TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Capitol Extension Auditorium
1500 North Congress
Austin, Texas

July 11, 2013
9:00 a.m.

BOARD PRESENT:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice Chair
LESLIE BINGHAM ESCAREÑO, Member
LOWELL KEIG, Member
J. MARK McWATTERS, Member
TOM GANN, Member
AGENDA ITEM

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE:

a) Presentation, Discussion, and Possible Action on the Board meeting Minutes Summary for June 13, 2013

b) Discussion and Possible Action on Compensation of the Executive Director pursuant to the recent enactment of the 2014 - 2015 General Appropriations Act by the 83rd Texas Legislature

FINANCIAL ADMINISTRATION

c) Presentation, Discussion, and Possible Action on the FY 2014 Operating Budget

d) Presentation, Discussion, and Possible Action on the FY 2014 Housing Finance Division Budget

ASSET MANAGEMENT:

e) Presentation, Discussion, and Possible Action on approval of Housing Tax Credit Amendments 12332 Apple Grove Villas Mesquite

COMMUNITY AFFAIRS:

f) Presentation, Discussion, and Possible Action on Approval of the Amended FFY 2013 Low Income Home Energy Assistance Program (LIHEAP) State Plan, for submission to the U.S. Department of Health and Human Services

g) Presentation, Discussion, and Possible Action on Approval of the Final FFY 2014 Low Income Home Energy Assistance Program (LIHEAP) State Plan, for submission to the U.S. Department of Health and Human Services

h) Presentation, Discussion, and Possible Action on the Allocation of 2012 Community Services Block Grant (CSBG) TDHCA Administrative funds to replace some portion of funds in 2013 Housing and Homeless Services Program (HHSP) contracts funded with HTF
REPORT ITEMS:
The Board accepts the following reports:
1. Report on Plans related to the 2014 Qualified Allocation Plan and other Multifamily Rules
2. Report on Challenges Made in Accordance with '11.10 of the 2013 Qualified Allocation Plan (QAP) Concerning 2013 Housing Tax Credit (HTC) Applications
3. Report on the Status of the Community Services Agency of South Texas contracts
4. TDHCA Outreach Activities, June 2013

ACTION ITEMS:

ITEM 2: ASSET MANAGEMENT:
Presentation, Discussion, and Possible Action on approval of Material LURA Amendments
96134 Sabine Park Meadows Orange

ITEM 3: APPEALS:
Presentation, Discussion, and Possible Action on Timely Filed Appeals under any of the Department=s Program or Underwriting Rules
13022 Liberty Manor Liberty Hill 49
13023 Patriot's Crossing Dallas 74
13046 La Esperanza Del Rio Rio Grande City 92
13053 Heritage Plaza Montgomery 117
13088 Riverwood Apartments Three Rivers 143
13177 Rosewood Apartments Three Rivers 143
13068 Mayorca Villas Brownsville 160
13166 Artspace El Paso Lofts El Paso 164
13113 Reserve at Arcola Senior Living 165
Arcola
13139 Stonebridge of Plainview Plainview 188
13159 4800 Berkman Austin 200

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS.

EXECUTIVE SESSION

OPEN SESSION

ADJOURN
MR. OXER: Good morning, everyone. I'd like to welcome you to the July 11 meeting of the Texas Department of Housing and Community Affairs Governing Board. We will begin, as we always do, with roll call.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: And we'd like to welcome Ms. Bingham back after some adventurous surgery. She's not quite ready to go out dancing again yet, but we've got her here mobile.

(General laughter.)

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Professor McWatters?

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here and that gives us five present. We have a quorum so we can proceed. All right, Tim, stand and salute the flags, please.

(Whereupon, the Pledge of Allegiance and the Texas Pledge were recited.)

MR. OXER: For those of you who have come in,
you might have noticed there's a little extra security out
front, and we didn't expect it to get too adventurous in
here, but that's actually for somebody else today, so
we're hoping we won't have to call any of those folks in
here.

All right, Michael, we have Representative Bell
here. Representative Bell, we'd like to give you an
opportunity, as we always do, for senators and
representatives to make your comments first, sir.

MR. BELL: Thank you very much, and I do
appreciate the opportunity to speak first. As you
mentioned the troopers out there, obviously, the State's
business is something we want to make sure we get taken
care of.

Mr. Chairman, members, first let me thank you
for the opportunity to speak.

MR. OXER: Representative Bell, could you hold
on for just a second. Penny, can you hear?

THE REPORTER: Not very well.

MR. OXER: I don't think that mike is on.

Let's get that straightened out first. Thank you.

MR. BELL: I was not advised I was supposed to
turn on the mike.

MR. OXER: We could hear you up here for sure.

(General laughter.)
MR. BELL: Again, I'm State Representative Cecil Bell, Jr. I represent part of Montgomery County and all of Waller County.

I come before you today asking your favorable action on an appeal on the part of Heritage Plaza Apartments. Heritage is a proposed 80-unit development which would be located in the City of Montgomery which is within my district. This is a much needed project; it will provide housing to senior citizens and to low income. Montgomery County is a rapidly growing county. There's a tremendous amount of stress being placed on our population as properties that have traditionally been rented are not available any longer, so it's a great project for our area. It will spur growth and development within the city and will provide, again, the much needed housing for people who are currently underserved.

It is my understanding that the termination of the Heritage application for tax credit allocation was due, in part, to their failure to notify me. I was formerly notified March 14, however, in February when we became -- the state sends out letters that are in the county -- when we received that letter, my district director actually was in contact with the folks from Heritage.

And a part of the whole project's problem in
terms of notification comes from the fact that this is a new district which was added in the redistricting process, and so even yesterday we received calls from folks who felt like that the office was still held by Erwin Cain, Representative Cain, which is obviously not the case, and every day we deal with folks who think that they're either in Representative Creighton's district, my district, or Representative Toth's district. So the maps are there but if you don't have an address, which is one of the problems these projects have when the applications go on, it can be very difficult.

I, again, did speak to Mr. Richardson and Mr. Fuqua before March 1, and am very comfortable with being able to stand before you and say that I was aware of this project, and I felt adequately notified. And I want to make sure that I make note of the fact that as soon as the applicant realized that the project was actually in this district that they sent me that notice as quickly as possible, and that that notice, along with the previous conversations, gave me ample time to send out my letter of support, which I did do, and I actually submitted it before the April 1 deadline.

So therefore, members, I would respectfully request that you grant the appeal of termination filed by the applicant so that this much needed project, which had
the highest scoring application in Region 6 Rural, can
obtain a tax credit allocation. Again, I thank you for
your time and appreciate your hard work.

MR. OXER: Thank you, Representative Bill. We
appreciate you coming in to speak to us.

Any questions from the Board? Yes, Dr. Muñoz.

DR. MUÑOZ: Yes. Representative Bell, thank
you for joining us this morning. I think it speaks a
great deal to your advocacy of the program.

Here's my question very directly. So you're
stating for the record that you were aware of this
project, your office as made aware of this project prior
to March 1?

MR. BELL: Yes, sir.

DR. MUÑOZ: Thank you.

MR. OXER: Any other questions?

(No response.)

MR. OXER: Thank you, Representative.

MR. BELL: Thank you very much.

MR. OXER: Great. We'll take up the consent
agenda. It's listed here. Is there any item that any
member of the Board would like to pull? I'd like to pull
item 1(h) and we'll hear some comments on that in a
minute. If all members are satisfied with the consent
agenda, I'll entertain a motion.
MS. BINGHAM: Move to approve the consent agenda with the exception of item 1(h).

MR. OXER: Okay. Motion by Ms. Bingham to approve the consent agenda with the exception of 1(h).

DR. MUÑOZ: Second.

MR. OXER: Second by Vice Chair Muñoz. Is there any comment from the public? We'll have 1(h) comment here in just a minute.

(No response.)

MR. OXER: Okay. There are none. And as a housekeeping item here, there's a set of chairs, the seats right here, so if you have an interest in speaking, fill those chairs first and then the second row here from there out. We've reserved those seats for those who wish to speak on any item when it's time.

All right. Motion by Ms. Bingham, second by Dr. Muñoz to approve the consent agenda with the exception of 1(h) being pulled. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous.

Thank you.

Okay. There was comment on 1(h). Michael.

MR. DeYOUNG: Mr. Chair, members of the board,
item 1(h) on the consent agenda was an item which takes CSBG administrative funds and the item, as it's drafted, moves the funds to the HHSP program, the Homeless Housing Service Program, which you will remember is a program that was declared by the legislature a few years back and TDHCA has had to fulfill the funding obligation for the last few years.

We do have a technical correction to the item as drafted so that you can be aware of what will happen, and it is very technical. In the CSBG Act we are allowed 90 percent of the funds to go to eligible entities. We fund 43 eligible entities throughout the state. The remaining 10 percent is divided into two pools: administrative and discretionary funds. You'll remember back in January of this year we had a Strategic Planning and Budget Policy Committee meeting and we discussed taking a focus of homelessness for those discretionary funds.

The technical correction to this item is that it's drafted as we would award our administrative funds to HHSP eligible entities. Technically, what we're going to do is we're going to move those admin dollars into our discretionary pool and then we will award them to one or more of those HHSP subrecipients. So it's a minor technical correction. It would change the way we report
the dollars to the federal government, so we wouldn't say these are TDHCA admin dollars, these are actually dollars that were spent to benefit homeless populations through the HHSP fund.

And I believe Stella Rodriguez, from Texas Association of Community Action Agencies, is here to speak on this item.

MR. OXER: Good. Stella, good morning.

MS. RODRIGUEZ: Good morning.

MR. OXER: And don't forget to sign in when you speak.

MS. RODRIGUEZ: It's not here.

MR. OXER: We'll figure it out.

MS. RODRIGUEZ: Okay. Good morning again, members of the Board, Mr. Irvine. My name is Stella Rodriguez, executive director of the Texas Association of Community Action Agencies. I bring you greetings from the proud network of community action partners all across the Great State of Texas.

With me this morning is Christy Smith, executive director of the community action agency in Bay City, as well as Mark Bethune, who is the executive director of the community action agency in San Angelo.

We applaud your noble task of navigating through the rough waters that have become the business of
government finance. We certainly understand the challenges and we praise your success thus far. It is not without partners and input from those partners that you will carry out future successes, and to that end, we would like to address this item 1(h).

On behalf of the entire membership of the Association of Community Action Agencies and all CSBG eligible entities in Texas, we must stand firm in our opposition to the staff's recommendation regarding this agenda item. The item proposes a shift, now clarified, of the administrative funds that we believe is in conflict with the CSBG state application and plan posted on the Department's website. This was the plan that was submitted to the Office of Community Services, a division of the U.S. Department of Health and Human Services, and we stand opposed to any material variation from the plan without the following:

A public hearing for review of and comment on proposed amendments to the plan as allowed in the federal CSBG Act, or the opportunity to provide an alternative solution to the use of funds.

Currently community action agencies, funded by the Community Affairs Division of TDHCA, administer a large number of programs which require support from CSBG funds, and CSBG funds not only support TDHCA programs, but
others, such as senior nutrition, Head Start, Early Head
Start, workforce, childcare, to name a few. The CSBG
dollars provide viability and stability in an ever
changing funding environment. This condition is on
different from programs funded by the Housing Section of
TDHCA, such as housing and homeless services programs.

As everyone on this Board is keenly aware, with
recent sequestration, cuts at the federal level to CSBG
and an obvious mandate to do more with less, the highly
successful community action partners of Texas are being
taxed to the limit. We feel that since the CSBG funds in
question were designated to support CSBG entities and
activities, the proposed shift of the dollars will
circumvent the community action mission of promoting self-
sufficiency, reducing poverty, and revitalizing the
community, hence, preventing homelessness.

Additionally, we think there are other funding
streams more suited for assisting the housing and homeless
service programs without placing undue burden on our
community action partners. The result of this shift could
lead to the Department's inability to prevent catastrophic
events that may resonate from already strained financial
conditions.

We think the following conditions are imminent:
agencies receiving LIHEAP funds will leave large
unexpended balances due to the lack of personnel to administer the programs; agencies may be hindered when addressing real-life needs that extend beyond the standard entitlement payments afforded by the state's current LIHEAP procedures; the shift of funds benefit eight largest and best funded recipients, however, the rural communities are left without any additional support; community action agencies, who have not already, will begin to provide fewer services, causing a stark contrast to the very mission to which we are all beholding.

The list of potentially disastrous forthcomings is exhaustive. Many of them may be unavoidable, however, you are in the rare position of being able to have a lasting positive effect on the situation.

We trust that you have completed your administrative tasks listed in your state plan and the alternative use of these funds will not raise caution to those who ensure your compliance in such matters. With that being said, we respectfully ask that you reconsider the proposed use of unspent CSBG administrative funds, and we request that you consider providing these funds to the community action network, via formula, which they can expend prior to the expiration of those funds. We believe these funds can help alleviate burns caused by sequestration cuts. Our communities need these dollars,
our citizens need to be able to rely on our resources in these trying times.

We do not feel we are being insensitive to the issues proposed, as homelessness is certainly a blight on our proud state's profile, however, CSBG funds are intended for reducing poverty, promoting self-sufficiency, and revitalizing communities. The proposed shift would stray from these endeavors. We would be pleased to meet with staff to further discuss it.

This concludes my comments. Thank you.

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

Are there any questions from the Board?

I have a question Megan. Come on, you knew you were going to be in this.

MS. SYLVESTER: Megan Sylvester, Legal Services.

MR. OXER: Right. We do have a discretionary authority on these funds.

MS. SILVESTER: Yes, we do, and our Texas Administrative Code rule also allows us to move these administrative dollars to our discretionary pool. On the federal level, we just need to merely document the file that that's what we're doing and it needs to have the signature of our chief executive officer.
MR. OXER: Okay. And that would be Tim, of course.

So the crux of the issue here is a discussion of which part of the necessary funding programs that we're involved in we would spend this money, where this money would be spent. Do I read that correctly?

MS. SYLVESTER: I believe you do read that correctly, but I think Michael could speak further to that.

MR. OXER: Okay. Let's have Michael talk to it for a second.

MR. DeYOUNG: I apologize. I did not clarify, Michael DeYoung, director of Community Affairs, when I first spoke. I apologize.

MR. OXER: That's okay.

MR. DeYOUNG: Yes. The discussion is where do we apply these dollars. The intent of this drafted action item is that we would move these dollars into HHSP. HHSP currently is funded by two funds sources: bonds and trust fund dollars. This would free up trust fund dollars. The intent would be to move the corresponding amount, and I'm going to use a rough figure of between $450,000 and $500,000, to the Amy Young Barrier Removal Program, which you'll remember does modifications on homes for accessibility purposes.
We want to fully expend, we do not want these
funds to lapse. They would lapse on September 30 of this
year and we would lose access to these dollars.

MR. OXER: Texas sends enough money to D.C.; we
only want to keep as much we give back.

MR. DeYOUNG: And the goal would be to
hopefully do this in one action. The language is very
broad. We would look at the unspent dollars currently by
those eight cities, we would try and identify about
$450,000 in expenditures that would neatly swap out with
these funds. Ideally, it's one contract action.

One of the issues that presents itself if we
try to address the concern from Stella's comments of
distributing the funds to the network, we would have to
set up separate contracts for each of the 43 entities,
because we've got to keep these dollars separate because
of federal reporting requirements, so we would merge 43
different contracts. Some of these contracts, by formula,
one of them would be $584 for that agency. You would have
to close those grants in the next two months and then
report on them separately, and you're talking a tremendous
amount of staff time to get all that action. They would
have to track these dollars separately and report on them
separately just to meet the federal requirements.

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

(No response.)

MR. OXER: Stella, do you have a follow-on comment?

MS. RODRIGUEZ: I do. Thank you so much.

Stella Rodriguez, Texas Association of Community Action Agencies.

I just want to make clear that the 2012 plan that was approved by the U.S. Department of Health and Human Services does not state that the use of discretionary funds can be used for homelessness.

DR. MUÑOZ: Does it state that they can't be used for homelessness?

MS. RODRIGUEZ: No, it does not. But the federal act under 42 USC, 9908(e)(2), in the federal act it specifically states that amendments have to be made to the plan once they've been approved, and if there's going to be an amendment, and this would require an amendment to the plan, has to be submitted to the U.S. Department of Health and Human Services and a public hearing has to be held on that plan amendment.

DR. MUÑOZ: I thought Megan addressed that a minute ago.

MS. RODRIGUEZ: She addressed the Texas Administrative Code; this is the federal act.
MR. OXER: Thank you for your comment.
Megan, if you want to follow.

MS. SYLVESTER: If we were moving funds actually in the way Stella described, I would argue that we would need an amendment to the plan because we have said that we are going to spend in our plan 90 percent. In our plan that we submitted we cited our rules and our rules say that of this 10 percent we can spend, and per the federal act, up to 5 percent on administrative funding, but what we don't spend in administrative funding we may move to our discretionary funds. Homelessness is an eligible activity under the Federal CSBG Act to spend our discretionary dollars -- homeless prevention, I should say.

MR. OXER: Okay. Hold on a second. So what we're essentially saying is the plan that we put forward with HHS said we'll spend this money, there's discretionary money when there's discretionary money will follow under the Texas Code and HHS has approved that.

MS. SYLVESTER: Yes. And we will need to document our file, when it is reviewed by HHS, that this is what we have done, and when we do our reporting to HHS we will have to report on what we spent those discretionary dollars on.

MR. OXER: All right. Thank you.
Is there any other public comment on this item?

(No response.)

MR. OXER: Okay. Actually, we were supposed to have a motion to consider earlier. We need a formal motion to consider this item.

DR. MUÑOZ: I just have one followup question. Michael, you know, I understand sort of the arduousness of receiving input. You're saying that in your estimation there's no way to solicit some degree of input on this. Whether or not it's necessary, I think we've established, at least from staff's point of view, that it's not necessarily statutorily required; nevertheless, it could be helpful. I mean, is there a way to find a different, more equitable way of distribution within the time frame to ensure that this is awarded by the deadline before it becomes inaccessible to us?

MR. DeYOUNG: If we were to go out for public comment we would have to post, and it would take a good portion of what we have left timewise. And again, the concern was to rapidly get these dollars expended so that we're able to report at the end of September that we fully expended the grant. In an ideal situation, if we knew this three months earlier, certainly we would want to talk about a public hearing and the possibility and options that we could do with these dollars.
The reason we're dealing with this issue now is there had been a change, during ARRA, there was a change in the way we report to the federal government. CSBG is the last program that -- each of the grants is on a different calendar, CSBG is the last one that we're dealing with, and this issue kind of caught us, and we've talked about how to avoid this in the future, and I think that remedy is that we identify it earlier and we have more time to have that discussion, and hopefully, we avoid last-minute July 11 meetings where we say we need to do this.

DR. MUÑOZ: One final question. Do we annually, at this point in the calendar, have this kind of, whether it's $450,000 or less, sort of 5 percent residual amount to allocate? Because I don't recall that?

MR. DeYOUNG: You're correct. Historically we have not had this issue, and because of the change in the reporting requirements that were implemented during the ARRA period -- and it's, again, applying to many of the federal grants -- now we're caught and this is the first time that I'm aware of in my ten years in Community Affairs that we've had this issue.

MR. OXER: Megan.

MS. SYLVESTER: Megan Sylvester, Legal Services.
I would just like to add that the public did have a chance to comment during our rulemaking process that this is something that we would consider doing.

MR. OXER: Okay. Thank you.

All right. Any other comments or questions from the Board? A motion to consider, please.

DR. MUÑOZ: Move staff recommendation.

MR. OXER: Motion by Dr. Muñoz.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. Any other comments or questions?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous.

Thank you.

Okay. Let's move to the first item, and that will be item number 2 on Asset Management. Cari, good morning.

MS. GARCIA: Good morning. Cari Garcia, director of Asset Management.

Item 2 is the presentation, discussion and possible action on a material amendment to the land use...
restriction agreement, or LURA, for Sabine Park
Apartments.

Generally, by the time a material amendment
request is presented to the Board for action, the issues
have been worked out and there's little need for extensive
discussion or presentation, which is why usually these
amendments are seen on the consent agenda. But this
particular request involves a significant issue that the
Department has not previously considered, therefore, we've
brought this as an action item today. And what's the
saying, if the decision was easy, I wouldn't be standing
here in front of you today. In addition, there are a
couple of other people who may wish to provide comment on
this item as well.

Sabine Park Apartments is a 200-unit
multifamily development located in Orange, Texas. The
development consists of 40 buildings. Thirteen of the
buildings are in their last year of the federal compliance
period which is a 15-year federal period, and 27 of the
buildings are in year 16, so they're outside of that
federal period. Current occupancy at the development is
around 50 percent as of May, and occupancy has fluctuated
over the last few years between 50 and 60 percent.

The development was originally built in 1941
and rehabilitated with tax credits in 1996 under previous
ownership. All units are restricted under the LURA, with
60 units set aside for households who earn income at or
below 50 percent of them are median income and 140 units
at or below 60 percent of the AMI. The development was
sold to the current owner in 2010. The owner has
requested a material LURA amendment which would release 50
percent of the low income units from these rental
restrictions, allowing them to be rented to households
making more than 60 percent, so for market rate
households.

This request is the proposed solution to the
financial distress that the property has suffered over the
last few years. The owner contends that they have been
unable to lease units, and more specifically, maintain
occupancy at a breakeven level, due primarily to the high
levels of affordable housing recently developed in the
area, including housing developed under the federally
funded disaster recovery programs following both
Hurricanes Rita and Ike. They believe that prospective
low income tenants are choosing to live in other newer
affordable housing developments that have been rehabbed or
built, and that current residents are also choosing to
leave their development for this newer housing stock.

Staff has significant concerns about
recommending approval of this request. Part of this
concern is based on the fact that recent market studies of the area, both a study that the owner submitted and recent studies with tax credit applications for the area, do not fully support that there is a lack of low income housing demand in the area. And I will say that market studies can't show a person's preference on where they want to live, it basically shows this is the number of low income households, this is the number of affordable units, and it's a multiplication, so I just wanted to state that fact.

So the market studies of the area don't fully support that there is a lack of demand, and that is consistent with the current Department rules for market study analysis for that type of area. However, we do understand the financial condition of this property and we've been working and discussing with this owner for several months now and would like for the owner to be able to preserve all 200 units as affordable housing.

One of our purposes under statute is to provide for the housing needs of low income individuals and families by preserving affordable housing. I believe that preservation happens not only at allocation or award of new funding opportunities in the area, but also on the back-end of these deals in between years 15 and 30 when the majority of the original stakeholders have often left
the transaction. The Department must then work with the current owner to ensure that affordable housing can continue to be provided on a long-term basis.

Quite honestly, we usually don't get the chance to work out this type of transaction with the owners of a 9 percent tax credit transaction. Usually what happens is we receive foreclosure notice, at which time the LURA is automatically terminated. But in this situation, the owner has reached out and asked for assistance to prevent such an event.

There are a range of possibilities that could occur with this development, and nobody can foresee the future. If nothing is done here, this is a possibility that the property could go into default and be foreclosed, meaning the loss of affordability under the LURA for all 200 units. Or the Department could give the owner time to develop a long-term plan for keeping this development affordable under the provisions of the LURA. This option may not be successful either, but at least at the end of the day the owner can make a decision about the future viability of the development, knowing that all the options were exhausted.

I think right now, and likely for the past few years, the owner has been paying for operating deficits, and so there's kind of a cloud, he's within that cloud,
and perhaps if we give some time where they can research all the options, if they can even occupy with a market rate household, the cloud can be lifted so they can see, you know, what do we need to do long term to keep this affordable.

