TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Room JHR 140
John H. Reagan Building
105 West 15th Street
Austin, Texas

June 5, 2014
9:00 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
J. MARK McWATTERS, Member
LESLIE BINGHAM ESCAREÑO, Member
ROBERT D. THOMAS, Member
TOM GANN, Member

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

Adoption of Resolution No. 14-030 recognizing June as Home Ownership Month and announcement of Lenders and Loan Officers of the Year

CONSENT AGENDA

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

EXECUTIVE

a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for March 6, 2014, and April 10, 2014

b) Presentation, Discussion, and Possible Action regarding the staff report relating to previous participation reviews performed on awards conditionally approved by the Board on May 8, 2014, for unexpended Program year 2013 CSBG discretionary funds

BOND FINANCE

c) Presentation, Discussion, and Possible Action on Resolution No. 14-034 authorizing the Third Amendment to the Servicing Agreement between TDHCA and US Bank

RULES

d) Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 1, '1.20, concerning the Asset Review Committee and directing its publication in the Texas Register

e) Presentation, Discussion, and Possible Action on orders adopting the repeal of 10 TAC '5.23, concerning Protected Health Information, and directing its publication in the Texas Register

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f) Presentation, Discussion, and Possible Action on an order adopting new 10 TAC '1.24, concerning Protected Health Information and directing its publication in the Texas Register.

g) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC '1.5(e), concerning Previous Participation Reviews, and directing its publication in the Texas Register.

h) Presentation, Discussion, and Possible Action on proposed new 10 TAC '10.1004, concerning Income and Rent Limits, and directing its publication for public comment in the Texas Register.

i) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC '1.206, concerning Applicability of the Construction Standards for Compliance with '504 of the Rehabilitation Act of 1973, and directing its publication for public comment in the Texas Register.

TEXAS HOMEOWNERSHIP

j) Presentation, Discussion, and Possible Action on the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs Participating Lender List.

MULTIFAMILY FINANCE

k) Presentation, Discussion, and Possible Action on Resolution No. 14-031 for the First Supplemental Trust Indenture and Modification Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Green Crest Apartments, Series 2002.

l) Presentation, Discussion, and Possible Action on Resolution No. 14-032 for the Supplemental Trust Indenture and Modification Agreement relating to the Multifamily Housing Mortgage Revenue Bonds for Ironwood Crossing, Series 2002A and Taxable Series 2002B.

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m) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

13428 Village at Palm Center Houston

n) Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2013-1 HOME Multifamily Development Program Notice of Funding Availability

13139 Stonebridge of Plainview Plainview

o) Presentation, Discussion, and Possible Action of Qualified Investment Banking Firms to provide Underwriting Services for Multifamily Bond Transactions

REPORT ITEMS

The Board accepts the following reports:

1. TDHCA Outreach Activities, May 2014

2. Status Report on AThe Report on Customer Service@ as required by Chapter 2114 of the Texas Government Code

3. Results from Compliance Division Customer Service Survey and update on Compliance Activities

4. Report on activities of the Department’s newly-formed fair housing team and its plans for coordinated efforts to address requirements regarding the affirmative furthering of fair housing

ACTION ITEMS

ITEM 2: HOUSING RESOURCE CENTER:

Presentation, Discussion, and Possible Action on the Agency Strategic Plan for Fiscal Years 2015-2019

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ITEM 3:  MULTIFAMILY FINANCE:

a) Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers of the Department=s Program Rules and Requests for Exemption from Undesirable Site Features

14006 Oak Grove Village Marble Falls 55
14029 Royal Gardens Wichita Falls 76
14108 Cleme Manor Houston 77
14175 Liberty Square and Liberty Village Groesbeck 91

ITEM 4:  COMMUNITY AFFAIRS

Presentation, Discussion, and Possible Action on Approval of the Draft FY 2015 Low Income Home Energy Assistance Program (LIHEAP) State Plan for Public Comment

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

none

EXECUTIVE SESSION

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OPEN SESSION

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ADJOURN

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ON THE RECORD REPORTING
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MR. OXER: Good morning, everyone. I'd like to welcome you to the June 5 meeting of the Texas Department of Housing and Community Affairs Governing Board. I see everyone got the memo on summer attire; June and July is when we do that.

So we'll begin with roll call, as always. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Professor McWatters?

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: I am here. We expect Mr. Thomas, but he's not here yet; we'll advise for the record when he arrives. We have a quorum present so we can do business.

Let's stand and salute the flag.

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

MR. OXER: Don't we have a resolution, Tim?

Let's start with that.

MR. IRVINE: We do. This is Resolution No. 14-
"Whereas, June 2014 is Homeownership Month in Texas

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

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

"Whereas, it is the policy of the Texas Department of Housing and Community Affairs to support equal housing opportunity in the administration of its homebuyer and homeownership programs and services;

"Whereas, the Texas Department of Housing and Community Affairs applauds all those who work to achieve and maintain affordable, responsible homeownership, and recognizes those who provide services and resources to all homebuyers, regardless of race, color, creed, place of birth, familial status, or disability;

"Whereas, the Texas Department of Housing and Community Affairs encourages Texas to explore the numerous homeownership resources available during Homeownership Month and throughout the year;

"Therefore be it resolved, that in pursuit of
the goal and responsibility of providing affordable
homeownership opportunities for all, the Governing Board
of the Texas Department of Housing and Community Affairs
does hereby celebrate and join Governor Rick Perry in
proclaiming June 2014 as Homeownership Month in Texas,
and encourages all Texas individuals and organizations,
public and private, to join and work together in this
observance of Homeownership Month."

And we would request that the Board adopt that.

MR. OXER: No discussion required, or does a
Board member have a comment?

MS. BINGHAM ESCAREÑO: Move to so resolve.

MR. OXER: Thank you, Ms. Bingham. Do I hear a
second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. All
in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Thank you for that,
Tim.

MR. IRVINE: I have a proclamation.

MR. OXER: Yes, please.

MR. IRVINE: This is a proclamation from
Governor Perry.

“For Texans, a home is more than shelter from steamy summers and cold, rainy winters. It's a hub for family and community and serves as a symbol of success, security and independence. When families move into homes of their own, they gain independence, build relationships in the community, and have a vital stake in the progress of our great state. Homeownership is an important part of our way of life for many in the Lone Star State.

“While owning a home can be a financial challenge, thankfully, Texas is home to many outstanding organizations, from real estate professionals, builders and lenders, to nonprofit organizations and government agencies like the Texas Department of Housing and Community Affairs, working to help potential buyers make informed decisions about their future. I applaud all of those who work to achieve and maintain affordable, responsible homeownership, and recognize those who provide services and resources to all homebuyers and homeowners.

“Each year the month of June is designated to raise awareness of the benefits of homeownership and the resources available to Texans. At this time I encourage all Texans to explore the homeownership opportunities ahead. The steps you take today can make a difference.
for yourself, your family, and the Great State of Texas.

"Therefore, I, Rick Perry, Governor of Texas, do hereby proclaim June 2014 to be Homeownership Month in Texas, and urge the appropriate recognition whereof.

"In official recognition whereof, I hereby affix my signature, this 1st day of May 2014." Signed by Governor Perry.

MR. OXER: Great. Well, we appreciate his recognition of the efforts that everybody in this room makes.

I'd also like to recognize Riley Stinnett. He's here from Senator Fraser's office. Appreciate you coming by.

We have some other folks here. Eric, I want you to make a couple of comments about the month of May and the response we had to our reservations on mortgages and identify some of the people we have and take some pictures. If you'd come up and do that, please. And we're going to ask each of the folks who had their pictures taken this morning, the lenders of the year and such, come up and be recognized here in a minute.

So tell us how May went, Eric.

MR. PIKE: Good morning, Board, Chairman. Eric Pike, director of the Homeownership Division with TDHCA.

We typically see, on an average month, around...
$25 million in mortgage loan originations under our My First Texas Home program. We obviously have had a very successful year, but during the month of May, this past May, that production level increased up to almost $37 million, so an increase of around $11 million over what we typically see. So record production. We've also had significant production under our Mortgage Credit Certificate program.

We are here today recognizing some of our lending partners, and I'd like to ask, if I could, that they stand at this point in time.

MR. OXER: Ask them to come up here. We're going to have Jorge come and take a picture.

Introduce and explain who each of them are, Eric.

MR. PIKE: To my left here is Kim Lewis. Kim has been one of our recognized loan officers for a number of years. I think this is actually her fifth year in a row as one of our top loan officers, so welcome back Kim Lewis. Kim is with Premier Nationwide Lending out of the town of Flower Mound which is up northwest of the Dallas-Fort Worth area.

Also joining us today is Dan Reagan. Dan is with Cornerstone Home Lending. Cornerstone's corporate office is located in the Houston area, but Dan works here
locally in Austin and is representing the company and accepting the award on their behalf.

Also, immediately to his left, is Andy Woodside. Andy has also been one of our top loan officers for a number of years. Andy is out of the Houston area and he works for Cornerstone Home Lending. To give you a reference point here, Cornerstone, the company, did $99.4 million worth of production with us for the year of 2013 and for the first three months of 2014, so that's a huge accomplishment, and we do want to thank you all for your efforts.

Also joining us today is Clifton Saunders. Clifton is with Houstonian Mortgage. Obviously, Houstonian, they're out of the Houston area; I think he told me Stafford is where your offices are located. This is Clifton's first year receiving and accepting the Loan Officer of the Year Award. He also has done a considerable amount of business with us. The Houstonian Mortgage Group has done over $43 million in production with us this year. So he is accepting on behalf of the company which is one of our Lenders of the Year, as well as himself for being a Loan Officer of the Year.

Also joining us is Jeremy Radick, and Jeremy is with Guild Mortgage. Guild is located is headquartered in San Diego, they're a big nationwide lender, do lots of
business all across the country. They do a significant amount of production with us as well. Their total production level topped $63 million this year. And so Jeremy is here accepting on behalf of Guild. The Guild office that he is with is out of the Houston area.

So, again, I want to thank all of you for your efforts. I'd also like, if I might, ask for my staff to stand just for a moment. I have a very small staff so this won't take but a moment. Sheron Everett, who has been with the Department for a number of years. All my staff are long term serving state employees. Cathy Gutierrez, and Dina Gonzales. And so, obviously, without their efforts and without the lenders' efforts, we would not be as successful as we are, so we certainly appreciate it.

MR. OXER: I'd like everybody to stand and give them a round of applause.

(Applause.)

MR. OXER: Eric, come up here, Eric's staff come up here with this crew. And I also want you to point out something, Friday was a pretty unusual day in terms of what we did, so say a few words about that too, Eric. And since Guild is here, I want you to recognize that the record that they did Friday would have been a record for the Department, not to mention the record we
MR. PIKE: Last Friday, as I said, part of our record production for the month of May, we did $7.2 million worth of mortgage loans.

MR. OXER: And the previous record had been?

MR. PIKE: Well, the day before we did over $4 million, but I think our previous record prior to that was around $2.2-. We used to get excited about $2.2-, so $7 million just blew our mind. But Guild Mortgage originated about 20 loans that day out of about 50-some-odd loans that were done.

MR. OXER: For a total of $3.1 million on that one day.

MR. PIKE: Thank you.

MR. OXER: Congratulations, everyone.

(Applause; pause for photos.)

MR. OXER: Thanks again, and congratulations, everybody.

Is Bobby Wilkinson here? Just want to say hi. You’re our link, our communication to that big pointy building, so we always appreciate you showing up.

Let’s get to the agenda now. On the consent agenda, does any Board member have an item they wish to pull? I’ve been given some information that we’re going to pull item 1(b) for a discussion. Is there anything
else?

    Just another housekeeping item. The front row
up here to our left is for speakers that wish to speak on
the item being considered.

    With respect to the consent agenda, do I hear a
motion to consider?

    MS. BINGHAM ESCAREÑO: Move to approve the
consent agenda with the exception of item 1(b), pulled
out to be considered separately.

    MR. OXER: Thank you, Ms. Bingham. Do I hear a
second?

    MR. GANN: Second.

    MR. OXER: Second by Mr. Gann. There's no
discussion. All in favor?

    (A chorus of ayes.)

    MR. OXER: Opposed?

    (No response.)

    MR. OXER: There are none.

    Then we'll take 1(b) to begin.

    MS. DEANE: Mr. Chair, I believe there have
been some handouts provided to you on 1(b). Under the
rule, the Board would need to decide if they want to
accept those handouts.

    MR. OXER: Does the entire Board have that
handout?
MS. DEANE: No. It would not be given to the Board until the Chair, in his discretion, determines. The questions are: whether or not it's exceptional circumstances, whether or not they are delivered to staff prior to the start of the meeting so that staff may log them in and the chair may review them for acceptance, they're not so voluminous as to cause inordinate delay with members while the Board and the public review them, and they are provided in hard copy format to all members of the public in attendance, and they're also provided to staff in Adobe Acrobat format for inclusion in the electronic records of the Board materials.

MR. OXER: Can we certify if those criteria have been met? Peggy, do we know? They have. Do we have copies of these for everybody in the front, or they're available? They're not particularly voluminous. All right, we'll accept the documentation.

MS. DEANE: You can hand them out now.

MR. IRVINE: While these are being handed out, I'd just like to reinforce for everybody for future meetings, it's really important that you get materials in to staff in time for us to include them in the Board materials, whenever possible. We want to make sure that the whole public has a full chance to study the materials, and obviously, that our Board members have a
chance to look at them so we have a more engaged and informed discussion.

MR. OXER: Barbara, are you going to make the presentation on this, or is somebody from staff?

MS. DEANE: No.

MR. OXER: Who is going to present on this from staff? Patricia? And while the Board is reviewing this and listening, I think we'll get started on your comments, Patricia.

MS. MURPHY: Good morning. Patricia Murphy, chief of Compliance.

The item before you is about some awards of some discretionary CSBG funds that were previously awarded at the May 8 meeting, subject to a previous participation review. EARAC reviewed the previous participation of the considered entities and EARAC voted against providing discretionary funds to Tri-County Community Action based on some findings in their most recent single audit. Those findings related to internal controls over their financial reporting, and the monitoring staff of the Department is not able to confirm that they have implemented those procedures.

Attached to this item that they have provided to you is the procedures that they have proposed to resolve the finding, but we're not able to confirm that
these procedures have been implemented. Which makes sense because we just recently monitored them and what we're monitoring is their 2013 contracts and that was the fiscal year for the same single audit, so we found the same things that the single auditor found. So in the next set of reviews we would be able to look at these procedures that they have developed to see if they're implemented. So they have these procedures but I cannot confirm for you that they're implemented.

MR. OXER: So the timing is essentially that there was an audit, there was a response to the audit, you've gone out and done the monitoring, you saw that they did something in the meanwhile, but they haven't done it long enough for it to be evident that the implementation has occurred.

MS. MURPHY: That's correct. So their response that they just provided to you shows that these were procedures that were adopted in December of 2013, and so our monitoring work, what we are looking at is prior to December of 2013.

