupancy requirement for domestic farm labor.

Affordable housing units are sitting unoccupied because there is not enough domestic farm labor in Laredo in need of affordable housing to occupy this development.

One of the main purposes, if not the main purpose of the at risk set-aside is to maintain affordability of existing low income housing in the State of Texas.

And that is exactly what the development we proposed is doing. We are being terminated because of a disagreement over how to interpret the word "possible." While we acknowledge that it is possible to renew subsidy tomorrow, it is not possible to maintain that subsidy for

the long term.

It is not possible to syndicate a deal where you cannot prove there is enough domestic farm labor to occupy your development. We do not believe that our interpretation of what retaining or renewing all possible financial benefit means was unreasonable or incorrect. Therefore, we respectfully request that you reinstate our application.

MR. OXER: Any questions of the Board?

MR. BROWN: We can't have, without domestic farm labor, we can't have the rental assistance. They are both connected. Cameron wants to disconnect the two and say, well, it is not our problem. It is not our problem. This is an occupancy issue.

But if we don't have the domestic farm labor, we don't have the rental assistance. That is why we are proposing this development. Is because we are trying to keep the affordable housing at this location.

And I don't think our interpretation of the QAP was an unreasonable interpretation. There is no -- we are talking about the word "possible" here. And it is not possible to do what Cameron says is required in the at risk set-aside. We can't do this at all.

MR. OXER: Stand your ground there. Cameron?

MR. DORSEY: The only thing I would add is just, I don't -- I think their development plan actually makes a lot of sense. I just don't think it is an at risk development.

I just don't think it qualifies under the set-aside. They totally could have submitted it under the you know, under the region. I looked at the scores. And I don't think it would have been competitive. But you know, I mean, the purpose really is to retain financial benefits for the State of Texas.

MR. BROWN: And affordability.

MR. DORSEY: And affordability. But if all you are retaining, if all you are retaining is the affordability, that is not really any different than demolishing those units and building some other units somewhere else, or doing a new construction development with new affordability on it, and letting people just move over from an existing development.

So you know, the key really is the retention of those financial benefits. And so that is really what is at play. And whether or not it qualifies under this particular set-aside, not for the program in general.

MR. OXER: Any other questions of the Board?

(No response.)

MR. OXER: Okay. There is a motion by Mr. Keig to and second by Vice-Chairman Gann to deny the appeal, or to move staff recommendation to deny the appeal. Any other comments?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Thank you.

Cameron, little housekeeping check here. How many more have you got?

MR. DORSEY: I believe I have one more.

MR. OXER: Okay. The on deck circle is open for anybody that wants to play here.

MR. DORSEY: All right. Back to costs per square foot. So this is Villas at Henderson. It is Rural Region 4. And they elected twelve points for the cost, development costs per square foot.

I can't say exactly what threshold they were trying to meet because it is not one of the thresholds that is explicitly within the QAP. Basically, we have two options. Developments fit as under the category with \$95 a foot, or under the category with \$85 a foot.

The \$85 a foot is for everyone that really doesn't qualify under one of the special conditions for the \$95 a foot category. In the \$95 a foot category we have qualified elderly developments, with -- and then elevator-served developments. And single developments that are single-family design.

In this case, the Applicant is proposing the construction of 80 units, 68 of which are single-family -- 70 of which are single-family homes. And then the remainder are not single-family homes that are duplex. Yes, they are duplexes. And so they came out with a cost per foot of 94.09.

Now the way they got to 94.09 and what their ultimate limitation would be, they are not suggesting that they should be subject to the \$95 a foot because they are 100 percent single-family. They are saying we should take a pro rated approach to calculating the cost limitation or cost threshold for this item.

Like I am saying, we should apply \$95 a foot for the units that are single-family, and \$85 a foot for the units that are not single-family. And then come up with kind of back into a cost per foot threshold through that prorated approach. I am not here to argue whether that is a rational approach or an irrational approach.

All I am saying is that is not what the QAP says. It says developments, and we don't parse it out by units. So developments that are single-family design. How what does that mean. Well, if we took, interpreted that to mean you are single-family design as long as you have some single-family units.

That would be a problem. Because you could go one single-family unit. And all of a sudden, you are subject to the \$95 bucks a foot instead of the 85. So you really are, or you aren't. You are under one category or the other. I mean, this is an A or B type of thing.

MR. OXER: You mean, you can't be half pregnant.

MR. DORSEY: Yes. Exactly. And so in this case, they were subject to the \$85 bucks a foot. But they came in at \$94 bucks a foot. So we didn't award twelve points.

There is -- the preapplication incentive points tag along on this, because the twelve points put them outside of the variance allowance for the preapp points. But whatever you would decide to do on the cost per foot item, the preapp points can kind of just follow along.

So that is the issue on its face. I will let the Applicant speak unless you all have questions.

MR. OXER: We have a Board resolution, or motion that has to be in play first.

(No response.)

MR. OXER: Okay. So what is the Board's pleasure.

MR. GANN: Move staff recommendation.

MR. OXER: Okay. Motion by Vice-Chairman Gann to move staff recommendation to deny the appeal.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Any other questions of the Board, Cameron, before we start?

(No response.)

MR. OXER: Okay. Good afternoon.

MR. OPIELA: Members, Eric Opiela here for the Applicant. We are asking that the Board not agree with the staff recommendation and the staff's interpretation of the QAP. Because it imputes language that is not in the QAP, to the QAP.

First, let's take a look at Section 50.9 (b)(8) of the QAP. It says developments qualify for twelve points if the costs do not exceed \$95 per square foot and direct construction costs also referred to as building costs in Section 1.32(e)(4) of this Title do not exceed \$80 per square foot for a qualified elderly and elevator-

served development, single-family designs and supportive housing developments and developments located in a central business district, unless located in a first year county, in which, their costs do not exceed \$97 per square foot.