Therefore, in this item we are requesting that the Board authorize staff to work with the owner for a period of up to six months, which may be extended an additional six months with executive director approval, to develop a plan of action to preserve the long-term affordability of all 200 units under the basic parameters that were outlined in your Board package.

I do want to stress that this is not a recommendation to approve the material LURA amendment request. The recommendation is that the Department will not enforce this one restriction of the LURA, the income restriction provision, for specific buildings that are outside of the 15-year federal compliance period, so that would be 27 buildings that their current vacant units they could occupy those with households that are above 60 percent, the rent would still be restricted and they would still be required to comply with all other aspects of the LURA, and this would only be for a limited time, as well, for a six-month period with a possible extension by approval. Again, this would allow the owner to develop
the best possible resolution solution which we believe would be to keep all 200 units affordable.

I'm happy to answer any questions that you might have, and I believe Mr. Lyttle might have a letter to read into the record as well.

MR. OXER: Yes, I believe he does. At this point we have to have a motion to consider, and then we'll take comment, including the one from the representative.

MR. GANN: Mr. Chairman, I'll move staff's recommendation.

MR. OXER: Motion by Mr. Gann to approve staff recommendation. The chair seconds.

We'll hear comment. Michael.

DR. MUÑOZ: I have a question. One of the recommendations of the staff under the third bullet, any lease to an above income household during the accommodation period must provide that it is not renewable and that the tenant may be required to vacate. So under this provision, during this six-month period, somebody moves in, a year lease, and is told you might have to be run out of here after a year?

MS. GARCIA: Well, it's told that the owner has the option to not renew that lease, which they have the option with any other lease as well. They can't evict a low income household but an owner can choose not to renew
based on other factors.

    DR. MUÑOZ: This wouldn't be, this would be under that six-month period, so this wouldn't be necessarily low income.

    MS. GARCIA: Right. It could be a market rate household. Right now what the owner is doing is, in any household that is low income, under 60 percent, if they meet their other tenant selection criteria, they will sign a lease and move the person in. That will be the same. If they have an open unit in one of these buildings and they have a choice between a low income household and a market rate household, both are going to be paying the same rent and we're going to require that they verify income and complete all of the eligibility paperwork, even for the market rate households, so it would be in their best interest to choose the low income household.

    MR. OXER: So it would be monitoring consistent with what they would be doing for the rest of the facility.

    MS. GARCIA: Right. Because one of the problems with this request is that the owner hasn't had sufficient documentation to back up that there are even market rate households that want to live at this development, and so during this time period we could see who was coming in, where are they employed, how much
income do they earn, are they just slightly above 60 percent, are they $5,000 above the limit or are they $50,000 above the limit. And so perhaps if they're only slightly above the limit, then a more reasonable amendment request, if one is needed at all, would be to amend the LURA to accept households that are 80 percent and above and not market rate. I think that would be more palatable for the Department, and perhaps the Board, than just removing half of the units and allowing them to market.

MR. OXER: More data-driven.

MS. GARCIA: Exactly.

MR. OXER: All right. Let's hear from Michael.

And stay close, Cari.

MR. LYTTLE: Okay. This is a letter addressed to Mr. Tim Irvine, Executive Director of TDHCA. It's from State Representative Allan B. Ritter of House District 21.

It reads:

"Dear Mr. Irvine, I am writing to you with regard to the application for the land use restriction agreement amendments to allow for market rate units at Sabine Park, formerly known as The Oaks.

"Sabine Park has a rich history to Orange and its residents. The 40 apartment buildings, including 200 rental units, are located in the southeast section of Orange's historical district. Sabine Park was built in
1942 to house military and civilian workers involved in the ship-building trade for World War II. In 1998 the units were fully remodeled and converted to a federally approved and TDHCA supervised tax credit property.

"At its current occupancy level, Sabine Park will not be able to continue to operate at a deficit. If Sabine Park were closed, the city and its citizens would be exposed to several negative implications besides the loss of affordable housing units: the city would lose several water and sewer customers; vagrancy and criminal mischief would increase in and around the 12-acre site; the city may have to begin exterior security and maintenance of the property; and if the property contributed to blight, health and safety issues, the city would have to demolish the units to protect the surrounding residents. Amending the LURA will help ensure the viability of Sabine Park.

"The area stakeholders, the City of Orange, Lamar State College at Orange, Sabine Park residents, and the Orange Housing Authority, support the pending application. Please consider the current application to transition 100 units at Sabine Park from tax credit to market rate units and accept this letter as my support of this application."

Signed: "Sincerely, Allan B. Ritter."
MR. OXER: Thanks, Michael.

Okay. Cari, let's sort this down to some dots here. Basically, we're saying we want to have some time. It's our expressed intent to make sure we maintain the stock of affordable housing, wherever they are. The financial details of these things I'm sure vary and oscillate over time, the economic circumstances in that area have probably changed, so I'm inclined to support -- my own perspective, I'm inclined to support an opportunity for the Department and the owners to get together to see if there's a viable solution to this that doesn't slam the door shut either direction.

Do I hear that correctly, Mr. E-D?

MR. IRVINE: Well, I would say that while we certainly understand and are supportive of the idea of taking the time to work out the best possible solution, this matter does present a very troublesome concept. I mean, it's the concept that a property receives assistance through tax credits and commits to retain affordability for an extended period, typically 30 years, and that we would release that requirement. As our tax credit counsel in Washington advised, the only remedy that the Internal Revenue Code provides for is foreclosure.

MR. OXER: And the LURA is lifted upon foreclosure. Is that correct, Cari?
MS. GARCIA: Yes.

MR. OXER: Any other questions from the Board?

MR. GANN: I have a point I'd like to make.

MR. OXER: Mr. Gann.

MR. GANN: I foresee this to be something that we're going to be dealing with a whole lot in the future, simply because of the nature of the animal. This is going to be the classic example, this property started basically at the first World War, which is older than I am even --

MR. OXER: Really.

(General laughter.)

MR. GANN: Yes, it really is. There's a lot of just functional obsolescence in a property that old that can't be corrected, and you're in competition with some really nice units today, in Orange even. So see this to be a problem not just for Orange but for us in the future. And the 30-year LURA is problematic to me because when you get into that particular situation, you're going to be changing economics of the area, a lot of other things that are going on, it could be a prime real estate retail area, for all we know, but it's trapped in the middle of a position because of the LURA of 30 years.

So I think we really need to look at this for future solutions and may make some drastic changes to those particular things, and it may be we have to do this
in Washington. Thank you.

MR. OXER: Thanks.

MS. DEANE: Mr. Chair, if I can just make a suggestion.

MR. OXER: Madam Counsel, yes.

MS. DEANE: Based upon a question that was raised, that if the Board is inclined to go forward with this that you add something to the resolution: "Nothing in this resolution shall be interpreted to require or authorize evictions or non-renewals that are otherwise contrary to law."

MR. OXER: I certainly concur with that.

Did you have a comment, Juan?

MS. DEANE: Oh, and this is Barbara Deane.

DR. MUÑOZ: Well, you know, I'm given some pause given the E-D's sort of representation of this possible decision, given the recommendations of the staff, which I presume he's also read and at some level concurred with.

MR. IRVINE: I actually participated actively in drafting it, and I think that the recommendation is, at its most basic, simply that the state and the state alone would not enforce its rights to require that these particular units be leased to income-qualified households but all other requirements would remain in effect, and
whatever rights, if any, that any third parties might have under the LURA are unaffected.

MR. OXER: So essentially, the LURA remains in effect, we're going to hold the monitoring and compliance of that one component of it.

MS. GARCIA: For those 27 buildings that are outside.

MR. OXER: For those 27 buildings, 62 units, and you get six months to figure this out and come back and tell us if it worked or not.

DR. MUÑOZ: With the possible extension of an additional six months.

MS. GARCIA: Right.

MR. OXER: Right. But we'll hear from you within six months.

MR. IRVINE: And we do believe that there are potential solutions that need to be explored that could result in retaining the affordability on all the units.

MR. GANN: Mr. Chairman, I think I need to amend my motion to include Ms. Deane's phrase, if she wouldn't mind repeating it one time.

MR. OXER: I was going to offer that up, but please do so.

MS. DEANE: You want me to read it again?

MR. OXER: Yes.
MS. DEANE: "Nothing in this resolution shall be interpreted to require or authorize evictions or non-renewals that are otherwise contrary to law."

MR. GANN: I include in my motion.

MR. OXER: Okay. Motion by Mr. Gann, second by the chair to approve staff recommendations, as modified by comments by general counsel. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Okay. You've got six months, let's hear about it.

Cameron.

MR. DORSEY: Good morning. My name is Lora Myrick and I am with BETCO Consulting, and I apologize for disrupting the process. I seem to have missed the opportunity to speak on a report item, and I was wondering if I would be able to do that before we go on to the next action item.

MR. OXER: Yes, I think we'll be able to do that. We'll have you on a clock, you know that. Okay?

MS. MYRICK: Yes, sir, I understand. And I apologize for that and I appreciate the opportunity.

MR. OXER: Well, we try to run a fairly predictable ship here, but one of our purposes is to make
sure that everybody is heard. Good morning.

MS. MYRICK: Absolutely. Thank you very much.

Again, I would like to speak to a report item which is the challenge log. I certainly understand that the challenge log is a report item and that no action will be taken on the log, but we would like to make some public comment.

There were many new items introduced this year in the QAP, and with all new items, there are unforeseen circumstances and consequences that may have great impact on a situation or an application. We have seen very careful and thoughtful rule development and implementation this year. As the application process as evolved, the Department has made an effort to foresee as many potential scenarios as possible and to address them properly. We applaud and encourage such thoughtfulness and consideration, as this will be a great benefit to all parties involved.

That being said, there is an issue involving the challenge process that we would like to bring to your attention. This year we saw a more formalized process for filing and responding to challenges. We understand and welcome changes that will discourage superficial filings and allow the Department staff to focus on filings that have great merit. However, what seems to have gotten lost
in this process is the ability to appeal and to be heard
at the highest possible level, with you, the Board.

Under the current challenge process, if the
Department rules against an applicant, the applicant has
the opportunity to appeal the decision to the Board. If
the Department rules in favor of the applicant, the
challenger is not allowed to appeal the decision before
the Board because it's a report item. This presents an
inequitable advantage to applicants in the challenge
process. It would be more equitable if both sides or all
parties have the same opportunity to present evidence to
you or appeal staff decisions before the Board.

In reviewing the challenges filed this cycle,
there seem to have been issues that warrant further
consideration before a determination is deemed final. In
one example, it appears that an applicant engaged in
actions that crossed the line, and in the Department's
words, were susceptible to being raised in a challenge in
accordance to 10 TAC.

The applicant began meetings and correspondence
with county commissioners advising them not to make funds
available to a competing application. The applicant used
inflammatory terms in a public forum via local newspaper
and public meetings, and more private forums by
communicating via email and private meetings with county
commissioners and staff to denigrate the competing application's financing structure and the competing applicant's integrity and manner of conducting business. These actions were taken in what appears to be a deliberate effort to cause harm to a competing application.

This is further substantiated by the fact that the applicant did not request funding from the county and had no reason to insert themselves other than to create opposition for a competing application. There was substantial evidence to confirm the negative efforts and appearance of violation of rules. A challenge was filed yet no action was taken. If these actions do not rise to the level that violates the rule, then what does?

Last year there was a similar situation that occurred where an applicant wrote misleading letters to HOAs and that applicant was to be terminated before they withdrew on their own. What facts or details allowed this applicant to continue to move through the process and not be terminated this year? In this situation, additional information and explanations from the Department to help understand the reasoning would be beneficial to all of us and for the ability for the challenger to appeal this decision before the Board.

There was a second example, there was a
challenge that was filed contesting the good faith effort made by an applicant with respect to local funding. The applicant temporarily conformed to the rules by obtaining a letter from the county for funding since the proposed development was in the ETJ. The applicant persuaded a county judge to write a letter regarding local funding to meet point requirements in the QAP, despite knowing that the county lacked the funds to make this commitment. The applicant made assurance that by the time the commitments were issued, the city would have been annexed and the site would be in the county and the county funding would be swapped out for the city funding, in essence.

This action here seems to circumvent the rules. Staff seemed very adamant at the time of application that funding for these projects outside city limits must come from the county and funding for projects within the city must come from the city. This is further confirmed by the FAQs that are published on the Department's website. It should also be noted that it's come to our attention that the applicant, should they be annexed, there is the possibility that the substitution of funds will occur. Again, in this instance the Department should provide definite guidance based on their reasoning for this ruling and both the applicant and the challenger should have the ability to bring this matter before you, the Board.
While these challenges individually are not specifically relevant to all applicants, their overall impact is of great relevance to all of us in the development community and the public. Any and all determinations and explanations of such determinations should be available to the public and not just the challenger and the applicant. We have high respect for the work, consideration and the efforts that staff make when reviewing and analyzing the information before them and in making such decisions, but sometimes Department staff must make decisions with either limited or incomplete details and facts. Moreover, sometimes the item is simply not addressed fully and consistently or not at all.

In these cases, the challenger should have the ability to make the case to the Board for a complete and final determination. It is especially important to have this ability when there's so many new rules and criteria and processes. These rules are the Board's rules and the Board has oversight and should have the ability and the opportunity to apply, interpret and make the final determination on the very rules that they have approved.

And I thank you very much for the opportunity to present my comments.

MR. OXER: Certainly. Is there any comments or
questions from the members of the Board?

(No response.)

MR. OXER: Cameron, did you have a response or comment?

MR. DORSEY: Yes. The challenge process is one where I don't believe statutorily we could actually allow for one applicant to appeal a decision made with regard to another application. In statute, under the appeal process in 2306.6715, provision (b) states: "an applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant."

Now, the provisions in 6710 relate directly to scoring. Only one of the instances that Lora mentioned was related to scoring, the other one was related to more of an eligibility issue, however, the appeal process described here only specifies what to do in instances under 6710 as a whole. We apply this uniformly to all types of appeals, and thus, the provision precluding the ability for one applicant to appeal a decision made on another application that is filed by an unrelated applicant carries through to that uniform application of the statutory provisions.

In the specific instances at hand, I think in the case mentioned about the creation of opposition, I think there were some very unique facts and circumstances
that had some complicated legal issues involved, including constitutional rights, free speech rights and some stuff like that. We had some very long discussions and came to the conclusion that we did not feel we had the ability to say that that violated the rule, just fundamentally.

The other one was a scoring issue, so fundamentally, under statute one applicant can't appeal the decision made with regard to another application. However, I think the problem under that particular challenge there were two deadlines. The QAP provides for some level of documentation at application and then a final proving up of the ability to elect those points at the time of commitment which occurs in mid September. We did not want to presume specific outcome in September and thereby kind of preclude the applicant from having access to the full period to prove up those points in a compliant manner.

Lora also mentioned that we hadn't necessarily come down with a firm decision on an issue that relates to proving those points up at commitment. That is very specifically because we have very diverse circumstances that have similar but not the same fact patterns, and I'm concerned about putting out very broad guidance without seeing some actual facts on the ground or without having access to the full information such that we might mislead
one applicant when they come in at commitment and say:  
Well, we followed your guidance. And it's like: Well, we  
didn't know these particular facts over here.  

So we're just trying to be careful. First of  
all, there's a decision on an appeal at this meeting that  
will have bearing on what the applicant is able to prove  
up at commitment, so that's one key issue there is we  
didn't feel like we could issue guidance prior to Board  
action on similar issues at this meeting and possibly at  
the July 25 meeting. So there's some timing issues  
involved there.  

Ultimately, though, I think a key concept is we  
try to accommodate the ability for one applicant to know  
things about another application that we may not, as best  
we can through the challenge process. The challenge  
process is not a right provided for in statute,  
necessarily, it's something crafted to just allow a higher  
level of due diligence and the ability to confirm facts  
and circumstances with respect to the applications that  
are filed. So it's really more of an accommodation and an  
attempt by staff to make sure we have the facts right.  
There's not this fundamental right for one applicant to  
appeal decisions to non-related applications.  

MR. OXER: So essentially, any applicant can  
only essentially appeal the decisions with regard to that
application. They can ask you things about the others or
ask you to clear up a fact pattern, but there's no hard
bearing on another application to an external applicant or
an unassociated applicant.

MR. DORSEY: Right. And we had a deadline for
those challenges and we try to keep it very organized. I
mean, one thing you've got to keep in mind is we've got
statutory deadlines to get all of these decisions made,
March 1 to the end of July. We can't have these always
appealable issues that kind of can last forever. We have
a challenge deadline.

MR. OXER: Believe me, I know. At some point
the buzzer rings and the clock runs out and the game is
over.

MR. DORSEY: Bingo.

MR. OXER: And start again next year.

MR. DORSEY: It's hard enough to fit everything
we've got into the time frame now. You know, if you
considered the idea of having a challenge deadline,
challenges are filed, you provide a response period to the
actual applicant that's challenged. Then the Department
gets all that information together, we issue a
determination, the applicant can appeal that
determination, as can the challenger. If the challenger
appeals the determination and that results in the ED, for
example, granting that appeal, then the applicant has yet
another appeal right. I mean, it's unmanageable.

MR. OXER: Good. Thanks, Cameron.

Okay. That was commentary on a report item. I think we get your point.

Okay. Where are we here, on number 3?

MR. DORSEY: Yes. I probably shouldn't have sat down.

MR. OXER: I was going to say, Cameron, you knew better than that.

MR. DORSEY: Actually, what I wanted to do just briefly, Jean is going to present some of the first appeals, but I wanted to just say we're going to reorder these a little bit based on topic, so I thought I'd state it right from the beginning so people know when to come up and sit down.

MR. OXER: Is there to them that you'd like to group them in?

MR. DORSEY: There is an order. There are a couple of instances where I think it's helpful to group them because the fact patterns are so very similar that if the Board were to rule on one at the beginning and then hear different arguments at the end related to very similar situations, they might feel like they already made a decision and they're bound by that decision and they
didn't have the opportunity to hear alternative arguments from other applicants.

MR. OXER: How many groups do you have, more or less?

MR. DORSEY: Well, it's really just an order that I'm changing. So Liberty Manor which is currently first would remain first, Patriot's Crossing, La Esperanza Del Rio, Heritage Plaza, then we're going to look at Riverwood and Rosewood. Heritage Plaza, Riverwood and Rosewood all have very similar issues. Then Mayorca Villas which has very similar issues to the Artspace application which is listed last. Then Arcola Senior Living.

MR. OXER: Wait a minute. Hold on. We're at Mayorca Villas?

MR. DORSEY: Yes, Mayorca Villas. Then you skip those next two because those I moved up. Then the next one after Mayorca is Reserve at Arcola Senior Living, and then Stonebridge of Plainview, and then 4800 Berkman.

So that's the order we're going to try to hear them so that the issues can be grouped.

MR. OXER: Essentially moved one up and one down, but it's essentially the same.

MR. DORSEY: Yes. It's not a big reorganization. I just want to make sure like topics are
heard together. And Jean is actually going first.

MS. LATSHA: Good morning.

MR. OXER: Good morning.

MS. LATSHA: Jean Latsha, Housing Tax Credit manager.

The first few appeals here, we're going to hear a lot surrounding the date of March 1. These appeals cover a number of different issues, but at the end of the day, what this is really about is March 1, it is: did you notify the proper elected officials by March 1, did you include what you needed to include in your application on March 1, where was your site located on March 1. And I just want to throw out there really quickly that that date is really important for the QAP to function as a document. We have to evaluate these applications with the facts as they exist on March 1, and that's exactly what we did in a number of instances here, although, like I said, they're related to different scoring items.

That being said, we'll start with Liberty Manor. So Liberty Manor is an application in Rural Region 7, and they lost points for a couple of different scoring items. The first, commitment of development funding from a unit of general local government. The reason they lost those points is that on March 1 they were not located within the city limits of Liberty Hill, however, for
purposes of scoring under this item, they submitted
documentation that they had a commitment of development
funding from the City of Liberty Hill which, per the
rules, was not sufficient for points. In order for that
commitment of funding to count for points, they needed to
be located within the city limits, and this was made very
clear through some staff guidance before March 1.

Their argument is that because the development
was proposed to be located in Liberty Hill and has since
been annexed that that commitment of funding should count
for points. But again, you'll hear the date March 1 from
me several times while I'm up here. Again, the
development site was not located in the City of Liberty
Hill on March 1, therefore, they are not eligible for the
points.

Secondly, they also lost points for a community
revitalization plan in a rural area. This is actually a
different issue. They did submit some documentation that
there were some infrastructure projects near their
development site that would qualify them for these points,
however, the application was challenged, and it turns out
that these new water wells and a pumping station, which
were the infrastructure projects that were qualifying them
for these points, were not, in fact, located within a
quarter mile of the site which is required by the rule.
I think that there was just a misunderstanding of the rule here, and in their appeal they state that they believed a way to achieve these points is that the infrastructure project serves the development site, however, there's no language in the rule that says anything about the project serving the development site. If that were the case, you could have, let's say, a paved roadway three miles away, yes, you have to take that road to get to the road to get to the development site, everything would serve the development site. The rule clearly states that the infrastructure projects have to be within a quarter mile, this one was not, and I don't believe the applicant is contesting that fact. Unless you have any other questions for me about this application, I'll let the applicant speak.

MR. OXER: Hold on a second. We have to have a motion to consider.

MS. BINGHAM ESCAREÑO: Mr. Chairman, I move staff's recommendation to deny the appeal.

MR. OXER: Okay. Motion by Ms. Bingham to move staff recommendation to deny the appeal. Is there a second?

MR. GANN: I'll second.

MR. OXER: Second by Mr. Gann.

Okay. We have public comment on this.
DR. MUÑOZ: I've got a question for Jean.

MR. OXER: Okay. Let's do that.

MS. LATSHA: Yes, sir.

DR. MUÑOZ: Jean, one of the points that the applicant contends is the interpretation of the word "proposed." They cite from the QAP the statement: "An application can receive up to 13 points for a commitment of development funding from the city or county in which the development is proposed to be located."

MS. LATSHA: Yes.

DR. MUÑOZ: That's not ambiguous to me.

MS. LATSHA: And I understand their reading of that rule. However, we use the word "proposed" all over the QAP and it really is more of a general meaning of these are all proposed developments, and that's really as far as that meaning goes. We made it very clear in some other guidance, some other applicants that were in very similar situations.

DR. MUÑOZ: Yes. You say other applicants were afforded the same opportunity to seek guidance. Yes, I get that point, but afforded doesn't necessarily compel them to take advantage of it.

MS. LATSHA: Except that there was -- if you would like to go ahead.

MR. IRVINE: It goes back to March 1. On March
l it was proposed to be here. Where is that? It's either
in the city or it's not in the city.

MS. LATSHA: And there are statements in the
QAP that really do encourage that type of guidance, and
had the applicant ask us about this very particular
situation that they were in, they would have received
exactly the same guidance that everyone did.

DR. MUÑOZ: Does it say proposed to be here, or
is that how we interpret it? I mean, that to me is very
clear. It's proposed to be here, where is it on this
date. Is that how it's stated?

MR. OXER: That's essentially how it's stated.

MS. LATSHA: That is how it's stated, yes, sir.

DR. MUÑOZ: I mean, unless they misrepresented
in their appeal letter, it says proposed to be located,
doesn't say proposed to be located on this date.

MR. OXER: But it has to be for the point of
the application, the application goes in on March 1.

Cameron.

