

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

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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	
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c) Presentation, Discussion, and Possible Action on the FY 2014 Operating Budget	
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P R O C E E D I N G S

1
2 MR. OXER: Good morning, everyone. I'd like to
3 welcome you to the July 11 meeting of the Texas Department
4 of Housing and Community Affairs Governing Board.

5 We will begin, as we always do, with roll call.
6 Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Here.

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

12 (General laughter.)

13 MR. OXER: Mr. Gann?

14 MR. GANN: Here.

15 MR. OXER: Professor McWatters?

16 MR. McWATTERS: Here.

17 MR. OXER: Dr. Muñoz?

18 DR. MUÑOZ: Present.

19 MR. OXER: And I am here and that gives us five
20 present. We have a quorum so we can proceed.

21 All right, Tim, stand and salute the flags,
22 please.

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

25 MR. OXER: For those of you who have come in,

1 you might have noticed there's a little extra security out
2 front, and we didn't expect it to get too adventurous in
3 here, but that's actually for somebody else today, so
4 we're hoping we won't have to call any of those folks in
5 here.

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

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

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

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

19 THE REPORTER: Not very well.

20 MR. OXER: I don't think that mike is on.
21 Let's get that straightened out first. Thank you.

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

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

25 (General laughter.)

1 MR. BELL: Again, I'm State Representative
2 Cecil Bell, Jr. I represent part of Montgomery County and
3 all of Waller County.

4 I come before you today asking your favorable
5 action on an appeal on the part of Heritage Plaza
6 Apartments. Heritage is a proposed 80-unit development
7 which would be located in the City of Montgomery which is
8 within my district. This is a much needed project; it
9 will provide housing to senior citizens and to low income.

10 Montgomery County is a rapidly growing county. There's a
11 tremendous amount of stress being placed on our population
12 as properties that have traditionally been rented are not
13 available any longer, so it's a great project for our
14 area. It will spur growth and development within the city
15 and will provide, again, the much needed housing for
16 people who are currently underserved.

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

25 And a part of the whole project's problem in

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

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

23 So therefore, members, I would respectfully
24 request that you grant the appeal of termination filed by
25 the applicant so that this much needed project, which had

1 the highest scoring application in Region 6 Rural, can
2 obtain a tax credit allocation. Again, I thank you for
3 your time and appreciate your hard work.

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

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

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

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

14 MR. BELL: Yes, sir.

15 DR. MUÑOZ: Thank you.

16 MR. OXER: Any other questions?

17 (No response.)

18 MR. OXER: Thank you, Representative.

19 MR. BELL: Thank you very much.

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

1 MS. BINGHAM: Move to approve the consent
2 agenda with the exception of item 1(h).

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

5 DR. MUÑOZ: Second.

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

9 (No response.)

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

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

19 (A chorus of ayes.)

20 MR. OXER: Opposed?

21 (No response.)

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

23 Thank you.

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

25 MR. DeYOUNG: Mr. Chair, members of the board,

1 item 1(h) on the consent agenda was an item which takes
2 CSBG administrative funds and the item, as it's drafted,
3 moves the funds to the HHSP program, the Homeless Housing
4 Service Program, which you will remember is a program that
5 was declared by the legislature a few years back and TDHCA
6 has had to fulfill the funding obligation for the last few
7 years.

8 We do have a technical correction to the item
9 as drafted so that you can be aware of what will happen,
10 and it is very technical. In the CSBG Act we are allowed
11 90 percent of the funds to go to eligible entities. We
12 fund 43 eligible entities throughout the state. The
13 remaining 10 percent is divided into two pools:
14 administrative and discretionary funds. You'll remember
15 back in January of this year we had a Strategic Planning
16 and Budget Policy Committee meeting and we discussed
17 taking a focus of homelessness for those discretionary
18 funds.

19 The technical correction to this item is that
20 it's drafted as we would award our administrative funds to
21 HHSP eligible entities. Technically, what we're going to
22 do is we're going to move those admin dollars into our
23 discretionary pool and then we will award them to one or
24 more of those HHSP subrecipients. So it's a minor
25 technical correction. It would change the way we report

1 the dollars to the federal government, so we wouldn't say
2 these are TDHCA admin dollars, these are actually dollars
3 that were spent to benefit homeless populations through
4 the HHSP fund.

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

8 MR. OXER: Good. Stella, good morning.

9 MS. RODRIGUEZ: Good morning.

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

12 MS. RODRIGUEZ: It's not here.

13 MR. OXER: We'll figure it out.

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

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

24 We applaud your noble task of navigating
25 through the rough waters that have become the business of

1 government finance. We certainly understand the
2 challenges and we praise your success thus far. It is not
3 without partners and input from those partners that you
4 will carry out future successes, and to that end, we would
5 like to address this item 1(h).

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

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

22 Currently community action agencies, funded by
23 the Community Affairs Division of TDHCA, administer a
24 large number of programs which require support from CSBG
25 funds, and CSBG funds not only support TDHCA programs, but

1 others, such as senior nutrition, Head Start, Early Head
2 Start, workforce, childcare, to name a few. The CSBG
3 dollars provide viability and stability in an ever
4 changing funding environment. This condition is on
5 different from programs funded by the Housing Section of
6 TDHCA, such as housing and homeless services programs.

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

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

24 We think the following conditions are imminent:
25 agencies receiving LIHEAP funds will leave large

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

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

15 We trust that you have completed your
16 administrative tasks listed in your state plan and the
17 alternative use of these funds will not raise caution to
18 those who ensure your compliance in such matters. With
19 that being said, we respectfully ask that you reconsider
20 the proposed use of unspent CSBG administrative funds, and
21 we request that you consider providing these funds to the
22 community action network, via formula, which they can
23 expend prior to the expiration of those funds. We believe
24 these funds can help alleviate burns caused by
25 sequestration cuts. Our communities need these dollars,

1 our citizens need to be able to rely on our resources in
2 these trying times.

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

10 This concludes my comments. Thank you.

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

13 Are there any questions from the Board?

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

16 MS. SYLVESTER: Megan Sylvester, Legal
17 Services.

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

20 MS. SYLVESTER: Yes, we do, and our Texas
21 Administrative Code rule also allows us to move these
22 administrative dollars to our discretionary pool. On the
23 federal level, we just need to merely document the file
24 that that's what we're doing and it needs to have the
25 signature of our chief executive officer.

1 MR. OXER: Okay. And that would be Tim, of
2 course.

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

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

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

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

15 MR. OXER: That's okay.

16 MR. DeYOUNG: Yes. The discussion is where do
17 we apply these dollars. The intent of this drafted action
18 item is that we would move these dollars into HHSP. HHSP
19 currently is funded by two funds sources: bonds and trust
20 fund dollars. This would free up trust fund dollars. The
21 intent would be to move the corresponding amount, and I'm
22 going to use a rough figure of between \$450,000 and
23 \$500,000, to the Amy Young Barrier Removal Program, which
24 you'll remember does modifications on homes for
25 accessibility purposes.

1 We want to fully expend, we do not want these
2 funds to lapse. They would lapse on September 30 of this
3 year and we would lose access to these dollars.

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

6 MR. DeYOUNG: And the goal would be to
7 hopefully do this in one action. The language is very
8 broad. We would look at the unspent dollars currently by
9 those eight cities, we would try and identify about
10 \$450,000 in expenditures that would neatly swap out with
11 these funds. Ideally, it's one contract action.

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

25 MR. OXER: Okay. Thanks.

1 Any other questions from the Board?

2 (No response.)

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

5 MS. RODRIGUEZ: I do. Thank you so much.
6 Stella Rodriguez, Texas Association of Community Action
7 Agencies.

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

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

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

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

24 MS. RODRIGUEZ: She addressed the Texas
25 Administrative Code; this is the federal act.

1 MR. OXER: Thank you for your comment.

2 Megan, if you want to follow.

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

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

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

25 MR. OXER: All right. Thank you.

1 Is there any other public comment on this item?

2 (No response.)

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

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

17 MR. DeYOUNG: If we were to go out for public
18 comment we would have to post, and it would take a good
19 portion of what we have left timewise. And again, the
20 concern was to rapidly get these dollars expended so that
21 we're able to report at the end of September that we fully
22 expended the grant. In an ideal situation, if we knew
23 this three months earlier, certainly we would want to talk
24 about a public hearing and the possibility and options
25 that we could do with these dollars.

1 The reason we're dealing with this issue now is
2 there had been a change, during ARRA, there was a change
3 in the way we report to the federal government. CSBG is
4 the last program that -- each of the grants is on a
5 different calendar, CSBG is the last one that we're
6 dealing with, and this issue kind of caught us, and we've
7 talked about how to avoid this in the future, and I think
8 that remedy is that we identify it earlier and we have
9 more time to have that discussion, and hopefully, we avoid
10 last-minute July 11 meetings where we say we need to do
11 this.

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

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

23 MR. OXER: Megan.

24 MS. SYLVESTER: Megan Sylvester, Legal
25 Services.

1 I would just like to add that the public did
2 have a chance to comment during our rulemaking process
3 that this is something that we would consider doing.

4 MR. OXER: Okay. Thank you.

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

7 DR. MUÑOZ: Move staff recommendation.

8 MR. OXER: Motion by Dr. Muñoz.

9 MR. GANN: Second.

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

12 (No response.)

13 MR. OXER: Okay. All in favor?

14 (A chorus of ayes.)

15 MR. OXER: Opposed?

16 (No response.)

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

18 Thank you.

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

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

24 Item 2 is the presentation, discussion and
25 possible action on a material amendment to the land use

1 restriction agreement, or LURA, for Sabine Park
2 Apartments.

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

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

24 The development was originally built in 1941
25 and rehabilitated with tax credits in 1996 under previous

1 ownership. All units are restricted under the LURA, with
2 60 units set aside for households who earn income at or
3 below 50 percent of them are median income and 140 units
4 at or below 60 percent of the AMI. The development was
5 sold to the current owner in 2010. The owner has
6 requested a material LURA amendment which would release 50
7 percent of the low income units from these rental
8 restrictions, allowing them to be rented to households
9 making more than 60 percent, so for market rate
10 households.

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

24 Staff has significant concerns about
25 recommending approval of this request. Part of this

1 concern is based on the fact that recent market studies of
2 the area, both a study that the owner submitted and recent
3 studies with tax credit applications for the area, do not
4 fully support that there is a lack of low income housing
5 demand in the area. And I will say that market studies
6 can't show a person's preference on where they want to
7 live, it basically shows this is the number of low income
8 households, this is the number of affordable units, and
9 it's a multiplication, so I just wanted to state that
10 fact.

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

19 One of our purposes under statute is to provide
20 for the housing needs of low income individuals and
21 families by preserving affordable housing. I believe that
22 preservation happens not only at allocation or award of
23 new funding opportunities in the area, but also on the
24 back-end of these deals in between years 15 and 30 when
25 the majority of the original stakeholders have often left

1 the transaction. The Department must then work with the
2 current owner to ensure that affordable housing can
3 continue to be provided on a long-term basis.

4 Quite honestly, we usually don't get the chance
5 to work out this type of transaction with the owners of a
6 9 percent tax credit transaction. Usually what happens is
7 we receive foreclosure notice, at which time the LURA is
8 automatically terminated. But in this situation, the
9 owner has reached out and asked for assistance to prevent
10 such an event.

11 There are a range of possibilities that could
12 occur with this development, and nobody can foresee the
13 future. If nothing is done here, this is a possibility
14 that the property could go into default and be foreclosed,
15 meaning the loss of affordability under the LURA for all
16 200 units. Or the Department could give the owner time to
17 develop a long-term plan for keeping this development
18 affordable under the provisions of the LURA. This option
19 may not be successful either, but at least at the end of
20 the day the owner can make a decision about the future
21 viability of the development, knowing that all the options
22 were exhausted.

23 I think right now, and likely for the past few
24 years, the owner has been paying for operating deficits,
25 and so there's kind of a cloud, he's within that cloud,

1 and perhaps if we give some time where they can research
2 all the options, if they can even occupy with a market
3 rate household, the cloud can be lifted so they can see,
4 you know, what do we need to do long term to keep this
5 affordable.

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

13 I do want to stress that this is not a
14 recommendation to approve the material LURA amendment
15 request. The recommendation is that the Department will
16 not enforce this one restriction of the LURA, the income
17 restriction provision, for specific buildings that are
18 outside of the 15-year federal compliance period, so that
19 would be 27 buildings that their current vacant units they
20 could occupy those with households that are above 60
21 percent, the rent would still be restricted and they would
22 still be required to comply with all other aspects of the
23 LURA, and this would only be for a limited time, as well,
24 for a six-month period with a possible extension by
25 approval. Again, this would allow the owner to develop

1 the best possible resolution solution which we believe
2 would be to keep all 200 units affordable.