MR. OXER: Prior to December.

DR. MUÑOZ: Patricia, having reviewed these procedures, would they address the deficiency?

MS. MURPHY: I believe they would, if they're properly implemented
MR. OXER: If properly implemented.

MS. MURPHY: Right.

MR. OXER: And there were procedures in place, apparently before, or is that the case that procedures were in place but they weren't followed before?

MS. MURPHY: There was a lack of internal controls before.

MR. OXER: Lack of internal controls. So we don't actually know, we expect this to work but we don't know if it has. So essentially, the process would be to wait for another year for monitoring to see if their implementation actually effects the change that we're looking for.

MS. MURPHY: That was the recommendation of EARAC.

MR. OXER: Any questions from the Board?

DR. MUÑOZ: Just for my memory, these are sort of dollars that were in addition to that were not sort of allocated, so it's not necessarily that this or any other awarded agency would have necessarily expected this.

MS. MURPHY: That is correct. This is additional discretionary funds, and so the money that would have gone to them gets disbursed among the entities that did not have compliance issues.

DR. MUÑOZ: The others in that group.
MS. MURPHY: Correct.

MR. OXER: Which included a total of how many: two, fifty, twelve?

DR. MUÑOZ: A dozen?

MR. IRVINE: Dozen-ish.

MS. MURPHY: I'm sorry, I don't know offhand.

MR. OXER: About a dozen is a good answer.

MS. MURPHY: Correct.

MR. THOMAS: This program for Tri-County is specifically related to Head Start, Early Head Start, energy assistance and Community Service Block Grants. Is that what I'm reading in there?

MS. MURPHY: That's my understanding of the programs that this agency runs, yes.

MR. THOMAS: And these material weakness findings affect the accountability, transparency and recognizing that the dollars are accountable, going where they're supposed to go?

MR. OXER: Properly accounted for in the expenditure.

MR. THOMAS: Obviously, if an auditor tells us that it's a material weakness, that's significant. What did the staff find in their review of that, auditors being very cautious.

MS. MURPHY: So both the single auditor and our
staff found that they made corrections to their general ledger but there's no like backup to say why was that charged to this, so something like a Head Start expense is being charged to our programs, and then they just sort of say oh, that was a mistake, and fix it. But they don't have good controls over making sure that the right amounts are charged to the right programs. These are very, very small amounts, it's just that it's an internal control, it's a process and procedure kind of an issue, and that without those kinds of internal controls in place, it could possibly lead to fraud, waste and abuse or mismanagement of funds.

MR. THOMAS: We're not concerned about amount, we're concerned about managing the public's funds no matter what the amount is. Correct?

MS. MURPHY: EARAC's recommendation was to say: let this agency get their internal controls in place, and then through our normal course of monitoring we can confirm that they're in place.

MR. THOMAS: Because we don't care about the amount, we care about making sure the procedures are followed for ensuring the public's monies are spent properly.

MS. MURPHY: Correct. These are the discretionary funds.
MR. OXER: We're exercising our responsibility as a fiduciary for the State.

Any other questions from the Board?

(No response.)

MR. OXER: Just restate staff's recommendation on the item, Patricia.

MS. MURPHY: Staff's recommendation is, as in your Board book, to award the funds to the CSBG entities that did not have those types of compliance issues.

MR. IRVINE: And actually, if I might clarify, it's in your Board materials, the formal language in the resolution is to accept the report from EARAC confirming the previous participation review status of all of the previously awarded activities, and then the conditions to make those awards have two exceptions for Cameron-Willacy and for Tri-County.

MS. MURPHY: What Tim said.

MR. THOMAS: So moved.

MR. OXER: Motion by Mr. Thomas to approve staff recommendation on item 1(b). Do I hear a second?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz.

There's public comment. Mr. Simon.

MR. SIMON: Good morning. I'm George Simon, the executive director of Tri-County Community Action.
I've been in this position for the last two and a half years.

MR. THOMAS: How long? I'm sorry, sir.

MR. SIMON: Two and a half years. And over that time, Tri-County has really come a mighty long way. This particular audit -- and if I could draw your attention to the last page of the audit -- does not say that we didn't have documentation. The recommendation was that we have it in the proper location in a proper manner that would be readily accessible. So the documentation that we had there was available and was provided, it's just that we had to dig for it instead of it being in one place. And so the recommendation from the auditor was to enhance procedures that would maintain in such a manner the entities that can readily be accessed.

And so, again, when you look at this audit, it was zero cost, there was no disallowed costs involved. All of the findings in this particular one were cleared, and to be honest, since I've been there, and even reading back to former audits, this has been the cleanest audit that this organization has had in a long time.

So I stopped today to, first of all, say thank you for even being considered for this award, but secondly, TDHCA has done a fantastic job with us in

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partnering, working together to get the recommendations
that would help us to do what we need to do in terms of
managing the monies that are available. My
disappointment is in the decision because, again, we have
worked hard to get where we are now, and when we really
look at what the recommendations were to enhance
procedures, we did do that. There's a letter on the
second page that shows we answered that, it's on the
actual audit if you read our recommendations, and then
the procedures that took place have moved forward.

We just were audited this past April with
TDHCA. There was one question, to my awareness, that was
in regards to a journal entry and we were able to provide
that documentation. Of course, the monitoring report
isn't back yet and so they can only go off of what has
happened in the past.

So I'd like for you to reconsider here. If
not, again, we appreciate the opportunity to stand and
tell you that this organization is spending the
government's money in the right way and with all
transparency and doing the things that are required from
you guys to us.

MR. OXER: Thank you, Mr. Simon.

Any questions from the Board for Mr. Simon?

MS. BINGHAM ESCAREÑO: I have one.
MR. OXER: Ms. Bingham.

MS. BINGHAM ESCAREÑO: Mr. Simon, can you just explain in layman terms your understanding of what the actual operational finding was from the previous audit?

MR. SIMON: Yes. When they asked for journal entries, they needed support documentation, and so they had to go into the computers and to the files and so forth in order to dig it up, so it wasn't something that was readily accessible. The auditors, when they sat down, it wasn't a matter that we didn't have the documentation, but they felt like, procedurally, we should have that information handily and readily available, especially for me as the executive director. Finance knew where to go and get it and so forth, but I didn't know myself where I could get the information.

So this process now puts us in place that when we look at journal entries or changes in journal entries, that that supporting documentation is in a general journal that could be provided and at the location where this information is kept. And so that was the recommendation and so that's what we moved forward to do and put it in place right away and it's in place right now.

MR. OXER: Anything else, Ms. Bingham?

MS. BINGHAM ESCAREÑO: I have a question of
Patricia.

MR. THOMAS: Don't go away, sir, because I have some questions.

MS. BINGHAM ESCAREÑO: Patricia, Mr. Simon referenced an April audit, and so the official findings are not back to the organization yet?

MS. MURPHY: That is correct.

MS. BINGHAM ESCAREÑO: Does the agency know what the findings are from the April audit?

MS. MURPHY: I have a draft of the report and I can tell you that we cannot confirm that these procedures have been implemented, but again, it's because we are reviewing the same transactions and are saying there's not readily accessible documentation to support these journal entries. It's the same body of work that's being audited. And again, they'll have their response period if there's anything that's incorrect in our report to set it straight on that.

MR. THOMAS: I don't understand that clarification. So the April audit went back over the existing audit -- did I understand that correctly? -- and as part of that the audit should have identified whether corrections have been made and now documentation was kept? Or was it just a review to determine whether the initial audit was done properly?
MS. MURPHY: So their single audit was for their fiscal year which is a calendar year?

MR. SIMON: It's our fiscal year.

MS. MURPHY: It's a calendar year, your fiscal year is a calendar year?

MR. SIMON: No. The fiscal year runs from May 1 to April 30.

MS. MURPHY: So their single audit covered their fiscal year 2013, and we're monitoring their 2013 grants, so both their single auditor and our auditors, our monitors are reviewing the same financial transactions, so it makes sense that we're seeing the same things that the single auditor saw. So while they have developed these procedures in December of 2013 to be implemented to address this issue, I can't confirm that they're implemented because I'm looking at the same transactions that the single auditor did.

MR. THOMAS: So there's nobody's feet on the street to go see if they actually put the paperwork next to a file, like you close your books, you create your financial records for the bank and the universe and accountability and transparency, and when you close you've got a nice big thick book that has all of your transactions, all of your ledgers, and all of the backup, and you're saying that we haven't had a chance to see if

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that's been developed yet.

MS. MURPHY: Right. And I appreciate your clarification that it's not that there's no documentation, it's like where is this documentation to support this journal entry. So we, again, are finding journal entries where we're going to have to say where's the documentation to support these journal entries, and they'll have that corrective action period to do so.

So he's saying that as of December 2013 we've implemented these procedures, where going forward any journal entries we have we're going to have nice clean documentation and all the documentation in one place that's easily auditable.

MR. THOMAS: And we haven't seen in April that that's been in effect because there's no one that's actually been able to go over their files to determine that.

MS. MURPHY: Correct. So when we went in April, we monitored their 2013 contract; in April 2014 we monitored the past work.

MR. THOMAS: I guess I'm so dense. Wouldn't they have had to take up to December 31 of 2013, if they had documentation that supported those journal entries, in order to comply, would they not have had to take that paperwork, with the auditor's instructions, and just as
Mr. Simon has just indicated, and put those where they belong so that our staff would have been able to see that at this point? And I may be asking the wrong person here.

MS. MURPHY: So when we go out we pick a month that we're going to review their journal, their general ledger and all of the transactions, and so we did not pick January 2014, we didn't pick a month after they have prepared these procedures. So our review included transactions prior to the implementation of these internal procedures. Next year we'll go out and we'll look at their 2014, we'll pick months in 2014 and select transactions to say let me see the backup for these things, is this supportable, is it documented, all that kind of stuff.

MR. THOMAS: So we've had horrible examples of a lack of good process and procedures and protocols resulting in hundreds of thousands of dollars, millions of dollars having been lost from public trust, and being a former executive for the Austin Child Guidance Board and chair of the Safe Place Board, this kind of stuff keeps me up at night, so this is not insignificant for me. So I guess what I'm trying to make sure if this is just truly -- in my mind, if this was just an issue of getting the documents in the place where they needed to

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be but we were able to confirm that they've done that, I see this one way. If this is a situation where they didn't go back and correct for the prior year and put the things together so that you all would have been able to see that, I'm concerned about their commitment to making sure that their records met the obligation, and if you can't answer that, then I need Mr. Simon to.

MS. MURPHY: So we're not able to confirm that these policies and procedures have been implemented. In our future monitoring we'll test for that.

MR. OXER: Mr. Simon, you have to restate your name when you come back to the microphone.

MR. SIMON: George Simon.

In regards to the audit, if you look at the total audit, it was zero cost. So in other words, there was no dollars that were misappropriated, there was no unrestricted funds that needed to be paid back or anything like that. Overall, the agency operated very, very well this year; I mean, there was no disallowed costs. And so if you look at the zero cost part of it, all the monies were spent appropriately, there was no questions in regards to costs, and out of this whole audit, this was the recommendation that came from our auditors -- and well taken because I think it should be.

MR. THOMAS: I'm thrilled about the level. I'm
concerned about you saying that it's the best audit you've had, and I'd like to know historically, but that just gives me even more concern, so I'm afraid I haven't asked my question very well. It's a very, very narrow question. If the historical records found that documentation necessary to confirm those journal entries was not located in such a manner or situation, whether it was closing the month out and making sure that you had copies of everything behind your journal entries so it could easily be found -- which is a very simple thing to fix, which is a very standard process in the finance department -- if that wasn't done such that our staff could see that, how do we know these procedures have been implemented. It should have been in place at this point.

MR. SIMON: Yes, sir. The audit took place last November.

MR. SIMON: I'm sorry. I'm talking about when our folks went back in April.

MR. SIMON: It was a desk audit, and then we had people to come out afterwards to look at some documents. I wasn't sure what they looked at. From the staff's perspective there was only one document that they asked in relationship to the GL, and so with that being the case, that's what they showed them from the information that was provided, and that's in my cover
letter. I said to the best of my knowledge, the recent monitoring when they came out, only one request was made for supporting documentation from the journal entry which was provided from our general ledger.

MR. THOMAS: Okay. Thank you, sir.

MR. OXER: Any other questions from the Board?

(No response.)

MR. OXER: Mr. Simon, while I appreciate that the effort has been made and we appreciate that your audit was clean and your funds were good, and it's obvious that you're making improvements and getting there. Depending on what this does, the way this vote would currently be structured, it's not a condemnation of your efforts so much as a recognition that there were changes that were made, it's a snapshot in time that we're looking at this. This is excess money that would have been redeployed, so I think it needs to be recognized on the record that this is not something that you would have expected so it's not a diminution of your operating funds.

In several of the other programs, and Cameron is going to be here and Jean is going to be here, we have to slice some exceedingly thin lines, and so I appreciate your effort, but recognize that this is something that happened and you're going forward and we recognize you're
making efforts going forward.

MR. SIMON: I appreciate the opportunity to speak to you today, and again, the key here was for me to stand for Tri-County to let you know that this organization is putting forth the effort to do what we need to do that this will be a model agency to come, so that's my purpose for being here.

MR. OXER: Great. Okay. Is there anything else that you'd like to say?

MR. SIMON: No, sir. Just thank you.

MR. OXER: Any other questions from the Board?

(No response.)

MR. OXER: All right. We had a motion by Mr. Thomas, second by Dr. Muñoz to approve staff recommendation on item 1(b). All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

Mr. Simon, thank you for your efforts, and we expect to see you here again with some more good news.

MR. IRVINE: Mr. Chairman, before we move into the regular action items, I believe Cameron has some remarks on one of the report items that was on consent.

MR. OXER: Sure. Good morning, Cameron.
MR. DORSEY: Good morning. Cameron Dorsey, deputy executive director of Multifamily Finance and Fair Housing.

I just wanted to call attention to one particular report item, it's the report item on the formation of the new Fair Housing team and talk a little bit about what our activities are and just let you guys know that we're going to be bringing more regular reports to you all on what the activities of that team are.

MR. OXER: And the hide is on the wall where we used it for the right purpose.

MR. DORSEY: Right, exactly.

So we recently formed a Fair Housing team internally, and I took on the responsibility for overseeing the activities of that team. I hired Laura Debellas. Laura Debellas is our new Fair Housing team lead, right here. Laura is a great addition to help lead this team. She has previously worked as a housing advocate for persons with disabilities in the Seattle area, she worked for HUD Multifamily in their Seattle office. She's also worked in all kinds of areas of the department, she started in the Compliance Division at TDHCA, she was one of the two-person core team that implemented the tax credit assistance program. Then she left and went back to Seattle for a while and realized
she made a grave error, and that she wanted to come back and work for me, so she came back and worked in our Multifamily HOME program, and now she's leading up this Fair Housing team with me. So she's really a great addition and great resource.