MR. DORSEY: I think the problem with this
is -- and let me work you up here -- we got several
questions prior to March 1 about this and what we needed
to do, so we sat down as a group and we said, All right,
how do we need to look at this? Because I understand the
reading that they're putting forth, I'm even sympathetic
to the reading that they're putting forth. The problem is this, if we're asked the question before March 1, here's what I've got to base our decision on: I am an applicant seeking to be annexed, I cannot tell you necessarily when I will be annexed, there is no date to prove up that annexation.

The way the QAP operates is everything is due on March 1 and based on the fact pattern on March 1 unless an explicit future date is provided for where the applicant can prove up that information, and to have these kind of contingent, unknown determinations without any QAP direction as to when those things need to be resolved would create some pretty sweeping problems.

If in this particular instance, based on that sympathy for this particular reading, the Board wants to grant that appeal, that's one thing, however, I think it's highly problematic to extrapolate that type of reading to the QAP as a whole document.

DR. MUÑOZ: Cameron, speaking for myself, I supposed I'm prepared to accept your explanation on the date, but this argument that, well, we provided instruction to others so they should have had the foresight to contact us and receive the same instruction, I find that a fairly unconvincing position.

MR. DORSEY: Okay. I think that really
revolves around there were a lot of questions, we put out some guidance that said, Hey, if you're not in the city, you can't request funds from the city. We didn't say on March 1, we definitely did not, but to me it at least raises a question: Why would I spend $40,000 on an application and elect points that would be determinative of whether or not I got an award without asking the question?

MR. OXER: Anything else, Jean?

MS. LATSHA: No, not really. I mean, I think the only thing I might add to that is that some of those other applications that were similarly situated that thought annexation, for instance, was going to happen relatively soon, in some of those cases that annexation actually did not happen, and so had we relied on that information in the other instance, then we would have been in a different problematic situation. So I think this was definitely the most consistent way to look at all of these applications.

MR. OXER: But at some point when the application comes in, whatever that date is set -- we've set it at March 1 -- you've got to evaluate the application as of March 1, so the question is was this one in the city or not.

MS. LATSHA: It was not.
MR. OXER: Okay. And that's determinative to the question in my mind. And the ambiguity of the expectation of being annexed, could happen next week, could happen next year, could happen next month, might not happen at all, so that would be problematic had it not happened, so you have to look at circumstances on some fixed date.

MS. LATSHA: Precisely.

MR. OXER: March 1 is that date. Good.

MR. IRVINE: Yes. We seek certainty. On March 1 if you're in an ETJ, it's certain that you're in the county and you will be in the county even if the municipality proceeds with the annexation. If you're within the municipality, it's certain that you're within the municipality. ETJs are very problematic things and that's why we draw the lines around municipalities and counties.

MR. OXER: Good. I'd like to have a motion to consider, please.

MR. IRVINE: We've got one.

MS. LATSHA: We already have one.

MR. OXER: From?

MR. IRVINE: Leslie and Tom.

MR. OXER: Okay. Bingham and Gann. Is there public comment on this item?
MS. BAST: Good morning. I am Cynthia Bast of Locke Lord, and I am representing the applicant in this appeal.

MR. OXER: Good morning.

MS. BAST: I certainly understand the staff’s desire to have a date certain of March 1, the need for the process to have a date certain on March 1. I understand that with all of that focus on March 1 that the staff believes that their rule is clear. But I do look at these rules differently and I do think that it is our job to take a rule and look at it and apply common rules of interpretation that say you must give effect to every word that is written on the page.

With regard to the local funding, the key word here is "proposed." Dr. Muñoz, you certainly keyed in on that. The funding is supposed to come from the local government of the jurisdiction in which the development is proposed to be located, not the jurisdiction where the proposed development is located. It could have been written differently; those are two different things. And Ms. Latsha's comment that oh, we just kind of throw the word "proposed" around because these are all proposed developments, no, we don't throw words around, we put words in rules to give us very specific guidance.

And if this development was going through an
annexation on March 1 and could prove up on March 1 that they were in good faith going through an annexation, that the city was working with them on that, then that development on March 1 is proposed to be located in the city. And if you accept the staff's recommendation and their interpretation that we're looking at where the development is located on March 1, then I assert that you're really just reading the word "proposed" out of the rule.

I also think that accepting that a property that is going through annexation is proposed to be located in the city is consistent with other sections of the QAP. If you look at section 11.9(d)(6)(A)(II) with respect to community revitalization plans, it says the plan must be adopted by the municipality or county in which the development is proposed to be located.

But I think even more instructive is section 11.8(b)(2)(A)(I) which talks about neighborhood organization requests, and it requires that the applicant send a letter based on where the development is proposed to be located. And in that section it goes on to say that if the development is located in a city or an ETJ, then the letter should be delivered to the appropriate city official.

The QAP allows for this financing to be proven
up at the time of your commitment notice. The QAP also
allows for zoning to be proven up at the time of your
commitment notice. Annexation and zoning often go hand in
hand. So if we're talking about timing here, it is
logical that an application with a development currently
in the ETJ as of March 1 but proposed to be in the city of
as of March 1 could prove up the financing at the time of
the commitment notice and could show the department:

Look, on March 1 we were going through annexation, we did
go through annexation, we went through zoning, we got our
zoning, we're proving that up now, as we're supposed to in
the QAP, we're proving up our financing now, as we're
supposed to in the QAP.

And TDHCA could look at this and say: Was
there an annexation in process on March 1 so that this
applicant reasonably and in good faith got a commitment
from the city for financing? And if so, the QAP already
allows for that subsequent recognition.

So I truly believe that this part of the QAP is
clear and that you have to give effect to the world
"proposed" in the context of an annexation that is in
process on March 1.

With regard to community revitalization plans,
this is another matter of really just looking at one word
in a sentence, and in this sentence the word is "or." The
rule provides points if the government has approved: (1) expansion of basic infrastructure that serves the development site, or, and the second phrase is improvements to areas within a quarter mile of the development site.

So our client has interpreted the use of that conjunction "or" to indicate that that last phrase within a quarter mile of the development site really only relates to the improvements to the area, not the piece before the "or" and so I ask you to look at that and see if you can derive a similar interpretation.

There is more testimony here and I will cede my time and allow you to hear from the rest of the public comment, unless there are any questions.

MR. OXER: Thank you, Cynthia.
Are there any questions from the Board?
(No response.)
MR. OXER: Good. Thanks.
MS. BAST: Thanks.
MR. OXER: Any other comment?
MR. BOATRIGHT: Good morning. My name is Greg Boatright. I'm the city administrator for the City of Liberty Hill, and I very much appreciate your time and your service.

I, too, serve in a role that is similar to the
one that you are serving this morning in that I serve as the president for the Capital Area Housing Finance Association and have been a member of that board for the past 22 years. So when the term "affordable housing" is mentioned, I understand the challenges that your Board faces because we face that each time that we meet as a board and undertake the challenge to provide workforce housing, which is basically what we're doing, and it's a very, very important role to our community -- as is this project that we're here about this morning.

I want to speak on behalf of Prestwick Development and the project that is currently taking place in our community. It will serve a vital role as a senior project for many families that have aging parents that live either with them or that they are responsible for, but it also fills a much more important role for us as a community in that the type of project that they are proposing, it gives us the ability to supplement our workforce because many of these people that are 55 years young -- since I hit that mark this past June provide a vital role in the workforce from a temporary standpoint, from a full-time standpoint. Many of the people that will be housed here are looking for ways to supplement their income.

The school district is very excited about this.
It's right across the road from where our school district has its bus facility, has its administrative offices, has the middle school and the intermediate school. And so they're looking for, as you know, always looking for ways to fill positions that are very difficult because many of them are on a part-time basis. So it's very vital to our community to have this project located where it's proposed to be.

I won't address the technicality of the March 1 date. I understand the argument and the stand that the staff is taking on this, but I will say that "proposed" in the QAP does leave a lot for interpretation, and when rules change I think there needs to be some flexibility as to the way that it's interpreted, and we would certainly appreciate your consideration on that. Thank you.

MR. OXER: Thank you, Mr. Boatright.

Any questions from the Board?

(No response.)

MR. OXER: Thank you.

MR. BOATRIGHT: You're welcome.

MR. OXER: Further comment?

MR. TUCKER: Good morning, members of the Board, Mr. Irvine. My name is Jody Tucker and I'm the CEO and founding partner of Prestwick Development.

We started our company back in 2008. We've
done over 20 deals in four different states, along with my other two partners combined, in previous lives we've done over 50. We're a very successful development organization and we spend a lot of time reviewing and discussing the QAPs in all of the states we work in each year. We attend all the workshops, we're actually engaged in the QAP drafting process. My point with all this is we're not here pleading ignorance.

Our attorney, Cynthia, has clearly pointed out that the literal wording of the 2013 Texas QAP, we followed that literal interpretation. The fact that other developers sought guidance on these issues clearly shows this is an area of the QAP where the literal reading does not match staff's intent. You cannot penalize a developer and take away points because staff said their intent is different than what was written. The QAP is the law on how credits are allocated and subjective interpretation should not be allowed. If the intent is different than the literal reading of the QAP, the staff should address this in the following year's QAP and not penalize an applicant in the current year's round.

We have dealt with this in other states that we have done business in, and in every instance the staff realized their intent was different than the literal reading and the literal interpretation has always
prevailed. In each instance staff addressed their mistake in the following year's QAP by rewording the section to match their intent. We can't question the intent on each item in the QAP which is why we always read the literal interpretation and put together applications to meet those requirements.

At this time I'd like to respectfully ask the Board to reverse the previous motion and to make a new motion to reinstate the points for Liberty Manor. We thank you for your consideration and time and thank you for all that you do for the State of Texas and affordable housing.

MR. OXER: Thanks, Jody.

Any questions of Mr. Tucker? Cameron, do you have a follow-up?

MR. DORSEY: I wanted to just address a couple of things that I see as kind of maybe reading into staff's interpretation a little bit. We're not reading the word "proposed" out of the sentence, I want to be clear. The word "proposed" if you read it out of the sentence is even more nonsensical than if you read it the way they're reading it. The development is located, where the development is located. Does anyone know where the development is located? Nowhere. It's an application so you can't take the word proposed out of the sentence and
make it make any sense. We are reading the word
"proposed" to modify the status of the development, it is
proposed, the activities in the application are proposed,
the location that it is proposed to be is proposed, but
it's definitive, it is that site. It doesn't modify the
uncertainty of the city's future boundaries and boundary
changes. To read it that way is just -- I'm not
suggesting that it can't be read that way, I'm saying that
it's inconsistent with how the QAP operates as a document.

I also think that it's clear that if we were to
read it this way and interpret it this way, then I've got
problems with other applications where we awarded points
even though they anticipate annexation because not only
under this point item, but as Cynthia mentioned, in the
community revitalization point item, this carries out and
has a pretty big ripple effect. And so before March and
since before March 1, staff has remained incredibly
consistent in its view of this point item and provided
consistent guidance, and the staff recommendation today
maintains that and retains that consistent treatment of
this issue across all applications and applicants.

The second thing is with regard to the whole
issue of "or." I encourage you to read the sentence
because what it says is it's project infrastructure or
project, infrastructure or project to the development
site. If I put "and" there, it doesn't make any sense; I need to be able to use the word "or" in this manner. The construction of the sentence is pretty apparent, and if you don't take into account that "or" to string that sentence together that way where it has to be to the site or within a quarter mile, then what you end up with is a rule that says you have to prove up that there's infrastructure. Where? Can it be anywhere in the county? There's no distance requirement then.

It's incredibly difficult to read it that way because if you read the quarter of a mile and then you go up and you read the other to not provide for a distance requirement, then why would I have a distance requirement in any case if the project just needs to be somewhere. So it's an illogical construction of that sentence and way to read that sentence is what we looked at. I think when I approached Barbara with the subject and said can you read it this way, it was no, not really. So I think certainly if you're sympathetic to that reading, definitely look at the explicit language there.

MR. OXER: Okay. Thanks, Cameron.

Any comments from members of the Board?

(No response.)

MR. OXER: Okay. Mr. Tucker. And please restate your name when you come back up.
MR. TUCKER: Jody Tucker with Prestwick Development.

First, staff did provide guidance but that guidance was provided privately to the developers that asked the question. There was no public guidance given on this topic to us or to anybody in this year's round.

The second thing regarding infrastructure, if you read the sentence there's two options: expansion and improvement. Expansion would be adding to, adding water wells, adding sewer pump stations; improvements would be improving what's already there within a quarter mile of the site. And so we selected under expansion as our choice of claiming those points. Thank you.

MR. OXER: Okay. Thanks for your comments.

Any questions from the Board?

(No response.)

MR. OXER: Anything else, Mr. E.D.?

MR. IRVINE: Not from here.

MR. OXER: Okay. Professor McWatters.

MR. McWATTERS: Cameron, I just want to make sure I understand the timing here. On March 1, let's say a property is located in a county and there is the intent for it to be located in the city through annexation at some time in the future. To get the additional 13 points, you're in the county on March 1, do you have to have a
commitment then from the county?

MR. DORSEY: If you're in the county on March 1, then you can either pursue funding and get a commitment in the form of a resolution from the county or a qualifying instrumentality of that county.

MR. McWATTERS: What's a qualifying instrumentality?

MR. DORSEY: It's an instrumentality with a certain board makeup. It can be, for example, a housing finance corporation that has a board makeup with primarily county commissioners on that board.

MR. McWATTERS: Okay. Well, here's my issue, I'm in the county, I don't want to be in the county, I'm doing everything I can do to be annexed, I think I will be annexed. Why should I have to waste my time getting a commitment from the county when I know I'm going to be in the city and so I just really want to get a commitment from the city?

MR. DORSEY: That's a great question. The problem is that the QAP doesn't provide any instruction surrounding what to do in instances where an annexation or the boundaries of a city will change at some point in the future. I think that there are a couple of key pieces. One is that you can go to the county even when you're in the city, so that's key. The other thing is you can go to
the city and secure funding. This is a point item, you
know, you elect points voluntarily to meet the explicit
requirements of that point item. We're not requiring you
to do anything.

MR. McWATTERS: Okay. So if I'm in the county,
I expect to be in the city, I can go ahead and get a
commitment from the county and if I am subsequently in the
city, that's still okay for the 13 points?

MR. DORSEY: Yes.

MR. McWATTERS: Okay.

MR. OXER: So you can be in the county but not
in the city, but if you're in the city you're
automatically in the county.

MR. DORSEY: That's right. Yes. If you're in
the city, then you can go to the county, but the strict
plain reading of the requirement is that you could not go
to a county instrumentality. I'm not sure that that was
necessarily intentional but it's pretty explicit.

MR. OXER: Do you have a follow-up, Cynthia?

MS. BAST: Yes, sir. Cynthia Bast. That's
exactly what I was going to point out. I'm looking at the
FAQ that was published after the pre-application deadline
but before the application deadline, and what it's telling
is that if your development site is located within the
city, then your possible local subdivisions include the
county, the city or a city instrumentality, but it doesn't include a county instrumentality. However, if you're in the ETJ, which means you're in the county, then your possible government entities are the county or the county instrumentality.

So theoretically, in this situation, Mr. McWatters, if we're in the ETJ on March 1 but we're being annexed, if we went to the county instrumentality, that would be an appropriate governing body on March 1 because we're in the ETJ. But then when we're annexed on June 23, it's no longer an appropriate body because we're now in the city and a county instrumentality doesn't count. A county counts so you can get county money for either one, but the way I read this FAQ, county instrumentality doesn't count, so that creates sort of a strange situation here where you could get funding and then change your jurisdiction and then what do you do when it's time for the commitment notice? Do you go to the department and say, oh, well, I changed my jurisdiction so I'm going to change my funding now? Well, what does that do to the integrity of the process?

MR. DORSEY: I would say that there are a lot of instances where things change after March 1. One thing that almost always happens is new census data is released, and this occurs after the rules are finalized, and you
know, while you might be in a high opportunity area on March 1, you might not when you place the deal in service. I mean, there are things changing all the time after March 1. So you might be in a QCT when you submit the app, you might not be in a QCT later. That's the reality of just this process.

MR. OXER: But at some point you've got to take a snapshot and evaluate that.

MR. DORSEY: Snapshot, bingo.

MR. OXER: Okay. Anything else? Any followup, Professor McWatters?

MR. McWATTERS: No. I think, Cameron, the way you're reading this, you're reading it as if the word "proposed" modifies the word "development" so the provision would read: in which the proposed development is to be located, and I mean, I think it's implicit that all developments, since they're not built yet, are proposed so you don't really need that in there, and so by adding the word "proposed" or even deleting the word "proposed" when you say to be, that's future tense, and so where's it going to be in the future, not necessarily on March 1. But I admit, it's ambiguous.

MR. OXER: Mr. Boatright, you had a followup?

MR. BOATRIGHT: Greg Boatright. Just briefly just to clarify the timelines that we're talking about.
Voluntary annexation was requested January 28 of 2013, and as you all know, the timelines that are associated with annexation and zoning, so we, as quickly as possible, went through the process and this property was annexed into the city on March 28. So that's the timeline, and with the public notices and the time limits that you have to face there, I know we did it as quickly as possible. So thank you.

MR. OXER: Any further questions?
(No response.)

MR. OXER: Okay. A passing comment on my part is while there are -- and I expect we'll hear some more efforts to parse out individual words within the QAP, one of the things that we have to recall is the QAP has to be looked at as an overall document and it has to be consistent with the tone and intent and detail of the QAP. As everybody in this room probably knows, there are quirks within there and we try to improve and buff it and polish it, but at this point the QAP has to be considered as a whole document. Am I not correct, Counselor?

MS. DEANE: That's correct.

MR. OXER: Okay. She can't quite reach me with the cattle prod over there, she's a little too far away, but if I say something wrong, I get a little jolt over here.
(General laughter.)

MS. DEANE: And plus, in conjunction with the reading of the statute and the statutory deadlines that are in the statute and the minimum requirements of applications and so forth, so staff's reading of the QAP is in accordance with the remainder of the QAP and with the statutory requirements and deadlines that are in there. It is a snapshot.

MR. OXER: Okay. There's a motion by Ms. Bingham, second by Mr. Gann to approve staff recommendation to deny the appeal. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous.

The appeal is denied.

All right. Here's what we're going to do, we've been in our chairs for an hour and 40 minutes here, take a 15-minute break and let's be in back in our chairs at five minutes to the hour. We're in recess.

(Whereupon, at 10:40 a.m., a brief recess was taken.)

MR. OXER: Thank you, everyone. Let's get back to work here. Okay, Jean.

MS. LATSHA: All right. Jean Latsha, Housing
Tax Credit Program manager.

The next appeal on your list is Patriot's Crossing. This is an application in Dallas and it is currently tied with another application that's located in Mesquite. So in order to break that tie, staff first looks at the opportunity index score of both applications, and that score was the same for these. And so the next tiebreaker that we look at is how close each of these development sites is to another existing housing tax credit development.

MR. OXER: Jean, let me interrupt for a second. I'm sorry to interrupt but I need to offer a courtesy to a rep here, if I might.

MS. LATSHA: Absolutely.

MR. OXER: Let's park this.

MR. STOKES: My apologies.

MR. OXER: My apologies. We had that on the schedule here, we worked it out, so please.

MR. STOKES: My name is Jeff Stokes. I'm the chief of staff for State Representative Lance Gooden, and I'm reading a letter of support on the record for application number 13032, Stone Leaf at Eustace.

MR. OXER: Okay. Is this one on appeal?

MR. STOKES: No.

MR. OXER: What's the issue on this one?
MS. LATSHA: No, but I think it was a competing application for another application that was under appeal.

MR. OXER: Okay. Please continue. I'm sorry.

MR. STOKES: "Mr. Chairman, Members, I would like to go on the record with my support for application number 13032, Stone Leaf at Eustace, Texas.

"I am familiar with the property and the developer, and I've also spoken to the mayor and community leaders in Eustace. From what I understand, there is a serious need for affordable housing in this community. I have been in support of Stone Leaf projects in my district before and I've personally seen these projects benefit the constituents whom I represent.

"If you have further questions concerning this project, please do not hesitate to contact me. Thank you for your consideration. Respectfully, Lance Gooden, State Representative, District 4."

MR. OXER: Good. Any thoughts from the Board? We appreciate you coming in. Thanks very much.

All right, Jean.

MS. LATSHA: And you know, I think I can correct myself. I don't think that that was competing with any application that was even under appeal.

So we'll go back to Patriot's Crossing in Dallas, and Mesquite. So Patriot's Crossing in Dallas is
located about 1.29 miles from Rosemont of Oak Hollow which is an existing housing tax credit development. Vanston Park, which is tied with Patriot's Crossing, is located in Mesquite and about 1.4 miles from LBJ Garden Villas. These figures are approximate. We're going to get into some, I think, much more detailed numbers from the applicants in just a moment, but these are numbers that I was able to determine from several different maps. And what's most important is that these numbers were determined by taking a linear measurement from the two closest boundaries. I've got a site over here, a site over here, I measure from thumb to thumb, and that gives me the distance between those two sites.

MR. OXER: And that's how far it is.

MS. LATSHA: The applicant for Patriot's Crossing thinks that we should use a different measurement, maybe driving distance, maybe we should look at where the driveways of these two developments are, and quite frankly, I think that that's just impractical.

There was not anything written into the QAP about how we were going to do this measurement because it's not necessary. There's only really one practical way to make this measurement. The only information that we have at application for the new site is the shape of the site. There's not necessarily an address associated with
it or anything. The only thing that we can look at is the shape of this site and the shape of this existing site over here and measure the distance in between those two. I don't know that I have a whole lot else to say about that. Unless anyone has any questions for me, we can probably let Claire speak.

I will say one other thing. I understand that the applicant does not contest that when you make the measurement this way, the linear distance between closest boundaries, that Vanston Park wins this tiebreaker, that in fact that distance is longer.

MR. OXER: So what it gets down to is the shortest distance between two points is a straight line?

MS. LATSHA: Correct.

MR. OXER: As opposed to the shortest distance between two straight lines is a point. Right? Sorry. It's engineer's humor.

(General laughter.)

MS. LATSHA: But either way, it's not around the block.

MR. IRVINE: I think that it also is that if you measure the distance between two points by any other method than a straight line, you inject variables and matters that simply cannot be handled in a manageable and uniform way.
MR. OXER: So what we're saying is this is a geometry problem.

MS. LATSHA: Yes. I don't think it's much of a problem, it's pretty straightforward.

MR. OXER: Well, not a problem, a concept.

DR. MUÑOZ: Hey, Jean. The CBJ survey.

MS. LATSHA: I'm not sure if that's the applicant for Vanston or for Patriot's, not ours.

DR. MUÑOZ: Because this represents Vanston being closer.

MR. OXER: All right.

MS. LATSHA: Staff recommendation basically is to uphold the tiebreaker as we are reflecting it in the log right now which is Vanston winning the tiebreaker.

MR. OXER: Okay. We need a motion to consider.

DR. MUÑOZ: Moved.

MR. OXER: Okay. Motion by Vice Chairman Muñoz to move staff recommendation. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. There's obviously a little comment on this one. Good morning.

MS. PALMER: Yes, sir. Good morning. Chairman Oxer and members of the Board, my name is Claire Palmer, and I represent the developers of the Patriot's Crossing project, and as Jean indicated, we're here to appeal the
scoring on the tiebreaker.

At the last TDHCA Board meeting on June 13, the TDHCA Board rejected staff recommendation and accepted the community revitalization plan from the City of Mesquite for application number 13044, Villas at Vanston Park which is located in Mesquite. This is how we ended up with Vanston scoring 142 points and end the tiebreaker situation. Once those CRP points were added back in at the last meeting, they ended up in a tie with us. And in fact, there are four projects in Urban Region 3 that are tied at 142. Two meet the criteria for the first tiebreaker which is high opportunity area, and Vanston Park and Patriot's Crossing both met the revitalization plan, plus being named as the most significant project by their city council.