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

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

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

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

13 We'll hear comment. Michael.

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

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

1 based on other factors.

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

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

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

20 MS. GARCIA: Right. Because one of the
21 problems with this request is that the owner hasn't had
22 sufficient documentation to back up that there are even
23 market rate households that want to live at this
24 development, and so during this time period we could see
25 who was coming in, where are they employed, how much

1 income do they earn, are they just slightly above 60
2 percent, are they \$5,000 above the limit or are they
3 \$50,000 above the limit. And so perhaps if they're only
4 slightly above the limit, then a more reasonable amendment
5 request, if one is needed at all, would be to amend the
6 LURA to accept households that are 80 percent and above
7 and not market rate. I think that would be more palatable
8 for the Department, and perhaps the Board, than just
9 removing half of the units and allowing them to market.

10 MR. OXER: More data-driven.

11 MS. GARCIA: Exactly.

12 MR. OXER: All right. Let's hear from Michael.
13 And stay close, Cari.

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

17 It reads:

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

22 "Sabine Park has a rich history to Orange and
23 its residents. The 40 apartment buildings, including 200
24 rental units, are located in the southeast section of
25 Orange's historical district. Sabine Park was built in

1 1942 to house military and civilian workers involved in
2 the ship-building trade for World War II. In 1998 the
3 units were fully remodeled and converted to a federally
4 approved and TDHCA supervised tax credit property.

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

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

25 Signed: "Sincerely, Allan B. Ritter."

1 MR. OXER: Thanks, Michael.

2 Okay. Cari, let's sort this down to some dots
3 here. Basically, we're saying we want to have some time.

4 It's our expressed intent to make sure we maintain the
5 stock of affordable housing, wherever they are. The
6 financial details of these things I'm sure vary and
7 oscillate over time, the economic circumstances in that
8 area have probably changed, so I'm inclined to support --
9 my own perspective, I'm inclined to support an opportunity
10 for the Department and the owners to get together to see
11 if there's a viable solution to this that doesn't slam the
12 door shut either direction.

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

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

24 MR. OXER: And the LURA is lifted upon
25 foreclosure. Is that correct, Cari?

1 MS. GARCIA: Yes.

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

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

4 MR. OXER: Mr. Gann.

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

10 MR. OXER: Really.

11 (General laughter.)

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

23 So I think we really need to look at this for
24 future solutions and may make some drastic changes to
25 those particular things, and it may be we have to do this

1 in Washington. Thank you.

2 MR. OXER: Thanks.

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

5 MR. OXER: Madam Counsel, yes.

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

12 MR. OXER: I certainly concur with that.

13 Did you have a comment, Juan?

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

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

20 MR. IRVINE: I actually participated actively
21 in drafting it, and I think that the recommendation is, at
22 its most basic, simply that the state and the state alone
23 would not enforce its rights to require that these
24 particular units be leased to income-qualified households
25 but all other requirements would remain in effect, and

1 whatever rights, if any, that any third parties might have
2 under the LURA are unaffected.

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

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

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

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

13 MS. GARCIA: Right.

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

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

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

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

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

25 MR. OXER: Yes.

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

4 MR. GANN: I include in my motion.

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

8 (A chorus of ayes.)

9 MR. OXER: Opposed?

10 (No response.)

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

13 Cameron.

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

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

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

24 MR. OXER: Well, we try to run a fairly
25 predictable ship here, but one of our purposes is to make

1 sure that everybody is heard. Good morning.

2 MS. MYRICK: Absolutely. Thank you very much.

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

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

19 That being said, there is an issue involving
20 the challenge process that we would like to bring to your
21 attention. This year we saw a more formalized process for
22 filing and responding to challenges. We understand and
23 welcome changes that will discourage superficial filings
24 and allow the Department staff to focus on filings that
25 have great merit. However, what seems to have gotten lost

1 in this process is the ability to appeal and to be heard
2 at the highest possible level, with you, the Board.

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

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

20 The applicant began meetings and correspondence
21 with county commissioners advising them not to make funds
22 available to a competing application. The applicant used
23 inflammatory terms in a public forum via local newspaper
24 and public meetings, and more private forums by
25 communicating via email and private meetings with county

1 commissioners and staff to denigrate the competing
2 application's financing structure and the competing
3 applicant's integrity and manner of conducting business.
4 These actions were taken in what appears to be a
5 deliberate effort to cause harm to a competing
6 application.

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

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

25 There was a second example, there was a

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

13 This action here seems to circumvent the rules.
14 Staff seemed very adamant at the time of application that
15 funding for these projects outside city limits must come
16 from the county and funding for projects within the city
17 must come from the city. This is further confirmed by the
18 FAQs that are published on the Department's website. It
19 should also be noted that it's come to our attention that
20 the applicant, should they be annexed, there is the
21 possibility that the substitution of funds will occur.
22 Again, in this instance the Department should provide
23 definite guidance based on their reasoning for this ruling
24 and both the applicant and the challenger should have the
25 ability to bring this matter before you, the Board.

1 While these challenges individually are not
2 specifically relevant to all applicants, their overall
3 impact is of great relevance to all of us in the
4 development community and the public. Any and all
5 determinations and explanations of such determinations
6 should be available to the public and not just the
7 challenger and the applicant. We have high respect for
8 the work, consideration and the efforts that staff make
9 when reviewing and analyzing the information before them
10 and in making such decisions, but sometimes Department
11 staff must make decisions with either limited or
12 incomplete details and facts. Moreover, sometimes the
13 item is simply not addressed fully and consistently or not
14 at all.

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

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

25 MR. OXER: Certainly. Is there any comments or

1 questions from the members of the Board?

2 (No response.)

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

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

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

23 In the specific instances at hand, I think in
24 the case mentioned about the creation of opposition, I
25 think there were some very unique facts and circumstances

1 that had some complicated legal issues involved, including
2 constitutional rights, free speech rights and some stuff
3 like that. We had some very long discussions and came to
4 the conclusion that we did not feel we had the ability to
5 say that that violated the rule, just fundamentally.

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

18 Lora also mentioned that we hadn't necessarily
19 come down with a firm decision on an issue that relates to
20 proving those points up at commitment. That is very
21 specifically because we have very diverse circumstances
22 that have similar but not the same fact patterns, and I'm
23 concerned about putting out very broad guidance without
24 seeing some actual facts on the ground or without having
25 access to the full information such that we might mislead

1 one applicant when they come in at commitment and say:
2 Well, we followed your guidance. And it's like: Well, we
3 didn't know these particular facts over here.

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

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

24 MR. OXER: So essentially, any applicant can
25 only essentially appeal the decisions with regard to that

1 application. They can ask you things about the others or
2 ask you to clear up a fact pattern, but there's no hard
3 bearing on another application to an external applicant or
4 an unassociated applicant.

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

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

15 MR. DORSEY: Bingo.

16 MR. OXER: And start again next year.

17 MR. DORSEY: It's hard enough to fit everything
18 we've got into the time frame now. You know, if you
19 considered the idea of having a challenge deadline,
20 challenges are filed, you provide a response period to the
21 actual applicant that's challenged. Then the Department
22 gets all that information together, we issue a
23 determination, the applicant can appeal that
24 determination, as can the challenger. If the challenger
25 appeals the determination and that results in the ED, for

1 example, granting that appeal, then the applicant has yet
2 another appeal right. I mean, it's unmanageable.

3 MR. OXER: Good. Thanks, Cameron.

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

6 Okay. Where are we here, on number 3?

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

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

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

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

19 MR. DORSEY: There is an order. There are a
20 couple of instances where I think it's helpful to group
21 them because the fact patterns are so very similar that if
22 the Board were to rule on one at the beginning and then
23 hear different arguments at the end related to very
24 similar situations, they might feel like they already made
25 a decision and they're bound by that decision and they

1 didn't have the opportunity to hear alternative arguments
2 from other applicants.

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

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

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

16 MR. DORSEY: Yes, Mayorca Villas. Then you
17 skip those next two because those I moved up. Then the
18 next one after Mayorca is Reserve at Arcola Senior Living,
19 and then Stonebridge of Plainview, and then 4800 Berkman.
20 So that's the order we're going to try to hear them so
21 that the issues can be grouped.

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

24 MR. DORSEY: Yes. It's not a big
25 reorganization. I just want to make sure like topics are

1 heard together. And Jean is actually going first.

2 MS. LATSHA: Good morning.

3 MR. OXER: Good morning.

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

6 The first few appeals here, we're going to hear
7 a lot surrounding the date of March 1. These appeals
8 cover a number of different issues, but at the end of the
9 day, what this is really about is March 1, it is: did you
10 notify the proper elected officials by March 1, did you
11 include what you needed to include in your application on
12 March 1, where was your site located on March 1. And I
13 just want to throw out there really quickly that that date
14 is really important for the QAP to function as a document.

15 We have to evaluate these applications with the facts as
16 they exist on March 1, and that's exactly what we did in a
17 number of instances here, although, like I said, they're
18 related to different scoring items.

19 That being said, we'll start with Liberty
20 Manor. So Liberty Manor is an application in Rural Region
21 7, and they lost points for a couple of different scoring
22 items. The first, commitment of development funding from
23 a unit of general local government. The reason they lost
24 those points is that on March 1 they were not located
25 within the city limits of Liberty Hill, however, for

1 purposes of scoring under this item, they submitted
2 documentation that they had a commitment of development
3 funding from the City of Liberty Hill which, per the
4 rules, was not sufficient for points. In order for that
5 commitment of funding to count for points, they needed to
6 be located within the city limits, and this was made very
7 clear through some staff guidance before March 1.

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

16 Secondly, they also lost points for a community
17 revitalization plan in a rural area. This is actually a
18 different issue. They did submit some documentation that
19 there were some infrastructure projects near their
20 development site that would qualify them for these points,
21 however, the application was challenged, and it turns out
22 that these new water wells and a pumping station, which
23 were the infrastructure projects that were qualifying them
24 for these points, were not, in fact, located within a
25 quarter mile of the site which is required by the rule.

1 I think that there was just a misunderstanding
2 of the rule here, and in their appeal they state that they
3 believed a way to achieve these points is that the
4 infrastructure project serves the development site,
5 however, there's no language in the rule that says
6 anything about the project serving the development site.
7 If that were the case, you could have, let's say, a paved
8 roadway three miles away, yes, you have to take that road
9 to get to the road to get to the development site,
10 everything would serve the development site. The rule
11 clearly states that the infrastructure projects have to be
12 within a quarter mile, this one was not, and I don't
13 believe the applicant is contesting that fact.

14 Unless you have any other questions for me
15 about this application, I'll let the applicant speak.

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

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

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

23 MR. GANN: I'll second.

24 MR. OXER: Second by Mr. Gann.

25 Okay. We have public comment on this.

1 DR. MUÑOZ: I've got a question for Jean.

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

3 MS. LATSHA: Yes, sir.

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

10 MS. LATSHA: Yes.

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

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

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

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

25 MR. IRVINE: It goes back to March 1. On March

1 1 it was proposed to be here. Where is that? It's either
2 in the city or it's not in the city.

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

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

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

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

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

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

19 Cameron.

20 MR. DORSEY: I think the problem with this
21 is -- and let me work you up here -- we got several
22 questions prior to March 1 about this and what we needed
23 to do, so we sat down as a group and we said, All right,
24 how do we need to look at this? Because I understand the
25 reading that they're putting forth, I'm even sympathetic

1 to the reading that they're putting forth. The problem is
2 this, if we're asked the question before March 1, here's
3 what I've got to base our decision on: I am an applicant
4 seeking to be annexed, I cannot tell you necessarily when
5 I will be annexed, there is no date to prove up that
6 annexation.

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

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

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

25 MR. DORSEY: Okay. I think that really

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

9 MR. OXER: Anything else, Jean?

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

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

25 MS. LATSHA: It was not.

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

8 MS. LATSHA: Precisely.

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

10 MR. IRVINE: Yes. We seek certainty. On March
11 1 if you're in an ETJ, it's certain that you're in the
12 county and you will be in the county even if the
13 municipality proceeds with the annexation. If you're
14 within the municipality, it's certain that you're within
15 the municipality. ETJs are very problematic things and
16 that's why we draw the lines around municipalities and
17 counties.

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

20 MR. IRVINE: We've got one.

21 MS. LATSHA: We already have one.

22 MR. OXER: From?

23 MR. IRVINE: Leslie and Tom.

24 MR. OXER: Okay. Bingham and Gann. Is there
25 public comment on this item?

1 MS. BAST: Good morning. I am Cynthia Bast of
2 Locke Lord, and I am representing the applicant in this
3 appeal.

4 MR. OXER: Good morning.

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

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

25 And if this development was going through an

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

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

17 But I think even more instructive is section
18 11.8(b)(2)(A)(I) which talks about neighborhood
19 organization requests, and it requires that the applicant
20 send a letter based on where the development is proposed
21 to be located. And in that section it goes on to say that
22 if the development is located in a city or an ETJ, then
23 the letter should be delivered to the appropriate city
24 official.