We also are putting together folks in other areas of the department. Just to call a couple of those folks out, we've got Megan Sylvester in the Legal Division who is just a really, really important resource and has lots to add to what we do. And then also very critical are the data people that are helping us build some databases: Chad Landry and David Johnson, who are part of the 3PM team that reports to Brooke, and Brooke has been kind enough to let us borrow those folks. And in addition to that we have a couple of other positions we might fill in the future, we just want to make sure we identified what kind of individuals we would need to fill those positions before we go about hiring folks.

So some of the first activities that we're engaging in, that this Fair Housing team is engaging in, we are consolidated and collecting all of the demographic data we have throughout our various programs. We have various systems throughout the Department to collect demographic information concerning who we serve, where our funds are allocated, and those types of things. So
we're trying to pull that together into one kind of centralized location so that we can run comparisons against census data.

We're also looking at purchasing crime data and looking to pull in other types of data such as environmental related data and what-have-you, so that we can do some really good reviews on kind of where our funds go, who they go and how we can improve reaching all segments of the populations, including all of those protected classes that are protected under the Fair Housing Act.

We're also building a database that's separate from that one that will help basically document what we are doing in a central place. As you all know, we have various divisions that are operating all different types of programs and so we're creating a database that will help us track everything that's fair housing related in each division and pull that together in a centralized location so you can actually look at a report, identify where holes might be, where additional action steps might be implemented to affirmatively further fair housing.

And I also think we'll be able to, once we kind of get all this data together and we're able to look at everything we're currently doing, we might also be able to identify some additional impediments or refine the
impediments that are reflected in our current Phase II Analysis of Impediments to Fair Housing Choice. So these are all some kind of core really kind of big activities that we're engaging in.

We don't want to sit idle while we're getting these databases together, so we're also doing a few things just right off the bat. We're holding a roundtable, actually tomorrow afternoon, to discuss our affirmative marketing rule and our tenant selection criteria rule. These are two rules that have a very direct bearing on the State's efforts to affirmatively further fair housing, and so we're going to open those up for consideration and look at possible changes we might make to, I think, benefit everyone involved, the development community, including just some additional objective standards for how you identify the populations that are least likely to apply and what groups you should be affirmatively marketing to, and these types of things.

Also on kind of the agenda, as the previous director of the Multifamily Division -- and Jean knows this as well -- it's very difficult to pay equal attention to every element of the QAP and the multifamily rules. A disproportionate amount of time gets spent kind of debating those certain scoring elements or what-have-you, and so there are some other elements that kind of
fly under the radar and maybe don't get as much
consideration as other elements.

And so I think my experience with the
multifamily area, as well as just the fact that we've got
this Fair Housing team together, we're going to be
looking at focusing on some of the undesirable area
features and undesirable site features rule, giving a
little bit more substantive consideration to things like
the distance requirements for undesirable area features
or site features. Perhaps a railroad shouldn't be on
equal par with a hazardous manufacturing kind of facility
or what-have-you, or an oil refinery, these types of
things. So we're doing a lot of stuff in those areas.

We're also kind of keeping tabs on a couple of
other cool outreach activities that we've got underway.
One is a collaboration with the University of Houston to
develop materials to provide additional education to
local elected officials concerning their role in
providing support resolutions and engaging in the tax
credit allocation process, just allowing them to
understand all those various resolutions that they may or
may not have to consider in order to assist in
facilitation of a tax credit deal in their area.

And then last, but not least, we are also
working with the Health and Housing Services Coordination

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Committee to develop a small set of videos. There's going to be a series of them that address various topics. They're kind of high level videos for service providers and folks that are working with persons with disabilities and other populations that we serve, to just kind of, in a five-minute video, give them an overview of different aspects of the programs we offer.

Rental assistance, for example, would be a topic that's important. There's so many different types of rental assistance out there, and understanding all of those various forms of rental assistance and how folks holding those vouchers have access to tax credit properties. Fair housing, there will be, hopefully, a five-minute fair housing video, somewhere in the realm of five minutes, to just kind of give an overview of what the Fair Housing Act is, reasonable accommodations type issues.

So we've kind of ramped up pretty quickly, we've got a lot going on in the fair housing arena, and I fully expect that once we have these databases developed, we'll bring reports that actually include some lists of all of the different types of activities and the status of those activities. So there you go. I just wanted to give you guys kind of an overview of what we're working on now and what to expect from us in terms of reports in
the future.

MR. OXER: Great. Thanks, Cameron.

Any questions from the Board?

MR. IRVINE: I just have a comment on it. When we entered into our conciliation agreement and we developed the Phase II Analysis of Impediments through the use of a third-party consultant, the affirmatively furthering fair housing process moved along in a very specific orderly manner, and as we concluded that requirement and submitted the Phase II AI to HUD, I think you're going to see a significant transformation in just the way that we're approaching this.

Staff has taken this back from the consultants, this is something we own. We want to use these regular reports at the Board meeting to make sure that the Board is engaged and that the public has an opportunity for engagement, and we do not view affirmatively furthering fair housing as some static checkbox activity, we view it as a pretty intensive process.

Once upon a time I might have said not a week went by without a discussion of fair housing activities in the Department, now I would safely not an hour goes by without it. And I really mean that. Cameron and Laura and Megan are really reaching out and engaging the programmatic areas and others, and this is very
proactive, and I think, frankly, it's kind of exciting. So thank you.

MR. OXER: So essentially what we're doing, too, from what I gather what you're doing on one of the early questions that some of us had was what's in all that data in those repositories down in the agency and what can we learn from it, so you're able to deep-dive that data and figure out some things that give us some assistance in terms of directions we can take in the future to make this more appropriate, more responsive, and essentially more productive. Is that right, Cameron?

MR. DORSEY: Right. I mean, I think that there's a lot of questions you can ask. When we allocate tax credits to a deal in a high opportunity area, for example, are we reaching a broad segment of the population, what does the demographic profile of these properties, are they reaching everyone, and I think we need to be looking at that. Part of whether or not you're reaching folks is looking at affirmative marketing, so that's one of the reasons we've opened that rule up for discussion at this roundtable tomorrow.

And there are quite a bit of little holes in how we might collect data that are really important to identify and resolve. Just simple things. You know, when we collect race and ethnicity information on tax
credit tenants, the race and ethnicity information is virtually completely separate which doesn't really align well with how the Census Bureau collects data, so it makes it more difficult to compare. For example, a Hispanic individual may or may not identify themselves as white, and so then identifying white non-Hispanic individuals becomes a big problem if you don't have that linkage there in how you collect the information. And the Census Bureau has that linkage and we want to have that linkage as well so that we can do similar comparisons and comparable comparisons, apples to apples.

MR. OXER: So you're setting this up to be able to correlate it with externally available data sets so that you can see what happens, because most of what we've got is a snapshot on these tax credit deals, for example, that happened then but they're not a static environment because they continue to change over time, so we can go back and look at what happened at that snapshot when it occurred. Right?

MR. DORSEY: Sure. I think you can do a number of things. Right now, with respect to high opportunity areas and providing incentives to go into high opportunity areas and develop tax credit deals, it's fairly simple. We've got this big website and I can go on the website and pull off a data set and do some Excel
formulas and spit out a list of probable high opportunity areas, but then I think that there are some subsequent questions you need to ask that relate to who those developments are reaching and how we better reach a broad segment of the population and create really inclusive tax credit developments and multifamily properties.

MR. OXER: With the background in engineering that I have, nothing speaks as loud as data, so I hope this is going to be something that gives us a stronger foundation to make policy on everything that we do. Okay, I'm a nerd, I admit that, I like the idea that we're going to have some things like this, some numbers to guide some of the decisions that we're going to be making.

MR. THOMAS: The rest of us like it too, we're just not as nerdy

(General laughter.)

MR. OXER: If you were as nerdy as me, you'd be in real trouble to start with.

Thanks, Cameron.

Let's go to item 2 and get started here.

MR. IRVINE: And, Mr. Chairman, now that we're on the action agenda, I was wondering if we might ask that the community affairs item, item number 4, occur after item 2.
MR. OXER: And then number 3?

MR. IRVINE: Right.

MR. OXER: Good enough. Elizabeth, good morning.

MS. YEVICH: Good morning, Mr. Chair, Board members. I'm Elizabeth Yevich, director of the Housing Resource Center, and I'm here for item number 2 which is the agency's strategic plan for fiscal years 2015 through 2019, and this plan communicates the agency's goals, directions and outcomes to various audiences, including the governor, the legislature and the general public.

This plan is due every two years, and the plan was developed within the context of the State's overall goals and budget to generate specific outcomes that tie directly to the Department's budget structure. And the plan provides a very high level overview of issues that may affect the ongoing accomplishments of the agency's mission over the next five years.

Examples of internal issue the report considers include the Department's budget, workforce characteristics, technological assets and projects, organizational structure, and our existing performance measures. External factors, examples of those that may change over time are also studied, and such factors include the agency's available funding resources, service
population characteristics, service area boundaries, economic, legal and environmental conditions in which it operates. So finally, this plan provides TDHCA with an opportunity to describe some of its strengths, weaknesses, challenges and opportunities for change.

While this is a planning document, it does not establish future performance measure targets or the methods of finance, and this is done through what you're going to be hearing about in the next 60 days, the LAR, the Legislative Appropriations Request process, so this is sort of the first step before that. This plan also doesn't talk about program set-asides or program activities. All of those specific details and decisions are made through program rulemaking, funding plans and our infamous SLIHP which is the State Low Income Housing Plan and annual report.

Again, the agency strategic plan is just a very high level overview plan, and it's due in a few weeks, June 23, to the Governor's Office, the LBB and several legislative committees. So staff would like to request permission to make very minor changes in the next couple of weeks, including small clarifications or editing that might be needed. Therefore, with that, staff recommends approval of the plan.

MR. OXER: Good. Thanks, Elizabeth. Any
questions from the Board?

        MR. THOMAS: How is the Board's involvement
from the policy perspective incorporated into the
strategic plans going to the governor and the LBB?

        MR. OXER: Do you want to handle that, Tim?

        MR. IRVINE: Well, we have the Chair acting as
the liaison for planning and financial matters. We went
through the plan in depth with Chairman Oxer and
discussed it with him. Quite candidly, because of the
way that our programs are assigned to us legislatively,
there's really not a tremendous amount of strategic
development in that process. Our real strategic efforts
are more on efficiency and delivery.

        MR. OXER: One of the first questions that was
asked of me when I came over here, Robert, was: What do
you plan to do over there? I said, I don't plan to
figure out what to do, my job is to figure out how to do
what the legislature and the governor have decided needed
to be done, so our strategy is to execute on what they've
told us. That said, there's some structuring and
organizational changes we made that are moving along.

        For one, there was a strategic planning
committee that was in place. We had a series of
committees. By virtue of the fact that we're a very
small board and we would have at least three members on a
committee, it was very difficult to get everybody
together just because it was either all of us or not, and
so with the exception of the Audit Committee, which is
formal and mandated, we now have a liaison from the Board
on each of the planning or the committee efforts that
we're undertaking, as opposed to a full committee
assigned to each one of them. I'll make that as a point
of record on there, so the strategic planning and
finance, I serve as a liaison.

MR. THOMAS: Other than the rubber stamp,
without having any background or view of these things
before now -- and maybe it was and maybe I didn't
remember it, and of course I have great deference to our
executive team and great deference to our Chair -- but
how am I supposed to help establish, recognizing that our
members come from far and wide and we're lucky to have
them show up and that I can be five minutes late every
time and I live in town.

But given all of that, I have some concern
about the process we're currently following and would
like to state for the record that I'd like to see some
process implemented that would allow the Board members,
because this is the core essence of policy direction
setting and then the execution, so how do we get insight
into this in a way that allows our staff to know that our
Board and our Chair has the full Board's support -- which they know they do -- and we can vote and make sure we're doing this the right way.

MR. OXER: Point noted, point taken and accepted. I think the strategic plan has been available to every member of the Board, hasn't it?

MR. IRVINE: Yes.

MR. OXER: And it's on the website, it's posted.

MR. THOMAS: There's a tremendous amount of information on the website.

MR. OXER: You've got to be a nerd to find it. We'll send you the URL.

MR. THOMAS: This is absolutely not an attack of the process, it is, instead, a request for enhancement of the process.

MR. OXER: And I recognize that, Robert, and I appreciate that.

DR. MUÑOZ: You need a motion?

MR. OXER: We need a motion with respect to this item.

DR. MUÑOZ: Move approval.

MR. OXER: Motion by Dr. Muñoz to approve staff recommendation on this item.

MR. McWATTERS: Second.
MR. OXER: Second by Professor McWatters.

There's no evident request for public comment. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, and the Chair notes that Mr. Thomas would like to have considerable input and more information about this, so it's on the record, Robert.

MR. THOMAS: Thank you.

MR. OXER: Yes, sir. Happy to do it.

MR. IRVINE: I would certainly offer any time any member wishes to discuss any of these plans, I'd be delighted to meet with you and go through them in detail.

MR. THOMAS: You're awesome, and you have every single time offered to meet with me, walk me through anything I needed to appreciate and understand. Sometimes I don't know what I need to know about. I saw the agenda item but I honestly did not go into the detail that I should have, but I would think a strategic plan, particularly that covers that many years, would have some level of Board involvement, beyond just our chair, so that we can, quite frankly, answer questions

MR. OXER: And you need to be able to answer
questions. And let it be stated on the record that the strategic plan, as it shows, 2015 to 2019, is a strategic direction that we're constantly making course corrections as we go. All of this is generally amenable to modification and input any time there's a Board member who thinks there's an item that needs to be considered for improving our process or result.

MR. THOMAS: Okay. Thank you.

MR. OXER: Sure. Okay. We'll take item number 4 next before item number 3. I'll take that out of line, out of order here. Brooke, are you handling this one?

Oh, Michael. I'm sorry.

MR. DE YOUNG: Michael De Young, Community Affairs Division director.

Item 4, Mr. Chairman and Board members, is the presentation and discussion of the approval for the draft LIHEAP plan. Just some quick information to share with you. The LIHEAP program is a program that awards about $131 million annually to the State of Texas for energy assistance, weatherization activities, and then the associated administrative costs.

The draft plan before you is a fairly large document upwards of 100 pages. This is the draft plan, we'll take it out for public comment, we'll also have a public hearing, a formal process where comment can be
accepted, and if there's significant comment, we would modify the plan. What we're asking you all to do today is to approve us to take the draft plan out, publish it, receive comment, conduct a public hearing, and if there are no substantive changes to the plan from the public comment received, that we could go right away, with Tim's approval, to submit the plan to the LIHEAP office.

There's a couple of technical things that are going on right now. LIHEAP, at the federal level, has instituted a new application process. They are out for public comment on that application form. So the form in front of you is what we think will be the final format, so when we get final approval through the federal process to update our application, we would make all this information fit into the new form. We don't expect that there will be much change, and we expect that to come within the next 20 to 30 days. The comment period, I believe, has already concluded, they're just going through the final steps now.