I hope that that is something that gets changed next year because we competed against five projects in the City of Dallas to get the City of Dallas recommendation as their most significant project, while in Mesquite there was only one project so it was much easier to get that designation. Be that as it may, this is how we've ended up in the place. There are four projects tied at 142 points and only money for three to get an award.

I have been through all of the rules and all of the QAP multiple times this year, and in every instance,
except this tiebreaker, the QAP and the rules designate how measurement is to be made. We have the quarter mile measurement, we have one instance of using nearest boundary to nearest boundary, we have radius, we have a lot of different measurements. But the fact is we all talk in address terms. The only way to determine your census tract is to put in some sort of address, and even if it's just a street name, you know the street name on which your address is located, so we actually talk in terms of address.

And why does this become so critical in this particular case is because these two projects, if you measure from closest boundary to closest boundary, only have a difference of 328 feet. Their project is 328 feet farther from the nearest tax credit development based on a measurement from nearest point to nearest point. However, using driving distance which is shown on our surveys, there's a difference of 611 feet with Patriot's Crossing being the farther development, as well as if you measured linearly from driveway to driveway, again the difference is 370 feet and Patriot's Crossing is the farther project.

Staff says that we should use as the crow flies, however, people don't fly. Given choices of places to live, people drive to look at the sites. Even staff recognizes this, and in fact, from 2002 to 2009 I found 73
instances of appeals where they were showing -- and I was only able to look at all of the appeals because it was easier to pull up, but I think the standard language that staff used in those periods on shopping and services was that while the language in the QAP read the site is within one mile of major grocery, pharmacy, shopping centers of other retail establishments, staff actually said, in their real estate analysis, are located within a short driving distance from the site. That's our standard of measuring things these days: with navigation systems, driving is how we determine how far things are from each other. I've also provided in your materials multiple instances of when the Board has talked about driving distance.

I went back and I read what I determine to be every case law in Texas on measuring boundaries, mileage, distance. I can find no case law on point or attorney general's opinion on point. So in my mind, because the language in the QAP is silent, this is an issue that only affects these two properties, by the way, in the entire application round and is an issue where it's silent.

I've gone back and forth, I've talked to staff on multiple occasions about this, and finally my last conversation after my supplemental appeal was filed was with Jean on June 28 where she told me that what they really do to classify projects is based on the entire
property. Honestly, that would be fine with me too, because I can show you how the properties are located. These are the two Mesquite properties, this is the proposed project and this is the project that's the nearest project. When you overlay our project which is located right there and the nearest project, this is what you get, they overlap each other.

Now, you can see clearly that we are the nearest by boundary, but the fact is the two projects are so close together that this is a situation where it would be important for the Board to make a determination, number one, on what the appropriate language is since the tiebreaker is completely silent, and number two, based on fundamental fairness. This is an application that has been here three times. We've managed to get the City of Dallas to name us their most significant project. This is our last year in which we can possibly make a tax credit award because we're required by the City of Dallas to be under construction by the summer of 2014. We have no more time to come in for tax credits.

And finally, the tiebreaker scoring is done on high opportunity index as the first criteria which is really judged, once again, on addresses. It's census tract and school district, both of which use addresses as their criteria. Using that same factor on the second
tiebreaker I think would be fundamentally fair. And so I ask that you overrule staff's recommendation and grant the tiebreaker to Patriot's Crossing.

MR. OXER: Thanks, Claire.

Okay. Additional comment?

(No response.)

MR. LELAH: Good morning. Vigal Lelah,

Patriot's Crossing.

When I listen to Claire speak, I hear her say that the QAP is totally silent, it does not give us a way of measurement. And I also heard her say at the last Board meeting that this Board rejected staff recommendation regarding Vanston Park. I'm asking you to reject staff recommendation today.

MR. OXER: Vigal, can I interrupt you just for a second. Pull the microphone a little closer to you.

MS. LELAH: Is that better?

MR. OXER: Yes, that's better. Thank you. I want to make sure everybody can hear.

MR. LELAH: Five years of work and three tax credit applications comes down to this moment. The fate of Patriot's Crossing is going to be decided by a technicality that comes down to mere feet. What if there was a third tiebreaker? Real dollars invested, Patriot's Crossing has $4.7 million today; land closed and under
ownership, Patriot's Crossing is closed and we own the property; plans are complete, the project is shovel ready, we have five years invested in this project; number of tax credit applications, three applications. Does the applicant have an opportunity to reapply? No, we do not. The population we're serving, we're serving those who have served us, and the significance of the project. That would make your job easy to day to make your decision based on any of those if there was a third tiebreaker.

This is the last opportunity for us to apply and it's the last opportunity for us to acquire funding. The QAP is silent and this Board has the ability to make a ruling. Thank you.

MR. OXER: Thank you. Any questions from the Board?

(No response.)

MR. SUGRUE: Vigal, you need to sign in. You need to sign over here, it's taped down.

Good morning, Mr. Chair, Board members, Mr. Irvine, Ms. Deane. How are y'all doing? My name is Mike Sugrue, Stone Leaf Companies. I am the consultant with this property, and the main reason I'm the consultant with this property is this property is the only application this year directly to serve veterans -- and as a veteran myself, who, praise the Lord, I have not had to use the VA
Hospital which is directly across the street from this property -- many of the veterans who would use that hospital on a regular basis could live across the street. It would be very, very convenient for our veterans.

Vigal made a reference to it's to serve those who served us. Veterans seems to be a real hot word right now, it wasn't so hot not so long ago, but right now veterans seems to be a hot topic. I ask that you consider the veterans, I ask that you consider this property. As he says, this is his last hurrah, his last shot at it. He's taken three times to come here, he's got a substantial amount of money invested in applications, as well as the property, et cetera.

With that said, I'll sit down, other than to say I am so glad to see Cameron has joined the brotherhood of facial hair.

(General laughter.)

MR. OXER: And we just thought he wasn't standing close enough to his razor all this time.

Is there additional comment?

MR. OJI: Good morning, Board. My name is Jay Oji. I'm the applicant for the tiebreaker project, Villas at Vanston Park in Mesquite, Texas.

I don't know what to say. The bottom line is I may not be a good old boy Texan, but as the crow flies,
our property is 328 farther away than Patriot's Crossing, and this is what the rule is. Common sense, from property to property, we're farther away. If you want to go to Dallas, it's a straight shot, you can still get to Dallas; if you go through Hillsboro, Texas, it's farther away. The bottom line is from Austin to Dallas, straight line, you know what it is. From our property to the next available HTC, we're 328 feet farther away than Patriot's Crossing is to the next available HTC project.

So to me, I think the staff has done what they can do. The bottom line is I will recommend that the Board be consistent with what the staff is recommending and deny the appellant. Thank you so much.

MR. OXER: Thank you, Jay.

Are there any questions?

DR. MUÑOZ: I've got a question for Claire. You don't dispute the fact that your development is closer?

MS. PALMER: I don't dispute the fact that if you measure from boundary to boundary, our project is 328 feet -- from closest boundary to closest boundary, our project is 328 feet closer, and that's mainly because of the shapes of the various projects. I mean, they literally line up on top of each other. And frankly, boundary to boundary is only used in one place in the QAP
and it's specifically defined as what you're supposed to use in that particular instance in measuring distance, and it has to do with hazardous waste sites. And so, to me, I really do believe that this is a question of first instance for the Board and it is up to your discretion.

DR. MUÑOZ: But let me ask a question. I'm not sure it is up to our discretion because the statute states very clearly, 11.7 and then 11.9(c)(f), applicants proposed to be located the greatest distance from the nearest housing. You are closer than that which the competing project is at a greater distance. I mean, I don't see where the discretion lies other than disregard the rules.

MS. PALMER: It's how you define distance, honestly, because driving distance is a distance, and we're certainly farther from a driving distance point of view, no matter how you drove it, and if you did it from driveway to driveway, we're a farther distance. Distance doesn't mean closest points on a map necessarily, distance can be defined in many ways and in the QAP is defined in many ways. Sometimes you have one mile, sometimes you have radius, there's many different definitions. But if you look at, as a practical matter, how we use distance today, I believe we use driving distance.

And one of the main things, after Jean and I
talked, she kept telling me again and again: No, we look at the total project, we don't just look at the boundaries, we look at the entire property, all caps, and if you look at the entire property, putting them on top of each other, you see that they're really equidistant, 328 feet is less than a tenth of a mile. These two projects from any other boundary, we would be the farther project, it's just from those two closest points. So it comes down to a matter of how you measure distance and what you consider as the property.

MR. OXER: Jean, what's the reasoning behind this application, just to lasso off this application. Vigal said and Claire has responded and Mike has said also that this is the last time they would have an opportunity.

MS. LATSHA: My understanding is I think that maybe they have significant funding from the City of Dallas that I think is going to go away.

MS. PALMER: (Speaking from audience.) The land reverts to the City of Dallas if we don't start construction by summer of 2014.

MS. LATSHA: And they have submitted this application, I know, at least last year and this year, three times.

Just to clarify a couple of things. It is true that we do not use addresses really for anything. The
only thing that an address does for you is allow you not
to search all over a map of the State of Texas for the
piece of land that you're looking for. So if I go to
Google Maps and I plug in an address, it's going to zoom
in a lot closer to where I want to be, but I still need to
look at a site plan, I need to look at where streets
intersect, and everything else to determine where a site
is. And an address is simply an approximation; we went
over this last year.

MR. OXER: An address is simply a name for the
site.

MS. LATSHA: And in every case, in every single
one -- and this is going to come up later too -- you go to
a who represents mew website and you plug in an address,
that gets you close, you still need to look at the map.
You go to the Census Bureau website, you plug in an
address and that gets you close, but you need to look at
the map and determine on that map where your site is and
then make those kinds of determinations: I'm in X census
tract, X representative represents my district, and I'm X
distance from another existing development. I'm not sure
how much clearer I can be on that point.

MR. OXER: Okay. Thanks.

Any other questions? Professor McWatters.

MR. McWATTERS: Staff's recommendation approach
here to me seems rational, it seems objective, it seems transparent, and it's easily understandable. I think if we adopt another rule, a driving rule, then what does that mean, does that mean we can cut through parking lots to shorten the distance of expand the distance. And why driving, why not walking, what if you walk? You can cut corners, you walk over grass, you can come up with a vast array of combinations and permutations of routes, and then we get into which route, is it the walking route, is it the driving route, is it cutting through parking lots, is it walking over grass and the like, and I think it just opens an area which should be fairly clean, easy to determine to a lot of ambiguity and uncertainty.

MR. OXER: Last comment, Claire.

MS. PALMER: Mr. McWatters, I just want to respond to that really quickly. I don't disagree that there are many ways to drive and how would you measure, but the fact is that if you measure these two properties from front boundary to front boundary, we would still be farther. It is only because of a very weirdly shaped property in the Mesquite transaction that we end up having the closest two properties. And I think for it to come down to the shapes that people happen to pick for their land or that they were able to buy is a terrible result in this particular case. I mean, as you've seen, if you
overlay the properties, they do overlay to each other.

And to say it's nearest point to nearest point is not what it says in the QAP, it's just says the greatest distance from another tax credit property. That language wasn't added to the QAP until very late in the game because it was a motion by TDHCA in the inclusive communities litigation that proposed that that language be used as a tiebreaker. None of the briefs made any definitions of what they meant by that. And so this got thrown into the QAP late in the game, I don't think there was a lot of thought about how that measurement would be made, and I do believe that there are other options besides nearest boundary to nearest boundary.

MR. McWATTERS: I understand and I respect your opinion; I think it's something where reasonable minds may differ. But adopting your interpretation of one boundary, one curb cut versus another one could seem just as unfair to your competitor, and so using the method that staff has determined seems perfectly rational to me and probably would be the way that I would come up with it myself just given a blank sheet of paper.

MR. OXER: Okay. No other public comment.

Motion by Dr. Muñoz to approve staff recommendation, second by Ms. Bingham. All in favor?

(A chorus of ayes.)
MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The appeal is denied.

MS. LATSHA: All right. Next on our list is application number 13046. This is La Esperanza Del Rio in Rio Grande City.

The appeal here deals with points for a community revitalization plan for developments in a rural area, which is, again, that scoring item that requires that infrastructure improvements on projects be within a quarter mile of a site.

The applicant in their original application that was submitted on March 1 submitted evidence of a police station that met the requirements of the rule, and those points are actually being upheld. What is in question here is that the applicant also provided in the original application evidence of infrastructure associated with the Mi Ranchito Subdivision that was supposedly within a quarter mile of the development site. The application was challenged and we discovered that the Mi Ranchito Subdivision, those improvements associated with that subdivision were, in fact, outside of that quarter mile radius -- which, by the way, was measured from the closest boundary out in a straight line.
The applicant, in response to the challenge, has made two separate points, and I'm not quite sure which one that they're going to focus on, but they are these. First, that within a quarter mile there is an easement to a lift station that they feel should count as an infrastructure project. Staff has basically disagreed with that and said that it was really the physical infrastructure project that we want to see within that quarter mile radius.

So the applicant also provided evidence of yet another project, a new water line that was installed that appears to be actually within that quarter mile radius. However, there was no mention at all of that water line in the original application, so this is, again, where I'm going to go back to that March 1 date. Because that water line was not mentioned in the original application, we did not feel we could basically include it in our assessment to see if the application was eligible for the points, and because the easement is not eligible for the points, those two points have been denied. And unless you have any other questions for me, staff's recommendation is to deny the appeal.

MR. OXER: Thanks, Jean.

All right. Any questions from the Board?

Motion to consider?
DR. MUÑOZ: I move.

MR. OXER: Okay. There's a motion by Dr. Muñoz.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann to approve staff recommendation to deny the appeal.

Okay. Now we'll have public comment, starting over there.

MS. BROWN: Good morning, Chairman Oxer and members of the TDHCA Board. My name is Linda Brown and I am president of Casa Linda Development Corporation. CLDC is the proposed developer, HUB and general partner for TDHCA number 13046, La Esperanza Del Rio.

La Esperanza Del Rio is a proposed 60-unit new construction multifamily development in Rio Grande City which is the county seat for Starr County and sits just north of the Rio Grande River in deep South Texas. Fifty of the 60 units are proposed tax credit units, and the remaining ten units are proposed market rate units. Our mix is one, two, and three bedrooms in a garden style design. We are setting aside 5 percent of our units for veterans. Our proposed seven-acre site is located adjacent to the General Ricardo Sanchez Elementary School.

La Esperanza has been the leading application in Rural Region 11 since the first application log was
released after March 1, as well as after the staff's rigorous review on June 13, and we are first on the application list for HOME funds. We've received support letters from State Senator Judith Zaffirini and State Representative Ryan Guillen, as well as resolutions of support from both the county and the city.

During staff's review, we received very few deficiencies that simply required minor correction or clarification. We were not asked to further clarify the points related to community revitalization. After receiving the challenge, we prepared a response that we believed dutifully explained how we qualified for the two points that are now in question. We again provided an extended response in our appeal to the executive director.

Before I introduce Rick Schell, our legal counsel, who will go into the detail of our position, I would like to make just a couple of points.

First, Sarah Reidy, my business partner, and I selected a site that we believed met all of the state's criteria. We still believe that today. What's interesting about the two points in question is that it's not about whether the improvement lies within the quarter mile from the site or that it was approved by the city in the time frame set in the QAP, it's simply a question of whether the type of improvement is acceptable as
"infrastructure." If the staff desires to restrict certain types of infrastructure, even if they are improvements to the area, then those types should be added as excluded types in next year's QAP.

Secondly, there is no dispute on whether a new water line is located within the quarter mile of the site and was constructed and approved by the city in the required time frame. The staff simply concluded the evidence we provided insufficiently proved it up. We believe the evidence we provided was sufficient, given the limited resources of this rural community and city staff time, as more fully described in our appeal letter to Mr. Irvine.

Finally, one last comment I would like to make. Rio Grande City is the birthplace of my father and mother. In fact, our family goes back several generations in Rio Grande City and Starr County. I spent quite a bit of time in Rio growing up, so La Esperanza is more than another tax credit opportunity, it is an application that is very important to me on a much more personal level.

On behalf of Sarah and myself, I respectfully request your full consideration of our position and approve the return of these two points. There is no doubt that in this area of Rio Grande City within the quarter-mile radius of our site community revitalization has
occurred and is occurring.

Mr. Schell will now provide you with the basis of our position and why your final determination to return these two points meets the requirements explicitly expressed in the 2013 Qualified Allocation Plan Multifamily Rules and simply makes sense.

Thank you for your kind attention and consideration to our position.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Thanks, Linda.

MR. SCHELL: Good morning. Mr. Chairman, members of the Board, my name is Rick Schell. I'm an attorney from McAllen. Things are a little bit wild on the border but I don't think I'm the cause of all the DPS troopers out there.

I'd like to thank you for giving me the opportunity to speak to you. These are some very interesting issues presented in this appeal which I think should be particularly resonant with the members of the Board and generally what your role is in the application process.

And I think to start out with, what I'd like to do is just kind of give you a general lay of the land out there. Rio Grande City is right on the border. This
development site is within a mile or two of the Rio Grande, it's located next to an elementary school, General Sanchez Elementary School that was built a few years ago. Around it is pretty much nothing but South Texas brush. Below to the south there's a subdivision, and a little bit below that there's an apartment complex.

The infrastructure there, the wastewater infrastructure for those apartments, that subdivision, runs north up towards where the school is and where the development site is. There's a lift station that has been there for many years, and from the lift station wastewater is pumped into a four-inch forced main. So basically we have infrastructure for these apartments, the subdivision, all moving up to this lift station and into the wastewater system of the city.

Now, what's interesting to note, though, is that the lift station, even though it had been in existence for many years, was on private land. There's no development there, no easement, nothing by which the city had a right to come in and do anything with that lift station. It was installed at some point in time. If the folks in the apartments have problems with their sewer system, they had to rely on a private landowner who would either work on the lift station or get somebody to come in. And so the situation there was that you have a
certain segment of the population relying on a lift station located on private property over which the city had no legal control.

In February of 2012, all that changed because the subdivision platted -- or there was platted a phase 2 of that subdivision which included the lift station, and in that plat there was a specific dedication of a lift station easement to the City of Rio Grande City, and of course, that was accepted, you got all the signatures and it was recorded. So in February of 2012, the City of Rio Grande City obtained control of the lift station and had an easement on which they could expand the lift station, they could reconstruct it, they could repair it, they could add additional pipes, they could change the pumps, whatever, they had that now in perpetuity, whereas, they did not have it before.

And so for the first time the city had that access and control and that easement is clearly -- and it's undisputed -- that easement, as dedicated on the plat, is within the quarter mile of the development site.

In addition to that easement, there is no question, no dispute that a water line, water service line was installed within the quarter-mile radius that served a residential property, and there's no question that adequate proof was presented to staff regarding that water
line. First of all, there's a survey that shows where it is; secondly, there's a work order from the water corporation with a signed note from the manager of the water corporation saying that they installed a water service line. Then there is a certificate of occupancy by the city approving the construction. So again, in terms of what the facts are as they exist, we've got an easement within a quarter-mile radius of the property and we have a water service line.

So if we take those facts then and apply the rule to them, section 11.9(d)(6) the community revitalization rules, what do we get? Well, the rule states that in order to qualify for points you have to have an expansion of any of the basic infrastructure or projects to the development site -- and we talked about that in one of the earlier applications -- or improvements to areas within a quarter mile of the development site. and then the areas are in the laundry list which include wastewater service.

So the fact that in February 2012 the City of Rio Grande City obtained an easement which allowed it, for the first time ever, to have access to this lift station and to do what it needed to do with that lift station, clearly is an improvement to an area involving infrastructure for wastewater services. It's very
difficult to read that language in any other way.

The argument from staff has been that infrastructure must be physical infrastructure, and the staff is imposing a requirement of physical on the idea of infrastructure as it exists in the QAP, and first of all, physical is not in the rule, the word is not in the rule, there's no definition of that -- in fact, there's no definition of infrastructure in the QAP at all. And so what the code construction statute and what the enabling legislation says is that words have to be given their clear meaning as they're used normally within the context of the industries that they apply to.

And so what we did is we looked at what is infrastructure, and there are some very smart people, much smarter than me, who have opined on what infrastructure is, and one of them is Professor Andrew Lemur who is well known as an infrastructure policy expert, and he basically said that we are coming to realize that infrastructure is more than a collection of diverse facilities, rather, infrastructure comprises an interconnection, functional system in which tradeoffs among seemingly disparate parts can influence dramatically the performance of the whole.

So at the policy level, when you have legislators and city councils talking about infrastructure and making sure that there's infrastructure available for
the public, the concept of infrastructure is more than just pipes or more than just concrete or asphalt, it's the entire system which necessarily includes rights of way and easements.

The State of Texas has not specifically defined infrastructure but they have defined what they call critical infrastructure, and that's located in the Government Code, Section 421.001(2), and here the Texas Legislature has defined critical infrastructure as all public or private assets, systems and functions vital to the security, governance, public health and safety, economy or morale of the state or the nation. That's the definition of critical infrastructure that the state has.

MR. OXER: Rick, I'm going to have to ask you just to sum it up.

MR. SCHELL: Sure. And so given those types of definitions and those types of concepts, we believe that the easement that was dedicated is part of the infrastructure and falls within a clear reading of the statute. And you know, really, the issue is what's the difference between an easement or a pipe or asphalt. It all has to work together in order to have a wastewater system that works, and the fact that there was an easement dedicated in this particular instance clearly improved within the area, as the QAP requires, the wastewater
service.

And so in order to not take up too much more time, I'll simply ask that the Board deny the request of staff and reinstate the points.

MR. OXER: Good. Thanks for your comments.

As a reminder from here on, and we're trying to be courteous to everybody and give you as much time as possible, we've got a number of appeals to deal with today, we're going to be running a hard clock from here on, so when you hear the first beep that's three minutes, the second one is five, and then it's going to get short after that.

MR. BENNETT: Mr. Chairman, members of the Board, good morning. My name is Kyndel Bennett, the developer of the Villas Del Rio project who filed a challenge against La Esperanza Del Rio. Thank you for giving me the opportunity to address you today.

As a quick background, I was born and raised in the Rio Grande Valley where these projects are located, and although I'm new to the affordable housing tax credit business, I've been in the real estate development business my entire professional career.

Let me first state that it is clear to me and my team that the applicants of the other project have done a very thorough and professional job in their application.
I have not had a chance to meet them personally but I've heard nothing but good things about them. However, as indicated in our challenge, we disagree with what they are claiming points for under community revitalization.

Before I specifically address our position, I'd like to make some general comments about the community revitalization section of the QAP. As I mentioned previously, I'm new to this process and I don't know all the history that went into the writing of the rules for this section, however, when I think of community revitalization -- and let me emphasize the syllable re -- I do not think of a green field subdivision or a new development.

When we searched for our site for our application, we looked specifically for a site that was within a quarter mile of what we considered revitalization. We found a site that was within a quarter mile of a new sewer line and a paved road that was funded with CDBG and other public funds to revitalize an existing subdivision whose homes were on failing septic systems which you previously entered through a roadway in poor condition. The new sewer line and the newly paved road will revitalize this area of Rio Grande City. Additionally, our project will utilize both this new sewer line and the newly paved road which in our mind defines
the spirit of community revitalization.