25 The QAP allows for this financing to be proven

1 up at the time of your commitment notice. The QAP also
2 allows for zoning to be proven up at the time of your
3 commitment notice. Annexation and zoning often go hand in
4 hand. So if we're talking about timing here, it is
5 logical that an application with a development currently
6 in the ETJ as of March 1 but proposed to be in the city of
7 as of March 1 could prove up the financing at the time of
8 the commitment notice and could show the department:
9 Look, on March 1 we were going through annexation, we did
10 go through annexation, we went through zoning, we got our
11 zoning, we're proving that up now, as we're supposed to in
12 the QAP, we're proving up our financing now, as we're
13 supposed to in the QAP.

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

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

23 With regard to community revitalization plans,
24 this is another matter of really just looking at one word
25 in a sentence, and in this sentence the word is "or." The

1 rule provides points if the government has approved: (1)
2 expansion of basic infrastructure that serves the
3 development site, or, and the second phrase
4 is improvements to areas within a quarter mile of the
5 development site.

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

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

15 MR. OXER: Thank you, Cynthia.

16 Are there any questions from the Board?

17 (No response.)

18 MR. OXER: Good. Thanks.

19 MS. BAST: Thanks.

20 MR. OXER: Any other comment?

21 MR. BOATRRIGHT: Good morning. My name is Greg
22 Boatright. I'm the city administrator for the City of
23 Liberty Hill, and I very much appreciate your time and
24 your service.

25 I, too, serve in a role that is similar to the

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

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

25 The school district is very excited about this.

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

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

16 MR. OXER: Thank you, Mr. Boatright.

17 Any questions from the Board?

18 (No response.)

19 MR. OXER: Thank you.

20 MR. BOATRRIGHT: You're welcome.

21 MR. OXER: Further comment?

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

25 We started our company back in 2008. We've

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

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

22 We have dealt with this in other states that we
23 have done business in, and in every instance the staff
24 realized their intent was different than the literal
25 reading and the literal interpretation has always

1 prevailed. In each instance staff addressed their mistake
2 in the following year's QAP by rewording the section to
3 match their intent. We can't question the intent on each
4 item in the QAP which is why we always read the literal
5 interpretation and put together applications to meet those
6 requirements.

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

13 MR. OXER: Thanks, Jody.

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

16 MR. DORSEY: I wanted to just address a couple
17 of things that I see as kind of maybe reading into staff's
18 interpretation a little bit. We're not reading the word
19 "proposed" out of the sentence, I want to be clear. The
20 word "proposed" if you read it out of the sentence is even
21 more nonsensical than if you read it the way they're
22 reading it. The development is located, where the
23 development is located. Does anyone know where the
24 development is located? Nowhere. It's an application so
25 you can't take the word proposed out of the sentence and

1 make it make any sense. We are reading the word
2 "proposed" to modify the status of the development, it is
3 proposed, the activities in the application are proposed,
4 the location that it is proposed to be is proposed, but
5 it's definitive, it is that site. It doesn't modify the
6 uncertainty of the city's future boundaries and boundary
7 changes. To read it that way is just -- I'm not
8 suggesting that it can't be read that way, I'm saying that
9 it's inconsistent with how the QAP operates as a document.

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

22 The second thing is with regard to the whole
23 issue of "or." I encourage you to read the sentence
24 because what it says is it's project infrastructure or
25 project, infrastructure or project to the development

1 site. If I put "and" there, it doesn't make any sense; I
2 need to be able to use the word "or" in this manner. The
3 construction of the sentence is pretty apparent, and if
4 you don't take into account that "or" to string that
5 sentence together that way where it has to be to the site
6 or within a quarter mile, then what you end up with is a
7 rule that says you have to prove up that there's
8 infrastructure. Where? Can it be anywhere in the county?
9 There's no distance requirement then.

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

21 MR. OXER: Okay. Thanks, Cameron.

22 Any comments from members of the Board?

23 (No response.)

24 MR. OXER: Okay. Mr. Tucker. And please
25 restate your name when you come back up.

1 MR. TUCKER: Jody Tucker with Prestwick
2 Development.

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

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

14 MR. OXER: Okay. Thanks for your comments.

15 Any questions from the Board?

16 (No response.)

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

18 MR. IRVINE: Not from here.

19 MR. OXER: Okay. Professor McWatters.

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

1 commitment then from the county?

2 MR. DORSEY: If you're in the county on March
3 1, then you can either pursue funding and get a commitment
4 in the form of a resolution from the county or a
5 qualifying instrumentality of that county.

6 MR. McWATTERS: What's a qualifying
7 instrumentality?

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

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

19 MR. DORSEY: That's a great question. The
20 problem is that the QAP doesn't provide any instruction
21 surrounding what to do in instances where an annexation or
22 the boundaries of a city will change at some point in the
23 future. I think that there are a couple of key pieces.
24 One is that you can go to the county even when you're in
25 the city, so that's key. The other thing is you can go to

1 the city and secure funding. This is a point item, you
2 know, you elect points voluntarily to meet the explicit
3 requirements of that point item. We're not requiring you
4 to do anything.

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

9 MR. DORSEY: Yes.

10 MR. McWATTERS: Okay.

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

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

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

20 MS. BAST: Yes, sir. Cynthia Bast. That's
21 exactly what I was going to point out. I'm looking at the
22 FAQ that was published after the pre-application deadline
23 but before the application deadline, and what it's telling
24 is that if your development site is located within the
25 city, then your possible local subdivisions include the

1 county, the city or a city instrumentality, but it doesn't
2 include a county instrumentality. However, if you're in
3 the ETJ, which means you're in the county, then your
4 possible government entities are the county or the county
5 instrumentality.

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

22 MR. DORSEY: I would say that there are a lot
23 of instances where things change after March 1. One thing
24 that almost always happens is new census data is released,
25 and this occurs after the rules are finalized, and you

1 know, while you might be in a high opportunity area on
2 March 1, you might not when you place the deal in service.

3 I mean, there are things changing all the time after
4 March 1. So you might be in a QCT when you submit the
5 app, you might not be in a QCT later. That's the reality
6 of just this process.

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

9 MR. DORSEY: Snapshot, bingo.

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

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

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

24 MR. BOATRIGHT: Greg Boatright. Just briefly
25 just to clarify the timelines that we're talking about.

1 Voluntary annexation was requested January 28 of 2013, and
2 as you all know, the timelines that are associated with
3 annexation and zoning, so we, as quickly as possible, went
4 through the process and this property was annexed into the
5 city on March 28. So that's the timeline, and with the
6 public notices and the time limits that you have to face
7 there, I know we did it as quickly as possible. So thank
8 you.

9 MR. OXER: Any further questions?

10 (No response.)

11 MR. OXER: Okay. A passing comment on my part
12 is while there are -- and I expect we'll hear some more
13 efforts to parse out individual words within the QAP, one
14 of the things that we have to recall is the QAP has to be
15 looked at as an overall document and it has to be
16 consistent with the tone and intent and detail of the QAP.

17 As everybody in this room probably knows, there are
18 quirks within there and we try to improve and buff it and
19 polish it, but at this point the QAP has to be considered
20 as a whole document. Am I not correct, Counselor?

21 MS. DEANE: That's correct.

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

1 (General laughter.)

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

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

12 (A chorus of ayes.)

13 MR. OXER: Opposed?

14 (No response.)

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

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

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

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

25 MS. LATSHA: All right. Jean Latsha, Housing

1 Tax Credit Program manager.

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

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

14 MS. LATSHA: Absolutely.

15 MR. OXER: Let's park this.

16 MR. STOKES: My apologies.

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

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

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

24 MR. STOKES: No.

25 MR. OXER: What's the issue on this one?

1 MS. LATSHA: No, but I think it was a competing
2 application for another application that was under appeal.

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

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

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

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

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

20 All right, Jean.

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

24 So we'll go back to Patriot's Crossing in
25 Dallas, and Mesquite. So Patriot's Crossing in Dallas is

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

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

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

20 There was not anything written into the QAP
21 about how we were going to do this measurement because
22 it's not necessary. There's only really one practical way
23 to make this measurement. The only information that we
24 have at application for the new site is the shape of the
25 site. There's not necessarily an address associated with

1 it or anything. The only thing that we can look at is the
2 shape of this site and the shape of this existing site
3 over here and measure the distance in between those two.

4 I don't know that I have a whole lot else to
5 say about that. Unless anyone has any questions for me,
6 we can probably let Claire speak.

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

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

14 MS. LATSHA: Correct.

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

18 (General laughter.)

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

21 MR. IRVINE: I think that it also is that if
22 you measure the distance between two points by any other
23 method than a straight line, you inject variables and
24 matters that simply cannot be handled in a manageable and
25 uniform way.

1 MR. OXER: So what we're saying is this is a
2 geometry problem.

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

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

6 DR. MUÑOZ: Hey, Jean. The CBJ survey.

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

9 DR. MUÑOZ: Because this represents Vanston
10 being closer.

11 MR. OXER: All right.

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

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

16 DR. MUÑOZ: Moved.

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

19 MS. BINGHAM ESCAREÑO: Second.

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

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

1 scoring on the tiebreaker.

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

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

24 I have been through all of the rules and all of
25 the QAP multiple times this year, and in every instance,

1 except this tiebreaker, the QAP and the rules designate
2 how measurement is to be made. We have the quarter mile
3 measurement, we have one instance of using nearest
4 boundary to nearest boundary, we have radius, we have a
5 lot of different measurements. But the fact is we all
6 talk in address terms. The only way to determine your
7 census tract is to put in some sort of address, and even
8 if it's just a street name, you know the street name on
9 which your address is located, so we actually talk in
10 terms of address.

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

22 Staff says that we should use as the crow
23 flies, however, people don't fly. Given choices of places
24 to live, people drive to look at the sites. Even staff
25 recognizes this, and in fact, from 2002 to 2009 I found 73

1 instances of appeals where they were showing -- and I was
2 only able to look at all of the appeals because it was
3 easier to pull up, but I think the standard language that
4 staff used in those periods on shopping and services was
5 that while the language in the QAP read the site is within
6 one mile of major grocery, pharmacy, shopping centers of
7 other retail establishments, staff actually said, in their
8 real estate analysis, are located within a short driving
9 distance from the site. That's our standard of measuring
10 things these days: with navigation systems, driving is
11 how we determine how far things are from each other. I've
12 also provided in your materials multiple instances of when
13 the Board has talked about driving distance.

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

21 I've gone back and forth, I've talked to staff
22 on multiple occasions about this, and finally my last
23 conversation after my supplemental appeal was filed was
24 with Jean on June 28 where she told me that what they
25 really do to classify projects is based on the entire

1 property. Honestly, that would be fine with me too,
2 because I can show you how the properties are located .
3 These are the two Mesquite properties, this is the
4 proposed project and this is the project that's the
5 nearest project. When you overlay our project which is
6 located right there and the nearest project, this is what
7 you get, they overlap each other.

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

21 And finally, the tiebreaker scoring is done on
22 high opportunity index as the first criteria which is
23 really judged, once again, on addresses. It's census
24 tract and school district, both of which use addresses as
25 their criteria. Using that same factor on the second

1 tiebreaker I think would be fundamentally fair. And so I
2 ask that you overrule staff's recommendation and grant the
3 tiebreaker to Patriot's Crossing.

4 MR. OXER: Thanks, Claire.

5 Okay. Additional comment?

6 (No response.)

7 MR. LELAH: Good morning. Vigal Lelah,
8 Patriot's Crossing.

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

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

17 MS. LELAH: Is that better?

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

20 MR. LELAH: Five years of work and three tax
21 credit applications comes down to this moment. The fate
22 of Patriot's Crossing is going to be decided by a
23 technicality that comes down to mere feet. What if there
24 was a third tiebreaker? Real dollars invested, Patriot's
25 Crossing has \$4.7 million today; land closed and under

1 ownership, Patriot's Crossing is closed and we own the
2 property; plans are complete, the project is shovel ready,
3 we have five years invested in this project; number of tax
4 credit applications, three applications. Does the
5 applicant have an opportunity to reapply? No, we do not.
6 The population we're serving, we're serving those who have
7 served us, and the significance of the project. That
8 would make your job easy to day to make your decision
9 based on any of those if there was a third tiebreaker.

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

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

16 (No response.)

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

19 Good morning, Mr. Chair, Board members, Mr.
20 Irvine, Ms. Deane. How are y'all doing? My name is Mike
21 Sugrue, Stone Leaf Companies. I am the consultant with
22 this property, and the main reason I'm the consultant with
23 this property is this property is the only application
24 this year directly to serve veterans -- and as a veteran
25 myself, who, praise the Lord, I have not had to use the VA

1 Hospital which is directly across the street from this
2 property -- many of the veterans who would use that
3 hospital on a regular basis could live across the street.