The other thing that's unique in this plan right now, if you read through it -- and if you did, bless you for reading through this plan -- there is a requirement now for states to come up with a technical definition for crisis and life threatening situations. Each state is being asked to come up with a formal
definition. Rather than the state just setting out a formal definition, we're going to put out some proposed language and also have some public process with our subrecipient agencies and the general public to try and formulate what that should look like. It does have some specific requirements from the federal government that we'll have to meet, but the language we're allowed to tinker with a little bit.

So we're going to be doing that process over the next 60 days, and that would be included either in the final application to LIHEAP when we submit it before August 31, or as an amendment to the LIHEAP plan. And the LIHEAP plan, if you're not familiar with it, it is a block grant, it is a fairly wide ranging grant that has tremendous latitude for states, so the amendment process for the LIHEAP plan is simply filing a letter. So if we don't get the public process completed for those two definitions for crisis and life threatening, we would submit just shortly after the submission of the plan formally on August 31.

MR. OXER: Okay. Let me ask this, Michael, we're looking at what were the two, life threatening and crisis were the two definitions?

MR. DE YOUNG: Life threatening and crisis.

MR. OXER: And that's reserved for the states
because life threatening and crisis could be different here versus in Maine or Washington?

MR. DE YOUNG: Yes.

MR. OXER: And Washington State, not D.C.

Living in Washington, D.C. on Saturday night can be life threatening.

MR. DE YOUNG: I grew up in Washington, D.C.

Yes, sir.

Yes, it is reserved for the states to define, and we've had some conferences nationally to try and talk about this, and each state has very different structure to what they consider life threatening because of their public utility commission, their public utility requirements on disconnections. So all this has to go into kind of how you address these definitions because the federal government gives you no guidance on what is life threatening. They say you have to have a policy for life threatening situations, and then they give you no guidance on it; they say you must have a policy on crisis but they do not give you guidance on it. Actually, there are 57 grantees for LIHEAP that include some of the islands and territories, we're all being pushed for this same definitions. And it's probably a definition that even if we do adopt it now, we'll have to come back for revision a year into it after we figure out if we've
worded it correctly or not included some specific language.

MR. OXER: Is this a new component for the LIHEAP plan that we have, or is it something that we're just modifying, or is this a new piece?

MR. DE YOUNG: This is a new piece.

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

Motion to consider?

MR. THOMAS: So moved.

MR. OXER: Motion by Mr. Thomas to approve staff recommendation.

MR. McWATTERS: Second.

MR. OXER: And second by Professor McWatters.

There's no request for public comment. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. Thanks, Michael.

MR. DE YOUNG: Thank you.

MR. OXER: Okay. Jean, I think you're up.

MS. LATSHA: Good morning. Jean Latsha, director of Multifamily Finance.

I'm just going to really quickly piggyback on some of Cameron's introductions. As a result of his new position, obviously, I'm standing here.

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MR. OXER: I'll say congratulations or condolences, one of those two. Right?

MS. LATSHA: Probably the latter, but that's all right.

DR. MUÑOZ: Did Cameron get promoted again?

(General talking and laughter.)

MS. LATSHA: I'm happy to say that I do have a replacement for myself in my previous role.

MR. OXER: Is that possible that you can be replaced?

MS. LATSHA: Yes, right. All I know is that I've actually been able to cook dinner for kids a couple of times since Katherine came on, so thank you.

MR. OXER: Sorry we were interrupting you. Say who your replacement is.

MS. LATSHA: That's okay. Just wanted to introduce Katherine Saar as our new 9 percent housing tax credit administrator.

MR. OXER: Katherine, good morning. Buckle up, it's going to be a hell of a ride for the next couple of months.

MS. LATSHA: So item 3 is a number of appeals. We'll get to the first one, this is Oak Grove Village in Marble Falls.

Staff denied points on this application under
two separate provisions of the rule, one of which is a scoring item related to commitment of funding from a local political subdivision. The other was a five point deduction due to a late response to a deficiency. My understanding is that the applicant is not contesting those five points related to the late deficiency. However, we should talk about commitment of funding under a local political subdivision.

This rule 11.92 of the QAP states that funds cannot have been provided to the local political subdivision by the applicant or a related party -- I'm sorry -- by the local political subdivision. Basically, what we're saying is the local political subdivision that is providing the funding cannot be a related party to the applicant. In this case, Mr. Mark Mayfield is the president and CEO of an organization that is in the ownership structure of the development owner, and also serves on the board, I believe as chair, for the Marble Falls Economic Development Corporation.

Because of our definition of control, coupled with statute's definition of related party, has always taken the position that board members actually do exert control over the organization of the board that they serve on. The applicant clearly recognized this.

Let me quickly read our definition of control.
It's defined as the power, ability or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, et cetera. Which is why staff does take this position that a board member exerts control over that organization, therefore, that board member, as also a part of the ownership structure, makes the applicant and that EDC related parties. Related party is defined in a number of different circumstances, one of which is a person or organization -- which is Mr. Mayfield in this instance, that person -- and an organization that is tax-exempt under Section 501(a) which is the EDC, and that is controlled by that person, i.e., he is a board member of the EDC. So that's how staff got to this conclusion.

The applicant recognized this relationship, and so Mr. Mayfield recused himself from the decision relating to the funding for this particular development. Staff, however, does not believe that recusal from this one particular decision equates to his relinquishing control over that board, that EDC. So we feel that that related party relationship still exists between the applicant and the local political subdivision providing the funding.

I believe that the applicant is going to argue that Local Government Code does allow for the EDC to
commit funds to the development, despite Mr. Mayfield's involvement on both sides of this transaction. I'm not familiar enough with Local Government Code to know the answer to that. I can say that staff is not contending that the EDC could not provide funding to this development; we are simply contending that we should not award points for the EDC providing funding to this development because of that relationship between the board member and him as an owner of the development.

So unless you have any questions for me, I think that there's a few people that would like to speak to that.

MR. OXER: We'll get to that. Is there any questions from the Board? I have a question. There is apparently two issues that have been conflated here: one is the local financing decision about whether or not this recusal offers an opportunity for the EDC to make funding available to the application, and the other one is whether or not whether or not, from the perspective of the QAP and the tax credit program, despite that recusal they still constitute related parties.

MS. LATSHA: That's correct.

MR. OXER: Okay. And so the issue is then, absent the consideration for the financing, it's an assessment of the points available on this with respect
to the related party transaction.

MS. LATSHA: That's right. This is basically why the rule was written this way. You could have a PHA has a board, you could create another entity that has all of the same board members, plug that into the ownership structure, that board provides a commitment of funding to that development, and we said we don't think we should award points for that. We're not saying you can't do it, we just don't think that we should be awarding points for development funding when there is that relationship between the funder and the fundee, if you will.

DR. MUÑOZ: I have a question. Do you know of any instance where we have awarded points under this kind of situation?

MS. LATSHA: Not in the last few years when we changed the rule.

MR. OXER: Since the implementation of the rule as it stands now, we haven't done that.

MS. LATSHA: We have not.

MR. OXER: Does that answer your question, Juan?

DR. MUÑOZ: Yes.

MR. OXER: Any questions from the Board?

Motion to consider?

DR. MUÑOZ: Move staff recommendation.
MR. OXER: Dr. Muñoz moves staff recommendation on item 3(a).

MR. THOMAS: Second.

MR. OXER: Second by Mr. Thomas. Okay. We'll have public comment. Good morning, Claire.

MS. PALMER: Good morning. I always forget to sign in so I'm going to do that first. My name is Claire Palmer, and I am representing the ownership group of Oak Grove Village, TDHCA 14006, which the ownership group in this particular instance consists of Texas Housing Foundation and the Hamilton Valley Management and the Hoover Companies, and I represent all of the entities.

We actually think this is a pretty simple issue. We don't disagree that Mark Mayfield is both the executive director of Texas Housing Foundation which is part of the applicant group and that he's also a board member of the Marble Falls Economic Development Corporation. While we technically agree that that fits under the definition in the statute of a related party, although he draws a salary from the Texas Housing Foundation and will not directly benefit in any financial way from a tax credit award, unlike the hypothetical situation that Jean just discussed.

DR. MUÑOZ: Claire, did you just say you technically recognize?
MS. PALMER: Absolutely. We recognize that we fit within 2306, that is not an issue to us. We recognize that the related party definition includes our particular situation here. Where we disagree is the handling of the related party issue. There's no statutory prohibition against a local subdivision loan being made, and in fact, as recently as 2011 and 2012, the TDHCA QAP allowed for related party loans, a local government loan could be from a related party.

DR. MUÑOZ: Just a minute, let me just ask. When did we change the rule?


DR. MUÑOZ: So you're referring to something which has since been changed.

MS. PALMER: Right, but it's a new rule, in the QAP, it's not by statute, it was just changed by rule, and that's a very important distinction.

MR. OXER: Well, it's an important distinction for you to recognize that the statute tells us to make the rules.

MS. PALMER: I agree. I don't disagree that the statute tells you to make rules. What I disagree with is the rule being in conflict with the Local Government Code which provides a remedy when there is a conflict of interest or a potential for undue influence by an elected public official. And Local Government Code Section 171 provides a specific recusal procedure for any board member or local government.
official if the official has a substantial interest in a matter coming before that board. Failure to follow that procedure is actually a Class A misdemeanor by that board member.

And in this particular case, Mr. Mayfield followed the procedure exactly and filed all of the required affidavits and all of those affidavits were submitted with the application.

MR. OXER: And that financing would have been certified and allowed by this, and we're happy to recognize it.

MS. PALMER: Absolutely. And I understand that now TDHCA -- this was the original position that they took, but I understand that TDHCA staff is now trying to separate points from financial involvement from the applicant. The fact of the matter is a 9 percent application is completely points driven. To say that the local government could follow their local government procedure and give money to this development is irrelevant if you can't get the 14 points.

MR. THOMAS: Do those assurances include that there is no financial incentive? I mean, I get your point. Your point is the tail is wagging the dog. The rule is good and it's meant to accomplish or prevent certain situations. You're saying, however, it's in conflict with Local Government Code and procedures which exist to actually provide for allowing these public policy objectives to be achieved without there being fraud or double dealing.
MS. PALMER: Absolutely. And the Attorney General's Office has reviewed this actual situation on numerous occasions, and as far as I can tell, I can't find an attorney general opinion that says that when a rule of a state agency or local government is in conflict with a state statute, the state statute does not trump the rule.

MR. THOMAS: I think the legislature trumps our rulemaking authority, I'm just going to tell you.

MS. PALMER: Exactly. And that's our very simple and narrow issue here is we believe that the Local Government Code provides an exact process for handling the exact situation that came up in this particular issue of the related party loan. We handled it in accordance exactly with the Local Government Code, and we believe that staff should have recognized that and awarded the 14 points. In my mind it's a very, very simple issue.

MR. OXER: We actually put this rule in place to make sure that the staff didn't have to recognize any subtleties because we wanted a clear separation, period.

MS. PALMER: And I believe there is a very clear separation here, and a very, very clear Local Government Code rule that says that if a government official has any substantial interest in the matter coming before the board, they have a process laid out that they have to follow, and in fact, the final portion of that statute says this statute is
specifically intended to preempt the common law theory of
conflicts. And I don't know how you make it any clearer than

MR. THOMAS: Do we have that statute? I mean, you're talking my bailiwick and most of us up here that have
this background. And what you've just said now triggers the
next question for me, and do I actually have a rule that is
technically and legally in conflict with statute, versus is the
rule that we've put in place is it actually not inconsistent.
In other words, does the allow for exactly what the staff did
and what the Board voted to approve?

MS. PALMER: I believe that the rule is in direct
conflict with the statute, and I believe that strongly enough
that I would ask for an attorney general's opinion on that.

DR. MUÑOZ: Barbara?

MS. DEANE: Right. I would say that if our rule
said that they cannot give funding to this entity, we would
have a conflict, and that would be correct. But that's not
what our rule does. Our rule relates to points. This specific
sentence in this specific rule has been upheld by an opinion of
the Office of the Attorney General last year, and I don't
believe that there's a direct conflict here.

Now, that said, could the Board decide to recognize
the Local Government Code and decide to, in its implementation
of the rule, recognize that. I think there are some issues

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there in doing that. For one thing, the issue of related party
and the definition of related party occur many, many, many,
many places in our rules, and so to do some kind of blanket
recognition of Chapter 171 would basically wreak havoc on the
QAP, so any recognition of that would have to be extremely
narrowly tailored.

The other question I had, and I kind of wanted to
ask Claire this question. Do you mind?

MR. OXER: Please.

MS. DEANE: The rule was enacted, as Jean was
saying, to address the issue of a local governmental entity
setting up its own entity and then basically lending themselves
money, and the provision that you specifically cited, which is
171.004, in addition to allowing an individual member to file
and affidavit and recuse themselves, in subsection (c) it says
if every member of that local governmental body has the same
conflict of interest, they could all file affidavits and they
don't have to abstain. So do you think that, in your opinion,
would that then allow the governmental entity to do one of the
main reasons the rule was targeted at and that is then they
could all file affidavits and say we're all setting up this
entity and we're all going to loan it money, so here's our
affidavit, we're going to abstain, and therefore, we get to do
one of the main things that the rule was targeted to?

MS. PALMER: I understand that point, but if you
look at the QAP on this particular section of local government funding, the local government body that has to give the funds has to have been appointed by the mayor of the city or the city council of the city, so I find it difficult to imagine a situation where a city mayor or city council is going to go and make up a body specifically to fund an application for tax credits. I think it's a disingenuous idea to think that we're going to suddenly have cities creating bodies. For one thing, they have to have money, and where that money is going to come from is unique, at best. And number two, you're going to have to have a city willing to set up -- I think that hypothetical is so farfetched.

MR. OXER: Just to offer a historical note, it's not a hypothetical. In fact, that rule was put into place to prevent something that happened before.

MS. PALMER: I personally would never certainly recommend that to my client.

MR. OXER: Nor would anybody here personally ever do that. Okay? But the rule is in place to stop something that already occurred.

MR. THOMAS: I don't want to be antagonistic, and this is obviously a heated issue and I'm concerned a little bit with the discussion, but we all know, some way more than others, that we have come through a troubled period and we want to make sure that we don't go back to that troubled period.
MS. PALMER: I certainly don't disagree with that, and I absolutely understand why the rule is in place, but I also think that in the situation that I have before you today, we have an applicant who followed every rule they believed was proper, and they lost 14 points over that, and 14 points, as you know -- I mean, losing one point in an application can make the difference. Losing 14 points when you've acted in good faith and followed a statute of the State of Texas, to me seems patently unfair and an overly narrow reading of the conflict between your rule and the statute.

MR. THOMAS: Well, help with the slippery slope argument now. You understand exactly what my concern is.

MS. PALMER: I absolutely understand.

MR. THOMAS: And how does our staff, addressing using rules that are intended to create a fair playing field for everybody, not end up having a document which is five times this size in order to be able to address the concern you're raising?