I would like to ask the Department clarify this rule in next year's QAP. There were many sites that we passed on that were within a quarter mile of economic development projects that we might have pursued had we known that economic developments would be considered community revitalization.

As it relates to our challenge, Professional Engineer Gilbert Guerra from Rio Delta Engineering is going to speak to the specifics, but before he does, I would like to point out that the QAP is very clear and very specific. It states that to qualify for points under the section of community revitalization there are three items that could qualify if they're within a quarter mile of the subject site. Number one is paved roadways or the expansion of paved roadways by at least one lane; number two is water; and number three is wastewater service.

As Mr. Guerra will explain his analysis, none of these three items are within a quarter mile of the La Esperanza Del Rio site. There was no mention of an easement dedication being an eligible item in the QAP and I would also argue that the dedication of an easement is not even considered infrastructure to begin with.

After hearing testimony from Mr. Guerra and from our attorney, Ms. Cynthia Bast, I respectfully ask
that you support the staff decision and deny the subject appeal.

If you have no further questions, I'll introduce Mr. Guerra.

MR. OXER: Good. Thank you, Mr. Bennett.

Any questions from the Board?

(No response.)

MR. OXER: Thanks, Mr. Bennett.

MR. GUERRA: Good afternoon, Mr. Chairman, members of the Board. My name is Gilbert Guerra. I'm the president and principal owner of Rio Delta Engineering, a small consulting firm based out of Edinburg, Texas. I, too, am a native of Starr County, Rio Grande City, so I do have an interest in what goes on there.

In fact, we do a lot of work in Starr County. I do work for the county, until March of this year I was the city's consultant engineer, I work for the school district, and for private developers in the area, so I'm familiar with the area and the infrastructure in the area.

Somewhere in the beginning of April, I was approached by Mr. Bennett and Mr. Long to see whether I'd be interested in doing an investigation for them concerning a determination as to whether the utilities in Mi Ranchito Garden Homes Phase 2, whether the utilities in that development fell within the quarter mile of the
proposed La Esperanza project, and this was just in order
to determine whether they had met the criteria as
published in the QAP.

So what we did is, of course, I got the excerpt
from the QAP to see what the criteria was, and as an
engineer we look for the most literal, clearest definition
of words. The shortest distance between two points is a
straight line. So in reading this excerpt, it was clear
to me that the intent was to determine whether basic
infrastructure, meaning base infrastructure, primary
infrastructure, collection systems, distribution systems,
roadways, was to be the deciding factor in determining
what was there.

And further, it was defined pretty clearly in
the clauses down there, Roman Numerals I through IV, the
first two being paved roads and expansion of paved roads,
not caliche roads, not easements, not roadways, and water
or wastewater service. And once again, going back to the
basic infrastructure, to me that meant collection systems,
distribution systems, not service lines to homes. I
wouldn't accept the service line to a home as basic
infrastructure any more than I would a driveway as a basic
roadway, it's the same deal. So we focused our attention
on what was on the ground at the time.

So given that, I sent my crews out there. We
were provided a survey of the La Esperanza Del Rio site, we tied in to the corners at the time, the pins were relatively new, and as you well know, we've been through a drought in South Texas, so there wasn't any rust on the pins as far as I can tell at that time. They found the corners quite readily, and then my crews tied in all visible infrastructure appurtenances within the subdivision. By that I mean valves, manholes, the lift station, of course, and the backup curb for the roadways. Most of the infrastructure, water and sewer, is underground, so other than actually excavating and getting down to it, we couldn't pinpoint the exact location of the line, but a valve, a flush valve is pretty indicative of where the line is. For sewer, manholes are very indicative of where the lines lie because they are generally centered on lines.

So we picked up all the information, tied it in, tied it into the survey points for the proposed development, superimposed that on the aerial, and what you have before you, we put a handout out, and what I describe as exhibit number 1 is an illustration of what we picked up, including the La Esperanza site, superimposed on an aerial of the area, and then we drew a circle a quarter mile, 1,320 linear feet from the nearest corner of La Esperanza to Mi Ranchito Homes Phase 2.
In order to zoom into the area, we did an exhibit 2, it's in your handout, that brought us into the closest improvements to that 1,320 foot radius, and that is also superimposed on the aerial. If you would like to go ahead and jump to exhibit number 3, it's the same drawing minus the aerial, just for clarification and for the sake of clarity so everything is a little bit clearer.

Now, as I mentioned, up until March I had served as the city's consultant engineer for the City of Rio Grande City, so I was onboard when Mi Ranchito Garden Homes Phase 2 was developed. Having been there, I knew that a big portion of the sewer improvements had been in place prior to that and there had been some modifications. Evidently when Mi Ranchito Garden Homes Phase 1 was put together, there was a master plan, the lift station was put in place and there was a collection system put in place. Between then and February -- prior to February of 2012, between then and the time that they actually went to plat Phase 2, the layout changed and they had to change some of their sewer lines.

So you'll notice on this drawing we went through and labeled the improvements that were in place in 2006. The only improvements for sewer later than that was one corner down in the lower left-hand corner where you see a 12-inch sewer line. In order to get the existing
8-inch line out of the proposed lots, they had to reroute, and in order to meet grade for the existing line, they had to go to a larger size pipe for a lower grade. And that's the explanation for that.

But at any rate, none of the sewer improvements that were in place were anywhere close to the 1,320, relatively speaking, and the ones that were in place and the closest ones were twelve months prior to the application period in 2012. The water line had been extended for this subdivision.

MR. OXER: Mr. Guerra, I'm going to have to ask you to sum it up.

MR. GUERRA: Okay. And as you can see, the end of the line is the existing [indiscernible] that we illustrate there just below the cul de sac. The closest improvement, what I call a basic infrastructure improvement, was a street and we shot the backup curb, we even illustrated the valley gutter that's part of the street, part of the drainage, and the street was 52 feet from the 1,320 line.

So in essence, none of the improvements were within the 1,320 that met the criteria of both having been in place at least twelve months before or having been completed no earlier than twelve months before the application period and be inside the 1,320.
MR. OXER: Thank you.

Any questions from the Board?

(No response.)

MR. OXER: Okay. Cynthia. Three minutes, and I know you know how to do that.

MS. BAST: Cynthia Bast. I'm representing the Villas Del Rio application which, just to be clear, is a proposed application for 80 units in Rio Grande City and is a competing application to La Esperanza, and thus, they are opposing this appeal.

Again, as I was doing earlier this morning, I'm trying to get back to our rules and what do our rules tell us. Of all the testimony you've heard, I think there's an agreement that there are only two things within the quarter-mile radius: one is a water line, one is an easement.

With regard to the water line, you've heard from your staff that nothing about that water line was included as evidence in the application, and Section 10.902(f) says that the Board review of an application related appeal will be based on the original application. So I agree with staff that the water line should not be considered.

So we have the question of the easement. I believe that the community revitalization section of the
QAP does clearly contemplate physical improvements, something that you would expend funds for. And if we look at what really happened here, let's think about it. There's this Mi Ranchito Subdivision and it was a developer and the developer developed a lift station, and while they were doing that development, the developer was responsible for maintaining that lift station.

So the development gets completed, you file the plat, and when you file the plat you dedicate an easement to the city so that now they can take over maintaining this lift station. So now the city is going to maintain the lift station. Nothing has been improved, nothing has been expanded, they just have a different party maintaining this lift station. It's possible that in the future that may allow the city to make improvements to this overall service, but I don't see anyone making that argument or presenting that evidence.

So nothing physical has been done by granting an easement, and more importantly, going back to the fact that we're in the community revitalization section of our QAP, nothing has been revitalized or changed, really. So we believe that denying this appeal is consistent with the approach that you've taken on community revitalization thus far in this application cycle. The staff and the Board have clearly indicated that community revitalization...
should include some element of revitalizing a community, not just economic development or raw land. We've heard that multiple times.

So we do agree with the staff that if you look at your rule and what is required by your rule and what is actually being done here, that the water line cannot be considered and that the easement is not the infrastructure that is called for in the rule as part of community revitalization. So we do request that you uphold the staff's recommendation.

MR. OXER: Good timing.

MS. BAST: Told you I could do it.

(General laughter.)

MS. DEANE: Mr. Chair.

MR. OXER: Yes, ma'am.

MS. DEANE: I just want to make a note for those folks that are in the audience, it's my understanding that the handout that the Board has been referred to that there are copies of that available for the public out front, so if anyone would like to see the handout they've been discussing, they're on the front table.

MR. OXER: Thanks for that.

Okay. Rick, one last comment.

MR. SCHELL: I simply wanted to point out that
the evidence that's in your Board book does reflect that
the City of Rio Grande City has applied for a federal
grant to improve this lift station, and the only reason
that they were able to do that is because they now own the
easement and can work within that area. And so again, we
feel that the granting of the easement, in and of itself,
is an improvement to infrastructure within the area, as
required by the QAP.

MR. OXER: Good. Thanks for your comment.

No other public comment. Question from Mr.
McWatters. Professor.

MR. McWATTERS: I have one question for you.
Is the easement necessary for the ingress and egress to
this lift station? In other words, can you access the
lift station legally without going over the easement?

MR. SCHELL: No. If you look at maps or Google
aerial photographs, it looks like there was a dirt road
that kind of connected the highway to the easement which
was used by somebody, but there was no dedicated ingress
or egress to that lift station. And that did not occur
then until the plat of the subdivision was approved, and
once that was approved, now they have access to the lift
station easement through one of the roads in the
subdivision.

MR. McWATTERS: Okay. So an easement is an
interest in real property, it's different than a fee but it's still an interest in real property, and you need the easement to actually access the lift station legally. Okay.

MR. SCHELL: Yes.

MR. McWATTERS: Is this a limited use easement? In other words, is this an easement limited to the city to use, or can I use it?

MR. SCHELL: The dedicatory language in the plat dedicates the streets, the sewer system, the water lines, the easements as reflected on the plat for the use of the public, and presumably in this instance, the City of Rio Grande City would be the beneficiary of that, but it is a grant in perpetuity. And as you know, even though private easements can be abandoned, generally easements in favor of a public entity are virtually never abandoned, and so I think in this instance we've got a situation where the City of Rio Grande City has something it didn't have before that clearly improves their ability to serve the public within this quarter-mile radius.

MR. McWATTERS: I'm struggling with the idea of why this easement is not considered part of the lift station. I understand it's a different right in real property, it's a lesser right, perhaps, than a fee ownership in the real property, but nonetheless, it seems
to be an integral part of the lift station. Take the other example, if it wasn't an easement, it was just fee granted instead of the easement, I mean, that would seem to fall within part of the lift station.

MR. SCHELL: Correct.

MR. OXER: As a point of information on that, I've put in a few lift stations myself, and considering the easement an integral part of the lift station, the question should be asked then would the lift station function without the easement.

MR. SCHELL: Well, I think it would function so long as there was some private person that was willing to go on there and maintain, but when that private person decided not to, then the city could very well have a problem. And I don't think the question is necessarily is the easement part of the lift station, I think is the easement part of the infrastructure, and the infrastructure includes the easement and the lift station, they work together as a system.

MR. OXER: My point was to address Professor McWatters question about the easement being an integral part of the lift station. Admittedly, the infrastructure includes the lift station, but our contention and the staff's contention is that the easement does not, particularly in this specific case.
All right. We appreciate your thought.

MR. SCHELL: Thank you.

MR. OXER: Any other questions from the Board?

(No response.)

MR. OXER: Okay. We have a motion by Dr. Muñoz, second by Mr. Gann to approve staff recommendation to deny the appeal. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The appeal is denied. It's unanimous.

Jean.

MS. LATSHA: I'm back.

MR. OXER: Okay. Go for it.

MS. LATSHA: The next appeals, there are actually three, but they're very similar situations, so as Cameron spoke to earlier, we're just going to kind of take these together.

MR. OXER: Is this Heritage Plaza?

MS. LATSHA: Yes, Heritage Plaza, Riverwood Apartments, and Rosewood Apartments.

So the situation with all three of these applications is that applicants submit a pre-application that indicates that they notified the appropriate elected
officials, namely the state representative and state senator before they submit their pre-application on January 8. Come March 1, if there has been no change to those elected officials, staff accepts those notifications that were made back by January 8 as part of the full application.

So in all three of these applications, we allow, so that you don't have to send out these letters again, you're sending them out to the same person with all the same information, we allow applicants to simply check a box that says there was no change from pre-application to application, an that's what happened with all of these. But in fact, in all three of these instances there was a change in elected officials and it was as a result of all this redistricting. In the case of Heritage Plaza, both the senator's and representative's districts changed, and in the case of Riverwood and Rosewood, the senator's district remained the same but the representative's district changed.

We basically issued administrative deficiencies when this was brought to our attention, one through a challenge and then one after the challenge, I went through and made sure nobody else had made this same mistake and came up with the Riverwood and Rosewood applications. So in both cases we issued administrative deficiencies and
the applicants were not able to provide any evidence that they had notified the correct elected officials by March 1.

Now, I appreciate Representative Bell's testimony earlier today, and I would probably defer to Barbara on how to handle any testimony indicating that he was aware of those developments prior to March 1, however, I find one thing very problematic with that, and that is if there was notification made to the correct elected official before March 1, then I don't understand why the applicant would make no indication in their March 1 application that that correspondence had happened, that that notification had been made, and that there had been a change in the elected official.

We also are separately required to notify these elected officials and we notified the correct ones, which might be why the representative or senator could have been aware of this development. I'm not sure if that's why they were aware or not, but like I said, the thing that I find problematic is at application there was no indication that the correct elected official had been notified, and upon response to an administrative deficiency, there was again no evidence that that notification had been made prior to March 1.

I think that's kind of all my points I really
wanted to make on that.

MR. IRVINE: If I might just amplify that by reciting from the actual statutory -- not the rule but the statute in this regard: An application must contain evidence that the applicant has notified the state senator and state representative.

MS. LATSHA: I just want to touch on a couple of aspects of these appeals. There were two different appeals and they made some different points in those appeals, one of which is that there's no deadline in statute, but again, I'm just going to go back to that March 1 date. If there's not a deadline in statute, the deadline is at application, and not only that, the language in statute uses past tense that it's required certification that these elected officials were notified. So that's certainly implies that the notifications should have gone out before application.

And if there is no deadline, then what should the deadline be? Should it be the day before their support or opposition letters are due, should it be sometime after that? I mean, March 1 is really the only deadline that would really make sense.

There was also an argument that one of the representatives wasn't necessarily newly elected because that representative had been in office before, his
district boundaries simply changed, but whether it's redistricting or a new election or someone that resigns, the result of that is still the same, you still have a new person that is representing that development site, and therefore, that person is required to be notified.

There was also arguments made that it was simply confusing, it was difficult to determine who represented your site, and that might be true, but I'm going to go back to something I said earlier. I ran this exercise myself, I've gone to the same website that everybody else did, just like I said earlier, you plug in an address and it gets you close. It pops up a map and it also pops up a warning if you're close to district boundaries, and it is imperative that applicants look at those maps and look at where their sites are and look at where those boundaries are on those maps, especially in light of the redistricting and everything else that was going on.

And I think actually maybe that was my last point there too. Again, these maps have been available since April of 2012. I think with the proper amount of due diligence that the applicants could have determined who the proper elected official was, and in fact, they did by like March 12, March 14, March 18, they just didn't do it by February 12, 14 or 18.
MR. OXER: Or March 1.

MS. LATSHA: Right.

So staff recommends denial on all three.

MR. OXER: Okay. Thanks, Jean.

Any questions from the Board of Jean?

(No response.)

MR. OXER: We'll have a motion to consider, please.

MS. BINGHAM ESCAREÑO: Point of order, Chair, do you want an individual motion for each one?

MR. OXER: Yes. We'll have to take each one in order, or take them one at a time.

MS. BINGHAM ESCAREÑO: I move staff recommendation to deny the appeal on Heritage Plaza, 13053.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation denying the appeal. Do I hear a second?

MR. GANN: Second.

MR. OXER: Second by Mr. Gann.

Do we have comment? Michael has got a letter to read.

MR. LYTTLE: This is addressed to Tim Irvine, it's from State Representative Brandon Creighton.

"Dear Mr. Irvine, It has been brought to my
attention that the Texas Department of Housing and Community Affairs has terminated application number 13053 for housing tax credits filed by Montgomery Heritage Plaza, L.P. for Heritage Plaza Apartments, a proposed 80-unit development to be located on Flagship Boulevard and Liberty Street in the City of Montgomery, Montgomery County, Texas.

"This is to advise you that my staff and I have been in frequent communications with the developer for this project, both when an application was filed as a senior project in March of 2012, and since October 2012 when it was redesigned for general population residents. Further, I received proper notification concerning the project's 2013 submission at filing of the pre-application on January 7, 2013.

"I understand that the reasoning behind the decision to terminate was based on a lack of adequate notice being filed with the state senator and state representative who represented the project on the date the full application was filed with TDHCA. At the time, it was believed that this project was located within my district which is House District 16, however, due to confusion regarding the end-term redistricting maps and the Texas Legislative Council's Report on Cities and Census Designated Places which calculates representation.
by population and not by land area, it was noticed that
the project had been indeed placed in House District 3,
represented by Representative Bell.

"As stated, I was provided notification of the
2013 application from the date of the pre-application, as
required. Additionally, it is my understanding that the
applicant notified Representative Bell's office on March
14 once the mistake was discovered, and Representative
Bell's office immediately filed a letter of support on
March 27 before the April 1 deadline.

"In light of these facts, I would urge the
TDHCA Board to apply the reasonableness standard allowed
under Section 10.2 of the Uniform Multifamily Rules.

"Thank you for your time and consideration
today. Please feel free to contact my office with any
questions or concerns."

Signed: "Respectfully, Brandon Creighton,
State Representative, House District 16."

MR. OXER: Thanks, Michael.

Okay. Is there public comment on this item?

MR. FUQUA: Hello. My name is Matt Fuqua, and
I'm the representative for the application 13053, Heritage
Plaza, located in the City of Montgomery, Texas. Chairman
Oxer and Board members, thank you for allowing me to
present to you today.
Pre-app notifications. The pre-application required that notifications be sent to State Representative Creighton and State Senator Nichols. This was done and acknowledged by TDHCA staff.

New officials take office. On January 8 after our pre-application was submitted, the project site became located in a new House district and a new Senate district, and the officials elected to represent those districts took office, Representative Bell and Senator Williams.

TDHCA notifications. On January 18, the TDHCA sent notifications to Representative Bell and Senator Williams but did not copy us, so we were not aware that TDHCA had identified a change in local officials.

Regular communications. I had been in regular communications with Representative Creighton concerning the project, and there was no recognition that the district had changed.

Notifications to new officials. We provided notifications to new Representative Bell and Senator Williams as soon as effective interim redistricting lines were recognized.

Changes not clear. Changes in districts and officials were not clearly shown on the Texas redistricting website. Our project does not have a street address at this time, so the validity of the Who
Represents Me function was uncertain. I had been working with Representative Creighton for months and was never given to understand that the project was no longer in his district.

Representation of the City of Montgomery was looked up. Our project site is well within the city limits of Montgomery. Two reports published showed that Representative Creighton and Senator Nichols each represent 100 percent of the City of Montgomery. Two reports showed Representative Bell and Senator Williams each represented zero percent of the City of Montgomery. These reports were consistent with the notifications given prior to pre-app, so we concluded there were no changes.

Redistricting confusion. Confusion concerning redistricting status meant that the change in district lines was not recognized. The redistricting map was established by the 82nd Legislature and signed into law by the governor. Federal courts held it was not effective and established interim maps. Litigation was filed over the Texas maps and then the 83rd Texas Legislature established new maps which were signed into law by the governor.

Everyone received notification and was informed. All representatives and senators received notification of the project, and three of the four
officials wrote letters of support, Senator Nichols having established a policy of no support letters, so the purpose of the notifications was achieved.

Support for our appeal. We have additionally received letters from Representative Bell, Representative Creighton and Senator Williams specifically supporting this appeal and requesting that a reasonableness standard be applied to this situation as set out in Section 10.2(a) of the Multifamily Rules.

Use reasonableness standard and grant appeal. Given that we reasonably relied upon information taken from the Texas Redistricting web page on the Texas Legislative Council website, we request that you reverse your motion and make a motion to grant this appeal and reinstate our application pursuant to Section 10.2 of the Multifamily Rules. Thank you, sir.

MR. OXER: Thanks, Matt.

Any questions from the Board?

(No response.)

MR. OXER: Tamea. I'd say good morning, but it's good afternoon now.

MS. DULA: Good afternoon. Tamea Dula with Coats Rose, representing Heritage Plaza.

Ladies and gentlemen, we have a glitch.

MR. OXER: Quirk.
MS. DULA: That too. This appeal was rejected because it is stated that it is a statutory requirement that the notices be given to the state representative and the state senator, and this is correct. Government Code 2306.6704 set out the pre-application process and specifically requires notification go to five different groups. The very next language after that, which says the state senator and state representative of the district containing the development: The Department shall reject and return to the applicant any application assessed by the Department under this section that fails to satisfy the threshold criteria required by the Board in the Qualified Allocation Plan.

Fortunately, everything was done properly, TDHCA staff agreed. Section 11.8(b) of the QAP established the threshold requirements for the pre-app which contained nine different items, plus the same notifications that are in the statutory language. Additionally, 11.8(c) says that if you satisfy all of these, then you're eligible for pre-app points. Heritage Plaza received the pre-app points in its scoring notification, so we assumed that we had satisfied everything.

Government Code 2306.6705, this establishes the general application requirements. It contains eight
items, plus notifications going to these same five groups. The eight items that are included in that include requirements that are routinely addressed in administrative deficiencies, things like your financial plan and letters from your syndicator, and things of that nature. These are addressed in administrative deficiencies routinely and new information is brought in to clarify situations. Note that in 2306.6705 there is no language about rejecting the application if it doesn't contain all of these items.

Now, there is in 2306.6710 similar language which I will read, if I can find it: "Evaluation and underwriting of applications. In evaluating an application, the Department shall determine whether the application satisfies the threshold criteria required by the Board in the Qualified Allocation Plan. The Department shall reject and return to the applicant any application that fails to satisfy the threshold criteria."

Here is the problem: we no longer have threshold criteria for applications in the QAP. All of that has been moved to the Multifamily Rules. The QAP does indeed deal with pre-application threshold issues, it also deals with application selection criteria and challenges, and basically that's it. It does not deal in any regard with application threshold, that's all been
moved to the rules. The only place that it talks about
application threshold is in Section 11.8(a)(4) which is at
the top of page 10 of the QAP which says: "The acceptance
of a pre-application does not equal satisfaction of an
application threshold."

But what is this application threshold? Well, it doesn't exist anymore. In the rule we have, instead, procedural requirements for application submission, and as part of that, number one, we have Section 10.204 which is required documentation for application submission, and this includes all of the certifications, et cetera, which I think is about as close as you come to a threshold requirement.

Not included in that are notifications. Notifications are included in 10.203, they stand separate and apart, and in 10.203 it says: "If evidence of these notifications was submitted with the pre-application, if applicable to the program, for the same application and satisfies the Department's review of the pre-application threshold, then no additional notification is required at application."

We have evidence that the pre-app satisfied Department scrutiny, they gave us the pre-app points. No additional notification is required at application.

Now, it goes on to say --
MR. OXER: I'm going to have to ask you to sum it up here.

MS. DULA: -- later on that: "In addition, should a change in elected official occur between submission of the pre-app and submission of the application, the applicants are required to notify the newly elected or appointed official." But that does not give you a deadline, it doesn't even say that it has to be in the application.