4 It would be very, very convenient for our veterans.

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

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

17 (General laughter.)

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

20 Is there additional comment?

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

24 I don't know what to say. The bottom line is I
25 may not be a good old boy Texan, but as the crow flies,

1 our property is 328 farther away than Patriot's Crossing,
2 and this is what the rule is. Common sense, from property
3 to property, we're farther away. If you want to go to
4 Dallas, it's a straight shot, you can still get to Dallas;
5 if you go through Hillsboro, Texas, it's farther away.
6 The bottom line is from Austin to Dallas, straight line,
7 you know what it is. From our property to the next
8 available HTC, we're 328 feet farther away than Patriot's
9 Crossing is to the next available HTC project.

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

14 MR. OXER: Thank you, Jay.

15 Are there any questions?

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

19 MS. PALMER: I don't dispute the fact that if
20 you measure from boundary to boundary, our project is 328
21 feet -- from closest boundary to closest boundary, our
22 project is 328 feet closer, and that's mainly because of
23 the shapes of the various projects. I mean, they
24 literally line up on top of each other. And frankly,
25 boundary to boundary is only used in one place in the QAP

1 and it's specifically defined as what you're supposed to
2 use in that particular instance in measuring distance, and
3 it has to do with hazardous waste sites. And so, to me, I
4 really do believe that this is a question of first
5 instance for the Board and it is up to your discretion.

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

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

25 And one of the main things, after Jean and I

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

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

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

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

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

24 Just to clarify a couple of things. It is true
25 that we do not use addresses really for anything. The

1 only thing that an address does for you is allow you not
2 to search all over a map of the State of Texas for the
3 piece of land that you're looking for. So if I go to
4 Google Maps and I plug in an address, it's going to zoom
5 in a lot closer to where I want to be, but I still need to
6 look at a site plan, I need to look at where streets
7 intersect, and everything else to determine where a site
8 is. And an address is simply an approximation; we went
9 over this last year.

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

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

23 MR. OXER: Okay. Thanks.

24 Any other questions? Professor McWatters.

25 MR. McWATTERS: Staff's recommendation approach

1 here to me seems rational, it seems objective, it seems
2 transparent, and it's easily understandable. I think if
3 we adopt another rule, a driving rule, then what does that
4 mean, does that mean we can cut through parking lots to
5 shorten the distance or expand the distance. And why
6 driving, why not walking, what if you walk? You can cut
7 corners, you walk over grass, you can come up with a vast
8 array of combinations and permutations of routes, and then
9 we get into which route, is it the walking route, is it
10 the driving route, is it cutting through parking lots, is
11 it walking over grass and the like, and I think it just
12 opens an area which should be fairly clean, easy to
13 determine to a lot of ambiguity and uncertainty.

14 MR. OXER: Last comment, Claire.

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

1 overlay the properties, they do overlay to each other.

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

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

22 MR. OXER: Okay. No other public comment.
23 Motion by Dr. Muñoz to approve staff recommendation,
24 second by Ms. Bingham. All in favor?

25 (A chorus of ayes.)

1 MR. OXER: Opposed?

2 (No response.)

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

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

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

13 The applicant in their original application
14 that was submitted on March 1 submitted evidence of a
15 police station that met the requirements of the rule, and
16 those points are actually being upheld. What is in
17 question here is that the applicant also provided in the
18 original application evidence of infrastructure associated
19 with the Mi Ranchito Subdivision that was supposedly
20 within a quarter mile of the development site. The
21 application was challenged and we discovered that the Mi
22 Ranchito Subdivision, those improvements associated with
23 that subdivision were, in fact, outside of that quarter
24 mile radius -- which, by the way, was measured from the
25 closest boundary out in a straight line.

1 The applicant, in response to the challenge,
2 has made two separate points, and I'm not quite sure which
3 one that they're going to focus on, but they are these.
4 First, that within a quarter mile there is an easement to
5 a lift station that they feel should count as an
6 infrastructure project. Staff has basically disagreed
7 with that and said that it was really the physical
8 infrastructure project that we want to see within that
9 quarter mile radius.

10 So the applicant also provided evidence of yet
11 another project, a new water line that was installed that
12 appears to be actually within that quarter mile radius.
13 However, there was no mention at all of that water line in
14 the original application, so this is, again, where I'm
15 going to go back to that March 1 date. Because that water
16 line was not mentioned in the original application, we did
17 not feel we could basically include it in our assessment
18 to see if the application was eligible for the points, and
19 because the easement is not eligible for the points, those
20 two points have been denied.

21 And unless you have any other questions for me,
22 staff's recommendation is to deny the appeal.

23 MR. OXER: Thanks, Jean.

24 All right. Any questions from the Board?
25 Motion to consider?

1 DR. MUÑOZ: I move.

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

4 MR. GANN: Second.

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

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

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

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

24 La Esperanza has been the leading application
25 in Rural Region 11 since the first application log was

1 released after March 1, as well as after the staff's
2 rigorous review on June 13, and we are first on the
3 application list for HOME funds. We've received support
4 letters from State Senator Judith Zaffirini and State
5 Representative Ryan Guillen, as well as resolutions of
6 support from both the county and the city.

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

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

18 First, Sarah Reidy, my business partner, and I
19 selected a site that we believed met all of the state's
20 criteria. We still believe that today. What's
21 interesting about the two points in question is that it's
22 not about whether the improvement lies within the quarter
23 mile from the site or that it was approved by the city in
24 the time frame set in the QAP, it's simply a question of
25 whether the type of improvement is acceptable as

1 "infrastructure." If the staff desires to restrict
2 certain types of infrastructure, even if they are
3 improvements to the area, then those types should be added
4 as excluded types in next year's QAP.

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

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

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

1 occurred and is occurring.

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

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

9 MR. OXER: Any questions from the Board?

10 (No response.)

11 MR. OXER: Thanks, Linda.

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

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

23 And I think to start out with, what I'd like to
24 do is just kind of give you a general lay of the land out
25 there. Rio Grande City is right on the border. This

1 development site is within a mile or two of the Rio
2 Grande, it's located next to an elementary school, General
3 Sanchez Elementary School that was built a few years ago.

4 Around it is pretty much nothing but South Texas brush.
5 Below to the south there's a subdivision, and a little bit
6 below that there's an apartment complex.

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

16 Now, what's interesting to note, though, is
17 that the lift station, even though it had been in
18 existence for many years, was on private land. There's no
19 development there, no easement, nothing by which the city
20 had a right to come in and do anything with that lift
21 station. It was installed at some point in time. If the
22 folks in the apartments have problems with their sewer
23 system, they had to rely on a private landowner who would
24 either work on the lift station or get somebody to come
25 in. And so the situation there was that you have a

1 certain segment of the population relying on a lift
2 station located on private property over which the city
3 had no legal control.

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

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

21 In addition to that easement, there is no
22 question, no dispute that a water line, water service line
23 was installed within the quarter-mile radius that served a
24 residential property, and there's no question that
25 adequate proof was presented to staff regarding that water

1 line. First of all, there's a survey that shows where it
2 is; secondly, there's a work order from the water
3 corporation with a signed note from the manager of the
4 water corporation saying that they installed a water
5 service line. Then there is a certificate of occupancy by
6 the city approving the construction. So again, in terms
7 of what the facts are as they exist, we've got an easement
8 within a quarter-mile radius of the property and we have a
9 water service line.

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

20 So the fact that in February 2012 the City of
21 Rio Grande City obtained an easement which allowed it, for
22 the first time ever, to have access to this lift station
23 and to do what it needed to do with that lift station,
24 clearly is an improvement to an area involving
25 infrastructure for wastewater services. It's very

1 difficult to read that language in any other way.

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

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

23 So at the policy level, when you have
24 legislators and city councils talking about infrastructure
25 and making sure that there's infrastructure available for

1 the public, the concept of infrastructure is more than
2 just pipes or more than just concrete or asphalt, it's the
3 entire system which necessarily includes rights of way and
4 easements.

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

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

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

1 service.

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

5 MR. OXER: Good. Thanks for your comments.

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

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

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

23 Let me first state that it is clear to me and
24 my team that the applicants of the other project have done
25 a very thorough and professional job in their application.

1 I have not had a chance to meet them personally but I've
2 heard nothing but good things about them. However, as
3 indicated in our challenge, we disagree with what they are
4 claiming points for under community revitalization.

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

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

1 the spirit of community revitalization.

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

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

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

24 After hearing testimony from Mr. Guerra and
25 from our attorney, Ms. Cynthia Bast, I respectfully ask

1 that you support the staff decision and deny the subject
2 appeal.

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

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

6 Any questions from the Board?

7 (No response.)

8 MR. OXER: Thanks, Mr. Bennett.

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

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

20 Somewhere in the beginning of April, I was
21 approached by Mr. Bennett and Mr. Long to see whether I'd
22 be interested in doing an investigation for them
23 concerning a determination as to whether the utilities in
24 Mi Ranchito Garden Homes Phase 2, whether the utilities in
25 that development fell within the quarter mile of the

1 proposed La Esperanza project, and this was just in order
2 to determine whether they had met the criteria as
3 published in the QAP.

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

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

25 So given that, I sent my crews out there. We

1 were provided a survey of the La Esperanza Del Rio site,
2 we tied in to the corners at the time, the pins were
3 relatively new, and as you well know, we've been through a
4 drought in South Texas, so there wasn't any rust on the
5 pins as far as I can tell at that time. They found the
6 corners quite readily, and then my crews tied in all
7 visible infrastructure appurtenances within the
8 subdivision. By that I mean valves, manholes, the lift
9 station, of course, and the backup curb for the roadways.

10 Most of the infrastructure, water and sewer, is
11 underground, so other than actually excavating and getting
12 down to it, we couldn't pinpoint the exact location of the
13 line, but a valve, a flush valve is pretty indicative of
14 where the line is. For sewer, manholes are very
15 indicative of where the lines lie because they are
16 generally centered on lines.

17 So we picked up all the information, tied it
18 in, tied it into the survey points for the proposed
19 development, superimposed that on the aerial, and what you
20 have before you, we put a handout out, and what I describe
21 as exhibit number 1 is an illustration of what we picked
22 up, including the La Esperanza site, superimposed on an
23 aerial of the area, and then we drew a circle a quarter
24 mile, 1,320 linear feet from the nearest corner of La
25 Esperanza to Mi Ranchito Homes Phase 2.

1 In order to zoom into the area, we did an
2 exhibit 2, it's in your handout, that brought us into the
3 closest improvements to that 1,320 foot radius, and that
4 is also superimposed on the aerial. If you would like to
5 go ahead and jump to exhibit number 3, it's the same
6 drawing minus the aerial, just for clarification and for
7 the sake of clarity so everything is a little bit clearer.

8 Now, as I mentioned, up until March I had
9 served as the city's consultant engineer for the City of
10 Rio Grande City, so I was onboard when Mi Ranchito Garden
11 Homes Phase 2 was developed. Having been there, I knew
12 that a big portion of the sewer improvements had been in
13 place prior to that and there had been some modifications.

14 Evidently when Mi Ranchito Garden Homes Phase 1 was put
15 together, there was a master plan, the lift station was
16 put in place and there was a collection system put in
17 place. Between then and February -- prior to February of
18 2012, between then and the time that they actually went to
19 plat Phase 2, the layout changed and they had to change
20 some of their sewer lines.

21 So you'll notice on this drawing we went
22 through and labeled the improvements that were in place in
23 2006. The only improvements for sewer later than that was
24 one corner down in the lower left-hand corner where you
25 see a 12-inch sewer line. In order to get the existing

1 8-inch line out of the proposed lots, they had to reroute,
2 and in order to meet grade for the existing line, they had
3 to go to a larger size pipe for a lower grade. And that's
4 the explanation for that.

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

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

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

21 So in essence, none of the improvements were
22 within the 1,320 that met the criteria of both having been
23 in place at least twelve months before or having been
24 completed no earlier than twelve months before the
25 application period and be inside the 1,320.

1 MR. OXER: Thank you.

2 Any questions from the Board?

3 (No response.)

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

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

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

17 With regard to the water line, you've heard
18 from your staff that nothing about that water line was
19 included as evidence in the application, and Section
20 10.902(f) says that the Board review of an application
21 related appeal will be based on the original application.

22 So I agree with staff that the water line should not be
23 considered.

24 So we have the question of the easement. I
25 believe that the community revitalization section of the

1 QAP does clearly contemplate physical improvements,
2 something that you would expend funds for. And if we look
3 at what really happened here, let's think about it.

4 There's this Mi Ranchito Subdivision and it was a
5 developer and the developer developed a lift station, and
6 while they were doing that development, the developer was
7 responsible for maintaining that lift station.