And direct construction costs also referred to as building costs in Section 1.32(e)(4) of this Title relating to underwriting rules and guidelines, do not exceed \$82 per square foot. Or \$85 per square foot and direct construction costs also referred to as building costs in Section 1.32(e)(4), this title do not exceed \$70 per square foot for all other developments.

If the QAP said, comprised entirely of single-family design, we would fully agree with the staff, and their interpretation of the section of the QAP. What is clear here, is that in other sections of the QAP with nearly identical language, the QAP does have, composed -- it's entirely --

Let's take a look at Section 50.4(d)(10), which deals with ineligible developments in urban areas and specifically excepts qualified elderly development. A development proposed in a central business district. A development composed entirely of single-family dwellings or supportive housing developments.

That language mirrors almost exactly the

language in the section that the staff is adding the language, composed entirely of single-family dwellings. It doesn't say that. It just says single-family design.

If the QAP meant to say composed entirely of, you get \$95 per square foot, it would have said it. Because it clearly said it in an almost identically worded section, elsewhere in the QAP. Our development is the 70-unit single-family, ten-multifamily-unit design. It is not even close.

We could also see the interpretation of staff, if this was a 50-50 deal, or even a 60-40 deal; 88 percent of this unit, of this development is single-family. Staff's interpretation also contradicts the prior Department precedent dealing with this section.

Villages of Snyder, which was also developed by my client in 2009 was allowed a cost of development per square foot of \$95 per square foot for the single-family portion of a 90, I am sorry. Of a 46-unit single-family, 36-unit duplex development. It was an intergenerational development.

In discussions with staff, they argue that the QAP language has changed since 2009, to take out specific language dealing with intergenerational developments. But this remains the last development that was evaluated under

this section that had a mixed single-family, multifamily component to it.

And in that case, in 2009, the staff allowed a \$95 per square foot limit for to be awarded at that time, ten points. And an \$85 per square foot for the duplex portion of the property in order to qualify for those points. So the staff in the past has allowed this.

And this is different from the interpretation that they are providing today. There has only been one other development proposed since the 2009 language was changed.

And that was El Campo Village, which also had a mixture of single-family and multifamily units. But this section didn't come into play in that case, because the costs per square foot were less than even \$85 per square foot in that development.

The plain language of the QAP as well as the prior precedent of this Department in interpreting this section has supported allowing \$95 per square foot for the single-family design which is exactly what the section says. And then \$85 for other than single-family design, which is also what the section says itself, and did not require either of the developments to be composed entirely of single-family design like the other language in the QAP

where it tracks that language, and says that explicit limitation composed entirely of.

In the past, to qualify for the twelve points under Section 50.9(b)(A). Like I said, our design is 88 percent single-family. And we ask the Board to adopt our interpretation of the rule and not staff's interpretation.

We are not asking for a waiver here. We are just asking you to interpret, did you mean composed entirely, even though you didn't say that in the rule, or do you mean, the single-family design portion is at 95, the 85 is for the other than single-family design. I am open for any questions.

MR. OXER: Mr. Keig.

MR. KEIG: When did you first do these calculations that, with the \$95 times 99,220 square feet and \$85 times 9,800 square feet? Was it before you submitted your preapplication or after the administrative deficiency was issued?

MR. OPIELA: It was in February.

MR. KEIG: That is --

MR. OPIELA: It was after the preapplication but before the application.

MR. KEIG: How would you all calculate your costs per square foot before you submitted the

application?

MR. OPIELA: I will have Michael Hartman who is part of the development team talk about the preapp.

MR. HARTMAN: Michael Hartman, Tejas Housing Group. We did it exactly as we say in our letter, in our appeal. We looked at the rule. It says single-family design. It doesn't say 100 percent single-family dwellings.

If it did, we wouldn't be here today because Cameron would be entirely right. And I would agree with you. But in the past, in the past when we would hide developments like this, this is how we calculated it.

So when I went and looked and saw what the point limitation was, I said okay. It says single-family design. Single-family gets \$95. Everything else, the duplex get \$85. You come up to a number; \$10,258,900. We are \$10,258,500. They are poor because we are under the limit. We should qualify for the points.

MR. KEIG: I guess I am confused, because I thought my question was, how did you do it before you submitted the application. And I thought the answer was, we didn't do that calculation until the administrative deficiency was raised.

MR. HARTMAN: No. We did that calculation to

figure out if we were qualifying for the points. We did that qualification. We did that back in February.

One other point I would like to make here. We never got an administrative deficiency on this. We have been rushed through this process. On June 1st, we got a final scoring notice that said, you don't get these twelve points. It was never raised prior to June 1st.

Staff asked us to get our appeal in quickly to the ED. We worked over the weekend, June 2nd and 3rd. We filed it on the 4th. Okay. We did not even get a letter back from TDHCA saying whether or not the ED was upholding our appeal.

Instead, we got an email on the 7th that said, the Board book ain't out yet, but be ready because your appeal is going to be in it, direct to the Board. And it said, if you want to have additional information to the Board, get it to us by the 8th and we will publish it on Monday 11th. We worked all day the 7th and the 8th.

We filed the letter with the staff at 2:00 p.m. on Friday June 8th. We got an acknowledgment from staff that they had received it, and that it was going to be posted in the Board book with additional arguments that we wanted the Board to consider. We don't know why it never got posted.

We asked why it never got posted, and never got an explanation. We wanted to give you plenty of time to consider all of our arguments. And I don't know if you ever even saw our letter of the 8th where we raised additional arguments.

But the biggest thing is, is that if you are going to write a book of instructions, and you want the instructions to mean the same thing in two places, are you going to say two different things? I wouldn't. I would write the same exact language, if I wanted it to mean the same exact thing in both places. They didn't do that.

So we look back at what has happened in the past. And that is how we did our calculation that said we qualified for the points. That is why we asked for those points on March 1st, when we filed our application. Thank you.