And so we are submitting that there is this glitch in the thing, it is not statutorily prohibited to approve an application that failed to adequately see that with all of this redistricting and the unconstitutionality of the redistricting, that they failed to recognize that the lines had changed. They reasonably relied on documentation from the redistricting website which is included in the appeal that you have before you in exhibits 2 through 6. It shows that the previous representatives continued to represent 100 percent of the City of Montgomery, and this is practically smack-dab in the center of the City of Montgomery city limits.

So we request that you exercise your discretion which is granted in the rules and approve this appeal. Thank you.

MR. OXER: Okay. Thanks for your comments, Ms.
Okay. We've got a procedural question here. How many other people want to speak on this item? One, two, three, four. Okay. On this item, how many more? I'm talking about the item, not the concept. Here's what we're going to do. The last thing you want is for this Board to be hungry, so we're going to take a break here. And I want everybody to sit still if you can listen to this. This item is still active. When we take this break, I remind the Board we're not to discuss this except to ask for legal advice, so everybody be quiet for just a second.

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, to receive legal advice from its attorney under Section 551.072 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.074 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039(c) of the Texas Government Code.

The closed session will be held in the small banquet room in the cafeteria. The date is July 13, the
time is 12:31. We're in recess.

DR. MUÑOZ: July 11.

MR. OXER: I'm sorry. You're right, it is July 11, 2013, the time is 12:31. Let's be back in our chairs here at 1:30 sharp, please.

(Whereupon, at 12:31 p.m., the meeting was recessed, to reconvene this same day, Thursday, July 11, 2013, following conclusion of the executive session.)
MR. OXER: The Board is reconvened in open
session. It is 1:34. We met in executive session, there
were no decisions made, and we received legal advice from
our general counsel.

All right. We are on item 3 on Heritage Plaza,
application number 13053.

MS. LATSHA: Jean Latsha, Housing Tax Credit
Program manager.

So I'm not sure but I think we heard all the
testimony for 13053, so I guess the question is -- no?
Okay. More. So we'll take that up in a minute, but
whether we want to hear the testimony for all of the other
ones or make the motions separate.

MR. OXER: We're going to vote on each one of
them, as I think we are required to do, but it may be that
we'll hear individual testimony.

MS. LATSHA: With respect to the other
applications that are similarly situated, did you want to
hear all of that testimony first?

MR. IRVINE: Procedurally, there's already a
motion.

MR. OXER: There's already a motion on this
particular application.
Okay. Ms. Dula has had an opportunity to speak there are others. Line yourselves up there because I'm not picking out who goes first.

DR. MUÑOZ: They're on the next one.

MR. OXER: Are you on this one or the next one?

Okay. And pardon me for interrupting, but I will remind everybody we've got a three-minute limit, five-minute if you have time ceded by someone else. We're going to be suffering from a potential loss of quorum here in a certain amount of time, so we want to make sure that we please adhere to the time limits. When I ask you to, you'll need to sum up your position and statement, and then we'll move to the next speaker. So with that, welcome back after lunch.

MR. HARTZ: Thank you. Chairman Oxer and Board, my name is Justin Hartz with LDG Development. I'm here today to speak in favor of staff's recommendation of termination of TDHCA application number 13053, Heritage Plaza, to be located in Montgomery, Texas.

We were the challenger to this application that resulted in the termination. I would first like to mention that as a fellow developer, we do not take pleasure in challenging other people's applications and causing terminations of other companies' projects. Unfortunately, in this application the issues we observed
were not simply mistakes but major violations of the QAP.

I understand the applicant contends redistricting was confusing, and therefore, they should not be penalized for not notifying the correct legislators until after the March 1 deadline. I have to state, frankly, this should not have been the case. As a matter of fact, our site in Crosby, Texas was also one that was impacted by the redistricting, we had no problem finding the correct information, and actually notified both the outgoing and the incoming legislators at the time of pre-application. We also called and confirmed the legislators prior to the submission of the full application to triple check that we had the correct ones listed in our application.

While there may have been some confusion at the beginning of 2012, we all knew the elections happened in November and that the new legislators were going into office on January 8. There was no doubt that the state elected officials' districts were set and in place prior to the full application date of March 1, and this information was readily available prior to the full application on the Texas Legislative Council website. Within the website you can put the address in; if you don't have an address, you can clip the map viewer and you can zoom down to where you see your location and it shows
the district you're actually located in.

We were all warned at the application workshop to double check our legislators between pre and full app. Staff workshops specifically noted that any changes in officials required a re-notification by full application and the official RFQ. The applicant had seven weeks from the pre-application to full application to double check and make sure they had the correct legislators.

There is simply no excuse for not getting this right. It is the developer's responsibility to verify all information that is contained in the application. The developer certified that there was no change in the elected officials from the application to full application, when this was not the case. Additionally, TDHCA was the party to notify the correct legislators prior to the March 1 deadline that the applicant didn't even certify that. So the key is if you can find the legislator you can actually notify, why couldn't they find out who was the correct legislators at the time prior to the full application.

And also, too, I know this morning Honorable State Rep. Bell testified concerning that he was notified, but TDHCA actually notified him prior to March 1. And additionally, he mentioned this morning it was a senior project, not a family project.
So while I understand the application received letters of support for the application from the legislators, they were not notified according to the QAP, we also would like to point out the applicant misinformed the legislators by stating that this application was a senior property when, in fact, it is a family property. We are concerned about the misrepresentation, especially since one of the legislators wrote a letter of support for this application on March 28 which is the same date of applicant's notification of this being a senior property.

While staff has said they will address the issue at another time, if this current appeal is granted, we believe that the deliberate misinformation to all the elected officials should result in termination as well.

Thank you for the opportunity to speak. We would ask that you uphold the requirements of the QAP and approve the staff's recommendation of termination. Thank you.

MR. OXER: Great. Thank you.

Any questions from the Board?

(No response.)

MR. OXER: Okay. Next, Tamea.

MS. DULA: Can I respond?

MR. OXER: Yes. I'll give you one minute, please, not another three. Okay?
MS. DULA: Tamea Dula, Coats Rose for Heritage Plaza.

I'd like to simply respond to the issue with regard to senior project. This was a senior project a year ago, it changed to a general population project. It is true that one or two of the notifications contain the senior representation in it, however, the representatives and the senators are all aware that it is a general population, and some of the letters state that.

And there is precedent that over the Christmas vacation another application had a similar issue arise and it was determined that because all of the elected officials were aware that it was not going to be a senior project that it was not considered to be something that was so onerous as to ditch the application. Thank you.

MR. OXER: Okay. Thank you. Point noted.

Is there any other comment on application 13053, Heritage Plaza? Anything to add, Jean?

MS. DEANE: Mr. Chair, can I just give a bit of a framework for the Board in legal terms in terms of looking at this issue?

MR. OXER: We always ask your counsel.

MS. DEANE: I just wanted to say that I think with this particular issue really what we're looking at is a statutory hurdle. I know we've talked a lot about the
QAP, but I think really this is more a statutory issue that has to be addressed. And we've talked a lot about the March 1 deadline which, of course, is a statutory deadline, that's in 2306.6724(d), and it says that applications must be submitted by March 1.

So if you combine that with 2306.6708 which states that there can't be any change or supplement in the application after the filing deadline, after March 31, except at the request of the Department seeking clarifying information or creating administrative deficiencies.

MR. OXER: March 31 or March 1?

MS. DEANE: I'm sorry. March 1, the statutory deadline, March 1. And then if you look at by law, by statute what are the minimum requirements of that application that must be filed by March 1 -- and I know we've talked about that -- in this instance it's evident that the applicant has notified the following entities with respect to the filing of the application, so it is past tense. So it contemplates that on March 1 when you file that application you're going to be able to provide evidence that by that filing deadline you have -- past tense -- you have notified the appropriate senator or rep and that you have some kind of evidence of that.

There are separate statutory requirements for pre-app and for app, so I think it's very clear, first of
all, that it's an extremely important requirement, especially when you put that beside the requirement that letters of support or opposition from senators or reps must be received by the Department by April 1, so they only have 30 days. If you wait until the last minute to provide that notification, they're still only going to have one month.

If you read the requirement as allowing notification past that time, first of all, you're causing tremendous problems for the senator or rep, but also you have statutory compliance issues. And I believe, also, that since in the statute it lists it separately, both with regard to the pre-app and the app, it's real clear those are two separate requirements. You're going to notify the correct senator or rep at the time of the pre-app, and you're going to notify the correct senator of rep -- you must provide evidence that you have notified them on March 1 when you file that application.

MR. OXER: File the full application.

MS. DEANE: That's the full application, both the pre-app and the full application, that those are definite requirements.

And so I really think what we're looking at is a statutory requirement here, and if the applicants can show that they made that notification in some form or
fashion and that there is some kind of evidence in the app
that was done, then I think that might get them there
But I just want to make it real clear it's a statutory
issue, so it's a completely different level than just the
QAP.

MR. OXER: Good. Thanks, Barbara.

Anything to add, Jean?

MS. LATSHA: No, just if you have any questions
for me.

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

(No response.)

MR. OXER: Okay. There's been a motion by Ms.
Bingham, second by Mr. Gann to approve staff
recommendation to deny the appeal of Heritage Plaza,
application 13053. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous.
The appeal is denied.

Okay. Next one, Jean.

MS. LATSHA: So the next is -- and these are
actually exactly the same situation, it's the same
developer and in the same city, so it was even the same
representative that was not notified, so I would call
these exactly the same situation, although on two separate applications. One is Riverwood Apartments, number 13088, and the other is Rosewood Apartments, number 13177. And unless you have any questions about my previous presentation, I think we have covered all that, so I'll let them speak.

MR. OXER: Okay. We're going to take these in order, one at a time, and so the first one you want to consider is Riverwood?

MS. LATSHA: Sure. Riverwood, number 13088, and staff recommends denial of the appeal.

MR. OXER: Okay. A motion to consider from the Board, please.

DR. MUÑOZ: So moved.

MR. OXER: Motion by Vice Chairman Muñoz to approve staff recommendation to deny the appeal. Is there a second?

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham.

Is there public comment?

MR. MADDOCK: Mr. Chairman, members of the Board, speaking on behalf of number 13088, Riverwood Apartments, a senior project funded by rural development, approximately 20 years old, filed an application for rehab, my name is Gary Maddock. I'm head of the
application team for the developer, Ronald Potterpin, and
I have been since 2009.

In 2013 we gave the proper notices on the pre-app
to Representative Jose Aliseda and Senator Judith
Zaffirini. Unbeknownst to us, after the pre-application,
Three Rivers was redistricted to House District 31 and
Representative Ryan Guillen was the representative. TDHCA
had agreed with our pre-app filings, the same as with the
other application, and we received the pre-app points for
that.

From 2009 to 2012, we filed twelve tax credit
applications with TDHCA and probably double the number of
pre-applications and we always used Who Represents Me to
get the information that we need to send out the notices.
that site does not have all of the information, so we
also go to the Texas House of Representatives and the
Senate websites specifically to get more information.
With respect to city, county and state officials, in the
same manner, we use a number of different websites.

Following the mailing of our certified letters,
we received back letters that are undeliverable, we get
letters back that tell us that they're not the right
representative, we get phone calls, and we follow up on
all of those and we make the changes in our system and re-
otice those that have to be noticed. We did the same
thing for our 2013 applications. We filed ten pre-applications, including one for Riverwood and one for Rosewood. With respect to many of those pre-applications, we got letter notices back that they were misaddressed, we got phone calls saying that somebody else was. We corrected all of those in our system. We did not, however, get any back relating to Riverwood or Rosewood.

After the review of the pre-app log published by TDHCA, we decided to file applications in 2013 only for Riverwood and Rosewood. Having not received any return envelopes, phone calls and not being aware the redistricting had taken place, we had no reason to recheck the Who Represents Me and all of the other websites to check on all of the different officials. We had been through this procedure for four or five years and it seemed to work fine.

In March, our attorney, Scott Poor, in preparation for seeking legislative letters of support, discovered that there had been redistricting and Representative Guillen was now the proper representative. On March 12 he sent out the proper notice to Representative Guillen, and on March 19 we got a letter of support from Representative Guillen.

As we did provide notice to the new Representative Guillen and TDHCA itself had provided
notice to Representative Guillen prior to March 1 and we received a letter of support from Representative Guillen, we believe that we have complied with the statutory requirements. Accordingly, we respectfully request that the applications be reinstated.

MR. OXER: Thank you, Mr. Maddock.

Is there other comment?

MR. POOR: Good afternoon. My name is Scott B. Poor, and I serve the applicant as an attorney and as a consulting planner. I work as an economic development incentive consultant.

I wanted to discuss some of the confusion created by redistricting. I had previously submitted some written comments, and I respectfully request that those comments be incorporated into the record, and I won't recite my comments point by point, I just kind of want to get to the gist of the comments, and that is this redistricting process really created an extraordinary set of circumstances that should warrant some special degree of consideration.

To the extent that there was some confusion resulting from redistricting, that confusion should be excusable and that this applicant acted reasonably in interpreting conflicting information, and that this applicant utilized best efforts and practices in trying to
comply with all the agency's requirements.

During the application cycle, at least from the perspective of the rural development community, the redistricting was very much a moving target. There were lots of things going on because this application cycle was simultaneous with the legislative session where things were being debated. I'm not trying to be critical of how the courts and the legislatures dealt with redistricting --

MR. OXER: You're the only person in this room that's not, by the way.

(General laughter.)

MR. POOR: I appreciate it's a very complicated issue, but in all fairness, the Board should recognize that some degree of confusion on the part of the public was inevitable as a result of this complicated process.

The other point that I wanted to briefly address is the intent of these notice requirements, and the intent is clearly and is simply to give elected officials the opportunity to comment on a proposal that will have an impact on the communities and the constituents that they represent. In this case, that intent was met. The state representative had the opportunity and exercised the opportunity to voice his support for this project. It's a project located in an
oilfield town with skyrocketing rents and the preservation of affordable housing is an issue of critical concern to his constituents.

So I firmly believe that this applicant fulfilled the intent of the requirements, I believe this applicant acted reasonably and did everything that should be expected. And I appreciate your consideration today. Thank you for giving me the opportunity to speak.

MR. OXER: Thanks, Scott.

Any questions from the Board?

(No response.)

MR. OXER: Are you signing in, Cynthia, or would you like to speak again?

MS. BAST: Yes, sir, briefly. Cynthia Bast of Locke Lord, representing both the Riverwood and the Rosewood applications.

I don't deny that there is a statutory requirement in 6704 that says there's a notice at the time of pre-app, and there's a statutory requirement in 6705 that says there's a notice at the time of application, and that in our rules we allow for if you notified at the time of pre-app, that you don't have to do it again if there's that continuity from the time of pre-app to app.

But what's really interesting here -- and you've heard a lot about the redistricting -- as you look
at these dates, the pre-application was due on January 8. That happens to be the same the legislative session started which means it's the same date that the new court-ordered maps took effect. So our client notified Representative Aliseda on January 7, and then on January 8, the date the pre-application was due and delivered to TDHCA's offices, that's the date that the change happened.

So if, for instance, recognizing that redistricting was coming, if in the rules TDHCA had met the statute by saying you notify the representative who represents that district as of the date the pre-application is due, then Representative would have been notified in conjunction with the pre-application and there would no question here. So you've got, literally, a 24-hour time frame when something changed here and helped create this situation.

I know that applicants need to be duly diligent in this and that they need to dot all their i's, cross all their t's and check everything they can. I think you've heard some testimony that the resources for checking those things aren't always perfect. I've talked to several reputable application consultants who say that they go to three different databases to check these things and that those databases don't always give the same information. And if you go to the Who Represents Me website, it
specifically has a disclaimer about redistricting. It says: During the transition to new representation, Who Represents Me will provide limited information about the new districts.

So there we are January 7, January 8, it did make a difference for these two applications. Ultimately, but State Representative Guillen and Senator Zaffirini were notified by both the applicant and TDHCA, both Representative Guillen and Senator Zaffirini did provide support letters for these developments, and we respectfully request that you grant the appeal.

MR. OXER: Good. Thanks for your comment. Do you have a question, Doctor?

DR. MUÑOZ: I have a question for the executive director. The claim of the intent of the statute strikes me as very reasonable, but my understanding is we're not considering the intent that there must have been evidence at the time of application of notification, there must have been some physical evidence in the application, not intent.

MR. IRVINE: That's correct.

DR. MUÑOZ: And that's our statutory obligation.

MR. IRVINE: Statutory requirement is that there be evidence in the application that the notification
of the correct senator and representative had already occurred and that that application, with that evidence, has got to be submitted on or before March 1.

MR. McWATTERS: I also have a question for the E.D. Tim, on the Who Represents Me website there's a disclaimer there, is my understanding. Does the disclaimer give the person who is trying to figure out who represents him some additional guidance as to where to go?

MR. IRVINE: I believe it directs you to -- it says specifically if you have to be sure about this, you should contact -- and Jean Latsha will fill in that blank.

MS. LATSHA: I think it's the county election official, I don't know the exact title.

MR. OXER: County clerk.

MS. LATSHA: Right.

MR. McWATTERS: So if you followed that disclaimer, and that disclaimer, is it new, did it come up last week, or has it been on the website for some time?

MS. LATSHA: I couldn't say for sure. I've used the website for years and years myself. I'm not sure if it's new or not; I imagine it's probably not. The website looks exactly the same as it's looked for a long time.

MR. McWATTERS: Okay. So let's say it was there before March 1, then it directed someone to another
source if there was some ambiguity. Right?

    MS. LATSHA: Yes, sir.

    MR. McWATTERS: Okay. And then you go to that person and then you could come up with a definitive answer, which could ultimately be wrong, but at least you would go to the best source.

    MS. LATSHA: Yes.

    MR. McWATTERS: Okay. Thank you.

    MR. OXER: And in addition to that, let me ask, because the former gentleman speaking said that there was notification in workshops that if there is doubt on the second one -- if there is no change between the pre-app and the app, you don't have to do it again, but if there is or potentially is, that you were advised to be certain of it and renotify?

    MS. LATSHA: That's correct. And there was a lot of discussion about that at the workshops, especially because of that January 7-January 8, that's when things changed. So we had a number of applicants that, for instance, would notify both the outgoing and incoming elected officials. We advised applicants also that should they notify the outgoing -- let's say they were ahead of the game and they were doing their notifications in early January or December and they notified the outgoing, that they needed to make sure that between January 8 and March
1 that they notified the newly elected official, the one
that took office on January 8.

MR. OXER: And if you really wanted to be sure,
you would do a saturation campaign and notify everybody in
West Texas, for example, if you're in El Paso.

DR. MUÑOZ: So Jean, you're saying that we had
a number of applicants that found themselves in a similar
situation of transitioning representation and properly
notified both the former and new elected representative.

MS. LATSHA: Yes, sir.

MR. OXER: We have a comment from Michael
Lyttle. We also have a comment from Professor McWatters.

MR. McWATTERS: Well, I mean, there's been a
representation/presentation to the effect that this was a
very complex system, there's a lot of uncertainty there,
but following up on what Dr. Muñoz said, it sounds like
most people ran the gauntlet and survived and ultimately
complied. We have three here that did not, but does that
mean there was another three that did, or was there
another hundred that did?

MS. LATSHA: After the challenge to Heritage
Plaza, I went back and checked every single one of them
and these are the only three applications that I came up
with that made a mistake.

MR. OXER: Out of a total of?
MR. McWATTERS: Out of a total of what?

MS. LATSHA: Out of 131.

MR. OXER: So three out of 131 is about 2 percent then, more or less.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Michael.

MR. LYTTLE: Just a point of clarification.

Under the Who Represents Me website, actually when you go to that link where it says redistricting, it actually takes you to the Texas Legislative Council website. Then that website has a number of announcements and maps that indicate what the current plans are, what exists, what the previous plans were, all that sort of thing, so it's a direct link that takes you there.

MR. OXER: And in any event, the county clerk or the county election supervisor would have known in the event there had been any lack of clarity on the site. So anybody who is riding the line, a prudent individual would --

MS. LATSHA: I would think so. I never went that route or never had any experience with actually having to contact that office, but that's what I would understand would happen.

MR. OXER: Okay. Any other questions from the Board?
MR. OXER: Okay. Thanks, Jean. We have another comment now.

MR. SHACKELFORD: I'll be extremely brief, understanding the time constraints that we have. Mr. Chairman Oxer, members of the Board, Ms. Irvine and Ms. Deane. John Shackelford, Shackelford, Melton & McKinley, representing another applicant, Grand Manor, and I'm here to speak in support of the staff recommendation to deny the termination of this particular application and the one following, and again, I don't relish being up here asking that you terminate somebody. I'm sure these are good people and they've tried very hard and hope they'll come back next year and do the same thing.

But a couple of observations I just wanted to point out that hadn't been sort of spoken on until sort of at the very end by Dr. Muñoz and Professor McWatters, and that is out of those 131 applications, this affected a lot of people, you've only got three people sitting here, and from their testimony you would think that this was pretty extraordinary, but a lot of people were affected by the redistricting and had to go through the same thing that they had to go through, and amazingly, only these three didn't quite get there. It's unfortunate, but most everybody figured it out.
Also, as a practical matter, if you've got $30,000, $40,000, $50,000 in an app riding on the deal, what do you do? When in doubt, all you're doing is sending a letter out, you're not having to obtain anything from anybody. It's just send a notification letter to who you think was there or maybe who you think is coming in, so it's not that difficult.

And then finally, I appreciate Ms. Deane's comments about the statutory requirements, but it's also quite obvious to me under the Multifamily Rules, Section 10.203, it tells you when you've got to send your notification in and to whom you've got to send your notification. The first sentence says: "No later than the date the application is submitted, notification must be sent to all persons or entities identified in (a) through (h)." Sub-clause (h) says the state senator, the state rep, and then right before you get to (a) through (h), it says officials to be notified are those officials in office at the time the application is submitted. So in this instance, to me it's pretty clear 10.203 and the statute that's already been cited, to me make it pretty abundantly clear what the requirements are for any applicant.

And again, this affected a large pool of people, not just a small group of people that had trouble
navigating some websites to figure out which rep or which senator they may have had.

And finally, in order to save time, I think the next application before you, same facts, that I won't come back up and take up your time.

MR. OXER: Thanks, John.

Any questions from members of the Board? Is there any other comment?

MS. LATSHA: I just want to make one clarification. If memory serves, I actually did encounter one or two other applications that had this same issue but we didn't review those applications since they weren't competitive, so they didn't get the chance for an administrative deficiency, so I don't know what the ultimate outcome of those would have been, but there might have been two others.

MR. OXER: And that's true, but we're talking about there are three applications out of 131 that survived the review, those other two, if you had that five, that's not five out of 131, it's five out of 300?

MS. LATSHA: It's still five out of 131, right. And I also do, just because we talked about the other one so much, the applicant here did notify the correct senator. I don't know that that weighs into the decision, but it was only the representative that was wrong in this
case.

(Static in sound system.)

MR. OXER: Hold on a second. Is that the microphone?

MS. LATSHA: I don't know. Is it?

MR. OXER: It stopped. Okay. There it is again.

MR. LYTTLE: That usually happens when there's a mobile device in proximity of a microphone.

MR. OXER: I guess Big Brother is listening, or at least watching. Anybody here work for the NSA, by the way?

(General laughter.)

MR. IRVINE: It's an acronym, no such agency.

MR. OXER: That's right, they don't exist, they're not here.

All right. Is there any other public comment on application 13088, Riverwood?

(No response.)