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

18 So nothing physical has been done by granting
19 an easement, and more importantly, going back to the fact
20 that we're in the community revitalization section of our
21 QAP, nothing has been revitalized or changed, really. So
22 we believe that denying this appeal is consistent with the
23 approach that you've taken on community revitalization
24 thus far in this application cycle. The staff and the
25 Board have clearly indicated that community revitalization

1 should include some element of revitalizing a community,
2 not just economic development or raw land. We've heard
3 that multiple times.

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

11 MR. OXER: Good timing.

12 MS. BAST: Told you I could do it.

13 (General laughter.)

14 MS. DEANE: Mr. Chair.

15 MR. OXER: Yes, ma'am.

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

23 MR. OXER: Thanks for that.

24 Okay. Rick, one last comment.

25 MR. SCHELL: I simply wanted to point out that

1 the evidence that's in your Board book does reflect that
2 the City of Rio Grande City has applied for a federal
3 grant to improve this lift station, and the only reason
4 that they were able to do that is because they now own the
5 easement and can work within that area. And so again, we
6 feel that the granting of the easement, in and of itself,
7 is an improvement to infrastructure within the area, as
8 required by the QAP.

9 MR. OXER: Good. Thanks for your comment.

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

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

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

25 MR. McWATTERS: Okay. So an easement is an

1 interest in real property, it's different than a fee but
2 it's still an interest in real property, and you need the
3 easement to actually access the lift station legally.

4 Okay.

5 MR. SCHELL: Yes.

6 MR. McWATTERS: Is this a limited use easement?

7 In other words, is this an easement limited to the city
8 to use, or can I use it?

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

21 MR. McWATTERS: I'm struggling with the idea of
22 why this easement is not considered part of the lift
23 station. I understand it's a different right in real
24 property, it's a lesser right, perhaps, than a fee
25 ownership in the real property, but nonetheless, it seems

1 to be an integral part of the lift station. Take the
2 other example, if it wasn't an easement, it was just fee
3 granted instead of the easement, I mean, that would seem
4 to fall within part of the lift station.

5 MR. SCHELL: Correct.

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

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

20 MR. OXER: My point was to address Professor
21 McWatters question about the easement being an integral
22 part of the lift station. Admittedly, the infrastructure
23 includes the lift station, but our contention and the
24 staff's contention is that the easement does not,
25 particularly in this specific case.

1 All right. We appreciate your thought.

2 MR. SCHELL: Thank you.

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

4 (No response.)

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

8 (A chorus of ayes.)

9 MR. OXER: Opposed?

10 (No response.)

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

13 Jean.

14 MS. LATSHA: I'm back.

15 MR. OXER: Okay. Go for it.

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

20 MR. OXER: Is this Heritage Plaza?

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

23 So the situation with all three of these
24 applications is that applicants submit a pre-application
25 that indicates that they notified the appropriate elected

1 officials, namely the state representative and state
2 senator before they submit their pre-application on
3 January 8. Come March 1, if there has been no change to
4 those elected officials, staff accepts those notifications
5 that were made back by January 8 as part of the full
6 application.

7 So in all three of these applications, we
8 allow, so that you don't have to send out these letters
9 again, you're sending them out to the same person with all
10 the same information, we allow applicants to simply check
11 a box that says there was no change from pre-application
12 to application, and that's what happened with all of these.

13 But in fact, in all three of these instances there was a
14 change in elected officials and it was as a result of all
15 this redistricting. In the case of Heritage Plaza, both
16 the senator's and representative's districts changed, and
17 in the case of Riverwood and Rosewood, the senator's
18 district remained the same but the representative's
19 district changed.

20 We basically issued administrative deficiencies
21 when this was brought to our attention, one through a
22 challenge and then one after the challenge, I went through
23 and made sure nobody else had made this same mistake and
24 came up with the Riverwood and Rosewood applications. So
25 in both cases we issued administrative deficiencies and

1 the applicants were not able to provide any evidence that
2 they had notified the correct elected officials by March
3 1.

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

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

25 I think that's kind of all my points I really

1 wanted to make on that.

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

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

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

23 There was also an argument that one of the
24 representatives wasn't necessarily newly elected because
25 that representative had been in office before, his

1 district boundaries simply changed, but whether it's
2 redistricting or a new election or someone that resigns,
3 the result of that is still the same, you still have a new
4 person that is representing that development site, and
5 therefore, that person is required to be notified.

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

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

1 MR. OXER: Or March 1.

2 MS. LATSHA: Right.

3 So staff recommends denial on all three.

4 MR. OXER: Okay. Thanks, Jean.

5 Any questions from the Board of Jean?

6 (No response.)

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

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

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

13 MS. BINGHAM ESCAREÑO: I move staff
14 recommendation to deny the appeal on Heritage Plaza,
15 13053.

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

19 MR. GANN: Second.

20 MR. OXER: Second by Mr. Gann.

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

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

25 "Dear Mr. Irvine, It has been brought to my

1 attention that the Texas Department of Housing and
2 Community Affairs has terminated application number 13053
3 for housing tax credits filed by Montgomery Heritage
4 Plaza, L.P. for Heritage Plaza Apartments, a proposed 80-
5 unit development to be located on Flagship Boulevard and
6 Liberty Street in the City of Montgomery, Montgomery
7 County, Texas.

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

16 "I understand that the reasoning behind the
17 decision to terminate was based on a lack of adequate
18 notice being filed with the state senator and state
19 representative who represented the project on the date the
20 full application was filed with TDHCA. At the time, it
21 was believed that this project was located within my
22 district which is House District 16, however, due to
23 confusion regarding the end-term redistricting maps and
24 the Texas Legislative Council's Report on Cities and
25 Census Designated Places which calculates representation

1 by population and not by land area, it was noticed that
2 the project had been indeed placed in House District 3,
3 represented by Representative Bell.

4 "As stated, I was provided notification of the
5 2013 application from the date of the pre-application, as
6 required. Additionally, it is my understanding that the
7 applicant notified Representative Bell's office on March
8 14 once the mistake was discovered, and Representative
9 Bell's office immediately filed a letter of support on
10 March 27 before the April 1 deadline.

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

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

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

19 MR. OXER: Thanks, Michael.

20 Okay. Is there public comment on this item?

21 MR. FUQUA: Hello. My name is Matt Fuqua, and
22 I'm the representative for the application 13053, Heritage
23 Plaza, located in the City of Montgomery, Texas. Chairman
24 Oxer and Board members, thank you for allowing me to
25 present to you today.

1 Pre-app notifications. The pre-application
2 required that notifications be sent to State
3 Representative Creighton and State Senator Nichols. This
4 was done and acknowledged by TDHCA staff.

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

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

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

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

22 Changes not clear. Changes in districts and
23 officials were not clearly shown on the Texas
24 redistricting website. Our project does not have a street
25 address at this time, so the validity of the Who

1 Represents Me function was uncertain. I had been working
2 with Representative Creighton for months and was never
3 given to understand that the project was no longer in his
4 district.

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

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

23 Everyone received notification and was
24 informed. All representatives and senators received
25 notification of the project, and three of the four

1 officials wrote letters of support, Senator Nichols having
2 established a policy of no support letters, so the purpose
3 of the notifications was achieved.

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

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

17 MR. OXER: Thanks, Matt.

18 Any questions from the Board?

19 (No response.)

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

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

24 Ladies and gentlemen, we have a glitch.

25 MR. OXER: Quirk.

1 MS. DULA: That too. This appeal was rejected
2 because it is stated that it is a statutory requirement
3 that the notices be given to the state representative and
4 the state senator, and this is correct. Government Code
5 2306.6704 set out the pre-application process and
6 specifically requires notification go to five different
7 groups. The very next language after that, which says the
8 state senator and state representative of the district
9 containing the development: The Department shall reject
10 and return to the applicant any application assessed by
11 the Department under this section that fails to satisfy
12 the threshold criteria required by the Board in the
13 Qualified Allocation Plan.

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

24 Government Code 2306.6705, this establishes the
25 general application requirements. It contains eight

1 items, plus notifications going to these same five groups.
2 The eight items that are included in that include
3 requirements that are routinely addressed in
4 administrative deficiencies, things like your financial
5 plan and letters from your syndicator, and things of that
6 nature. These are addressed in administrative
7 deficiencies routinely and new information is brought in
8 to clarify situations. Note that in 2306.6705 there is no
9 language about rejecting the application if it doesn't
10 contain all of these items.

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

19 Here is the problem: we no longer have
20 threshold criteria for applications in the QAP. All of
21 that has been moved to the Multifamily Rules. The QAP
22 does indeed deal with pre-application threshold issues, it
23 also deals with application selection criteria and
24 challenges, and basically that's it. It does not deal in
25 any regard with application threshold, that's all been

1 moved to the rules. The only place that it talks about
2 application threshold is in Section 11.8(a)(4) which is at
3 the top of page 10 of the QAP which says: "The acceptance
4 of a pre-application does not equal satisfaction of an
5 application threshold."

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

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

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

25 Now, it goes on to say --

1 MR. OXER: I'm going to have to ask you to sum
2 it up here.

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

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

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

25 MR. OXER: Okay. Thanks for your comments, Ms.

1 Dula.

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

13 The Governing Board of the Texas Department of
14 Housing and Community Affairs will go into closed session
15 at this time, pursuant to the Texas Open Meetings Act, to
16 discuss pending litigation with its attorney under Section
17 551.071 of the Act, to receive legal advice from its
18 attorney under Section 551.072 of the Act, to discuss
19 certain personnel matters under Section 551.074 of the
20 Act, to discuss certain real estate matters under Section
21 551.074 of the Act, and to discuss issues related to
22 fraud, waste or abuse under Section 2306.039(c) of the
23 Texas Government Code.

24 The closed session will be held in the small
25 banquet room in the cafeteria. The date is July 13, the

1 time is 12:31. We're in recess.

2 DR. MUÑOZ: July 11.

3 MR. OXER: I'm sorry. You're right, it is July
4 11, 2013, the time is 12:31. Let's be back in our chairs
5 here at 1:30 sharp, please.

6 (Whereupon, at 12:31 p.m., the meeting was
7 recessed, to reconvene this same day, Thursday, July 11,
8 2013, following conclusion of the executive session.)

1 Okay. Ms. Dula has had an opportunity to speak
2 there are others. Line yourselves up there because I'm
3 not picking out who goes first.

4 DR. MUÑOZ: They're on the next one.

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

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

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

20 We were the challenger to this application that
21 resulted in the termination. I would first like to
22 mention that as a fellow developer, we do not take
23 pleasure in challenging other people's applications and
24 causing terminations of other companies' projects.
25 Unfortunately, in this application the issues we observed

1 were not simply mistakes but major violations of the QAP.

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

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

1 the district you're actually located in.

2 We were all warned at the application workshop
3 to double check our legislators between pre and full app.

4 Staff workshops specifically noted that any changes in
5 officials required a re-notification by full application
6 and the official RFQ. The applicant had seven weeks from
7 the pre-application to full application to double check
8 and make sure they had the correct legislators.

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

21 And also, too, I know this morning Honorable
22 State Rep. Bell testified concerning that he was notified,
23 but TDHCA actually notified him prior to March 1. And
24 additionally, he mentioned this morning it was a senior
25 project, not a family project.

1 So while I understand the application received
2 letters of support for the application from the
3 legislators, they were not notified according to the QAP,
4 we also would like to point out the applicant misinformed
5 the legislators by stating that this application was a
6 senior property when, in fact, it is a family property.
7 We are concerned about the misrepresentation, especially
8 since one of the legislators wrote a letter of support for
9 this application on March 28 which is the same date of
10 applicant's notification of this being a senior property.

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

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

19 MR. OXER: Great. Thank you.

20 Any questions from the Board?

21 (No response.)

22 MR. OXER: Okay. Next, Tamea.

23 MS. DULA: Can I respond?

24 MR. OXER: Yes. I'll give you one minute,
25 please, not another three. Okay?

1 MS. DULA: Tamea Dula, Coats Rose for Heritage
2 Plaza.

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

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

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

17 Is there any other comment on application
18 13053, Heritage Plaza? Anything to add, Jean?

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

22 MR. OXER: We always ask your counsel.

23 MS. DEANE: I just wanted to say that I think
24 with this particular issue really what we're looking at is
25 a statutory hurdle. I know we've talked a lot about the

1 QAP, but I think really this is more a statutory issue
2 that has to be addressed. And we've talked a lot about
3 the March 1 deadline which, of course, is a statutory
4 deadline, that's in 2306.6724(d), and it says that
5 applications must be submitted by March 1.