MR. OXER: Understand Michael, that we spent a long time last year, flushing out, what was the term we used Cynthia, quirks. That is what it was. Quirks. We found a few quirks. I think you found one of the little quirks that is still lurking in the --

MR. HARTMAN: And it could be. I mean, I agree with you there.

MR. OXER: The same point.

MR. HARTMAN: I agree with you completely. I am just saying that I think we have a reasonable man's interpretation. That is why we believe that we qualify for the points.

MR. OXER: Okay. Cameron.

MR. DORSEY: Do you think you might -- were you speaking on this? Okay. I wanted to clear up kind of the historical issue real quick.

MR. OXER: Let me add something on that historical issue. As I pointed out to Mr. Holden earlier, on the issue before he came up, I might add that historic precedent at the TDHCA is not necessarily something you should go on.

Just because -- let's just say there were some things that were done in the past, not just in the immediately recent past, but we probably wouldn't do again. So that is --

MR. HARTMAN: Even without the historical precedent, I would still write the same thing, if I meant the same thing in two places, I would write the same thing.

MR. OXER: And I understand your point, Michael. I am just saying that there is the -- there is a -- certainly my answer is, and I think the staff's would

be that too -- there is a conscientious effort ongoing to make the QAP to tighten up every place where we have found some gray.

We are going to create other gray areas. And so, I am just -- I say this, only to suggest that yes, you may have found one. And we are trying to move through that. Our interest is not necessarily to do, to be consistent with what we have done always in the past, but consistent in the round, in each of the tax rounds. So --

MR. DORSEY: I just wanted to know, I don't think there actually is any inconsistency with the past at all, nor internal to the language itself.

MR. OXER: That was generic, Cameron.

MR. DORSEY: Yes. You know, the --

MR. OXER: We don't have forwards anymore if you recall.

MR. DORSEY: Right. And in 2009 and 2010, the reasons we treated, actually Villages at Snyder differently is because the QAP explicitly said, for intergenerational developments, we will pro rate based on, and it laid out how that calculation was done. It was a pure assumption that that would be done again this time, despite the clear absence of any instruction to do so.

In addition, there are -- I mean, that really

would need to be spelled out, because I can't tell from the application how much costs are associated with the single-family versus the other units. That is a back end approach that is kind of maybe an approximation.

But there is nothing in the application that tells us that. I think it was just a presumption that we would do the same thing. And so you know, it is -- the language just isn't there.

In terms of entirely single-family and some issues like that, it is just -- frankly, the result of 76 or however many pages that the document is. But it is clear that if a development qualifies for twelve points, if it is this or this.

And in this case, it simply doesn't qualify for the \$95 a foot limitation. And I don't know how you read the pro rata approach.

MR. KEIG: What about the Chair's metaphor about being pregnant? I mean, if you have got 99,220 square feet that are single-family and only 9,800 square feet that are multi family, aren't you pretty much pregnant with the 99,220 square feet as single-family. And they are predominantly a \$95 per square foot argument there.

MR. DORSEY: I don't disagree. I don't

disagree with that, but you can't read the language to say that that allows you to apply a \$95 a foot limitation. That there is no line drawn anywhere there. And there is certainly not an indication that we should use a pro rata approach.

Again, in part, because I don't think we have any idea from the application. We don't ask how much of the costs are associated with this unit type, versus this unit type.

MR. OXER: Hang on, Michael. You will get your shot. So the allowable costs, the issue is not allowable costs, but the actual costs associated or at least -- not the issue.

But my question is about the actual costs associated with the large block of single-family, and the actual costs associated with the small block, 12 percent of the whole development that was other. And since there is at least some portion of the total site costs, or offsite costs, or related costs that are generic, or go to the entire development, then you wind up having to parse out those costs.

MR. DORSEY: Right.

MR. OXER: Okay. So the question is, how do you do that if you split it up on per square foot per

unit. And that is -- I understand your point. And I am seeing the difficulty. And I recognize that while these things are here, your letter Michael, as best as I can tell, does nothing to attend to the actual costs, not what you said, which are the allowable costs.

MR. HARTMAN: Well, let's look at how the staff computes allowable costs. What they do is they go to the building unit designation form. And it comes down to a net roundable square feet.

MR. OXER: Tell us again who you are.

MR. HARTMAN: Michael Hartman. I am sorry. Tejas Housing Group. I am sorry.

MR. OXER: All right.

MR. HARTMAN: So what they do is, they take the net roundtable square feet off of that form, times either 95 or 85, and say that is the maximum. So that if that number is 10 million -- if your number is 9 million, 9.5 million or 9.8 million you qualify.

That is how they calculate it. So in this case, when you go to the building form, it is very clear how much of that square footage is for single-family units and how much of that square footage is for duplex units. It is spelled out clearly in the form.

So when you add, when you look at the form, you

can easily determine -- okay. There is 9,800 at 85, and there is 99,220 at 95. You add those two numbers together, you come up to a number. As long as you are below that 10,258,900, whether it is 100 below or a million dollars below, you qualify for the points.

You don't look at it and say, okay. Well, this much site work is to this type of stuff. It is what your total construction number is, and is it less than the calculation. It is a very simple mathematical calculation. So it is not a breakout between the two.

MR. OXER: All right. I see your point. I recognize your point. Point of clarification. It is clear now.

MR. HARTMAN: Thank you. Okay.

MR. OXER: Okay. Do you have a question, Professor?

MR. McWATTERS: Yes. Cameron, maybe we are going over the same ground here, but in the current QAP, are there any provisions for pro ration?

MR. DORSEY: No.

MR. McWATTERS: No. I think you said in a prior QAP for intergenerational developments there was a provisions for pro ration.

MR. DORSEY: Yes.

MR. McWATTERS: Now in that provision for pro ration, was a distinction made upon the inclusion or the exclusion of a single word, or was there a mechanism built in there to convey without a shadow of a doubt that pro ration was permitted?