MR. OXER: Okay. We have a motion by Dr. Muñoz, second by Ms. Bingham to approve staff recommendation to deny the appeal. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)
MR. OXER: There are none. It's unanimous.

The appeal is denied.

The next one up is the Rosewood. You're saying it's the same concept?

MS. LATSHA: Exact same situation.

MR. OXER: Same time, same station, different name.

MS. LATSHA: Yes, sir. Same developer, same city, same representative.

(Discussion regarding static in sound system.)

MR. OXER: So essentially, we basically change the number on the application, it's the same concept for this one.

MS. LATSHA: Yes, sir.

DR. MUÑOZ: So moved.

MR. OXER: Okay. We have a motion to approve staff recommendation by Dr. Muñoz. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. Do we have public comment on this one?

It appears that we have none.

Is there any other questions from the Board?

(No response.)

MR. OXER: Okay. On the matter of the appeal by 13177, Rosewood Apartments, motion by Dr. Muñoz, second
by Professor McWatters. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The appeal is denied.

Okay. And while you're setting up there, Cameron, I'd like to take a minute and recognize Don Jones, chief of staff for Representative Jose Menéndez. D.J., how are you doing? Hope you survived all the activity out there.

(General talking between Mr. Oxer and Mr. Jones who was in the audience.)

MR. OXER: Okay. Cameron.

MR. DORSEY: All right. The next two are Mayorca Villas and Artspace El Paso Lofts. Both of them deal with the same issue, but we'll bite them off one by one, as we did in the last one.

Mayorca Villas is a transaction in Brownsville. This is the same issues that we've dealt with for the past two Board meetings. I think this is the last two that we're going to deal with on this subject, but it deals with the points for being located in an economically distressed area.

Based on the Board's action at the prior
meeting, which effectively was to accept that while they had worked in good faith to meet the point item, they had not ultimately met the point item, so the points for being located in an EDA were denied on very similar ones at the last meeting, the point deduction for having attempted to basically access those points was reinstated. So we align staff's recommendation with the Board's prior actions, we're recommending that the two points be denied but the one point be reinstated.

The reason we didn't do this administratively, the one point, was because two meetings ago the Board specifically directed staff to bring each of these to you all, so it's a bit unusual. Rarely do we have an appeal where we're recommending it, but that's what's going on here.

So staff recommends reinstatement of the one point deduction and denial of the appeal related to the two points for being located in an economically distressed area.

MR. OXER: So the net effect is this particular candidate or application loses one point.

MR. DORSEY: They would lose two points.

Losing is a tough word because they were never eligible for them in the first place.

MR. OXER: Not be given those points. The net
differential on the points is one.

MR. DORSEY: Right. Two points that they claimed we're suggesting they don't qualify for, but they don't get penalized for having attempted to claim those points.

MR. OXER: Okay. Item 13068, Mayorca Villas, need a motion to consider.

MR. GANN: I so move.

MR. OXER: Motion by Mr. Gann to support staff recommendation.

DR. MUÑOZ: Second.

MR. OXER: And second by Dr. Muñoz. Is there comment?

MS. ADAMI: Melissa Adami. Thanks for hearing me out today. I'm here on behalf of the applicant, and we respect staff's work on this and we understand you guys have heard a lot of this, so even though we do believe we elected these two points in good faith, we're fine with staff's recommendation. But I just want to put in the record that we did elect them in good faith and we support their recommendation, and I'm here for any questions you may have.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: Well, not so much a question, just an observation. I appreciate how sympathetic you are to
staff's recommendation. When I read and wrote significant notes, even the direction that they provided in trying to work through the Water Board and their lack of assistance, something has to be done about that and I believe something is going to be done about that. We provide guidance, you pursue that guidance, that agency is uncooperative, it puts you at an operational disadvantage.

It's something I mentioned to Cameron already, you should not be in that situation. If we refer you to an agency or entity or website, it should be functionally helpful.

MS. ADAMI: I appreciate that.

MR. OXER: And we recognize that we don't wish to have frivolous applications where everything has to be defended, but we recognize that. The not penalizing the one point I hope is evidence of that consideration.

MS. ADAMI: Definitely, and we all appreciate that and understand.

MR. OXER: All right. Is there any other comment?

(No response.)

MR. OXER: Okay. Motion by Mr. Gann, second by Dr. Muñoz to approve staff recommendation to deny the appeal of application 13068, Mayorca Villas. All in favor?
(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous.

The appeal is denied.

Cameron.

MR. DORSEY: Just clarifying that last one.

Staff's recommendation was appeal denied on two points and reinstate the one point.

MR. OXER: The appeal is denied and the one point is restored. Okay, point clarified.

MR. DORSEY: The next one, like I said, very similar, Artspace El Paso Lofts in El Paso. I'm not sure anyone is here to speak, but staff's recommendation is the same: we recommend the reinstatement of the EDA points be denied, the appeal related to that, but we're recommending reinstatement of the one point that was deducted for having attempted to meet that point item and having failed to do so.

MR. OXER: So this is essentially the same as the prior application.

MR. DORSEY: Bingo. Documentation behind it was a little bit different, but there was absolutely documentation submitted in an attempt to support the points claimed.
MR. OXER: Okay. Motion to consider, please.

DR. MUÑOZ: Cameron, that's your fourth bingo, I'm counting, and move staff's recommendation.

(General laughter.)

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Dr. Muñoz, second by Ms. Bingham to approve staff recommendation to deny the appeal but reinstate the one point penalty point.

MR. DORSEY: Precisely.

(General laughter.)

MR. OXER: And I was going for five in a row there, Cameron.

Okay. Any questions from members of the Board?

There's apparently no public comment, our chairs are empty out there. Motion by Dr. Muñoz, second by Ms. Bingham to support staff recommendation to deny the appeal but reinstate the one point. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous, as defined.

The next appeal is application 13113, Reserve at Arcola Senior Living, and this particular appeal is a bit interesting, it's not one that you've seen before.
Technically, they appealed the conclusions in the underwriting report that was posted, but you see me up here instead of Brent, and that's because the appeal dovetails quite seamlessly with program related issues and statutory program requirements.

The underwriting report actually recommended exactly what the applicant requested. This all deals with the credit request, so they said we want X and REA said we believe that the deal is financially viable and that X makes sense, we recommend that to the extent that it ultimately gets an award. So it's a bit curious, they're appealing the fact that we are recommending what they asked for, and I think you've got to ask why, and the why is what's key.

Just before the underwriting reports were posted, kind of let that kind of organically run its course, I called the applicant and let them know that if I sum the three applications that are all related, the credit requests for all three of their applications, they exceed what is known as the $3 million cap, and that's a statutory cap on the total amount of allocations that a pool of related parties can access in one cycle.

MR. OXER: Maximum of $3-, $2- on any deal; $2 million on any single deal and a maximum total of $3-.

MR. OXER: Laying it out there to see if he'd get it.

(General laughter.)

MR. DORSEY: You're not going to trick me.

So if I add all three of their applications up, it exceeds $3 million, not by much, it's not much at all, it's in the tens of thousands of dollars over the cap. But we've completed underwriting, all of their credit requests made sense based on the documentation in the application. There wasn't a whole lot of back and forth during underwriting, there was a little bit, but you know, what can I say, they put together good apps.

The reason they're appealing is because they would like us to reduce the award amount or the credit amount on one of the applications such that all three can get an award and if we don't allow that -- which we didn't, we didn't allow that kind of reduction, then only two of the three would be able to get an award and that money that the third would otherwise be able to access would go to the next person in line who hasn't hit that $3 million cap. So that's kind of how that process works.

So why would we not have accepted that request? Well, that's fairly simple, 2306.6708 I think was cited earlier by Barbara, and this is the rule that prevents an applicant from amending their application before award,
and it establishes this ability to cure certain things administratively, so it's the genesis of the administrative deficiency rule, and it states that at the request of the Department, an applicant can resolve or clarify information in the application. It does not provide the applicant the ability to initiate a communication in this manner.

And this is case in point why: the playing field is known; they recognize that oh, no, we're in the money on all three but we can't get all three; we want to modify the natural outcome of the tax credit cycle which would provide that money for someone else in line and we want that money instead. So while they're asking for a reduction and that seems reasonable, it's really so that they can access a full additional $1 million or more in credit on this other application. Otherwise, only two of the three would get awarded. So that's what's going on.

This is a really critical concept and I want to just provide one other example of why this is a critical concept. We don't allow this type of reduction in credit at the request of an applicant. If it happens organically through the underwriting process because we don't believe they have the eligible basis to support the request or we find that the transaction simply doesn't need that much in tax credits, those types of things, we would initiate a
communication and ultimately recommend less. But this
type of instance can have sweeping effects.

The other great example, and this really deals
with the regional allocation process, when I go through
and do the statewide and the rural collapses, I have to
look at what the most underserved region is. You know
what determines what the most underserved region is? The
percentage of awards they got kind of during the initial
funding as a percentage -- sorry -- the amount of the
initial award as a percentage of the total that was made
available.

So if they were able to initiate reductions in
their credit request, they could actually modify the
percentage underserved in any given region, thereby,
completely modifying all of the outcomes. In fact, you
could have negotiation out in the industry of different
award amount reductions so that they could modify which
region gets hit next in the collapses. So this is a very,
very critical concept. We simply don't allow this type of
applicant initiated change to the application.

Now, I'm going to point to the fact that the
underwriting report contains a general condition, it's a
condition that's in all of our underwriting reports that
if something related to the financial structure changes
that they need to let us know and we're going to
reevaluate it. That's not a condition that we look at prior to award. This underwriting report is related to the award in July, therefore, future, out beyond July, at the time of commitment, at the time of carryover, at the time of cost cert, they need to let us know of changes in their financial structure.

They were able to get a letter from a syndicator that provides a higher syndication rate, and thus, would allow for them to access more equity as support for why they don't need as much credit. Interestingly, the additional credit pricing wouldn't preclude them from still qualifying for the full amount that they requested. It's pretty clear that this is really connected to a desire to fall under the $3 million cap and access credit for three deals rather than just two.

MR. OXER: I have a question. Out of the three deals, how would it be determined which one is denied?

MR. DORSEY: That's a great question. We do not have anything specifically in the QAP to resolve that type of instance.

MR. OXER: On which one of the applications did the request for reduction occur?

MR. DORSEY: It occurred on the application for Arcola, and I think that that is also the one that they
feel is most uncertain in terms of some issues with getting the deal ultimately closed and placed in service. I think they feel more comfortable with the other two transactions.

What ends up happening, and this is something that is really difficult to control, it absolutely does also have some impact on the ultimate outcomes, but it's just not something we can really control. An applicant can simply withdraw one of them, and then that leaves only two left. And we can't prevent really under these rules, but they have some choice there, but they certainly don't have the choice to get all three of them is the idea.

MR. OXER: And so the total, as you suggested, out of the $3 million maximum, all of it is $3.1-, $3,050,000?

MR. DORSEY: It's even less than that, I think it's like $18,000 over. I think it was an oversight on their part when they put these together, I think they had one consultant working on two of them and different folks were working on one of them, and they just didn't see that it was all put together, but the problem is I just can't allow them to change it after the fact when they know what the outcomes are.

There's lots of people that exceed the cap with all of the applications that they submit, but there's an
understanding that they're probably not going to get all applications. So this isn't an instance that's limited to just one group of folks, it's just that in the other instances where they would exceed the $3 million cap, they don't have enough applications actually in the money to hit the cap.

MR. OXER: So in the event that something like that might have happened, what would be a decision process for knocking out the winners? If you have three that make up a total of $3 million or just over, do we have any protocol for that?

MR. DORSEY: We would discuss it with Barbara and Tim. We would probably bring a recommendation to the Board. Just as last year we didn't have a rule for situations where there was a tie between underserved regions and we tried to come up with just the most rational and logical way that complies with both the statute and furthers the objectives of the statute, we would like do the same thing in this instance.

One thing, I'll just throw it out there, one thing we thought of was applying a similar process like the tiebreakers between the apps. We could do score, but score is tough because between regions scores don't really equate very well necessarily, but we thought about using, for example, the tiebreaker. So those that were located
in the highest level of high opportunity would be the first, and then we would go down from there, and if they were tied, then we go for the distance issue because that's really a concentration issue and would help facilitate less concentration.

It wouldn't be Arcola under either of those scenarios, I don't think, that would be out. But like I said, it's really difficult to control, they can just withdraw one, I can't really stop them from doing that.

MR. OXER: In the event that we denied this appeal, knocked this one out, would they have the option to come back and say no, we'd like to take another one out?

MR. DORSEY: Well, this appeal is only related to the credit amount. I just happen to know the full story of why they're wanting a reduction in the credit amount because it all kind of happened one thing after another. So this is just related to the credit amount.

The next step would be we would look at all of them. If they left all of them in, then we would choose which of the two and try to provide a recommendation, as I mentioned before. Alternatively, and what happens most of the time, and this actually isn't something that I would normally just like have a big public discussion about, applicants can withdraw apps to pick which ones to get
under the $3 million cap, but it is what it is.

MR. IRVINE: But the cap issue is really contextual. The issue is simply you applied for X, and you can't change it.

MR. DORSEY: And your application supported X.

MR. IRVINE: You can't change it.

MR. OXER: Right. Well, and I think, on behalf of the Board, our compliments to the applicant for being successful and high quality applications, but we've got rules too.

MR. DORSEY: It's one of the better problems to have, that's for sure.

MR. OXER: One of the better problems for an applicant to have, I can imagine.

DR. MUÑOZ: I have a question for Cameron.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: So if we initiate some request for information or modification based on your underwriting study or what-have-you, then that's permissible for them to change their application. But in this case you're saying that that wasn't the case, that this was initiated at their request, and that we never permit that sort of modification.

MR. OXER: And let me ask a corollary question to that too, Cameron, because this is one of those things
that if it occurred in the underwriting, we hammered, staff hammered down their request, there's a prospect that it could have knocked $18,000 off this and they come in with all three and be under the cap.

MR. DORSEY: Yes, but it has to a result of something that's present in the application itself that causes the discrepancy rather than a recognition than that in hindsight they need to do this to get all of their awards.

DR. MUÑOZ: And that didn't happen during your evaluation.

MR. DORSEY: Bing -- you almost got me.

DR. MUÑOZ: The meeting is not over yet. (General laughter.)

MR. OXER: You know, for a sophisticated applicant that's been that successful, there is the prospect that gaming the system would have occurred for the staff to pin that down to knock $20,000 off it. I offer that up just as a comment and observation.

MR. DORSEY: Yes. You see all kinds of opportunities for all kinds of different thing when you have the ability to review and look at 130 applications, but usually I just don't talk about them in public.

MR. OXER: Usually don't have to.

MR. DORSEY: These guys are plenty smart
without me telling them how to do this type of stuff.

    MR. OXER: And we respect the quality of the
applications that come in. I think I can speak for the
Board saying that we respect that.

    Anything else on this one?

    MR. DORSEY: That's it. I think the applicant
would like to speak.

    MR. OXER: Okay. We have public comment.

    MR. IRVINE: Motion?

    MR. OXER: Absolutely correct. We have to have
a motion to consider here, please.

    DR. MUÑOZ: So moved.

    MR. OXER: Motion by Dr. Muñoz to approve staff
recommendation to deny the appeal.

    MR. GANN: Second.

    MR. OXER: Second by Mr. Gann. Now there's
public comment.

    MR. APPLEQUIST: Thank you. My name is Chris
Applequist, I'm with the Miller Valentine Group.

    One thing that was mentioned, that Cameron just
mentioned regarding Arcola was essentially there is some
uncertainty and that's been very clear since we started
working on this development. We've been working on this
more than a year and there's really some unique
circumstances with this development.
Arcola, in general, is a pretty interesting city. They've actually gone into bankruptcy twice, they've been in receivership twice, they've had a lot of issues, utility issues, roads issues, infrastructure issues. So we actually initially applied for revitalization points. When we applied for that, we set a meeting with staff to discuss some of the issues that Arcola has that should be considered in this meeting.

Essentially, we have a nine-acre tract that's in a 200-acre parcel. This has been targeted as a town center so the city has started working to extend utilities and they've actually started zoning -- they actually don't have zoning here -- and they've started working through impact fees and how to actually gain revenue for the city.

Because they've gone through these financial hardships, they actually don't have the tax base or the financial ability to extend the utilities themselves, so they're using CDBG funds, as well as a STAG grant. So we started working with them to see where these utilities were going to come in, but there is some uncertainty as to when they're going to come online, the capacity that those would have, and exactly what it would take to tap into them. They didn't even have impact fees figured.

So March 1 when we submitted our application, we had to go with what we had at that time and a lot has
changed since then. So initially, in our application our
pro forma was correct for March 1, but a lot has changed,
and we have relayed that to the Department.

April 19 we received an RFI just basically
asking for some preliminary information, some underwriting
information, but it was really preliminary and it was an
RFI, it was really just a request for information, not
even really labeled as a deficiency. And what was
included in that RFI was basically questions regarding
whether we were going to charge for storage rooms, our
insurance premiums, achievable rents, not very in-depth,
pretty straightforward.

It was our understanding that after scores were
posted and we could see actually where applications would
be competitively, at that point you would go through a
full underwriting, and that really hasn't happened for us.

Moving forward from April 19, May 24 we
received our final scoring notice. We were still working
with the city, we were still working with the property
owner. In our land contract we have a provision that
outlines that we will come to a utility agreement with the
landowner because at the time of the contract he couldn't
commit to anything, because essentially, he was dependent
on the city to bring the utilities basically on Highway
6 -- they're current at 521, they needed to come down
Highway 6 -- and he couldn't understand exactly what that number was going to be.

So he couldn't contractually obligate himself to deliver the utilities to us because he still didn't know exactly what the city was going to do. So we have a provision in our land contract that sets that aside and allows the city some time to figure that out and him some time to really understand what those costs are going to be.

So then moving forward, on June 13 -- I was at the last Board meeting -- there was a neighborhood group that showed up and they just recently got involved, they're actually in Missouri City, but they have some issues with access for our development. It would essentially involve a street coming from Missouri City over the city line into Arcola. They've approached the City of Arcola, Arcola has approached us to revise our plans and to account for some of these access issues, so we have had some adjustments there as well.

Initially, the city wanted us to extend a boulevard across the 200-acre tract that would be fairly substantial in cost. They've done away with that. But we've really experienced a lot of changes due to the city due to what they want to see.

And really moving forward from that, June 18
and 24, we had two council meetings with the City of Arcola to discuss some of these issues. We kept having dialogue with the neighborhood group, the landowner at that time. We could basically finalize an agreement with the landowner where we are now, and we've got a good handle on what he's going to contribute.

MR. OXER: I'll have to ask you to sum up, please.

MR. APPLEQUIST: Okay, absolutely.

Essentially, June 18 I had a call with Cameron, we discussed what was going on. I was very surprised that we were already getting our commitment, that they had already finished their underwrite, that that was already finalized, because again, two months prior was really the only correspondence that we've had regarding the underwrite. Since then, nothing has transpired, so we were very surprised that we were already at this point.

And it was mentioned earlier, Cameron made a point that a lot of these issues are vetted out organically during the underwrite, and a lot of these issues that came up that we could have addressed that have transpired since March really haven't been vetted, and we think they should be included in the underwrite, we think some of that information should be given to TDHCA, and we just feel it should be considered. Thank you.
MR. OXER: Good. Thanks for your comment.

Is there any questions from the Board?

(No response.)

MR. OXER: Okay. Cynthia.

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord for the applicant here.

The staff has certainly referenced the $3 million cap issue, but I believe that this is an underwriting appeal for Reserve at Arcola, and we need to look at the Reserve at Arcola application and whether there's an underwriting issue here.

And I think we also need to look at some context which is that what Mr. Applequist was saying is that he submitted an application in which, at least in his mind, it was not entirely clear what his development costs were going to look like with regard to utilities and some of that infrastructure to the site. In fact, the purchase and sale agreement said that the seller and purchaser were going to come to an agreement at a later date as to who was going to be responsible for what. So he felt like those costs were uncertain.

And in the context of prior application rounds and years, certainly there is time when the underwriters call, they ask questions, you submit more information, there's a dialogue back and forth. And what happened in
this instance is there was a call from underwriting in April that was understood by this applicant to be preliminary but he certainly thought that there was going to be more dialogue because he knew that he had an application that might not be entirely clear as to the development costs and such.

So I think where this all comes down is the question of your statutory obligation to award the minimum amount of credits necessary for the feasibility of an application, and based upon the fact that now the seller is going to cover some of these costs and there's an additional syndication price, this applicant believes that those all go together to get to a situation where this application doesn't need as many credits. And I think that's the fundamental question.

And we have an underwriting report that says if anything in your capital structure changes, you need to tell us. So we've told you and now it's between now and July 25, so is it your duty between now and July 25 to take that information that we've told you that there are changes and look at that again so that you can award the minimum amount of credits necessary for this application to be feasible. That's the question.

If each application is underwritten as to the amount of credits necessary for its feasibility, then this
Department has met its obligation and the credits are spread as far as they will go. Certainly, Mr. Dorsey indicates that there are statewide and sweeping implications here, and I believe that's correct, and that's correct for every application. Right? Every single one has some impact on every other one in this competition.

And so all we're asking is that we have recognized, based on your direction in your underwriting report, not to mention just standard good practice, that there are changes that we think should be addressed by underwriting to allow this application to get to the right number. And I appreciate your time. Thank you.

MR. OXER: I have a question, Cynthia. So your contention is that despite the fact that there were two other applications that put them close to the point of the $3 million and if that put them over it, you're saying it would be the obligation of TDHCA to award them up to whatever totaled $3 million?

MS. BAST: No, I'm not saying that all, sir. I'm not saying anything with regard to the $3 million cap. I'm saying you look at each individual application and you say under Section 42 we are required as a state agency to award only the minimum amount of credits needed for this application to be feasible.
MR. OXER: Notwithstanding what the applicant may have applied for.

MS. BAST: Correct. And over the years there have been many applications where they applied for a million and they get 980,000. I mean, there's been lots of times that that has occurred.

MR. OXER: But that's a product of underwriting.

MS. BAST: But that's a product of underwriting, and so that's the question: Is the underwriting, one, is it correct here, and two, if this agency has been advised that there is additional information that is relevant to that feasibility conclusion and that minimum credit calculation, then is it your responsibility to take that into consideration before July 25.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: I'm not sure that we enjoy the discretion of taking that into consideration after the applicant has submitted their application. So often I've heard people at that podium, at that microphone say this is the date, this is the rule, and it's not subject to interpretation. I'd say this is the rule and this was the date, and I don't believe that it's subject to interpretation or discretion.
MS. BAST: Dr. Muñoz, I would say I am absolutely sensitive to that, and to me, where I see the distinction is between the competitive rules of the QAP with regard to threshold and points and where we are here which is in underwriting. And underwriting over the years has definitely been a more fluid process, with a lot more back and forth and sharing of information and staff looking at an application saying you know what, I can't really get there with you on that, do you have some more information to support that. It's been handled a little more informally and a little bit differently.

So that's what I'm talking about. Clearly, we submitted an application and it contains certain information, clearly there's a rule that says you don't put in more information unless you're asked to do that, but the underwriting process has traditionally been where that has occurred.

DR. MUÑOZ: But it didn't occur in this instance.

MS. BAST: And it didn't occur and we wonder way.

DR. MUÑOZ: And you're asking to do precisely what you recognize the rule exists, that you can't add or modify information after the fact, and yet you're saying, knowing this information, how can you not consider it
after the fact.

MS. BAST: And that's correct. You know, we wonder why it wasn't asked about in the underwriting process because in our experience typically the underwriting folks might ask about those kinds of things.