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

11 MR. OXER: March 31 or March 1?

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

24 There are separate statutory requirements for
25 pre-app and for app, so I think it's very clear, first of

1 all, that it's an extremely important requirement,
2 especially when you put that beside the requirement that
3 letters of support or opposition from senators or reps
4 must be received by the Department by April 1, so they
5 only have 30 days. If you wait until the last minute to
6 provide that notification, they're still only going to
7 have one month.

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

19 MR. OXER: File the full application.

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

23 And so I really think what we're looking at is
24 a statutory requirement here, and if the applicants can
25 show that they made that notification in some form or

1 fashion and that there is some kind of evidence in the app
2 that that was done, then I think that might get them there
3 But I just want to make it real clear it's a statutory
4 issue, so it's a completely different level than just the
5 QAP.

6 MR. OXER: Good. Thanks, Barbara.

7 Anything to add, Jean?

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

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

11 (No response.)

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

16 (A chorus of ayes.)

17 MR. OXER: Opposed?

18 (No response.)

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

21 Okay. Next one, Jean.

22 MS. LATSHA: So the next is -- and these are
23 actually exactly the same situation, it's the same
24 developer and in the same city, so it was even the same
25 representative that was not notified, so I would call

1 these exactly the same situation, although on two separate
2 applications. One is Riverwood Apartments, number 13088,
3 and the other is Rosewood Apartments, number 13177. And
4 unless you have any questions about my previous
5 presentation, I think we have covered all that, so I'll
6 let them speak.

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

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

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

14 DR. MUÑOZ: So moved.

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

18 MS. BINGHAM ESCAREÑO: Second.

19 MR. OXER: Second by Ms. Bingham.

20 Is there public comment?

21 MR. MADDOCK: Mr. Chairman, members of the
22 Board, speaking on behalf of number 13088, Riverwood
23 Apartments, a senior project funded by rural development,
24 approximately 20 years old, filed an application for
25 rehab, my name is Gary Maddock. I'm head of the

1 application team for the developer, Ronald Potterpin, and
2 I have been since 2009.

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

11 From 2009 to 2012, we filed twelve tax credit
12 applications with TDHCA and probably double the number of
13 pre-applications and we always used Who Represents Me to
14 get the information that we need to send out the notices.

15 that site does not have all of the information, so we
16 also go to the Texas House of Representatives and the
17 Senate websites specifically to get more information.
18 With respect to city, county and state officials, in the
19 same manner, we use a number of different websites.

20 Following the mailing of our certified letters,
21 we received back letters that are undeliverable, we get
22 letters back that tell us that they're not the right
23 representative, we get phone calls, and we follow up on
24 all of those and we make the changes in our system and re-
25 notice those that have to be noticed. We did the same

1 thing for our 2013 applications. We filed ten pre-
2 applications, including one for Riverwood and one for
3 Rosewood. With respect to many of those pre-applications,
4 we got letter notices back that they were misaddressed, we
5 got phone calls saying that somebody else was. We
6 corrected all of those in our system. We did not,
7 however, get any back relating to Riverwood or Rosewood.

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

17 In March, our attorney, Scott Poor, in
18 preparation for seeking legislative letters of support,
19 discovered that there had been redistricting and
20 Representative Guillen was now the proper representative.

21 On March 12 he sent out the proper notice to
22 Representative Guillen, and on March 19 we got a letter of
23 support from Representative Guillen.

24 As we did provide notice to the new
25 Representative Guillen and TDHCA itself had provided

1 notice to Representative Guillen prior to March 1 and we
2 received a letter of support from Representative Guillen,
3 we believe that we have complied with the statutory
4 requirements. Accordingly, we respectfully request that
5 the applications be reinstated.

6 MR. OXER: Thank you, Mr. Maddock.

7 Is there other comment?

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

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

21 To the extent that there was some confusion
22 resulting from redistricting, that confusion should be
23 excusable and that this applicant acted reasonably in
24 interpreting conflicting information, and that this
25 applicant utilized best efforts and practices in trying to

1 comply with all the agency's requirements.

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

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

12 (General laughter.)

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

17 The other point that I wanted to briefly
18 address is the intent of these notice requirements, and
19 the intent is clearly and is simply to give elected
20 officials the opportunity to comment on a proposal that
21 will have an impact on the communities and the
22 constituents that they represent. In this case, that
23 intent was met. The state representative had the
24 opportunity and exercised the opportunity to voice his
25 support for this project. It's a project located in an

1 oilfield town with skyrocketing rents and the preservation
2 of affordable housing is an issue of critical concern to
3 his constituents.

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

9 MR. OXER: Thanks, Scott.

10 Any questions from the Board?

11 (No response.)

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

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

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

24 But what's really interesting here -- and
25 you've heard a lot about the redistricting -- as you look

1 at these dates, the pre-application was due on January 8.

2 That happens to be the same the legislative session
3 started which means it's the same date that the new court-
4 ordered maps took effect. So our client notified
5 Representative Aliseda on January 7, and then on January
6 8, the date the pre-application was due and delivered to
7 TDHCA's offices, that's the date that the change happened.

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

17 I know that applicants need to be duly diligent
18 in this and that they need to dot all their i's, cross all
19 their t's and check everything they can. I think you've
20 heard some testimony that the resources for checking those
21 things aren't always perfect. I've talked to several
22 reputable application consultants who say that they go to
23 three different databases to check these things and that
24 those databases don't always give the same information.
25 And if you go to the Who Represents Me website, it

1 specifically has a disclaimer about redistricting. It
2 says: During the transition to new representation, Who
3 Represents Me will provide limited information about the
4 new districts.

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

12 MR. OXER: Good. Thanks for your comment.

13 Do you have a question, Doctor?

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

21 MR. IRVINE: That's correct.

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

24 MR. IRVINE: Statutory requirement is that
25 there be evidence in the application that the notification

1 of the correct senator and representative had already
2 occurred and that that application, with that evidence,
3 has got to be submitted on or before March 1.

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

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

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

14 MR. OXER: County clerk.

15 MS. LATSHA: Right.

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

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

24 MR. McWATTERS: Okay. So let's say it was
25 there before March 1, then it directed someone to another

1 source if there was some ambiguity. Right?

2 MS. LATSHA: Yes, sir.

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

7 MS. LATSHA: Yes.

8 MR. McWATTERS: Okay. Thank you.

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

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

1 1 that they notified the newly elected official, the one
2 that took office on January 8.

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

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

10 MS. LATSHA: Yes, sir.

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

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

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

25 MR. OXER: Out of a total of?

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

2 MS. LATSHA: Out of 131.

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

5 MR. McWATTERS: Okay. Thank you.

6 MR. OXER: Michael.

7 MR. LYTTLE: Just a point of clarification.
8 Under the Who Represents Me website, actually when you go
9 to that link where it says redistricting, it actually
10 takes you to the Texas Legislative Council website. Then
11 that website has a number of announcements and maps that
12 indicate what the current plans are, what exists, what the
13 previous plans were, all that sort of thing, so it's a
14 direct link that takes you there.

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

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

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

1 (No response.)

2 MR. OXER: Okay. Thanks, Jean. We have
3 another comment now.

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

15 But a couple of observations I just wanted to
16 point out that hadn't been sort of spoken on until sort of
17 at the very end by Dr. Muñoz and Professor McWatters, and
18 that is out of those 131 applications, this affected a lot
19 of people, you've only got three people sitting here, and
20 from their testimony you would think that this was pretty
21 extraordinary, but a lot of people were affected by the
22 redistricting and had to go through the same thing that
23 they had to go through, and amazingly, only these three
24 didn't quite get there. It's unfortunate, but most
25 everybody figured it out.

1 Also, as a practical matter, if you've got
2 \$30,000, \$40,000, \$50,000 in an app riding on the deal,
3 what do you do? When in doubt, all you're doing is
4 sending a letter out, you're not having to obtain anything
5 from anybody. It's just send a notification letter to who
6 you think was there or maybe who you think is coming in,
7 so it's not that difficult.

8 And then finally, I appreciate Ms. Deane's
9 comments about the statutory requirements, but it's also
10 quite obvious to me under the Multifamily Rules, Section
11 10.203, it tells you when you've got to send your
12 notification in and to whom you've got to send your
13 notification. The first sentence says: "No later than
14 the date the application is submitted, notification must
15 be sent to all persons or entities identified in (a)
16 through (h)." Sub-clause (h) says the state senator, the
17 state rep, and then right before you get to (a) through
18 (h), it says officials to be notified are those officials
19 in office at the time the application is submitted. So in
20 this instance, to me it's pretty clear 10.203 and the
21 statute that's already been cited, to me make it pretty
22 abundantly clear what the requirements are for any
23 applicant.

24 And again, this affected a large pool of
25 people, not just a small group of people that had trouble

1 navigating some websites to figure out which rep or which
2 senator they may have had.

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

6 MR. OXER: Thanks, John.

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

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

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

21 MS. LATSHA: It's still five out of 131, right.

22 And I also do, just because we talked about the other one
23 so much, the applicant here did notify the correct
24 senator. I don't know that that weighs into the decision,
25 but it was only the representative that was wrong in this

1 case.

2 (Static in sound system.)

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

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

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

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

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

13 (General laughter.)

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

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

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

19 (No response.)

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

23 (A chorus of ayes.)

24 MR. OXER: Opposed?

25 (No response.)

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

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

5 MS. LATSHA: Exact same situation.

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

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

10 (Discussion regarding static in sound system.)

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

14 MS. LATSHA: Yes, sir.

15 DR. MUÑOZ: So moved.

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

18 MR. McWATTERS: Second.

19 MR. OXER: Second by Professor McWatters.

20 Okay. Do we have public comment on this one?
21 It appears that we have none.

22 Is there any other questions from the Board?

23 (No response.)

24 MR. OXER: Okay. On the matter of the appeal
25 by 13177, Rosewood Apartments, motion by Dr. Muñoz, second

1 by Professor McWatters. All in favor?

2 (A chorus of ayes.)

3 MR. OXER: Opposed?

4 (No response.)

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

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

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

14 MR. OXER: Okay. Cameron.

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

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

25 Based on the Board's action at the prior

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

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

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

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

22 MR. DORSEY: They would lose two points.
23 Losing is a tough word because they were never eligible
24 for them in the first place.

25 MR. OXER: Not be given those points. The net

1 differential on the points is one.

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

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

8 MR. GANN: I so move.

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

11 DR. MUÑOZ: Second.

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

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

23 MR. OXER: Dr. Muñoz.

24 DR. MUÑOZ: Well, not so much a question, just
25 an observation. I appreciate how sympathetic you are to

1 staff's recommendation. When I read and wrote significant
2 notes, even the direction that they provided in trying to
3 work through the Water Board and their lack of assistance,
4 something has to be done about that and I believe
5 something is going to be done about that. We provide
6 guidance, you pursue that guidance, that agency is
7 uncooperative, it puts you at an operational disadvantage.

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

12 MS. ADAMI: I appreciate that.

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

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

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

21 (No response.)

22 MR. OXER: Okay. Motion by Mr. Gann, second by
23 Dr. Muñoz to approve staff recommendation to deny the
24 appeal of application 13068, Mayorca Villas. All in
25 favor?

1 (A chorus of ayes.)

2 MR. OXER: Opposed?

3 (No response.)

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

6 Cameron.

7 MR. DORSEY: Just clarifying that last one.
8 Staff's recommendation was appeal denied on two points and
9 reinstate the one point.

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

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

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

22 MR. DORSEY: Bingo. Documentation behind it
23 was a little bit different, but there was absolutely
24 documentation submitted in an attempt to support the
25 points claimed.

1 MR. OXER: Okay. Motion to consider, please.

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

4 (General laughter.)

5 MS. BINGHAM ESCAREÑO: Second.

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

9 MR. DORSEY: Precisely.

10 (General laughter.)

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

13 Okay. Any questions from members of the Board?

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

18 (A chorus of ayes.)

19 MR. OXER: Opposed?

20 (No response.)

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

23 The next appeal is application 13113, Reserve
24 at Arcola Senior Living, and this particular appeal is a
25 bit interesting, it's not one that you've seen before.

1 Technically, they appealed the conclusions in the
2 underwriting report that was posted, but you see me up
3 here instead of Brent, and that's because the appeal
4 dovetails quite seamlessly with program related issues and
5 statutory program requirements.

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

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

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

25 MR. DORSEY: Precisely, yes. Notice no bingo.

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

3 (General laughter.)

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

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

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

22 So why would we not have accepted that request?

23 Well, that's fairly simple, 2306.6708 I think was cited
24 earlier by Barbara, and this is the rule that prevents an
25 applicant from amending their application before award,

1 and it establishes this ability to cure certain things
2 administratively, so it's the genesis of the
3 administrative deficiency rule, and it states that at the
4 request of the Department, an applicant can resolve or
5 clarify information in the application. It does not
6 provide the applicant the ability to initiate a
7 communication in this manner.