MS. PALMER: I think you could put exceptions into the QAP language on the local government funding; I think there's many ways that language could be handled. I don't think that this particular issue would affect any other section of the QAP that uses the related party terminology because we're not trying to change the related party issue with regard to the organizational chart or the organizational structure,
we're not trying to exempt someone out of the organization for any purpose other than local government funding. So first, I think we're only talking about that one section of the QAP and how it fits within the Local Government Code requirement of allowing a board member to recuse themselves.

And I think, number two, I think you need to look at the fact that the QAP is a living, breathing document that tries to address issues every year that come up. There's always a quirk in it that is an unintended consequence. In this particular case I think that Mr. Mayfield acted so in good faith and did exactly what he knew to do under the Local Government Code, I can't imagine that -- to me it just seems simple that they should have been awarded these points, that he did what he was supposed to do. I think that you could put in place language in that if there's some economic benefit that is going to derive to both the parties on either side, then they cannot give funding for the development. You've added language every year.

DR. MUÑOZ: Let me ask a question. This rule was enacted in '13, it was changed very deliberately from the previous QAP. Didn't he know that this rule existed and that points would not be allocated?

MS. PALMER: No. He didn't apply in 2013, and he believed when he read the rule that he had a procedure.

DR. MUÑOZ: Did he ask staff?
MS. PALMER: I don't think he thought he needed to.

The Hoovers and Mr. Mayfield have been applying for tax credits since the '80s, they probably know more about the tax credit process than I will ever begin to know.

DR. MUÑOZ: They didn't know that after 2013 that points wouldn't be allocated given this kind of financial relationship.

MR. OXER: For the record, it's not the financial relationship.

MS. PALMER: It's not the financial relationship.

If he had applied in 2013, he would have done exactly what he did this year, he would have filed the proper paperwork and recused himself from the vote of the economic development corporation.

MR. THOMAS: That's the nuanced argument, and the question is on that nuanced argument is our rule -- I don't see it necessarily -- I'm sorry, I'd like to see the document -- I don't necessarily see it's in contradiction just on the explanation we've been provided, but I do think it's a significant enough issue that it should have come up. And unfortunately, our law library is right across the street and I don't have internet access or I would have pulled it up.

MR. OXER: Let me ask a question, Robert. Do you want to see the law on 171, or do you want to see the QAP?

MR. THOMAS: I don't want to do the legal analysis
myself -- I do want to read it -- I don't think that's my job, we have a phenomenal general counsel, but I do have some concern that I didn't get an answer that comforted me in the context of this narrow situation.

MR. IRVINE: It may be appropriate to discuss that with counsel in executive session.

MR. THOMAS: I think that that's definitely a good idea.

MR. OXER: That's where I was headed with this.

Is there anything else you'd like to add, Claire?

MS. PALMER: No. Mr. Mayfield would like to make a few comments.

MR. OXER: Okay. Mr. Mayfield.

MR. MAYFIELD: Thank you, Board members. I guess unfortunately, I'm Mark Mayfield. I'm the executive director of the Marble Falls Housing Authority, as well as the Texas Housing Foundation. I've been doing this for 27 years.

There's two points I really want to make toward this. I'm the director of the housing authority, the Texas Housing Foundation is a public housing authority. It was birthed through just an effort that I have put my whole career into of how to provide housing that is much needed in communities all across the state.

The Texas Housing Foundation was started in 2009. It's the only public housing authority of its kind in the State.

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of Texas. It was created by resolution of the county commissioners of Blanco, Burnet and Llano counties, and the reason it was, was to become a tool because I was starting to develop housing in Marble Falls -- it's a growing community just west of here -- it's a growing community and a lot of needs were out there. I was the executive director of the housing authority and I was trying to meet those needs, and we began to do a lot of that through the Marble Falls Housing Authority and I started running into a lot of conflicts with HUD.

So I thought how can we address this HUD issue because a lot of the regulations that were coming from the federal government through the Department of Housing and Urban Development were starting to hinder a lot of our efforts to provide the housing. And so I go the services of a gentleman named Joe Shipp, who is a former assistant secretary of HUD. He came down and we began to explore how this could be done.

And so really, there's a couple of things I want this Board to understand and know about this. This is a HUD initiative that I'm trying to incorporate. Here's the HUD approval letter dated October 8 of 2009 and this was what birthed the Texas Housing Foundation when we elected, as a board of commissioners, to walk away from the federal public housing program, and the Marble Falls Housing Authority created a new housing authority with the Texas Housing Foundation, the
City to Marble Falls, my board of commissioners, the county commissioners of Llano, Burnet and Blanco counties to create this.

And through the special application center with HUD, they agreed to allow us to demolish the 100 public housing units and to go back and to put affordable housing units on this site. The City of Marble Falls passed a resolution, a revitalization plan, swapped a lot of land, parks, all kinds of things that we're doing in the City of Marble Falls, all under this guise of this HUD approved plan. Because of the regulations that we work under, we were only able to apply for 80 units, we demolished 100 units, to put back, according to the plan, 134.

We've already done the 80 units, got them on the ground, took the public housing units down, great property, tremendous, tremendous asset, an award-winning property that we put in Marble Falls. Now we're trying to finish this effort. This is the third time that we've applied for these credits, this is the third year in a row, and here we are now because of some related party issue.

I am not an owner, I am an employee. The Marble Falls Economic Development Corporation was not created to try to underskirt some regulation to allow this thing to happen. One of the things about rural communities, if you have any idea about rural communities, people like me have to serve a lot.

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This is my second go round on the economic development corporation board. I've served as mayor, council, school board, everything, you name it, been there, done that. It's just a part of what happens in rural communities. And to sit here and say that some related party issue and they're going to take 14 points away just because you are who you are is just the quagmire that we're working through here.

And here we are again, ready to complete this issue, complete this development, to complete this HUD-related plan, and because I'm the executive director of the housing authority that's applied through the local government, went through the full recusal process, the whole thing that's state law, following state law to the letter, and yet there's some issue here and they're going to pull the 14 points. I don't know how we'll ever finish this HUD-approved plan under these type of circumstances.

MR. THOMAS: Unless you retire and move to Hawaii.

MR. MAYFIELD: Well, Marble Falls is close to Hawaii.

MR. OXER: Pretty close to paradise.

MR. MAYFIELD: This is not some shifty maneuver to try to do something.

MR. OXER: Mr. Mayfield, I don't want to interrupt you, but to the point, I recognize your position, I grew up in a rural community, an extraordinarily rural community, my
nearest neighbor was like four miles away. And I recognize as
a sort of senior member of the community, there are a lot of
hats that you have to wear.

For the record, I'd like it stated on the record
that when we write the QAP, we go through this as a meticulous
process, it's painfully detailed, with the idea that these
rules have to apply for this program statewide.

MR. MAYFIELD: I understand that.

MR. OXER: So while we appreciate that there are
circumstances where this is not the case and it's a matter of
community service -- which we much appreciate and I'm sure your
community appreciates -- we're still trying to create a rule
that's fair to the entire state. That's just an issue that we
have to deal with, it's a plain policy issue. I'm not going to
say it doesn't result in blunt instrument abuse or impact on
some projects, it simply does, but that's just one of the
things.

I remind everybody, and anybody who's been here
before knows that I've said this, when I took this job they
said it's going to be really hard work, nobody is going to
appreciate what you're doing, and every decision you make is
going to piss off somebody.

So with that, I'd ask if there's anything else
you'd like to say. We get your point and I appreciate that
you're here on this.
MR. MAYFIELD: Well, I guess the legal side of it, we spent all day yesterday with Senator Fraser talking about this. There's a disagreement. We have followed state law.

MR. OXER: And we respect that you have followed the state law with respect to the financing of the project, we understand that, and our issue has little to do with the financing, for financing the project. It's just that the application of the QAP and the points available under that rule, that's a different rule, that's not in conflict.

MR. THOMAS: Well, I'm not convinced that it's not, so I don't think it's fair for us to make that blatant statement.

MR. OXER: It's not in conflict in my mind.

I will say we've heard what you've had to say. Is there anybody else that wants to speak on this, Claire?

MS. PALMER: No.

MR. OXER: Okay. Here's what we're going to do. We've been in our saddles here for an hour and a half, so we're going to take a 15-minute break and we're going to come back and take this issue up on this item after we have some discussion with general counsel in our executive session. Stay tuned, there will be more. For right now, let's take a 15-minute break and be back in here in 15 minutes.

(Whereupon, a brief recess was taken at 10:37 a.m.)

MR. OXER: Let's get started again, please.
What we're going to do is table this item for now, at the Chair's discretion, because I want to hear some comment from general counsel during our exec session. So given that's the case, Claire, just to remind you, it ain't over yet, we're still talking about this, so we're going to get some advice from our general counsel and get back to you after we get through exec session. If we get through quickly the next couple of items and get them taken care of it, we will do it as quickly as we can and get it done before lunch.

MS. PALMER: (Speaking from audience.) Chairman Oxer, will I get a chance for rebuttal or anything?

MR. OXER: You'll have a chance to continue the conversation after we come back. Don't be concerned.

MR. THOMAS: For rebuttal.

MR. OXER: If you ride a shuttle, what does that do to you?

MR. THOMAS: It re-shuttles you.

MR. OXER: You get a chance to shut when you come back.

MR. THOMAS: Yes.

(General laughter.)

MR. OXER: We make light of it because we know this is very difficult at times, these are hard decisions, but it's all better if we take a breath and think about it for a while.

Next item, Jean.
MS. LATSHA: The next item on your list, another appeal, this is Royal Gardens in Wichita Falls. Staff denied points for a few items here related to educational excellence, again, commitment of development funding by a local political subdivision, and pre-application participation. I understand that the applicant decided not to move forward with the appeal, so staff's recommendation is denial of the appeal.

MR. OXER: So they're actually conceding the points.

MS. LATSHA: Conceding the points. But that said, do we still need to formally follow this?

MR. THOMAS: Motion to approve staff recommendation.

DR. MUÑOZ: Second.

MR. OXER: There's a motion by Mr. Thomas to approve staff recommendation on item 3(b), and a second by Dr. Muñoz. Is that correct? Okay, close enough. Is there a request for public comment? There's none because they're conceding the points. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. Thanks, Jean. Next.

MS. LATSHA: You're welcome. Next on the list is Cleme Manor. This is a development proposed in the City of
Houston. This is actually two separate requests combined into one, but it will make sense in just a moment. It's an appeal of a termination under 10.101(a)(4) which undesirable area features and a request for an exemption under 10.101(a)(3) undesirable site features. It might seem a little unusual that staff is recommending granting of this appeal but the application can't move forward without Board action due to the necessity of the exemption, so we felt it appropriate to bring both recommendations under the same board item since they involve the same property and similar issues.

We have covered both of these rules at previous Board meetings, but just to summarize, the undesirable site features addresses those site features that are within 300 feet of the proposed development, including a railway, junkyard, heavy industrial use, and without the exemption that can be granted for developments proposing rehabilitation with ongoing assistance from HUD, those applications would be found ineligible. The undesirable area features rule addresses features within a thousand feet of the site, things like blighted structures, criminal activity, hazardous waste sites, et cetera. It is under this rule that staff actually did terminate the application.

This development is undoubtedly within 300 feet of a railway, and staff, upon two separate site visits, did see some evidence of blight, industrial use and junkyard. The area
also has a history of relatively high criminal activity.

However, there's also a significant revitalization effort from the City of Houston for this area, but because the rule related to undesirable are features doesn't specifically contemplate mitigating factors such as revitalization, staff did move forward with the termination.

However, in the applicant's appeal they did point to 10.207 of the rule which relates to the pre-clearance process. This part of the rule does suggest that staff and/or the executive director consider mitigating factors when making determinations with respect to eligibility of the site.

The applicant also pointed to some specific detail about some of the features that were previously mentioned. In particular, the railroad, there was a noise study conducted in accordance with HUD standards, indicating that it did not have a significant impact on the development. Also, the applicant pointed to the fact that the City of Houston has no zoning so the proximity of the warehouses and supposed industrial use to residential areas isn't that uncommon in the City of Houston. Also, some of those uses wouldn't necessarily be considered heavy industrial.

In addition, the applicant researched the site. There does appear to be that scrap metal yard that staff determined was a junkyard at one point, and it is, in fact, part of the Houston Valve and Testing Company and used valves
are kept in inventory there for sale. So staff might be
conceding also that some of these features that appeared to
exist on those site visits, either there are mitigating factors
or other circumstances that maybe these features don't actually
meet what the rule was trying to get at when we didn't want to
see these things around. I didn't say that very well.

    MR. THOMAS: You didn't want the tail to wag the
dog.

    MS. LATSHA: That's right.

    Further, staff did meet with the City of Houston
and the applicant. I think it's fair to say that we were
pretty impressed with the efforts being put the Greater Fifth
Ward and also with the applicant's very specific plans to
address issues of crime at the property. Staff does recommend
approval of the appeal and also that the Board grant the
exemption. This determination to recommend the granting of the
appeal does take into consideration matters of interpretation
of the QAP. First, it is our view that these undesirable site
and area features may be considered in the context of
appropriate mitigation and revitalization, as pointed out by
the applicant.

    So without any further questions of me, I believe
we have some folks here from the City of Houston who would like
to comment on the development.

    MR. OXER: Before we comment, as we always do, we
have to have a motion to consider.

MR. GANN: I'll move staff's recommendation.

MR. OXER: Motion by Mr. Gann to approve staff recommendation to approve -- say it again, Jean -- approve the waiver?

MS. LATSHA: Grant the exemption for undesirable site features and grant the appeal of the termination under undesirable area features.

MR. OXER: Motion by Mr. Gann. Do I hear a second?

MR. THOMAS: Second.

MR. OXER: Second by Mr. Thomas. Okay. We'll have public comment, and we'll start right here. Now, you folks sitting on the front right there, you have an interest in making a comment on this. Cynthia, were you first?

MS. BAST: Yes, sir. Good morning, Board. I am Cynthia Bast of Locke Lord, and I am representing the applicant for this appeal and clearance.

Cleme Manor is a very important redeveloping in Houston's historic Fifth Ward.

MR. OXER: I have a quick question before you go too far here, Cynthia. You seem to be getting what you're looking for.

MS. BAST: Yes, sir. I am just doing an introduction. Because this is such an important thing to the City of Houston, we really need to emphasize that to you all.
We appreciate staff's recommendation for approval, we appreciate your time, however there are a number of people here from the City of Houston that I just want to introduce, and then I'm going to sit down and they would like to give you context of why this is so important to their city.

MR. OXER: And while I appreciate that it is important to the city, if you're getting what you want, can there be anything that's much more important than that?

MS. BAST: No, sir, other than we do believe that letting you all know what's happening in the City of Houston is important because this is part of their distribution of Disaster Recovery Round II funds. There are only five developments that have been selected for those funds in the City of Houston. One of them was actually on your agenda today, two others are going to be coming before you in the future, and so the City of Houston really just wants you all to understand what they're doing with their revitalization and what they're doing with their disaster recovery funds.