And secondly, we have an underwriting report that says in explicit language if something changes in your capital structure, you need to notify us, so that has been done.

And I don't want to monopolize the microphone here, so unless you have anything further for me, I'll sit.

MR. OXER: Thanks, Cynthia.

MS. BAST: Thank you.

MR. OXER: Cameron, let's hear it.

MR. DORSEY: You know, they appealed the underwriting report but the issue is it's remained our cap. I cannot say that enough. I've worked here for over seven years, and I've worked in the Underwriting Division as an underwriter, I've worked in the HOME Division managing the HOME program, it's pretty rare for someone to come say I want less money after we recommend that they get.

And they've said things have changed. Right? But the reason people don't come and say I want less money is because the deal isn't solid, there's still a whole
bunch of terms out there changing. For example, they submitted a new syndication letter that reflects a higher syndication price, but interest rates have gone up. These changes always happen. We're underwriting with information we have at the time. If we encounter a conflict within the application, then we will attempt to resolve that conflict, we will attempt to clarify those issues. There wasn't an inherent discrepancy to resolve here.

You know, it's clear that the request for these reductions came immediately after and at the immediate time that I mentioned the $3 million cap on the phone to these guys. You're going to hit the $3 million cap, can we reduce the credit amount. It wasn't, well, things have changed since then, can we reduce the credit amount, it was $3 million cap, you hit it, can we reduce the credit amount.

I'm going to be frank. These are arguments of convenience more than they are arguments that are supported by the underlying rules here. So anyway, I'll leave it at that.

MR. OXER: Okay. Is there other comment? Any other comments from the Board?

(No response.)

MR. OXER: Okay. There's a motion by Dr.
Muñoz, second by Mr. Gann to approve staff recommendation
to deny the appeal on application 13113, Reserve at
Arcola. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The appeal is
denied.

Stonebridge next?

MR. DORSEY: Stonebridge is pretty
straightforward from the staff perspective. These folks
claimed six points related to a community revitalization
plan for a rural area, they elected those points in the
application. In order to support those points, there's
one basic requirement. It is a letter from a government
official with specific knowledge of the projects necessary
to prove up the points that lays out the requirements that
are explicit in the rule.

Now, when it comes to scoring, we have this
provision right at the beginning of the scoring criteria,
and it says if you elect points and you fail to submit any
supporting documentation, then you don't get the points
and you don't get to cure it through an administrative
deficiency.

The reason for that is because we don't want
folks to claim points where they don't have any support for those points but they think they're going to get that support by the time we ask about the lack of documentation, which can happen. And in this instance they elected the points, there was no letter, in fact, there was no nothing to support the six points that were elected, so we did issue an administrative deficiency. The administrative deficiency said, effectively, it appears that this documentation is missing, period.

The appropriate way to cure that issue would be to say it's on page 301, you guys just missed it. We don't presume to be all-knowing and to never make mistakes, so we definitely provide them the opportunity to point to where it's at, but they can't submit the letter and say, you know, okay, now it's in, now you've got it, we cured it through an administrative deficiency. That's not an appropriate cure, it violates the provision that's applicable to all of the scoring criteria.

So when they responded to the deficiency they did submit a letter. It also appears that they had the letter before March 1; on its face that appears to be the case. However, it wasn't in the application, there was no supporting documentation for those points in the application, so we denied the six points.

MR. OXER: So this essentially comes under the
same heading as having evidence in the application by the date certain, March 1, that somebody had been in contact with their representative and senator.

MR. DORSEY: Right. And in this particular instance, with the scoring criteria it's right up front at the beginning of the scoring section. Anything under this scoring section, if you elect the points but provide nothing, you don't get points and you don't get to cure that.

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

(No response.)

MR. OXER: Okay. Motion to consider.

MS. BINGHAM ESCAREÑO: I move staff's recommendation to deny the appeal.

MR. OXER: Okay. Motion by Ms. Bingham to approve staff's recommendation to deny the appeal. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. Comment.

MR. CHILDRE: Hello, Chairman and Board members, and Mr. Irvine and Ms. Deane. My name is Dru Childre and I'm representing the application.

I have this handout. I don't know if you all
have it up there. I just want to go through some of the documents that we received and our application and the process that we went through.

Before I get into that, I really want to say we were on the agenda for last month and you Board members tabled this item because I was unable to attend, and I really want to say thank you for that. And I want to commend your staff, you have such a wonderful staff. These guys are incredible people and just have wonderful hearts and they do a great job, and we really appreciate what they do. So I want to make that statement.

MR. OXER: Thank you for that. We appreciate everything that says things are going well.

MR. CHILDRE: So moving forward. The first page here is the deficiency that as dated on March 27, and once we received this deficiency, this was the first notice that we were informed that this letter was not in the application.

As you can tell, if you go through the deficiency there's ten items. Three of those ten items, number 4 which talks about community revitalization says no documentation to support the six points was found in the file. You go on down to number 8 and this is a commitment of funding from unit of general local, this is for 13 points. This says confirmed that 100 percent of
the board of Hale County Housing is appointed by county
elected officials. Number 9 is a HUB score, submit a
description of the how the HUB will materially participate
for one point. So these three items are all point scoring
related.

We were able to, on items 8 and 9, we were able
to respond to this deficiency and cure that deficiency
concern for those points. Unfortunately, number 4, which
is also point scoring, we were not able to submit any
documentation to them back to staff that would cure that
point.

If you go on to page 3, immediately, once we
received this deficiency and realized that it wasn't in
the application, we immediately sent this off. This is
the letter that we received from the City of Plainview for
revitalization, talks about what infrastructure was done
and water improvements and extension lines. It was dated
February 18, and to our knowledge, it qualifies for the
points for revitalization.

The next page is an email confirmation from the
city that shows that we received this letter on February
18. So the city emailed it to us, we had the letter, we
had it in our office dated on February 18.

DR. MUÑOZ: Where are the copies of the email?

MR. CHILDRE: It should have been on page 3 and
4.

MR. DORSEY: You should have a packet that was our front.

MR. OXER: We've got it.

MR. CHILDRE: Ms. Deane has it right there. It was a packet that I provided many copies for the entire group.

MR. OXER: Please continue.

MR. CHILDRE: And so we have these letters February 18 and an email confirmation that we received it on February 18.

And then on page 4 it talks about what Mr. Dorsey is referring to as far as the wording where the QAP states that if you don't have it in the application, then it doesn't qualify. Well, the specific wording in there on 11.9 at the bottom of the page, it says: Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation or fail to submit supporting documentation in good faith will not be allowed to cure the issue through administrative deficiency.

Well, in the application on the next pages, 6 through 8, these are the pages in the app where you elect the points and you choose to select certain points. On item 10 it talks about community revitalization, I checked
the box. It talked about development, it's in a rural area, and supporting documentation that meets all requirements is behind this tab. I elected six points. And then the next page that talks about the checklist of all the documentation that needed to be submitted in the application, I checked the box, the third one from the bottom, it says letter from government official with specific knowledge regarding infrastructure improvements.

So proof of the documentation, the pages that we checked boxes and elected the points and put in the application, proof of when the letter was dated and the email confirmation that we received the letter, these pages show that we submitted and did the work and worked with the city and we submitted what was needed in good faith. We did everything that we're supposed to, I had it in my hand, just for an oversight of mine, it did not get put in the application.

Last month you heard from our opponent up in Pampa that we're competing against who is in line to getting funded. They also went through a similar situation where they provided a letter from the City of Pampa regarding their revitalization plan. Staff submitted a deficiency to them stating that the deficiency -- stated that the letter indicates that their revitalization was routine maintenance.
Well, when they submitted that back to the applicant, the applicant went back to the City of Pampa, got a whole new letter, and resubmitted on May 22, two months after March 1, back to TDHCA, and they allowed with this new letter that they submitted, they were able to get the four points out of the full six points that are allowed. Staff didn't feel that two points were justified, but they did get four points.

So you know, I'd like to get an understanding of which deficiencies -- we were able to cure two out of the three deficiencies that are required for points but not the revitalization letter for six points, and I'm kind of a little confused on what deficiencies you can cure and which deficiencies you cannot.

The City of Plainview has been working with us on this application, they've been encouraging us and they've been helping us for the past two years. They need it, we don't have any kind of opposition in the City of Plainview, and would like to just ask that you allow us the revitalization points for six points on the basis that we provided the letter in good faith, working with the city and the city provided us what we needed, and please don't penalize the city and the residents of the city on a mishap on my mistake.

MR. OXER: Okay. I understand your point.
Thanks for your comments.

Any other comments from the Board?

(No response.)

MR. OXER: Cameron, do you have a thought on that?

MR. DORSEY: If you want me to I can explain the Pampa situation. I know we're short on time.

MR. OXER: Let's hear it.

MR. DORSEY: They submitted a letter, we read the letter, it appeared that they were attempting to meet the requirements of the rule but we had some questions about whether -- we needed some more support for what they were saying, we needed to understand should we classify this as maintenance or should we classify this as an actual infrastructure expansion or what-have-you. The second letter that came in was a clarification of the first letter. There wasn't completely new information, completely new infrastructure projects, it's almost case in point what an administrative deficiency is designed to do. So that's what happened there.

MR. OXER: And in this case, on this application we're considering now, Stonebridge, Dru, you admit that this was not in there.

MR. CHILDRE: Yes.

MR. OXER: Okay. So this particular
application was just lacking this component.

       DR. MUÑOZ: And that's six points, Cameron?

       MR. DORSEY: It's six points.

       DR. MUÑOZ: The letter by itself.

       MR. DORSEY: The letter is the only supporting documentation necessary, and since no supporting documentation was submitted, it really comes down to they didn't submit the letter.

       MR. OXER: Despite the fact they had it, it was essentially an oversight on their part.

       MR. DORSEY: Right. And I would note, he mentioned it, but we took two points away from another applicant in the same subregion because they were unable to prove up two of the six points under this point item.

       MR. IRVINE: There are basically two kinds of administrative deficiencies. One is we can't find it; if we missed it, point it out. And the only acceptable response to that is, like you said earlier, it's on page 301, you didn't find it. Then there's a second kind of administrative deficiency where you did provide something but we just need some additional clarification so it makes sense to us.

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

       DR. MUÑOZ: So which one transpired here, Tim?
I mean, we asked for it?

MR. IRVINE: The first one.

MR. DORSEY: We did not ask for it. We said it appears to be missing, effectively -- that's a paraphrase -- it appears to be missing, period, this is worth six points. Their response wasn't it's on page 301, it was oh, my gosh, we forgot to submit the documentation, here it is. I'm sorry, we can't accept that; that's a situation that can't be cured.

MR. OXER: Okay. Is there other comment on this one?

MR. JOHNSON: Mr. Chairman, members of the Board. My name is Brett Johnson. I'm partner with Overland Property Group out of Overland Park, Kansas. I am the competing applicant in Pampa.

And I'd like to first say I feel the pain of Dru because two years ago we were in reverse roles in Lubbock, and I made a mistake on the application, and it cost us a very sizable allocation. So to quote Dr. Muñoz, there's nine words here: This is the date and this is the rule.

We have to live with those mistakes as developers. It's unfortunate, but we go to great lengths in our firm -- and I'm sure Dru does as well -- to ensure that we are meeting all of the requirements of the QAP.
We had a mistake on our application this year on one of our deals, we're living with that mistake. Fortunately for us, it didn't cost us first place, but it's a mistake we made, and we live by the rules of the QAP, just as every other developer does here in Texas.

So I'm here to say we stand behind staff's recommendation to deny this appeal. We don't deny that the document exists, I'm sure he got it in time, it's unfortunate it wasn't put in in time. If his firm is anything like ours, I'm glad that it wasn't a staffer or an assistant that did it because I'm sure they'd feel even worse.

But it's a terrible situation to be in, however, it does affect the outcome of this region and it would reverse the scoring and we would then drop into second place if this is allowed in. And again, two years ago that wasn't the case and we were denied and we've lived with that ever since.

So if you have any questions for me.

MR. OXER: Great. Thanks, Brett. Appreciate your comments.

No other public comment.

Okay. There's a motion by Ms. Bingham, second by Professor McWatters to deny the appeal for application 13139, Stonebridge of Plainview. All in favor?
(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

Dru, we're sorry to do that, but recognize there's a rule that we had to score it.

So all I ask is for everybody to please recognize that we're trying to be consistent with the application of the rules, and I'm willing to bet the next one won't be missing that letter.

MR. CHILDRE: Thank you.

MR. OXER: Okay. Cameron.

MR. DORSEY: This is the last one and last item of the day, 4800 Berkman. This is a new construction deal located in Austin, actually out in the Mueller area -- I drive by the site all the darn time. The appeal relates to the awarding of the points for cost of development per square foot.

I don't know if you guys recall, I'm going to jog your memory here. There was a lot of debate about this point item when we were developing the QAP, a lot of it, and we went with this concept of how much an application's mean cost per foot deviates -- I'm sorry -- how much a particular application's cost per foot deviates from the mean of like applications. And so what we did
was we took all the applications that fit certain
categories. We had three basic categories: we had rehab
deals, we had high-cost new construction type deals, and
then we had the rest of the deals which is really just non
high-cost new construction or reconstruction deals. And
so we broke them out into categories, we took what was in
their application.

There were a couple of instances where we
needed a little bit of clarifying information because we
felt like they had inadvertently left some key square
footage information out. We got all that information in
before we posted the applications and so everyone could
see everyone else's applications, and we produced the mean
calculation, posted all of that information online, and in
this particular instance they get eight points rather than
ten points, which ten points is the maximum, and so that's
what they're appealing, they would like ten points.

The reason they got eight points is because
they're in the higher cost kind of category, their mean
deviates just -- sorry -- their cost per foot is just
slightly over 10 percent from the mean to drop from ten to
eight -- really to gain eight, not drop from ten to eight,
but I think developers look at it as their score drops in
these instances. So we sent them a notice indicating we
would be recommending eight points for this app.
They've put forth several arguments that primarily relate to just the skewed nature of the actual cost per foot calculations for each application. There's one particular application known as the Artspace application in El Paso, and it's at 147 or so dollars per square foot that's substantially higher than the vast majority -- well, actually every other application we've got, and so they feel that that skews the result and that potentially maybe we should have thought about removing that as an outlier. We did not do that, the QAP does not direct us to remove outliers, it directs us to use all of the applications we've got, calculate the mean, and do the calculation.

I think one question is why we didn't say we would remove outliers. Well, outliers are an inherently subjective determination. There are methods for determining outliers, there are three very common methods, but there are more statistically advanced methods. I could go do those but I think everyone's eyes would glaze over if we were doing that. And I wasn't sure that we would have a large enough sample size to create things like statistical significance and all this stuff, so it just didn't make sense to do.

Now, when you consider other types of outlier methods like just remove the top and bottom one, well,
mathematically I can create a scenario where you remove
the top and bottom one and that actually skews it more.
So it just depends on the body of applications you
actually get. So I don't feel like there is any, quote-
unquote, statistical inaccuracy here or anything, the mean
is the mean, we calculated it, we did exactly what the
rule says. It's less about what the rule says and more
about just we don't like the result, I think.

MR. OXER: Okay. Any questions of Cameron from
the Board?

(No response.)

MR. OXER: Okay. Let's have a motion to
consider.

DR. MUÑOZ: So moved.

MR. OXER: Don't everybody jump at once here.
Okay?

DR. MUÑOZ: Move staff recommendation.

MR. OXER: Okay. Motion by Dr. Muñoz to
approve staff recommendation to deny the appeal. Is there
a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. We have comment. Janine, hi.

MS. SISAK: Good afternoon. Hi, everyone.

I'll keep this brief because I'm freezing and need to get
out of this building.

MR. OXER: That's a strategic plan on our part.

(General laughter.)

MS. SISAK: That's one reason I'm going to keep this short.

Okay. Cameron did a good job of kind of outlying -- not outlying, outlier -- outlining some of our arguments. I do want to highlight a couple of things.

Yes, we just were outside the 10 percent by a fraction of a percentage, $12,000 in real money.

MR. OXER: May I interrupt you just for a second to make sure you state your name for the record.


So again, our community is 4800, it is truly a high-cost development, structured parking, four stories, lots of architectural articulation, lots of different materials. In terms of a DMA product, it is by far our most expensive product. However, when we submitted our cost and it was racked up against the other applications in our category, we actually came out low, which was incredibly surprising being that this is our highest cost product. We were low by $12,000, as I stated.

So you know, really this appeal is about the problems and how this rule was administered. At the last
minute, implementing a safe harbor for high opportunity on
a mean concept makes no sense whatsoever. Out of the 44
applications that were pooled in this category, 29 were
high opportunity. So those 29 applications were allowed
to go up to $80 a square foot regardless of what their
true costs were. They were, so they did because it
results in more credits for them. So those 29 skewed the
mean up considerably.

And as Cameron noted, the other problem was the
Artspace deal, $146 a square foot which was $66 higher
than any other application in the whole entire pool. So
those two things together really made the mean not a mean,
and the fact, again, that we were below it by a fraction
of a percentage.

What we're asking the Board to do today is
basically use your discretion to take out the Artspace
project and maybe a low one. I think taking out the low
one doesn't really matter because the low one was so close
to the other low ones. But I've done the calculation, and
if the Board uses its discretion to do this, no one in the
whole applicant pool is affected except for two projects.

Our project would get two points, that would
put us in fourth place in this region, we would not be in
the money, we would not knock out anyone else in the
money, we'd be in fourth place. The other application
that would gain two points I think is Mariposa at Ranch Road 12, they're at the bottom of Rural 7. They're at negative 12 now, I don't really know why. But it would help that application too and they would also not be in the money. So it has absolutely no impact on the pool.

If the Board decides not to grant us the two points, we just want to kind of keep this in mind for next year's QAP. We just feel like this rule is still broken and we need to fix it somehow because this is an unfair result.

Thank you.

MR. OXER: Thanks for your comments.

Any comments, questions from the Board? I would offer up it may have no direct impact on the placement or sequence of the winners, those in the money and those not in this, and while that may be true, it does have an impact on the consistency with which the Board applies the rules and which we're trying to be consistent in that.

Every issue that comes up before this Board, we assume that the staff -- and we have great confidence in the staff -- we assume that the staff has taken all effort to resolve it as accurately as possible. Any of the things that are done easy, we don't see them, you guys get to play with all the easy stuff. These are the hard ones.
to apply so we expect that everything that comes up here constitutes an opportunity to prove, amend or buff off a rough edge in the QAP. So if nothing else, having expounded on your point on that helps us take a look at that.

And from a statistical standpoint, I know the sample is not that much, particularly with an outlier that you have, but the pool is what the pool is, the population is what the population is.

Do you have another comment, Cameron?

MR. DORSEY: Nope.

MR. OXER: Okay. Is there any other public comment on this item?

(No response.)

MR. OXER: Okay. There's been a motion by Dr. Muñoz, second by Professor McWatters to approve staff recommendation to deny the appeal on application 13159, 4800 Berkman. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The appeal is denied.

Cameron, have you got anything else?

MR. DORSEY: No, sir.
MR. OXER: Okay. I had intended to take a brief break at this point based on the fact that we were anticipating a long schedule, but it seems that we have come to the end of our posted agenda.

We are now at the point where we have opportunity for public comment on matters other than for items that were posted on the agenda. This comment can include anything, and may include requests that we consider an item to be put on future agendas, and that's why it was originally put at the end of the meeting so we could start building our future agendas. Is there anybody who would like to speak? Sarah.

MS. REIDY: Good afternoon, Chairman Oxer and members of the Board. My name is Sarah Reidy and I am a partner with Casa Linda Development Corporation, the developer, HUB and general partner for La Esperanza Del Rio, TDHCA number 13046, located in Rio Grande City, Rural Region 11.

This year there is a possibility that two projects may be awarded in Rural Region 11 as a result of the rural collapse. We are in a unique situation. Three of the four applications submitted in Rural Region 11 are in the same city and in the same census tract. We believe that our application could be one of the two competitive applications in this subregion.
So in anticipation of this possibility for two awards, we reached out to our lender, syndicator and market analysis provider to find out whether two housing tax credit properties in the same census tract in Rural Region 11 could support market demand. The answer is yes.

Based on our market study analysis by Apartment Market Data, affordable housing demand far exceeds the supply in the primary market area.

Statistically, awarding two projects will not exceed the capture rate thresholds defined for rural areas in the 2013 real estate analysis rules should the highest scoring application be awarded. Darrell Jack, president of Apartment Market Data will speak in greater detail about this in a moment.

In addition, we asked our lender and syndicator if they would have any problem in their financial support to our project if the two deals in the same census tract were awarded. Both the lender and the syndicator said they would hold firm on their commitments as long as the market study can support both deals.

Of note, Rio Grande City has a population of 13,834 and has never been awarded a general family housing tax credit allocation. The last family tax credit project in Starr County was awarded in 1996, seventeen years ago. The project was 40 multifamily units, constructed in
Roma, Texas, ten miles from Rio Grande City. In addition, all operating tax credit properties in Starr County are 100 percent full.

In a conversation with staff on Tuesday that confirmed there are no rules prohibiting the award of two tax credit projects in the same census tract in rural regions as long as the two are market and financially feasible. So we respectfully request the Department seize this important and unique opportunity this year to create greater affordable housing opportunities for working families in Rio Grande City. Rio Grande City is greatly underserved and is one of the poorest counties of our state.

Thank you very much.

MR. OXER: Great. Thanks.

Darrell.

MR. JACK: Good afternoon. Thank you. My name is Darrell Jack, and I am president of Apartment Market Data.

As Sarah said, she called to ask me my thoughts and opinions as to whether Rio Grande City could actually lease and absorb two properties at the same time, and initially, I have to admit my reaction was: Well, probably not because Rio Grande City is such a small community compared to a lot of other areas in the state.
But as I looked at the unit mix of both properties, I found that they actually complement each other, because Sarah's project is made up primarily of one, two and three bedrooms with the units at 30, 50 and 60 and market rate units, the first project in line is a family project that is comprised of just a few two bedrooms, eight out of 80, and the majority of their units being three and four bedrooms. So you kind of have one property reaching out to this level, the next property reaching out to this level.

And there's only a few units that are three bedrooms at 60 percent AMI that the actually would compete at. In total, La Esperanza has nine of these 60 percent three bedrooms, and the project in first place has 17, so you're really only talking about 26 units out of 140 units that are going to be competing at that level.

Looking at the market and the capture rate, this market would easily absorb both projects and the capture rate would be well under the 10 percent threshold established by the QAP.

So I'm happy to answer any questions that you might have.

MR. OXER: Thanks, Darrell.

Any questions from the Board?

(No response.)
MR. OXER: Okay. Well, it appears that we're at the end of the agenda. The public has had an opportunity to speak. Is there any staff member in the audience that has anything else they want to say?

(No response.)

MR. OXER: Does any of the Board have anything else to say?

(No response.)

MR. OXER: Okay. As the chairman, I will say I appreciate everybody's contribution, and the intensity with which we pursue each of these is important in terms of creating a fair and transparent process. So with that, in two weeks we have our next Board meeting where we'll announce the outcome finally.

With that, I'll entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to adjourn.

MR. McWATTERS: Second.

MR. OXER: And second by Professor McWatters. It requires no contribution, so all in favor to adjourn.

(A chorus of ayes.)

MR. OXER: We'll see you in two weeks, folks.

(Whereupon, at 3:20 p.m., the meeting was concluded.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: July 11, 2013

I do hereby certify that the foregoing pages, numbers 1 through 213, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

07/18/2013
(Transcriber) (Date)

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