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

18 This is a really critical concept and I want to
19 just provide one other example of why this is a critical
20 concept. We don't allow this type of reduction in credit
21 at the request of an applicant. If it happens organically
22 through the underwriting process because we don't believe
23 they have the eligible basis to support the request or we
24 find that the transaction simply doesn't need that much in
25 tax credits, those types of things, we would initiate a

1 communication and ultimately recommend less. But this
2 type of instance can have sweeping effects.

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

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

21 Now, I'm going to point to the fact that the
22 underwriting report contains a general condition, it's a
23 condition that's in all of our underwriting reports that
24 if something related to the financial structure changes
25 that they need to let us know and we're going to

1 reevaluate it. That's not a condition that we look at
2 prior to award. This underwriting report is related to
3 the award in July, therefore, future, out beyond July, at
4 the time of commitment, at the time of carryover, at the
5 time of cost cert, they need to let us know of changes in
6 their financial structure.

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

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

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

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

24 MR. DORSEY: It occurred on the application for
25 Arcola, and I think that that is also the one that they

1 feel is most uncertain in terms of some issues with
2 getting the deal ultimately closed and placed in service.

3 I think they feel more comfortable with the other two
4 transactions.

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

13 MR. OXER: And so the total, as you suggested,
14 out of the \$3 million maximum, all of it is \$3.1-,
15 \$3,050,000?

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

24 There's lots of people that exceed the cap with
25 all of the applications that they submit, but there's an

1 understanding that they're probably not going to get all
2 applications. So this isn't an instance that's limited to
3 just one group of folks, it's just that in the other
4 instances where they would exceed the \$3 million cap, they
5 don't have enough applications actually in the money to
6 hit the cap.

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

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

20 One thing, I'll just throw it out there, one
21 thing we thought of was applying a similar process like
22 the tiebreakers between the apps. We could do score, but
23 score is tough because between regions scores don't really
24 equate very well necessarily, but we thought about using,
25 for example, the tiebreaker. So those that were located

1 in the highest level of high opportunity would be the
2 first, and then we would go down from there, and if they
3 were tied, then we go for the distance issue because
4 that's really a concentration issue and would help
5 facilitate less concentration.

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

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

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

19 The next step would be we would look at all of
20 them. If they left all of them in, then we would choose
21 which of the two and try to provide a recommendation, as I
22 mentioned before. Alternatively, and what happens most of
23 the time, and this actually isn't something that I would
24 normally just like have a big public discussion about,
25 applicants can withdraw apps to pick which ones to get

1 under the \$3 million cap, but it is what it is.

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

5 MR. DORSEY: And your application supported X.

6 MR. IRVINE: You can't change it.

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

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

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

15 DR. MUÑOZ: I have a question for Cameron.

16 MR. OXER: Dr. Muñoz.

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

24 MR. OXER: And let me ask a corollary question
25 to that too, Cameron, because this is one of those things

1 that if it occurred in the underwriting, we hammered,
2 staff hammered down their request, there's a prospect that
3 it could have knocked \$18,000 off this and they come in
4 with all three and be under the cap.

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

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

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

13 DR. MUÑOZ: The meeting is not over yet.

14 (General laughter.)

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

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

24 MR. OXER: Usually don't have to.

25 MR. DORSEY: These guys are plenty smart

1 without me telling them how to do this type of stuff.

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

5 Anything else on this one?

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

8 MR. OXER: Okay. We have public comment.

9 MR. IRVINE: Motion?

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

12 DR. MUÑOZ: So moved.

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

15 MR. GANN: Second.

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

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

20 One thing that was mentioned, that Cameron just
21 mentioned regarding Arcola was essentially there is some
22 uncertainty and that's been very clear since we started
23 working on this development. We've been working on this
24 more than a year and there's really some unique
25 circumstances with this development.

1 Arcola, in general, is a pretty interesting
2 city. They've actually gone into bankruptcy twice,
3 they've been in receivership twice, they've had a lot of
4 issues, utility issues, roads issues, infrastructure
5 issues. So we actually initially applied for
6 revitalization points. When we applied for that, we set a
7 meeting with staff to discuss some of the issues that
8 Arcola has that should be considered in this meeting.

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

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

24 So March 1 when we submitted our application,
25 we had to go with what we had at that time and a lot has

1 changed since then. So initially, in our application our
2 pro forma was correct for March 1, but a lot has changed,
3 and we have relayed that to the Department.

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

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

17 Moving forward from April 19, May 24 we
18 received our final scoring notice. We were still working
19 with the city, we were still working with the property
20 owner. In our land contract we have a provision that
21 outlines that we will come to a utility agreement with the
22 landowner because at the time of the contract he couldn't
23 commit to anything, because essentially, he was dependent
24 on the city to bring the utilities basically on Highway
25 6 -- they're current at 521, they needed to come down

1 Highway 6 -- and he couldn't understand exactly what that
2 number was going to be.

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

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

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

25 And really moving forward from that, June 18

1 and 24, we had two council meetings with the City of
2 Arcola to discuss some of these issues. We kept having
3 dialogue with the neighborhood group, the landowner at
4 that time. We could basically finalize an agreement with
5 the landowner where we are now, and we've got a good
6 handle on what he's going to contribute.

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

9 MR. APPLEQUIST: Okay, absolutely.
10 Essentially, June 18 I had a call with Cameron, we
11 discussed what was going on. I was very surprised that we
12 were already getting our commitment, that they had already
13 finished their underwrite, that that was already
14 finalized, because again, two months prior was really the
15 only correspondence that we've had regarding the
16 underwrite. Since then, nothing has transpired, so we
17 were very surprised that we were already at this point.

18 And it was mentioned earlier, Cameron made a
19 point that a lot of these issues are vetted out
20 organically during the underwrite, and a lot of these
21 issues that came up that we could have addressed that have
22 transpired since March really haven't been vetted, and we
23 think they should be included in the underwrite, we think
24 some of that information should be given to TDHCA, and we
25 just feel it should be considered. Thank you.

1 MR. OXER: Good. Thanks for your comment.

2 Is there any questions from the Board?

3 (No response.)

4 MR. OXER: Okay. Cynthia.

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

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

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

22 And in the context of prior application rounds
23 and years, certainly there is time when the underwriters
24 call, they ask questions, you submit more information,
25 there's a dialogue back and forth. And what happened in

1 this instance is there was a call from underwriting in
2 April that was understood by this applicant to be
3 preliminary but he certainly thought that there was going
4 to be more dialogue because he knew that he had an
5 application that might not be entirely clear as to the
6 development costs and such.

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

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

24 If each application is underwritten as to the
25 amount of credits necessary for its feasibility, then this

1 Department has met its obligation and the credits are
2 spread as far as they will go. Certainly, Mr. Dorsey
3 indicates that there are statewide and sweeping
4 implications here, and I believe that's correct, and
5 that's correct for every application. Right? Every
6 single one has some impact on every other one in this
7 competition.

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

14 MR. OXER: I have a question, Cynthia. So your
15 contention is that despite the fact that there were two
16 other applications that put them close to the point of the
17 \$3 million and if that put them over it, you're saying it
18 would be the obligation of TDHCA to award them up to
19 whatever totaled \$3 million?

20 MS. BAST: No, I'm not saying that all, sir.
21 I'm not saying anything with regard to the \$3 million cap.
22 I'm saying you look at each individual application and
23 you say under Section 42 we are required as a state agency
24 to award only the minimum amount of credits needed for
25 this application to be feasible.

1 MR. OXER: Notwithstanding what the applicant
2 may have applied for.

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

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

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

17 MR. OXER: Dr. Muñoz.

18 DR. MUÑOZ: I'm not sure that we enjoy the
19 discretion of taking that into consideration after the
20 applicant has submitted their application. So often I've
21 heard people at that podium, at that microphone say this
22 is the date, this is the rule, and it's not subject to
23 interpretation. I'd say this is the rule and this was the
24 date, and I don't believe that it's subject to
25 interpretation or discretion.

1 MS. BAST: Dr. Muñoz, I would say I am
2 absolutely sensitive to that, and to me, where I see the
3 distinction is between the competitive rules of the QAP
4 with regard to threshold and points and where we are here
5 which is in underwriting. And underwriting over the years
6 has definitely been a more fluid process, with a lot more
7 back and forth and sharing of information and staff
8 looking at an application saying you know what, I can't
9 really get there with you on that, do you have some more
10 information to support that. It's been handled a little
11 more informally and a little bit differently.

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

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

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

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

1 after the fact.

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

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

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

12 MR. OXER: Thanks, Cynthia.

13 MS. BAST: Thank you.

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

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

23 And they've said things have changed. Right?
24 But the reason people don't come and say I want less money
25 is because the deal isn't solid, there's still a whole

1 bunch of terms out there changing. For example, they
2 submitted a new syndication letter that reflects a higher
3 syndication price, but interest rates have gone up. These
4 changes always happen. We're underwriting with
5 information we have at the time. If we encounter a
6 conflict within the application, then we will attempt to
7 resolve that conflict, we will attempt to clarify those
8 issues. There wasn't an inherent discrepancy to resolve
9 here.

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

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

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

24 (No response.)

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

1 Muñoz, second by Mr. Gann to approve staff recommendation
2 to deny the appeal on application 13113, Reserve at
3 Arcola. All in favor?

4 (A chorus of ayes.)

5 MR. OXER: Opposed?

6 (No response.)

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

9 Stonebridge next?

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

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

25 The reason for that is because we don't want

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

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

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

25 MR. OXER: So this essentially comes under the

1 same heading as having evidence in the application by the
2 date certain, March 1, that somebody had been in contact
3 with their representative and senator.

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

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

12 (No response.)

13 MR. OXER: Okay. Motion to consider.

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

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

19 MR. McWATTERS: Second.

20 MR. OXER: Second by Professor McWatters.

21 Okay. Comment.

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

25 I have this handout. I don't know if you all

1 have it up there. I just want to go through some of the
2 documents that we received and our application and the
3 process that we went through.

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

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

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

19 As you can tell, if you go through the
20 deficiency there's ten items. Three of those ten items,
21 number 4 which talks about community revitalization says
22 no documentation to support the six points was found in
23 the file. You go on down to number 8 and this is a
24 commitment of funding from unit of general local, this is
25 for 13 points. This says confirmed that 100 percent of

1 the board of Hale County Housing is appointed by county
2 elected officials. Number 9 is a HUB score, submit a
3 description of the how the HUB will materially participate
4 for one point. So these three items are all point scoring
5 related.

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

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

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

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

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

1 4.

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

4 MR. OXER: We've got it.

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

8 MR. OXER: Please continue.

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

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

22 Well, in the application on the next pages, 6
23 through 8, these are the pages in the app where you elect
24 the points and you choose to select certain points. On
25 item 10 it talks about community revitalization, I checked

1 the box. It talked about development, it's in a rural
2 area, and supporting documentation that meets all
3 requirements is behind this tab. I elected six points.
4 And then the next page that talks about the checklist of
5 all the documentation that needed to be submitted in the
6 application, I checked the box, the third one from the
7 bottom, it says letter from government official with
8 specific knowledge regarding infrastructure improvements.

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

18 Last month you heard from our opponent up in
19 Pampa that we're competing against who is in line to
20 getting funded. They also went through a similar
21 situation where they provided a letter from the City of
22 Pampa regarding their revitalization plan. Staff
23 submitted a deficiency to them stating that the
24 deficiency -- stated that the letter indicates that their
25 revitalization was routine maintenance.

1 Well, when they submitted that back to the
2 applicant, the applicant went back to the City of Pampa,
3 got a whole new letter, and resubmitted on May 22, two
4 months after March 1, back to TDHCA, and they allowed with
5 this new letter that they submitted, they were able to get
6 the four points out of the full six points that are
7 allowed. Staff didn't feel that two points were
8 justified, but they did get four points.

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

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

25 MR. OXER: Okay. I understand your point.

1 Thanks for your comments.

2 Any other comments from the Board?

3 (No response.)

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

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

8 MR. OXER: Let's hear it.

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

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

24 MR. CHILDRE: Yes.

25 MR. OXER: Okay. So this particular

1 application was just lacking this component.

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

3 MR. DORSEY: It's six points.

4 DR. MUÑOZ: The letter by itself.

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

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

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

15 MR. IRVINE: There are basically two kinds of
16 administrative deficiencies. One is we can't find it; if
17 we missed it, point it out. And the only acceptable
18 response to that is, like you said earlier, it's on page
19 301, you didn't find it. Then there's a second kind of
20 administrative deficiency where you did provide something
21 but we just need some additional clarification so it makes
22 sense to us.

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

25 DR. MUÑOZ: So which one transpired here, Tim?

1 I mean, we asked for it?

2 MR. IRVINE: The first one.

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

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

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

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

22 We have to live with those mistakes as
23 developers. It's unfortunate, but we go to great lengths
24 in our firm -- and I'm sure Dru does as well -- to ensure
25 that we are meeting all of the requirements of the QAP.