MR. DORSEY: It was more than a word. It was at least a sentence that explained how the calculation would be done.

MR. McWATTERS: Okay. So in the past, in the QAP, where pro ratio was permitted, it was not simply the omission of a word, an inconsistency, an internal inconsistency in a document but it was expressly stated, and the mechanism was fleshed out?

MR. DORSEY: That is right.

MR. McWATTERS: Ok. Thank you.

MR. OXER: Michael?

MR. HARTMAN: Just to address your question a little bit more, that was put in there for a specific type of housing, intergenerational housing. It did not have to do specifically with single-family design. Intergenerational was defined as partially for elderly, partially for family. That was all taken out when intergenerational developments were taken out.

So now we have general developments. And there

is nothing in there that says specifically pro ration. But there is nothing in there that says that you cover it any other way. It doesn't say 100 percent single-family. We have got 88 percent single-family.

But we didn't say we should get the 95 one off. We should only get it on the single-family. On the duplex, you know, we should be held to the 85-dollar number, and that is what we did.

MR. McWATTERS: You know, I am not saying your position is unprincipled, or are you an unreasonable. All I am saying, that in the past where pro ration has been permitted, it has been expressly permitted unequivocally.

So if I was in your situation in a preapp, and I was about to do a pro ration, I might ask myself, well you know, in the past pro ration has been spelled out. So I think I will make a phone call or send an email to the staff and get a clarification. That is all I am suggesting here.

MR. HARTMAN: No. We didn't have our final costs put in there until the middle of February. So we had to get our site work number, and that was a very big number.

MR. McWATTERS: Well, I understand that final

numbers are final numbers. But you have to have back-of-the-envelope numbers, based upon some assumptions. And one of the assumptions, more likely than not, is pro ration. And you couldn't have said, it is going to be \$94.13. But you had to do something to convince yourself that it was going to be under a certain number. Otherwise, you wouldn't go forward with the deal.

MR. HARTMAN: I thought that we were taking a reasonable approach. That is why we didn't think that it was anything that needed to be questioned.

MR. McWATTERS: Well, like I said, it is not an unreasonable approach. But it is like many of the issues we have addressed today, I think it could have been addressed early in the process, and this never would have happened. But instead, we are getting into arguments and discussions like this, which are unfortunate, when they could have been preempted, I think.

MR. OXER: One the concepts we have brought forth today, and have had additional discussion about is, there is a lot of creativity on behalf of the developers in terms of putting parts and things together, and mixing unit mixes and that sort of thing.

Unfortunately, TDHCA has got a set of rules. It says we do 20 percent multi family, 20 percent one

bedroom, you know. And while I appreciate that, for example, in a market study, they may have said they needed 35 percent on those, I recognize that. Okay. What TDHCA finances is not under that category. Okay. Or that they qualify for credit.

And while I continue to look for ways to allow some flexibility in that, the way it reads right now, TDA does certain things, and other things it doesn't do. Tragically, sometimes. But it doesn't do them. And that is -- I am trying to get around the consistency. And every one of these projects of course, is worthy. And we would love to see every one of them.

And if you were here 15 years ago, as you first were, we were probably being looking for you to do some more projects so you could use up all of this extra money we had. Okay. Actually, right now, we are looking for extra money to use up all of these extra projects we have.

So that is why there has to be some tragically razor thin to the part of being practically opaque to make the distinctions between those that do and don't meet the criteria.

So with that, Cameron, do you have anything else to add?

MR. DORSEY: Only that Cynthia intended to

speak after this.

MR. OXER: We will get there. Okay. Mr. Keig, do you have another comment?

MR. KEIG: Just one comment. As I voted on this QAP, I was not aware that pro ration was something we have done before that we were taking out. And so to me, it is an unforeseen situation.

And our rules, 50.1(a) say, notwithstanding the fact that these rules may not contemplate unforeseen situations that may arise, the Department would expect to apply a reasonableness standard to the evaluation of applications for housing tax credits. I feel like the way they have apportioned it is reasonable and rational and I think it is sound. Okay.

MR. OXER: Thanks for that. Cynthia. I was going to consider the day lost if we hadn't heard from you today, you understand.

MS. BAST: Thank you. That makes me feel great. I am Cynthia Bast from Locke Lord. And I am here representing Real Tex Development Corporation. Real Tex has a competitive application in this Rural Region 4, and it does support staff's recommendation to deny the appeal.

I have listened very carefully. And I think that there have been a lot of good positions made here.

And I would just like to highlight a couple of them.

I have looked at the QAP. And I think that the problem with the pro ration argument, Mr. Keig, is that you have to look at the preamble, the opening paragraph of this section. And it says that the development qualifies for these points if it is either, X or Y, it qualifies for the points if it hits \$95 per square foot, if it is single-family, or 85. That "or" is squarely in between there.

And the QAP tells you to look at the development as a whole. This development as a whole is not a single-family design. It is a combination design of single-family and other.

I looked through the QAP, the underwriting rules, and Section 2306 searching for the term "single-family" and found every instance where the phrase single-family was used in all of your governing authority. And for the most part, across all of these rules, we are using either the phrase single-family or single-family design.

There is, as Mr. Opiela indicated, an instance where it refers to entirely single-family. There is also an instance where it refers to developments that are comprised partially of single-family and partially of other. But on the whole, I would say that most of the

phrases are just single-family.

And I go back to what Mr. McWatters said earlier, which is that we are just trying to look at the common sense meaning of a term. And while 88 percent may be a lot of single-family units, it doesn't make the element whole a single-family development.

And so, I think that that is an important point to note. And finally, I just really appreciated what Mr. McWatters just had to say. I have been reflecting as I sat through the testimony today. And I thought about what has been on appeal.

And it seems like a lot of what has been on appeal have been projects that don't quite fit in the box. They aren't just your garden style apartments with two sources of financing. And heaven only knows, we don't want all of that all over the State of Texas, but there is an old saying about what it means to assume. And it is a little bit off color, and I won't repeat it.