DR. MUÑOZ: Cynthia, at least on these other two that you're referring to that will be coming before us in the future, I think it's more appropriate for us to learn as they're before us rather than take this opportunity for some sort of preemptive narrative on these prospective projects.

MR. OXER: Because a preemptive narrative, we can't listen to anyway on anything that's not a consideration for...
this agenda.

   MS. BAST: Absolutely.

   MR. OXER: And while I appreciate the members, I'm from Houston, Metro Houston, so I drove over here too, appreciate you being here, appreciate your interest in the process. And of all the folks out there, there's a whole bunch of those same colored shirts, does everybody want to talk or is it just you? What I'm going to ask is whoever is going to speak for the City of Houston and for the resident group, or whatever you represent, if you could put yourselves together and somebody represent whatever you want to say instead of continuing to say it three or four or five times. We've been through this rodeo before, and we would like you to consider the time and effort that everybody has got into it.

   MS. BAST: We have had that discussion, to be respectful of your time. We have one person from the City of Houston and the developer, and that's all we brought that wanted to just very briefly give you an overview, that's all.

   MR. OXER: Great. Happy to have them. Introduce them and let's see what you've got to say.

   MS. BAST: So we will have Stedman Grigsby from the City of Houston, and Neal Drobenare from the NHP Foundation.

   MR. OXER: Great. Thanks. And everybody remember to sign in when you come up, just for our recorder's benefit.

   MR. GRIGSBY: Good morning. As Cynthia said, my
name is Stedman Grigsby. I'm the division manager for the City of Houston's Housing and Community Development Department. I oversee the City of Houston's Hurricane Ike Disaster Recovery Round II multifamily and non-housing programs which are funds which have been made available to the city by the General Land Office of the State of Texas.

The city's plans for our DR-II funds are to implement a targeted comprehensive revitalization plan which will concentrate investment in specific neighborhoods to create areas of opportunity which would be stable, racially integrated, diverse and economically robust, and to preserve affordable housing within those communities. The Fifth Ward is one such community which we have identified, and the renovation of Cleme Manor is critical to our plan for the Fifth Ward.

This comprehensive revitalization plan was developed over two years in conjunction with community residents and organizations, fair housing advocates, affordable housing development experts, a nationally recognized urban planner, the General Land Office, and HUD. As a result of our collaborative effort, we have found common ground with fair housing advocates through our plan to transform historically underserved neighborhoods of minority and poverty concentration into high opportunity neighborhoods.

We will leverage DR-II dollars within areas where previous current and planned public and private investment will
spark this comprehensive revitalization. Such public and private investment in the Fifth Ward includes 14 separate activities of various types which total approximately $352 million. As a part of the General Land Office's Disaster Recovery Round II program, an extensive fair housing review of our plan was conducted and it has been determined that our plan does affirmatively further fair housing.

HUD has also become aware of our plan, has reviewed it at the highest levels, and they are very pleased with what we have developed.

Thank you to the staff for allowing us to explain our plan and for your time this morning, and I ask that the Board support staff's recommendation regarding this matter.

MR. OXER: Good. Is there any comment or question from the Board?

(No response.)

MR. OXER: Thanks.

MR. DROBENARE: Good morning. My name is Neal Drobenare. I'm the vice president of the NHP Foundation, and I will be very brief.

The NHP Foundation is a national housing nonprofit devoted to the preservation of affordable housing with a portfolio here in Texas. We're very excited about this project, in particular because we believe that this is a neighborhood that has the opportunity to become a high
opportunity neighborhood, and one of the reasons it isn't, is we've got this property which, in fact, dominates a section of the Fifth Ward and its rehabilitation is necessary to set the pace for private investment in the neighborhood of single family and very small multifamily that surround it.

We recognize that this is a property that has had a history of crime, and in fact, even had a nuisance plan put in place by the City of Houston. We find that to be one of the most compelling reasons to do this, to bring true professional management, to put in the physical repairs, the cameras. We do have 50 manned cameras, along with a consolidate plan with the Harris County Sheriff and the Houston Police Department, to make this a safe property. And we believe that if this property is safe and crime is addressed, we'll have done a major part of the crime issue for the community.

We're very excited about this. We believe Section 8 should be not just a warehouse for the poor but a launching place where people can get ready for improving their lives through not only this housing but services attached for it.

We appreciate the work that the staff has done to really dig in and understand this neighborhood and understand this plan and understand this property. Thank you for your time, and I'll end here unless you have any questions for me.

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

(No response.)
MR. OXER: Okay. Thanks very much.

Stedman, I hope you'll pass along our best regards, certainly mine, to Mayor Parker. She and I had an opportunity to share a table at an event here not too long ago, and I appreciate her interest in what we're doing and her consideration for the effort that we go through because there are deliberations that we have to do to make that fit in to what the city is trying to do. So I hope you pass along our best regards.

Is there any other comment? Yes, ma'am. Good morning.

MS. WALKER: Good morning, and thank you for allowing us to come and speak.

Dear Chairman Oxer, Board Members and Mr. Irvine.

Since we didn't get the letter to you, I'm going to read the letter so we won't have to speak and everything. My name is Debra Walker and I'm a TOP board member. Also, I chair the TOP housing campaign with our organization.

MR. OXER: And TOP is?

MS. WALKER: Texas Organizing Project. We're a grassroots membership driven organization, and we took the fight on with the city Housing and Community Development to get the monies to come into our neighborhood to revitalize for our high opportunity areas.

MR. OXER: Good audience from what it looks like.
MS. WALKER: Thank you.

We are here today to speak on behalf of the members of TOP.

Cleme Manor Apartments are a product of bad housing policy from a bygone era. It is a 288-unit project based Section 8 apartment development built 40 years ago in a place and a manner that would not be permitted today. All of the residents have extremely low income, many are single mothers or elderly, and almost all are African American. It is one of the largest government subsidized housing developments in Houston today. It was poorly designed where it was built, has been allowed to run down, and the current owner and management have made a mess of property management. Cleme Manor Apartments have been neglected for so long. The development has to be fixed for the sake of the tenants and for the future of the neighborhood.

TOP has worked closely with Mayor Annise Parker and City Housing Director Neal Rackleff, HUD and fair housing advocates to develop and secure funding for a plan to transform the neighborhood around Cleme Manor Apartments, and two other Houston neighborhoods into high opportunity areas. This type of neighborhood transformation is completely unprecedented. Hundreds of new and reconstructed affordable homes are being rebuilt in the blocks surrounding Cleme Manor. Gentrification is going full force just a few blocks of Cleme Manor in the

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form of hundreds of new high end town homes at the edge of
downtown Houston.

The goal of the city, HUD, the neighborhood and
fair housing advocates and TOP is to get quality affordable
housing in the neighborhood so that the current residents can
enjoy the new opportunities and jobs that come with a
revitalized, diverse and integrated neighborhood. TOP will
continue to work with the developer of Cleme Manor Apartments
and the city over the coming weeks to ensure that things are
put in place to ensure that Cleme Manor is rebuilt right and
contributes to the revitalized community.

We know that TDHCA has compliance rules and
standards for apartments that receive housing tax credits and
that your staff enforces those standards. We will count on you
to do that over the years to come to ensure this rebuilt
project remains high quality.

For the sake of the tenants at Cleme Manor
Apartments, the neighbors, and our dreams for a new and better
community that overcomes past discrimination, TOP asks for your
support for the request before you to grant eligibility for
Cleme Manor Apartments for low income housing tax credits.

Sincerely yours, TOP, members of the Texas
Organizing Project. Thank you.

MR. OXER: Thank you.

Are there any questions from the Board?
(No response.)

MR. OXER: Other members of TOP, we appreciate you being here. Obviously, we can pick you out of the crowd. Are there any other questions, any other comments on this item? Jean, I have one other question. This looks like TDHCA will be putting money into a project that is not the first money in, there is obviously a lot of money going in to revitalize this area.

MS. LATSHA: That's correct. I think that was a big part of our discussion. When we met with the City of Houston and the applicant, it became pretty apparent to all of us that there's some really significant revitalization effort going on here, and it's already begun and there's plans to do even more.

MR. OXER: So this is not a revitalization plan, this is an execution and delivery on revitalization.

MR. IRVINE: It's attracting private sector capital already.

MR. OXER: Great. Any other comment or question from the Board?

MR. McWATTERS: Let me say this, Mr. Chairman.

MR. OXER: Yes, sir, Professor McWatters.

MR. McWATTERS: That was my question about it being the first money in. But I would also like to commend Ms. Bast for her letter she wrote on May 7. It was a very lawyer-like
letter, but given that I'm a lawyer, it presented a most compelling rational objective case for this, and I appreciate it, and hopefully it will serve as a template so people can ask you for maybe a Word copy and they can just change the dates and proceed from there. It was an excellent job and presented exactly the concern of the Chair.

MR. OXER: Given attribution, do you get royalties each time that letter is used, Cynthia?

(General laughter.)

MR. OXER: Anything else?

MS. LATSHA: No, except that I had the same reaction, sir.

MR. OXER: Okay. There's a motion by Mr. Gann, second by Mr. Thomas on item 3(c). All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Congratulations, folks, and good on you for what you're doing over there.

What's the next one, Jean?

MS. LATSHA: One more appeal.

MR. OXER: Okay. Let's do Liberty right quick and get that done.

MS. LATSHA: This is, again, an appeal of denial of points on an application, Liberty Square and Liberty Village.

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The points were denied under 11.9(e)(e) pre-application participation. Applications are eligible for six points if certain consistencies remain between the submission of a pre-application and an application. This includes that the application is participating in the same set-asides. This pre-application was submitted indicating participation in the USDA set-aside, and the full application indicated the same; however, upon review, there was no evidence of any USDA funding in this transaction.

Staff issued a deficiency and the applicant's response was essentially that the development was eligible to receive USDA financing, however, still no indication of any actual USDA financing in the transaction. So basically the ramifications of that are simply a loss of pre-application points. The application is still eligible to move forward but because it's not eligible to participate in the USDA set-aside, basically there's an inconsistency between that pre-application and the application submission because the set-aside changed, and so staff denied six points under pre-application participation.

During their appeal -- this was not during the deficiency process but at the point of appeal, the applicant produced a letter from Amegy Bank indicating that part of the mortgage financing was going to be provided under this business and industry loan from the USDA. We researched that loan a
little bit and discovered that this type of activity is not actually eligible to be funded under that B&I loan program. I think the applicant actually found the same. And my understanding is that today they may be proposing yet another way to have USDA financing in this transaction.

I believe they're going to try to receive funding under an intermediary relending program where the USDA lends money to a nonprofit, the nonprofit then lends that money to the development. Staff has some reservations as to whether participation in that program would qualify them to participate in the USDA set-aside, but more importantly than that, this almost feels like an extension of the administrative deficiency process. It just keeps changing and changing, trying to get their application to meet the requirements to participate in the set-aside when it just simply never met them.

One thing I would like to point out, 10.902(d) of the rules regarding appeals states that: While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the executive director. Full disclosure allows the executive director to make a fully informed decision based on a complete analysis of the circumstances and verification of any...
information that may warrant a granting of the appeal in the applicant's or development owner's favor.

So staff recommends denial of the appeal.

MR. OXER: Any questions from the Board of Jean?

Motion to consider?

DR. MUÑOZ: Move staff recommendation.

MR. OXER: Motion by Dr. Muñoz to approve staff recommendation. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Good morning, Barry.

MR. PALMER: Good morning. My name is Barry Palmer with Coats Rose, and we're representing the applicant.

In this case we don't disagree with some of Jean's comments on where we are. This application applied in at the at-risk set-aside as a USDA deal. The QAP and the rules at this point do not require that you prove up that you have a USDA commitment at the time that you apply, and so we're asking for time to prove up that commitment at a later date.

In the letter from Mr. Irvine, when he denied the appeal, he stated that if we had information or confirmation from the USDA showing that the development is indeed eligible to receive the USDA financing, that he would be willing to consider that information and revisit this appeal. And we've had some further discussions with the USDA and have talked to
them about this program that Jean mentioned that the project would be eligible for. So what we're asking for today is not for the Board to overrule staff here but to table this appeal to give us time until the next Board meeting to present further information to the executive director, as he suggested he would consider in his letter, from the USDA that this project is, in fact, eligible for USDA financing.

MR. OXER: Any questions?

MR. THOMAS: Yes.

MR. OXER: Mr. Thomas.

MR. THOMAS: I'm confused. Do our rules require unequivocally showing that the USDA approval existed as part of the application process.

MR. OXER: Jean.

MS. LATSHA: I can't say that it's explicitly stated in the rule that an applicant should submit X, Y or Z to prove up that they are eligible to participate in the USDA set-aside, but it's logical to assume that if someone wants to participate in the set-aside that their application should indicate that they are eligible to participate in that set-aside. Otherwise, every applicant could simply check these boxes, participate in that set-aside inevitably and drag out this administrative deficiency process until we simply couldn't manage the cycle.

MR. THOMAS: So does that Amegy letter attached as
Exhibit 3 satisfy that requirement?

MS. LATSHA: No, because that is the B&I loan that they're actually not eligible to receive. I believe that when Mr. Irvine wrote his letter, basically what that letter indicated was should we find that they're actually eligible for that B&I loan, since that was documentation that was submitted in their appeal, that we'd be willing to consider that as evidence that they are eligible to participate in the set-aside. But I don't think that they're still making that argument. Like I said, our own research indicates that they're, in fact, not eligible for that funding.

MR. THOMAS: Period.

MS. LATSHA: That's right.

MR. THOMAS: These are fundamentally opposite universes. I'm trying to reconcile with what you said first with what you were told by the applicant's representative and now what you're confirming here.

MR. OXER: Something isn't gelling. Come on, Barry. Say your name.

MR. PALMER: Barry Palmer. You asked Jean is there something in the rules that says you have to have your USDA commitment at the time of application, and I took her answer to say, well, it's logical that you would, not that the rules say that. And so if that' what the rule should be going forward, then let's change it in next year's QAP and say that you have
to have your commitment at the time you apply. But this year it doesn't say that. And so we're proving up after the fact that we're eligible for the USDA financing because we weren't required to have the commitment at time of application.

MR. THOMAS: But our staff has just told us through Jean that you will not qualify for that.

MR. PALMER: For the particular program that the Amegy Bank letter evidenced that they would provide funding for. But there is another USDA program that the project would be eligible for that we could prove up that this project is eligible to be financed, and then if it were to be awarded credits, it would be subject to the project being financed by USDA financing and we would have to prove that up over the course of moving forward towards the closing.

MR. THOMAS: So, Barry, thank you. That helps clarify it in my mind which is, I think, exactly was Jean was saying, that there's a concern that for a $5.6 million project, I think, wouldn't you have wanted to have that so that staff could verify? Barry, wouldn't you, just in your due diligence, wanted to provide that to the staff since, even though it may not technically say that it had to be, where you could show that as part of the awarding that you had everything lined up so it didn't look like we were just rolling this out for months at a time?