1 We had a mistake on our application this year on one of
2 our deals, we're living with that mistake. Fortunately
3 for us, it didn't cost us first place, but it's a mistake
4 we made, and we live by the rules of the QAP, just as
5 every other developer does here in Texas.

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

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

19 So if you have any questions for me.

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

22 No other public comment.

23 Okay. There's a motion by Ms. Bingham, second
24 by Professor McWatters to deny the appeal for application
25 13139, Stonebridge of Plainview. All in favor?

1 (A chorus of ayes.)

2 MR. OXER: Opposed?

3 (No response.)

4 MR. OXER: There are none.

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

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

11 MR. CHILDRE: Thank you.

12 MR. OXER: Okay. Cameron.

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

19 I don't know if you guys recall, I'm going to
20 jog your memory here. There was a lot of debate about
21 this point item when we were developing the QAP, a lot of
22 it, and we went with this concept of how much an
23 application's mean cost per foot deviates -- I'm sorry --
24 how much a particular application's cost per foot deviates
25 from the mean of like applications. And so what we did

1 was we took all the applications that fit certain
2 categories. We had three basic categories: we had rehab
3 deals, we had high-cost new construction type deals, and
4 then we had the rest of the deals which is really just non
5 high-cost new construction or reconstruction deals. And
6 so we broke them out into categories, we took what was in
7 their application.

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

18 The reason they got eight points is because
19 they're in the higher cost kind of category, their mean
20 deviates just -- sorry -- their cost per foot is just
21 slightly over 10 percent from the mean to drop from ten to
22 eight -- really to gain eight, not drop from ten to eight,
23 but I think developers look at it as their score drops in
24 these instances. So we sent them a notice indicating we
25 would be recommending eight points for this app.

1 They've put forth several arguments that
2 primarily relate to just the skewed nature of the actual
3 cost per foot calculations for each application. There's
4 one particular application known as the Artspace
5 application in El Paso, and it's at 147 or so dollars per
6 square foot that's substantially higher than the vast
7 majority -- well, actually every other application we've
8 got, and so they feel that that skews the result and that
9 potentially maybe we should have thought about removing
10 that as an outlier. We did not do that, the QAP does not
11 direct us to remove outliers, it directs us to use all of
12 the applications we've got, calculate the mean, and do the
13 calculation.

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

24 Now, when you consider other types of outlier
25 methods like just remove the top and bottom one, well,

1 mathematically I can create a scenario where you remove
2 the top and bottom one and that actually skews it more.
3 So it just depends on the body of applications you
4 actually get. So I don't feel like there is any, quote-
5 unquote, statistical inaccuracy here or anything, the mean
6 is the mean, we calculated it, we did exactly what the
7 rule says. It's less about what the rule says and more
8 about just we don't like the result, I think.

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

11 (No response.)

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

14 DR. MUÑOZ: So moved.

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

17 DR. MUÑOZ: Move staff recommendation.

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

21 MR. McWATTERS: Second.

22 MR. OXER: Second by Professor McWatters.

23 Okay. We have comment. Janine, hi.

24 MS. SISAK: Good afternoon. Hi, everyone.

25 I'll keep this brief because I'm freezing and need to get

1 out of this building.

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

3 (General laughter.)

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

6 Okay. Cameron did a good job of kind of
7 outlying -- not outlying, outlier -- outlining some of our
8 arguments. I do want to highlight a couple of things.
9 Yes, we just were outside the 10 percent by a fraction of
10 a percentage, \$12,000 in real money.

11 MR. OXER: May I interrupt you just for a
12 second to make sure you state your name for the record.

13 MS. SISAK: Oh, sorry. Janine Sisak, DMA
14 Development Company.

15 So again, our community is 4800, it is truly a
16 high-cost development, structured parking, four stories,
17 lots of architectural articulation, lots of different
18 materials. In terms of a DMA product, it is by far our
19 most expensive product. However, when we submitted our
20 cost and it was racked up against the other applications
21 in our category, we actually came out low, which was
22 incredibly surprising being that this is our highest cost
23 product. We were low by \$12,000, as I stated.

24 So you know, really this appeal is about the
25 problems and how this rule was administered. At the last

1 minute, implementing a safe harbor for high opportunity on
2 a mean concept makes no sense whatsoever. Out of the 44
3 applications that were pooled in this category, 29 were
4 high opportunity. So those 29 applications were allowed
5 to go up to \$80 a square foot regardless of what their
6 true costs were. They were, so they did because it
7 results in more credits for them. So those 29 skewed the
8 mean up considerably.

9 And as Cameron noted, the other problem was the
10 Artspace deal, \$146 a square foot which was \$66 higher
11 than any other application in the whole entire pool. So
12 those two things together really made the mean not a mean,
13 and the fact, again, that we were below it by a fraction
14 of a percentage.

15 What we're asking the Board to do today is
16 basically use your discretion to take out the Artspace
17 project and maybe a low one. I think taking out the low
18 one doesn't really matter because the low one was so close
19 to the other low ones. But I've done the calculation, and
20 if the Board uses its discretion to do this, no one in the
21 whole applicant pool is affected except for two projects.

22 Our project would get two points, that would
23 put us in fourth place in this region, we would not be in
24 the money, we would not knock out anyone else in the
25 money, we'd be in fourth place. The other application

1 that would gain two points I think is Mariposa at Ranch
2 Road 12, they're at the bottom of Rural 7. They're at
3 negative 12 now, I don't really know why. But it would
4 help that application too and they would also not be in
5 the money. So it has absolutely no impact on the pool.

6 If the Board decides not to grant us the two
7 points, we just want to kind of keep this in mind for next
8 year's QAP. We just feel like this rule is still broken
9 and we need to fix it somehow because this is an unfair
10 result.

11 Thank you.

12 MR. OXER: Thanks for your comments.

13 Any comments, questions from the Board? I
14 would offer up it may have no direct impact on the
15 placement or sequence of the winners, those in the money
16 and those not in this, and while that may be true, it does
17 have an impact on the consistency with which the Board
18 applies the rules and which we're trying to be consistent
19 in that.

20 Every issue that comes up before this Board, we
21 assume that the staff -- and we have great confidence in
22 the staff -- we assume that the staff has taken all effort
23 to resolve it as accurately as possible. Any of the
24 things that are done easy, we don't see them, you guys get
25 to play with all the easy stuff. These are the hard ones

1 to apply so we expect that everything that comes up here
2 constitutes an opportunity to prove, amend or buff off a
3 rough edge in the QAP. So if nothing else, having
4 expounded on your point on that helps us take a look at
5 that.

6 And from a statistical standpoint, I know the
7 sample is not that much, particularly with an outlier that
8 you have, but the pool is what the pool is, the population
9 is what the population is.

10 Do you have another comment, Cameron?

11 MR. DORSEY: Nope.

12 MR. OXER: Okay. Is there any other public
13 comment on this item?

14 (No response.)

15 MR. OXER: Okay. There's been a motion by Dr.
16 Muñoz, second by Professor McWatters to approve staff
17 recommendation to deny the appeal on application 13159,
18 4800 Berkman. All in favor?

19 (A chorus of ayes.)

20 MR. OXER: Opposed?

21 (No response.)

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

24 Cameron, have you got anything else?

25 MR. DORSEY: No, sir.

1 MR. OXER: Okay. I had intended to take a
2 brief break at this point based on the fact that we were
3 anticipating a long schedule, but it seems that we have
4 come to the end of our posted agenda.

5 We are now at the point where we have
6 opportunity for public comment on matters other than for
7 items that were posted on the agenda. This comment can
8 include anything, and may include requests that we
9 consider an item to be put on future agendas, and that's
10 why it was originally put at the end of the meeting so we
11 could start building our future agendas. Is there anybody
12 who would like to speak? Sarah.

13 MS. REIDY: Good afternoon, Chairman Oxer and
14 members of the Board. My name is Sarah Reidy and I am a
15 partner with Casa Linda Development Corporation, the
16 developer, HUB and general partner for La Esperanza Del
17 Rio, TDHCA number 13046, located in Rio Grande City, Rural
18 Region 11.

19 This year there is a possibility that two
20 projects may be awarded in Rural Region 11 as a result of
21 the rural collapse. We are in a unique situation. Three
22 of the four applications submitted in Rural Region 11 are
23 in the same city and in the same census tract. We believe
24 that our application could be one of the two competitive
25 applications in this subregion.

1 So in anticipation of this possibility for two
2 awards, we reached out to our lender, syndicator and
3 market analysis provider to find out whether two housing
4 tax credit properties in the same census tract in Rural
5 Region 11 could support market demand. The answer is yes.

6 Based on our market study analysis by Apartment Market
7 Data, affordable housing demand far exceeds the supply in
8 the primary market area.

9 Statistically, awarding two projects will not
10 exceed the capture rate thresholds defined for rural areas
11 in the 2013 real estate analysis rules should the highest
12 scoring application be awarded. Darrell Jack, president
13 of Apartment Market Data will speak in greater detail
14 about this in a moment.

15 In addition, we asked our lender and syndicator
16 if they would have any problem in their financial support
17 to our project if the two deals in the same census tract
18 were awarded. Both the lender and the syndicator said
19 they would hold firm on their commitments as long as the
20 market study can support both deals.

21 Of note, Rio Grande City has a population of
22 13,834 and has never been awarded a general family housing
23 tax credit allocation. The last family tax credit project
24 in Starr County was awarded in 1996, seventeen years ago.

25 The project was 40 multifamily units, constructed in

1 Roma, Texas, ten miles from Rio Grande City. In addition,
2 all operating tax credit properties in Starr County are
3 100 percent full.

4 In a conversation with staff on Tuesday that
5 confirmed there are no rules prohibiting the award of two
6 tax credit projects in the same census tract in rural
7 regions as long as the two are market and financially
8 feasible. So we respectfully request the Department seize
9 this important and unique opportunity this year to create
10 greater affordable housing opportunities for working
11 families in Rio Grande City. Rio Grande City is greatly
12 underserved and is one of the poorest counties of our
13 state.

14 Thank you very much.

15 MR. OXER: Great. Thanks.

16 Darrell.

17 MR. JACK: Good afternoon. Thank you. My name
18 is Darrell Jack, and I am president of Apartment Market
19 Data.

20 As Sarah said, she called to ask me my thoughts
21 and opinions as to whether Rio Grande City could actually
22 lease and absorb two properties at the same time, and
23 initially, I have to admit my reaction was: Well,
24 probably not because Rio Grande City is such a small
25 community compared to a lot of other areas in the state.

1 But as I looked at the unit mix of both
2 properties, I found that they actually complement each
3 other, because Sarah's project is made up primarily of
4 one, two and three bedrooms with the units at 30, 50 and
5 60 and market rate units, the first project in line is a
6 family project that is comprised of just a few two
7 bedrooms, eight out of 80, and the majority of their units
8 being three and four bedrooms. So you kind of have one
9 property reaching out to this level, the next property
10 reaching out to this level.

11 And there's only a few units that are three
12 bedrooms at 60 percent AMI that the actually would compete
13 at. In total, La Esperanza has nine of these 60 percent
14 three bedrooms, and the project in first place has 17, so
15 you're really only talking about 26 units out of 140 units
16 that are going to be competing at that level.

17 Looking at the market and the capture rate,
18 this market would easily absorb both projects and the
19 capture rate would be well under the 10 percent threshold
20 established by the QAP.

21 So I'm happy to answer any questions that you
22 might have.

23 MR. OXER: Thanks, Darrell.

24 Any questions from the Board?

25 (No response.)

1 MR. OXER: Okay. Well, it appears that we're
2 at the end of the agenda. The public has had an
3 opportunity to speak. Is there any staff member in the
4 audience that has anything else they want to say?

5 (No response.)

6 MR. OXER: Does any of the Board have anything
7 else to say?

8 (No response.)

9 MR. OXER: Okay. As the chairman, I will say I
10 appreciate everybody's contribution, and the intensity
11 with which we pursue each of these is important in terms
12 of creating a fair and transparent process. So with that,
13 in two weeks we have our next Board meeting where we'll
14 announce the outcome finally.

15 With that, I'll entertain a motion to adjourn.

16 MS. BINGHAM ESCAREÑO: So moved.

17 MR. OXER: Motion by Ms. Bingham to adjourn.

18 MR. McWATTERS: Second.

19 MR. OXER: And second by Professor McWatters.
20 It requires no contribution, so all in favor to adjourn.

21 (A chorus of ayes.)

22 MR. OXER: We'll see you in two weeks, folks.

23 (Whereupon, at 3:20 p.m., the meeting was
24 concluded.)

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C E R T I F I C A T E

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.

(Transcriber) 07/18/2013
(Date)
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