MR. OXER: We probably all know what it means, too.

MS. BAST: But my point is, and Mr. McWatters point was, that a developer takes a great risk in making any assumptions in this highly competitive process. And you have a wonderful staff that is amazingly accessible

for questions, when your application may not quite fit into that box.

And so we therefore respectfully request that you do deny the Applicant's appeal. And I appreciate you all devoting so much time to this today. We really all appreciate your very thoughtful consideration on all of these matters.

MR. OXER: Okay. Any questions of Ms. Bast from the Board?

(No response.)

MR. OXER: Got one more, Michelle, and then we get to you.

MR. LANG: Mr. Chairman, remaining members of the Board. My name is Tim Lang. I am with Tejas Housing. And I want to speak on a couple of points. I don't want to belabor anything that has already been discussed.

It has been a very long day. And I feel like I am coming up in the bottom of the ninth to break up Cameron's shut-out today. So I will settle for a group single, if that is all I can get.

But I think it is important to know that we didn't make any assumptions going into this. When we read the rule, it specifically says single-family design in between other definitions that specifically say

"Development" at the end, with a capital D as a defined term.

We took that to mean single-family design in any capacity. We didn't take that to mean 100 percent, a complete development. And we approached it in the best manner that we knew how, which was to apply the \$95 to those units, and then \$85 to the other.

And I think that that is an important distinction to make, in that we weren't looking to exploit the \$95 limit to get more money for the development. We did this as would be expected up front, transparently, and as reasonable as possible.

I can understand if the language was intended to mean 100 percent. But clearly, it wasn't interpreted that way. I could see the point, moving forward. But again, all we had to rely on was the language that was in the QAP this year.

And I believe this was the same language that was in the QAP back in 2009, when we did have intergenerational developments. The only exception was, there was an additional sentence or two after that, that dealt directly with the intergenerational developments. So that process was the best benchmark that we could use to assemble this development the way it has been set up.

We think that given the interpretation and how it can be reasonably read and understood by someone reading the QAP, because it does not state development after single-family. It just says, single-family design, which could mean one unit. It could mean 100.

We think that taking away the twelve points is severe, and really undeserved for approaching this development in the way that we think is appropriate, and as best can be determined from our understanding of the QAP. I think that if it is something that is meant going forward, we have that opportunity to clarify that when we discuss the next QAP.

We can clear that up, and this type of understanding won't have to happen again. But given the way that things are set up at the present time, in this QAP, I think that it is severe and unwarranted to lose twelve points over a reasonable and what we feel, an accurate interpretation of the language in the QAP.

MR. IRVINE: I just want to comment that in the statute, it does talk about costs per square foot for the development. When you look at the scoring item, while I will readily admit that Part A, the \$95 portion does talk about a lot of things that are not really crisply and clearly defined, at least, 20-20 hindsight, Part B uses

the cap D term and refers to other Developments; cap D.

Meaning that to me, implicitly the things that are listed in A are characterizations of developments. So for whatever that is worth.

MR. OXER: Say that again, Tim. I want to be clear on that.

MR. IRVINE: The language in the scoring item in Part B where it is talking about the application of the \$85 limit refers to that the \$85 applies to other cap D Developments. Which to me, implicitly means that Part A is also describing types of developments.

MR. LANG: In which case, I think that given 80 percent are single-family homes, then that would characterize this as a single-family development.

MR. IRVINE: That would be my take on reading the plain meaning of the rule.

MR. KEIG: Quick question.

MR. OXER: Okay. Mr. Keig?

MR. KEIG: Isn't it true that over 91 percent of the square footage of the development would be single-family?

MR. McWATTERS: Eighty-eight percent, thank you.

MR. KEIG: Unless my calculator is off.

MR. McWATTERS: It is going to be close to that. I am not --

MR. OXER: Well, let's see. It is substantial majority. Not insubstantial.

MR. KEIG: That is correct.

MR. OXER: Did you have any communication directly with Cameron and his staff when this came up?

MR. LANG: We didn't --

MR. OXER: Not another letter. But did you call Cameron and ask him? Did somebody call?

MR. LANG: We didn't realize there was a --

MR. OXER: That is right. I recall.

MR. LANG: Until we got the call.

MR. OXER: Eric.

MR. OPIELA: I spoke to Cameron after we --

MR. OXER: Okay.

MR. OPIELA: Earlier this week, I guess it was. You realize this has all happened in the last seven days?

MR. OXER: I recall the schedule.

MR. OPIELA: Eric Opiela, on behalf of Tejas Housing. No, I did call -- actually, I think I called Tim's office. And the call was returned from Cameron and a couple of the other staff. And we had this discussion.

MR. OXER: For the record, from a process

standpoint, it was proper for you to call Tim. That is the way that is supposed to work, okay.

MR. OPIELA: I was inquiring as to what the status of our appeal was, because we had been put on the Board book without actually having a decision out of Tim.

MR. OXER: But you had your picture posted in the Post Office, without having --

MR. OPIELA: Yes.

MR. OXER: On the Post Office wall. So welcome to the gallery, the Rogues Gallery, okay. Okay. Are there any other --

Michelle, you have got one to read in. Okay.

MS. ATKINS: Michelle Atkins, Executive Division, TDHCA. I have two people who would like to register their opinion on this item, number 12362, Villas at Henderson. They are both for staff recommendation. The first one is Rick Deyoe with Real Tex Development. And the other one is Julie Gonzalez with Real Tex Development. Those are the only two.

MR. OXER: Okay. Are there any --

MR. McWATTERS: Yes. Cameron, under these facts, which may be rare facts, okay, I just don't know. Has pro ration been permitted before? Have people raised this issue? Is this --

MR. OXER: Has it occurred before?

MR. McWATTERS: Yes.

MR. DORSEY: Not that I am aware of.