MR. PALMER: Well, I would say it's analogous to
the commitments of local government funding. All of these
applications that you have before you have put in points that
they're going to get local government funding, but they're not
required to provide those commitments until after they get an
allocation. Sometime in September they've got to prove up that
they actually have the commitment. And the reason it's
structured that way is that local governments don't want to
actually commit money to projects unless they know they have a
tax credit allocation. And that would be the same problem here
getting a USDA or even a FHA commitment for a project before
you have a tax credit application.

MR. THOMAS: I'm having a hard time seeing that
analogy stick, honestly.

MR. OXER: And for the ones that are local
government financing, the recognition of the commitment in the
application before it's proved up and the funds are available
is evidenced in what way, Jean?

MS. LATSHA: That the applicant has, at minimum,
applied for the funding and that the funding entity recognized
that.

MR. OXER: There's some sort of documentation that
says they're qualified, capable, and the entity would consider
this as they go forward.

MS. LATSHA: And not only that they are considering
that application but that they will make a decision on that
application by September 1. So that if staff were to award applications that indicated points for commitment from a local political subdivision and then that commitment fell off, we would have ample time to reallocate those tax credits.

The idea that you wouldn't have to prove eligibility for a set-aside, an at-risk set-aside, a USDA set-aside, nonprofit set-aside, kind of guts the idea of the set-aside in the first place. This determines which applications you're competing against, it drives our allocation process when we make determinations for awards at the end of July.

MR. OXER: This is speculative at this point, but is there anything we can think of to do to clarify that as we go forward? Because what I can see is every rural application just checks that box.

MS. LATSHA: Exactly, which is why this situation is problematic. That's precisely what happened here: they checked a box, said sure we'll get USDA financing when we need it, but there's no assurance that that's going to happen at all at this point.

We could certainly throw some additional documentation in the manual that makes it clear what needs to be submitted. I can tell you, though, every other USDA application that we received, because they do have that USDA 515 or 514, 516 financing in place, it's all there. They submit it because it makes sense to submit it, it's part of
their financing structure.

MR. OXER: That they have obviously been working on before they get there, because if you work with the USDA and you're trying to get a project under the 2014 allocation and you haven't gotten the commitment yet, it's going to be 2018 before you hear anything.

MS. LATSHA: And maybe so, but I think what it speaks to also is that all of these applications, whether they're in the USDA set-aside, at-risk set-aside, any application, a threshold requirement is submitting documentation that indicates the financing structure of the development. And so those that have USDA financing in that structure, it's submitted as part of the application under those threshold requirements, and so it's simply already there.

For those that are competing in the USDA set-aside, staff looks at this, they say we have the box checked over here. Over here under the financing requirement, sure enough, there is some USDA financing in this deal.

MR. OXER: Any other questions? Is there any other comment? Barry, anything else you want to add? Make it short, 60 seconds.

MR. PALMER: Okay. In view of the fact that the QAP and the rules don't say when you have to prove up your USDA financing, all that we're asking is that we have the ability to the next Board meeting to show the executive director that the
project is eligible for USDA and we would agree to prove it up with a commitment no later than the time that commitments are due for local government financing, so that it would not drag out for a long period of time.

MR. OXER: What you're looking for is a stay of execution.

MR. PALMER: We're looking for a chance to prove up that we're eligible for the money. In view of the fact that there's not a requirement as to when you prove it up in the QAP, we're asking for it to be considered the same as local government financing.

MR. OXER: And I assume, Jean, you're taking notes about any modifications we're making next QAP so that we can take this out of the quirk list.

MR. THOMAS: How long have we been asking for these extensions in various communications with the staff to get to this forum already?

MS. LATSHA: I believe the first deficiency was issued sometime in April -- March 31.

MR. THOMAS: Thank you.

MR. OXER: Is there any other public comment?

Donna.

MS. RICKENBACKER: Donna Rickenbacker with Marquee Consultants.

First, with respect to the deficiencies, I'm not
questioning what Jean is telling you with respect to the deficiencies. This is kind of a unique situation with USDA. First, there is nothing in the rules that require us to prove up USDA financing at the time of the application submittal deadline. However, what's happened here is that you've got conflicting statutory rules and USDA trying very much, have been proactive in working with us to identify a USDA loan program that would fit for this project.

As it is right now, under the Texas Government Code we're not allowed to have a 538 loan in the deal. So the only other rural housing loan programs that would be available would be 515 and 521. Those loan programs are effectively inactive. They have been for a while, to the best of my knowledge, and based on discussions with USDA, it doesn't appear that those programs are going to be funded any time in the near future. So the USDA set-aside transactions that moved forward this year that were able to prove up USDA financing in their deal at the time of applications were those that already had a 515 or a 521 loan already in place that they were then going to refinance and move forward in that set-aside.

We're in a situation where this would be new dollars, so identifying those new dollars, we can't use anything that's under any of the rental housing programs because there's nothing available except 538, which we're not eligible, if you will, to apply for because the Texas
Government Code forbids us from using that housing loan program. So USDA has been trying to find a program that we could qualify for, and it has taken a while. Jean is correct, it has taken us a while to identify what that is.

USDA has identified over the last few days a program, this intermediary relending loan program that they believe this project would qualify for. There are two intermediaries that do serve Limestone County which is where Groesbeck is located. All we're asking for is some additional time to get to the executive director evidence that this particular project does qualify for that USDA financing.

DR. MUÑOZ: I'd like to withdraw my motion and move to table.

MR. OXER: Professor McWatters, you seconded.

MR. McWATTERS: I concur.

MR. OXER: Okay. With respect to item 3(d), the motion recalled, the second recalled. There's a motion now by Dr. Muñoz to table the item until our next meeting on the 26th, three weeks away. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Nice the way that worked out.

Any other comment, Barry? Okay. All in favor aye.

(A chorus of ayes.)

MR. OXER: Opposed?
MR. THOMAS: No.

MR. OXER: One no registered by Mr. Thomas.

Now we're down to the last issue, so everybody sit still while I read this. The Governing Board of Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act, to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.0739(c) of the Texas Government Code.

The closed session will be held in the anteroom immediately behind us. The date is June 5, 2014, the time is 11:37. We expect this to be a relatively short executive session, so it's 11:37 now, we expect to be back by quarter after 12:00. See you then.

(Whereupon, at 11:37 a.m., the meeting was recessed, to reconvene this same day, June 5, 2014, following conclusion of the executive session.)

MR. OXER: Let's get back in the game here, in the interest of time. I know Mark is on his way. The Board is now reconvened in open session at 12:22. We heard advice from our general counsel. In closed session we made no decisions, we
received advice from our counsel.

MS. LATSHA: I believe we're back to Oak Grove Village, Marble Falls. Staff's recommendation, in general, was to deny the appeal of the scoring notice where staff denied points under commitment of development funding by a local political subdivision.

I didn't know if you were wanting to hear some additional comments from me or if you'd rather hear from Claire.

MR. OXER: I think what we're going to do, we know the staff position and there's a current motion that has been tabled. There's some conversation we need to have about the questions and the interpretation by members of the Board here on this particular item. So I'll ask if there's any member of the Board who has a question of Jean or something you want to say, and Robert, I know you do.

MR. THOMAS: And it may not be material. One of the things you provided us before, Barbara, that gives us the boundaries here that says the submission of these forms occurred after the deficiency response deadline on Monday, April 12, 2014 and it was this late submission that caused staff to deduct the forms pursuant to the rule, and that's on page 2 of 3 in the lower third, the second to last paragraph.

MS. LATSHA: That was a different scoring item. Staff denied points under local political subdivision funding,
but then we also imposed, basically, a penalty of five points for a late submission for a deficiency response. That five-point reduction is not being contested by the applicant.

MR. OXER: Any other member of the Board have a comment or question? Tom, you had, I think, a pertinent comment, and while we respect the position that the rural communities have a limited source of human capital to apply to these situations, there's still options that they have.

MR. GANN: I was wondering, and I realize that you are on both boards or at least two boards, and that's the conflict. And I know you get paid by one of them so you do get some money from one of these entities as you work as executive director or whatever. Why didn't you resign one of those two, because that's all you would've had to have done in order for this not to be a conflict at all.

MR. MAYFIELD: Mark Mayfield, Texas Housing Foundation.

I was under the impression that the recusal process is how it was handled. I was told by legal that that is how it was handled. I recused myself.

MR. OXER: And let me ask a clarifying question on that, Mark, because this is really important. When you say legal, that is your attorney, not our attorney.

MR. MAYFIELD: Correct. That is correct. So that is the process that was taken. My understanding is that is the
law. I mean, I'm not a lawyer but that was my understanding, and again, in small communities you wear a lot of hats.

MR. GANN: I'm from one of those small communities myself, so I understand that, but I've also had to resign a few things just to be on this Board, and I just wondered why that was not considered, I guess.

MR. MAYFIELD: Well, frankly, I've had to join a lot of things to where public housing authorities would not be looked at in the way that they're looked, and this industry battles an image, and even with the creation of the Texas Housing Foundation we created with the purpose of not using that name. The Texas Housing Foundation was used because affordable housing is critical, but we have a tremendous image problem, primarily because of public housing, and that was what we have tried to get away from. The Texas Housing Foundation receives no funding from any tax levying body. We are completely self-sustaining, self-supportive. But I've had to sit in many roles, elected roles and everything else, to bring credibility to our industry to the elected forces because public affordable housing has, as you very well know and hear, the connotations of being negative and not really what it stands for. I've spent my entire career trying to change that.

MR. GANN: I'm in that same boat because I've also had projects. All right? I am a developer and real estate agent at the same time, so I understand that comment. I still
said you could have resigned one of those two and solved thiswhole problem from the beginning. I take your comments to
heart.

MR. MAYFIELD: One thing, I'm not a developer. I
know I get that hat put on me a lot. This is a perfect example
of public-private partnerships which I think is how it's going
to have to happen. Thank you.

MS. PALMER: Mr. Gann, can I just add?

MR. OXER: Hold on a second, Claire.

Barbara, what I would like, if you would, could you
restate the decision we have to look at here, or what we're
looking at from a legal standpoint, just a legal clarification,
the two issues that seem to be in conflict, from their
perspective, and then what we're trying to decide on? Because
there's the financing issue and there's a recusal process to
allow for financing for this, for a dozen other opportunities
out there, and while I understand how that operates and there's
a clear provision that the recusal allows that to occur, what
we're trying to look at here is the QAP, for a lot of reasons,
is the point allocation process, it doesn't have an impact on
the financing. So can you have some comments on that, Barbara?

MS. DEANE: Well, let me just say, as I said to
Claire earlier, I don't agree there's a conflict itself between
Chapter 171 and the rule because one deals with whether or not
they could contract with and provide financing, and it's not
for me to say, but there appears to be absolutely nothing wrong
with the contract they entered into or the agreement to give
funding or Mr. Mayfield's vote, nothing absolutely wrong with
that. But our issue deals with whether or not they get points
under the QAP, and so to me, there is not a conflict there as
such because getting points is different than whether or not
you can actually give funding. I understand the concern that
you might consider it futile to give the funding if you can't
get the points. It's kind of a different issue, though, than
whether or not there's a straight up conflict between the
statute and the rule.

I will say that -- and this was kind of the
question I posed to Claire earlier -- I do understand that
there was a purpose for which the rule -- the main purpose, not
perhaps the only purpose, but the main purpose for which the
rule was enacted was to deal with the issue of governmental
entities creating their own entity and then lending itself
funds which is, granted, a little bit different situation than
we have here. I think the rule itself, as it's stated, is
pretty clear and I don't think it's in conflict with the
statute. I do think that if the Board wanted to recognize and
apply that statute in an extremely limited context, they could
consider that from a policy standpoint, but I don't think that
there is a legal conflict in which the statute completely
overrides and nullifies the rule.
Is that helpful?

MR. OXER: Claire, do you have a comment?

MS. PALMER: I do. Claire Palmer, representing the developer.

First, I wanted to address what Mr. Gann had brought up, and that is I wasn't the attorney that gave that advice, it wasn't the developer attorney reading the QAP and giving advice on how to handle the situation, that as the EDC and the City of Marble Falls attorney giving Mr. Mayfield advice on how to handle this situation which is who he took it to, rightfully so.

They could have played this system, they could have had the EDC give the money to the city and the city then grant the money. This is a developer who is so incredibly honest and transparent that they didn't want to play a game. If they had thought through the whole process and said, oh, well, maybe we're going to have a problem here, they could have played the system and figured out a way to get the money to some other entity and get the 14 points. The fact is they believe they played within the rules and they believe that they solved the related party issue.

And frankly, the QAP on local government support is where the points category is; you can't separate local government support from the points categories. When the local government agrees to provide certain levels of support, that is
a points category, so for me, the division between yes, they
could provide a resolution to give local support but we have
the authority to decide how they get points, to me, is really
such a narrow split in what the rule said as to be a little bit
disingenuous. I mean, this is a points game. To get a
resolution that's going to give support and have Mr. Mayfield
properly recuse himself and call that acceptable under the rule
but we're not going to give points for it makes the resolution
of local support useless because 9 percent tax credits is a
points game.

MR. OXER: And I understand where you're taking
that, but to say that it's a violation of the rule, it's not a
violation of the law. The QAP is the rule.

MS. PALMER: Right.

MR. OXER: Now, the whole discussion we had, and I
think most everybody in here who was a party to this, will
recall that last year we had this extended discussion, heated,
voluminous and extended, that if the local government entity
provides an opportunity to loan money to somebody else, the
whole purpose of the tax credit program is to provide
incentives for private sector participation in these financing
mechanisms.

MS. PALMER: Right.

MR. OXER: And having a public entity creating an
entity, loaning itself money, would immediately give an unfair
advantage to the public housing authorities -- which, if you'll recall, we went through an extremely heated conversation about that -- and the purpose of that rule was to simply separate that issue, simply separate the issue.

MS. PALMER: I completely agree.

MR. OXER: And now we're back to the issue of does it violate the law of Texas. No. Does it qualify for points under the QAP? There's nothing in the law that says we're obliged to give points for doing something that the law doesn't call illegal.

MS. PALMER: But you are obligated to give points for funding sources from local government because in the statute that's one of the categories that's listed in the statute. It doesn't say it can't be from a related party. The language in the QAP has restricted what's even in your own statute about funding from local governments. We're definitely talking about splitting hairs, and if we want to come up with a compromise solution, I can give you half a dozen of them.

The fact is we came with an argument that I think, in my opinion, should win the day here and would probably win the day in an attorney general's opinion. But if you want to say we recognize you did this in good faith and we'll give you an opportunity to go to the City of Marble Falls where Mark is not a related party and get the funding, we'll be happy to do that. We've already talked to them and we know that we could
get the funding from some other source. It's not that we can't
get the funding from some other source, it's just that we
believe we did it correctly. But if you want an option here,
that's certainly an option.