MR. McWATTERS: Okay.

MR. OXER: Yes. But as Mr. Keig, I think, rightly points out, it does constitute a reasonable interpretation. Although with, the purpose of the QAP is to be as clear as possible, to make sure the projects can be represented in the application, that you get the most information out of them.

You can't spend a week of staff time on this. You have got to do it in the process. Because it is -- we have got -- how many did we have? We had a lot. Okay. So that is a point of interpretation. I get that.

Recognizing that this is a fairly intimate interpretation of -- get the citation correct here, -- 50.9 what is it? Okay, 50.9(b)(A), Part A and B. Right.

Development, parts per square foot. This is a -- here is the issue I am having, okay. And it is not an issue with your interpretation. It is an issue of our consistency, okay.

We just read one, or made a ruling here earlier for something that the City of Houston had specifically voted to allow a development but didn't say, to negate the

rule of the one-mile and three-years. I mean, they did everything but put the dot at the end of the sentence, from what I can gather. Okay. And that is an interpretation we could have made on that.

And I am trying to figure out a way to be consistent on this, and fair to both of you. And that is -- frankly, I am bleeding on the inside of my mouth.

MR. DORSEY: You don't have to be fair to me. I am just trying to --

MR. OXER: I understand your point. I am trying to be fair to Michael and the crew, for these guys, and to the development. But also -- a good steward of the process, so that there is some confidence that this process is going to say. One of you turn your phone off. Okay. Thank you.

Trying to be a good steward of this process, and to be consistent within this round, so that everybody knows, we will get a reasonable, as you say, Mr. Keig, a reasonable and fair interpretation of the QAP under which we are now discussing or making this process.

MR. HARTMAN: Mr. Chair, Michael Hartman, Tejas Housing, just real quick. In response to that. Listening to that earlier, if I was a developer in one of those big cities, I think it is very clear that you need to have a

resolution.

And I would agree with Cameron on that one. I don't always agree with Cameron, like right now, I don't agree with him on our application. But on that one, I mean, it is pretty clear, in black and white, that hey, by April 2nd, you have a resolution, okay. Now on the other hand --

MR. OXER: That addresses the issue.

MR. HARTMAN: That addresses that issue. Okay. In this case, we are not talking about a resolution. We are just talking about words and what is the interpretation of those words.

So it is not something that is -- it is definitely a gray area. It is unique. We asked staff if there anybody else who had ever done this, because we wanted them to be consistent. There is nobody else in our same position.

We went back through all of the 2011 and 2012 generals. We could not find any other application that fit this quirk. So you are right. We are in a quirk. And we are just asking for a reasonable man's opinion.

MR. OXER: All right. Did you -- stay there, Michael. Did you offer up this, as opposed to in a letter to correct the deficiency? Did you offer up this pro

ration in the application? Or was it -- no, you couldn't have.

MR. HARTMAN: No. You don't show that calculation in the application. You just request the points and say that you qualify for the points.

And then as I said, when they do their calculation, they take the square footage times either 95 or 85. In this particular case, we are saying, okay take this square footage times 95, this times 85.

MR. OXER: And your total actual costs are less than what they prorated --

MR. HARTMAN: Right. Instead of taking ten seconds, it took 20 seconds to do the calculation.

MR. OXER: I have a little exposure to engineering. So I have been known to do a calculation or two myself, occasionally. And I have to say, I find it reasonable, in terms of what you are presenting.

And I am trying to make sure that we interpret this correctly, for the benefit of the process of the QAP.

So we have a -- is there any other comment? Any other?

Professor McWatters.

MR. McWATTERS: Let me ask you this, Cameron. Let's say we grant the appeal here. Are there any other -- are there any unintended consequences that come

to mind in doing that? Because what we are doing is, arguably reading something into the QAP which is not -- we are reading something into the QAP that is not explicitly there.

But we are also saying that that approach is not unreasonable. Does anything occur to you, off the top of your head that could create a problem, an unintended consequence by doing that?

MR. DORSEY: I mean, we are dealing with a very extensive document. And we certainly don't try to go through and use entirely everywhere where we mean, the whole thing is something.

And so, I think you can end up with a situation where you can probably pro rate different things in all kinds of different manners if you read it with the exclusion of entirely to mean something. So, yes.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Eric, go ahead.

MR. OPIELA: Eric Opiela on behalf of Tejas Housing. Another approach that you could take to this in making the decision is to determine what a single-family design is. Without getting into whether it is pro rated or not, we clearly meet the definition of a single-family design, because we are all but a couple of units are

single-family design.

It is predominantly, 88 percent single-family design. And we meet that \$95 per square foot threshold for single-family design. If you were to take the staff's interpretation, having just one duplex would disqualify an entire development that is logically priced at \$95 per square foot to get the points, because it costs more to build single-family units than it does duplexes or other multi family units.

And throwing that entire development which legitimately has those higher costs into a lower cost category. And so you don't have to -- you have two options when you evaluate the interpretation of this rule.

Take the pro ration approach, or take the approach that the language means exactly what it says, single-family design, and apply that language to this particular development.

Does it meet the definition of single-family design? And a reasonable interpretation of that would be, it does. Thank you.

MR. IRVINE: Along that, I would respectfully chime in that that concept of, you know, all or nothing is important. It does have consequences and implications. For example, in the Evergreen item, where we were

considering the issue of one building impacting, you know, whether it is new construction or not.

So yes, it does have implications. And I was maybe a little too arcane when I was explaining the way I was looking at A and B. And that is, that A is a very small identified club of people who qualify for the \$95 treatment. And B is everybody else.

So to me, you kind of go back to the plain language of what is A. We are not talking about qualified elderly or supportive housing. We are talking about single-family design.

And the question is, is this single-family design. In which case, it gets to be treated under A. Or is it not. In which case, it falls back under B.

MR. OXER: With the intent, as you interpret or as you read it, that it is either under A, 100 percent totally, exclusively single-family or anything else. And that falls into B, which is the \$85 rule. Is that what your read is?

MR. IRVINE: Correct.

MR. OXER: Okay.

MR. McWATTERS: Yes. And I should add, I mean, I really think there is a third approach. And the third approach is to recognize the ambiguity and to seek advice.

So I mean, it is not really one or the other.

It is like gee, I don't know. I am doing something here. I am pro rating. And that is maybe a little unusual. So perhaps I should inquire.

MR. OXER: Here again, Michael, restate your calendar. Because from what I gather, your pro ration on the letter you sent was June 4th. They didn't actually have -- is that correct?

MR. HARTMAN: Well, we have June 4th, and we did give one to June 8th. But evidently, it never got to the Board.

MR. OXER: Okay. Well, fair enough. But that is -- the point is --

MR. IRVINE: For that, I apologize.

MR. OXER: Yes. The point is, from what you are asking, Mark, when they should have asked that, at the point where they should have been doing it, it wasn't a question apparently, in their mind.

But this is not one of those things -- I mean -- unfortunately, this Board only deals with the things that we hit them off into the woods and the weeds and we have got to do something. Anything that is 500 yards straight down the fairway, you get to chase it and go do it. Okay. This is always going to be a problem,

because we are looking at Croesus. Mr. Keig?

MR. KEIG: Call the question.

MR. OXER: Okay. Let's see. There is a motion on the floor to deny staff appeal by Mr. Gann and second by Professor McWatters. Is there any other comment from the Board?

(No response.)

MR. OXER: Is there any other public comment?

(No response.)

MR. OXER: Mark, do you have another comment?

MR. McWATTERS: No

MR. OXER: Okay. All in favor? That is to deny the appeal.

(A chorus of ayes.)

MR. OXER: Okay. Opposed?

MR. KEIG: Nay.

MR. OXER: Okay. The appeal is denied, three to one. Opposition by Mr. Keig. Cameron, are with through with you, yet?

MR. DORSEY: We are through for today. But you know, I want to just mention really quick, you guys see the top stuff. And it doesn't feel good. I don't feel good right now.

I mean, a lot of people spent a lot of money

putting together apps that, they just lost points. And it put a lot of them out of contention for awards. Not all of them, but a lot of them. And I don't gain any enjoyment out of my batting average, quote unquote up here.

But we do have a substantial number of applicants that have not appeared before you, because they emailed. I get 80 emails per day during the period of time where we are developing the QAP, up to submission of an application. And I get through those. Our staff gets through those. Jean helps me.

We get through those questions because this is a real estate development program. And it is tough to develop rules that contemplate everything. We are accessible.

You know, so this is a handful of stuff that is tough to deal with, and tough to swallow. But when you think about it in the context of all of the folks who aren't appearing before you, and put together really clean applications, and had three deficiencies in a 400- page application. You know, those exist, I assure you.

MR. OXER: We have one other item before the Board, to come before the Board, as I read this. We have -- Sandy, I have got to give you points here. Okay.

This is -- Mark, we are doing okay on your clock. Right? Okay.

MS. DONOHO: Good evening, Mr. Ozer, Board members. For the record, I am Sandy Donoho, Director of Internal Audit. There is good news and bad news. The good news is that it has been so long since this morning's Audit Committee that I really don't remember what I was going to say.

The bad news is I have notes. I will try to make this as brief as I possibly can. We talked about three internal audits. The first one was an audit of website management, Information Systems Division, has an effective process in place to manage updates to the Department's website.

Controls over the process are operating as intended. We identified one minor opportunity for improvement. Management has already fixed that.

We looked at an audit of HOME multi family. They generally have processes in place to ensure that program funds are committed and spent appropriately, and within the time lines required by the Department of Housing and Urban Development. That draw processes are okay. They are processed in accordance with laws and regulations. Contract amendments are approved as

required.

However, we felt like improvements could be made in the timeliness of draw processing and in the maintenance of supporting documentation for expenditures.

Management is working on implementing those recommendations.

The third audit we talked about Human Resources. They are generally in compliance with the selected federal, state and agency requirements we tested.

We felt like there were a few improvements that could be made in ensuring that employment posters are accessible to applicants, and that I-9 forms, which are used to verify an employee's authority to work in the United States are completed as required.

The biggest issue we had there, which I don't consider to be a major issue was performance evaluations are not always completed timely and in accordance with Agency policy. There are 31 out of, I think, 305 that are late, or not on file.

Security over personnel files was appropriate. Management has already implemented some of these recommendations and is working on others.

We also talked about five recent external audit reports. The 2001 statewide single audit, they had three

findings, one and a half of those related to disaster recovery. So we won't see those again next year. All three of them do not have any questioned costs.

We talked about a DOE financial monitoring report. That one was pretty much clean. Everything was in compliance. They had one finding related to the rate at which we are spending the regular weatherization grant money, because the money for AURA spent first. But I believe that we are catching up with that now.

There was a Section 8 CMAP review. They looked at Section 8 performance and decided that our Section 8 program was a high performer. They scored 100 percent of 100 percent, so they did extremely well.

The SAO issued a report on the compliance with the Public Funds Investment Act. And they determined that we are fully compliant.

The last audit was a HUD remote monitoring of obligations for the MSP program. HUD looked at MSP obligations for all contracts previously administered by TDRA as well as four of the Department's subrecipients.

They identified \$10.6 million in unsupported obligations for these contracts, which was about 33 percent of what they tested. Most of the discrepancies, 57.8 percent were tied to the TDRA contracts.

Finally, we talked about prior audit issues. We have 30 right now. Eight were verified and closed by Internal Audit. Seventeen were reported to us as implemented. We will close those when we get time to look at them.

And five are pending, and as soon as they are reported as implemented, we will be done with those. Are there any questions on the Audit Committee meeting?

(No response.)

MS. DONOHO: Was that fast enough?

MR. OXER: It is lovely. Thank you. Mr. E.D., do you have anything else to comment?

MR. IRVINE: Well, in public comment, I believe Ashley Schweickart has a letter she needs to read into the record.

MR. OXER: And we will do that for sure.

MS. SCHWEICKART: I am sorry.

MR. OXER: That is all right. We are happy to have you. You know. Okay. This is the -- and I might add, that we have reached the end of the itemized issues to be brought before the Board.

We are now entering the public comment component, where anybody here is welcome to make comment on anything to be taken up in future Board meetings.

There is no decision to be made on these going forward. It is informational for us only. So Ashley, good afternoon, or good evening.

MS. SCHWEICKART: Good evening. Ashley Schweickart, Housing Resource Center. I am also the coordinator of the Housing and Health Services Coordination Council. And that is how I come before you right now. The Council has requested that as the coordinator, I submit this letter in public testimony, and I read it to you on their behalf.

So here we go. "Members of the TDHCA governing board. As you may know, TDHCA chairs the Housing and Health Services Coordination Council, which was created by Senate Bill 1878 during the 81st Texas legislative session. The Council's mission as defined in statute is to coordinate and increase state efforts to offer service enriched housing and to identify barriers preventing or slowing service enriched housing efforts for persons with disabilities and persons who are elderly.

"Service-enriched housing is defined by the Council as quote, integrated, affordable and accessible housing that provides residents with the opportunity to receive on site or off site health related and other services and supports that foster independence in living

and decision making for individuals with disabilities and persons who are elderly. End quote.

"In the past, public program spending for long term services and supports for low income persons who are elderly and persons with disabilities in Texas was allocated in large part to institutional facilities, such as nursing homes.

"However, over the last two decades, HOME and community-based service alternatives have become an increasingly significant option and choice as witnessed through recent federal and state legislation. Therefore, the remaining barrier, keeping these persons from living in non-institutional community-based settings is the availability of affordable, accessible and integrated housing.

"The need for service-enriched housing is great and continues to grow. According to recent census findings, the population of non-institutionalized working age persons with disabilities in Texas is approximately 1.44 million, and a full 25 percent of this population is living at or below the poverty level. An additional 10.7 percent of Texans over the age of 65 fall below the poverty level.

"Since its inception, the Council has focused

its efforts on identifying methods for overcoming barriers to the creation of service enriched housing. We have concluded that the lack of funding appropriated for this purpose is the single largest ongoing obstacle preventing low income persons with disabilities and persons who are elderly from obtaining community-based living.

"The Council also acknowledges that a key limitation for TDHCA is the availability of flexible sources of housing funding, given the highly proscriptive nature of federal funding programs, which constitute the vast majority of ongoing housing funds that TDHCA administers. Therefore, the Council recommends that TDHCA submit an exceptional item within the Agency's Legislative Appropriation Request for the state fiscal years 2014-2015 that one, establishes a separate service enriched housing fund for the purpose of producing new units of service-enriched housing on an annual basis.

"And two, provides for annually funding the service-enriched housing fund at a level, and through a funding source determined by the Agency. The Council appreciates the Board's careful consideration of this recommendation and thanks the Board for its time. Respectfully, Texas Housing and Health Services Coordination Council."

MR. KEIG: Could you just read back the last couple of sentences at the very end there?

MS. SCHWEICKART: Sure. "Therefore, the Council recommends that TDHCA submit an exceptional item within the Agency's Legislative Appropriation Request for the state fiscal years 2014-2015, that one, establishes a separate service-enriched housing fund for the purpose of producing new units of service-enriched housing on an annual basis. And two, provides for annually funding the service-enriched housing fund at a level and through a funding source determined by the Agency. The Council appreciates the Board's careful consideration of this recommendation and thanks the Board for its time."

MR. OXER: Okay. Do you have another comment, Mr. Keig? Go ahead. Interpret that, would you? What do they want? Yes. What you are asking is, we have got to find more money?

VOICE: I'm trying to figure out what source --

MS. SCHWEICKART: This is not my request but the request of the Council. Thank you.

MR. OXER: I understand the point. You were reading their letter. So I was asking you the question. All right. That concludes our -- anybody else that has anything to bring before the Board for the future? Good

afternoon.

MR. FISHER: A few seconds. Bill Fisher, Sonora Housing.

MR. OXER: How are you doing, Bill?

MR. FISHER: Very good. Thank you all very much for your service and your time today. Four percent tax exempt bond deals. We are going to have to cull these lists of 9 percent deals, so we are doing some of these mainstream affordable housing projects in Houston and Dallas under the 4 percent bond program, and use our HOME funds and other soft money to make those projects a reality, which will take some pressure off you having to deal with these -- I will refer to it as the slugfest for 9 percent credits.

Many of you Board members are new. Back in the early 2000s, we did thousands of units using 4 percent credits. And that market is returning today. But it requires some soft money resources from the cities or from the state to make those transactions a reality.

So I think we could accomplish two goals. We can get more housing, and we can take some pressure off you all for the competitions for 9 percent credits. Thank you.

MR. OXER: Thanks for the comments. Okay.

Is there any other comment? Because the Board gets to make comments too. So is there any member of the Board that would like to bring anything forward to be discussed, or to put on? Mr. Keig?

MR. KEIG: I just want to thank you guys that come from out of town for all of the time you spend to come down here.

MR. OXER: All right. Mr. Executive Director or staff have any other comments to make?

MR. IRVINE: No, sir.

MR. OXER: Okay. The Chair has no other comments for the Department. Thank you for everybody for your attention deserves. I will entertain a motion to adjourn.

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. All in favor?

(A chorus of ayes.)

MR. OXER: We stand adjourned. See you in three weeks.

(Whereupon, at 6:10 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: June 14, 2012

I do hereby certify that the foregoing pages, numbers 1 through 281, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

6/21/2012
(Transcriber) (Date)

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