MR. OXER: That's an interesting crease in this
because we just got finished offering somebody an opportunity
to have three weeks to go restate their financing. I've got to
tell you, this whole related party issue, it's a third rail,
somebody is going to get fried on this pretty soon if we're not
careful about this.

Jean, do you have a comment right quick, a thought?
We're looking for creative solutions to this, and frankly,
that's the best one I've heard. If you've got another option
to go get money for this, Claire, we don't have to make this
decision, or we keep the rule in place and you can get the
project going. Because we certainly want, Mr. Mayfield, to
support those projects, but we've also go to maintain some
continuity in our rule and some structure.

I sat here two years ago and told some veterans,
who sat there with tears in their eyes and tears in mine, we're
not going to fund your project because you didn't follow the
rules. Now, our interpretation of the rules, that's basic
policy, and we always wind up in these situations where we're
looking at a crease and we're trying to do the best thing for
the State of Texas.
So what I'm trying to do here is find a path through this that will support your project that will maintain the integrity of our QAP, while in the interim between now and the time we'll modify it for the QAP in 2015, we can kill this little quirk because the damn things keep showing up all the time, take another one out and iron this wrinkle out of this cloth.

Hi, Jean. Welcome back.

MS. PALMER: Jean Latsha, director of Multifamily Finance.

I do see some problems with allowing this applicant to substitute this financing. Basically, we've said this a lot too, we review these applications as they are submitted on March 1. To simplify this a little bit, let's say someone did not submit a resolution from a local government indicating support for another scoring item, and basically what's happening here is that applicant would simply say: Well, I can get the support, I just can't get it until June 5. And we have consistently said that's not acceptable.

And that's essentially what would be happening here, we would say you submitted something that was not eligible for points, well, that's great, I can go out and get something that is eligible for points now. It's something that would, again, make the cycle a bit unmanageable. I don't really have another comment except for that, that that would be
presenting some very new and different information quite a bit after the application deadline.

MR. OXER: Your point is made.

MS. PALMER: Wait, wait.

MR. OXER: Relax, Claire. Nobody has called for a question, nobody is going anywhere on this.

MS. DEANE: Mr. Chair, I was just going to offer, without specifically saying it might be substitute financing, if you want to put it on the June 26 agenda, legal would be glad to work with Claire and with them to look at possible legal options and other possible legal avenues, may or may not include substitute financing, if that would be a problem. But I'd be glad to work with them and see if we can find some way around -- not way around but some way to work through this legal issue, if that's the Board's desire.

MR. OXER: Right. And, Mark, we recognize that you've been at this for several years, and we're not here to say no, and we've had this conversation before, we're not looking for projects, we're looking for money because there's a whole lot of projects competing for that money and we've had to create some way to have discriminating decision-making so we can select those. So what we're trying to figure out is if there is a way to make that happen.

Now, I sort of like the idea that we table this one, as I telegraphed everybody up here on the Board, table
this one until Barbara can get in the game to see if we can figure out a path through this, but if you can't by the time you get here in three weeks. Where are you at, Jean?

DR. MUÑOZ: Jean, before you indicate where you're at, let me indicate and telegraph where I'm at. What's to prevent this, were this to be -- and I'm the one who made the motion earlier to table -- what's to prevent this from, as Jean sort of explained, become a precedent for others who fail to submit documentation that is appropriate and compliant with the QAP from simply making the same argument?

MR. OXER: And I have an answer to that.

MR. THOMAS: I would like to have just a discussion. I'd like us to get this out, I'd like to hear this, I'd like to hear where Mark is going to go, and I'd like to piggyback on their expertise without necessarily answering but getting those issues out there, if that's okay with the Chair.

MR. OXER: It's absolutely all right with me, but the answer to how this would not set a precedent would be to say we make an exception to deal with this and then correct the QAP with explicit connotation in the record that we were trying to get through this maintaining the integrity of the rule.

Did you have a comment, Jean?

MS. LATSHA: The only other comment I would make is this financing that is in this deal, in this format, I would
say actually is not only acceptable but incentivized by another point item. This affects their ability to get points under leveraging from private, state and federal sources, it absolutely counts towards those points. It simply doesn't meet the requirements of the rule under this specific provision. That would be my only other comment.

MR. OXER: Mark, did you have a comment? Because Robert just said you did.

MR. THOMAS: Well, he was trying to touch.

MR. McWATTERS: I'm not sure if I did, but I'm trying to think through this, and if I was the attorney in Marble Falls and Mark walks in and says I have this problem, and you look at the Local Government Code and you determine, oh, there's a recusal process here, and then it's oh, great, let's do that. And then if someone even bothers to look at the QAP but they review it and they see the provision, and I think it's not irrational or non-reasonable for someone to conclude that the recusal is somehow incorporated by reference into that, that that surely must be part of the QAP if it's part of the Local Government Code. I'm not saying it necessarily has to follow, I'm just saying that it seems to me to be reasonable that that could be an approach a lawyer would take.

So I would say this is probably a little bit different than the firm date because here there's some ambiguity which I could see, as a lawyer, making that mistake.
also. And although I completely agree we ought to have a rules-based approach to this, it would not seem unreasonable to bump this for three weeks and see if a solution can be determined, simply because, again, I can see how we got to this point. No one was acting in bad faith, no one was skirting the rules, this was no wink and a nod to get around the policy of recusal and the like.

MS. BINGHAM ESCAREÑO: I have just a comment about that, and it's just a question and it may be rhetorical or it may be cleared up. I've been on the Board for a while, what we hear a lot is how helpful staff is, that whenever there are problems or whenever somebody hits a bump, that staff is always there and willing to help out. And so I'm following your hypothetical, Mark, about Mark goes to Marble Falls and says, Here's this issue. And the lawyer looks at the law and says, I think if we do the recusal everything will be fine. But at no point it ever occurs to anybody to pick up the phone and call staff and say: We just want to check on this; our legal counsel in Marble Falls is saying I'll be covered by the recusal, or maybe his representation here. But anybody to call staff and just say: We're going to be counting on these points, it looks like we're going to meet the criteria for them, is there anything in this whole related entity or in the QAP that might get in the way of that. And I think that's where I'm kind of stuck.
I'm also a little stuck on making an exception or extending a timeline, but I'm open to it. I think I'm like the Chair, I'd like to hear a good idea around it, because I agree, I don't think the intention was necessarily bad. But these are points, and even though it's hard to swallow when people talk about it being a points game because I don't like to think about it as a game.

MR. OXER: That tells us that you're trying to "game" the system.

MS. BINGHAM ESCAREÑO: Bad taste in my mouth.

MR. OXER: That was what really irritated us last year about the gamers.

MS. BINGHAM ESCAREÑO: That's it.

MR. THOMAS: You made the motion to table, and my concern, piggybacking exactly what you just said, Leslie, is I'm really --

DR. MUÑOZ: The motion on this one.

MR. OXER: To table until we came to this point.

DR. MUÑOZ: This was your motion to table, seconded by Mark, and that's what I voted no to.

MR. OXER: What you voted was to table until after we take it back up, which is now.

MR. THOMAS: Okay. Thank you.

My concern is just that you all, this Board and this staff and this interested community, has been grappling
with these issues for so very long. Maybe it's the lawyer lines, along with Mark, I see that this is something that was just not anticipated, this was not the related party issue that we voted for in this QAP, it just was not.

But moreover, I'm very, very concerned that sometimes we allow the QAP to jam up the process, to be used as an absolute brick wall when, in essence, we want this community to be poking holes. We want them to find, not to game any system, but to find ways to provide the services, as a matter of public policy to our state. We want developers, we want cities and housing authorities to figure out ways, in these complicated, bureaucratic messes that we all have to play within, to make it work.

My concern of reading the rules so narrowly, we're either going to go back to where we were before where our QAP is so thick, that we're so rule-based that we now have conflicts within our own rules, which is inherent, or the flip side -- which I think we're going to have to end up -- and that's having consistency in our Board, consistency from our staff, establishing precedent, being reminded of that precedent, but making judgment calls from here, and that means sometimes not kicking it down the road and asking folks to come back and figure out how to find another funding source, which you're going to jeopardize potentially other points and then make our staff feel like there's never an end point, they can
never move on because they're going back.

So my concern is simply that we recognize that we have a unique circumstance here that did not, at least as I understood it in my limited context of approving these QAPs, I think of related party a someone that is getting a direct benefit, or as we talked about it globally, an entity that was basically double dealing, giving themselves an advantage over a private entity. That was the big point. But moreover, I think we need to be prepared to make tough decisions up here and sometimes not kick it down the road and tabling.

MR. OXER: And I completely concur. There is a certain amount of ambiguity on this, as Mark has pointed out, and the responsibility of this Board is to make policy decisions, and there comes a time, it's knowing when to override the rules, and while we have those and we still try to protect the integrity of those rules but it's also knowing when to override them.

I'd love to see this thing funded. You'll have a chance here in a second, Mark, don't worry. We're way away from being finished on this, don't worry. I'd like to see a way to fund this, to make this work, but with the specific record pointed out that this is a unique circumstance and if that were to be the case, it's not a precedent or something to be looked on as a precedent for using this in the future, this is a wrinkle that we ironed out of this larger cloth so that we
can get past this and support a project that we recognize has merit and value in that community.

That said, at this point we've got to come up for a reason -- and I think Robert has just identified that reason -- kind of come up with a reason why we oppose staff recommendation. The motion that's currently on right now, on the table --

DR. MUÑOZ: The motion, I thought, was to table it until further in the meeting.

MR. OXER: Correct.

DR. MUÑOZ: There's not been a motion.

MR. OXER: We have now taken it back up. The motion was to table the item until after executive session so we could hear counsel and take it up again which is what we're now doing.

MR. THOMAS: So that means that there's no motion.

MR. OXER: Currently there is no motion applying to this item, so we're starting clean on where we're going to go with this for comment. Is that a correct statement, Counsel?

MS. DEANE: Michael, you're taking the minutes. My recollection is I'm not sure if we actually took a vote to table.

DR. MUÑOZ: We did not.

MS. DEANE: So it would probably be better to go ahead and pull back, if that's your desire, to pull back the
original motion and second and propose an alternative motion,
if that's what you desire to do.

MR. OXER: My notes were that we tabled. There was
a motion by Dr. Muñoz, second by Mr. Thomas.

DR. MUÑOZ: It would have been voted on.

MR. THOMAS: The motion initially by Dr. Muñoz was
to accept staff recommendation, I then seconded. Dr. Muñoz
then withdrew his motion and inserted his motion to table.

MR. OXER: We voted to table until after executive
session, so that's where we're at now. So now we don't have to
vote to take it back up. Bear with us, people, this is one of
those things we're going to have to deal with. So now we've
taken it back up, so now, since the original motion was
rescinded, we are starting with a clean slate on the
consideration by the Board for this item. Everybody understand
where we're at? You agree with that, counsels?

Now, anything else, Jean?

MS. LATSHA: No. Staff's recommendation is the
same, and I think that we've stated position pretty clearly.
The only thing, if there is going to be direction for staff to
consider documentation at this point in the game, I would only
ask that that direction be pretty clear because this scoring
item is complicated, it takes several different dates into
consideration. There is the initial scoring item that is based
on the amount funding in the transaction, then there are

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additional points that are awarded for an actual commitment from the funding entity that is supposed to be in the form of a resolution dated before February 28, and there is an additional point awarded dependent upon the form of that financing.

MR. THOMAS: My motion is to deny staff's recommendation which, if I understand correctly, would allow those 14 points to stand.

MR. OXER: And to not table it but to deny staff recommendation.

MR. THOMAS: Not table it for all of the reasons that staff just said and that Dr. Muñoz, Ms. Bingham, Mr. McWatters indicated were potential concerns. So if I understand it correctly, if we do not accept our staff's recommendation -- which is a very rare and very serious occurrence -- if we move not to accept, those 14 points would still be awarded, the project would be moving forward. Do I understand that correctly?

MS. LATSHA: As far as an ultimate recommendation for an award, I couldn't speak to that because there are some other point reductions on this application.

DR. MUÑOZ: It's just the 14 points, Jean.

MR. THOMAS: The 14 points.

MS. LATSHA: Yes.

DR. MUÑOZ: The answer was yes.

MR. THOMAS: So then my motion is to deny or not to
accept staff's recommendation, and therefore, the 14 points
would be awarded and the staff would decide how the rest of the
points fall or do not fall, but this issue would be behind us.

MS. DEANE: That would be to grant the appeal, basically.

MR. THOMAS: Well, I'm just reading the resolve:
The applicant's appeal of the scoring notice of Oak Grove Village is hereby denied. I would like to not have it denied.

MS. DEANE: You're granting it.

MR. OXER: You move to grant the appeal.

MS. DEANE: As to the 14 points only.

MR. THOMAS: Then for clarity, I move to grant the applicant's appeal as to the 14 points only.

MR. OXER: Is there a second?

(No response.)

MR. OXER: There apparently being no second, let's look at another way we can take this on.

MS. PALMER: Chairman Oxer, I think I might be able to resolve that.

DR. MUÑOZ: I'd like to move staff's recommendation.

MR. GANN: I'll second.

MR. OXER: Motion by Dr. Muñoz and second by Mr. Gann to approve staff recommendation to deny the appeal.

Claire.
MS. PALMER: Claire Palmer again. Back to the tabling issue, Jean is correct, there are difficulties with tabling and letting the funding, but we actually in this application already had a resolution with city funding in it, and so honestly, according to the QAP you have until September 1 to prove up your firm commitment of government funding, and so I think that there's a pretty easy way that we could come back in and amp up the city funding that we already have, that's already in there by resolution. The city had agreed to put in the detention pond which is puts in about $60- to $80,000 in the deal. So it would not be a new source of funding, it would actually just be taking out the EDC funding and adding to the city funding, which we've already talked to the city about doing and we can do.

So I think it would not be a completely new source of funding, I think that Barbara and I could work out a way where that funding came in under the rule, just for clarification purposes.

MS. LATSHA: I would suggest that staff could address that issue even with the denial of the appeal. We could simply look at that application again, see what city funding is already indicated in that application, and award points accordingly.

DR. MUÑOZ: I'd like to move --

MR. OXER: Hold on. We've got an active motion on
the floor. So the current motion to deny the appeal, to
approve staff recommendation, which is by Dr. Muñoz, second by
Mr. Gann. In the event that that were to be the way this came
down, you're not dead yet, this application would not be dead,
you'd have an opportunity to pursue this through another
mechanism to work this out. Is that correct, Jean?

MS. LATSHA: Yes, sir.

MR. THOMAS: And still have their 14 points?

MS. LATSHA: Not necessarily. I would pick up this
application again, I would not award points based on funding
from the economic development corporation, however, if there is
another source of funds that is eligible for these points
that's already indicated in that application, we can certainly
award those points.

MR. THOMAS: But this is a 9 percent tax credit
deal. Right?

MS. LATSHA: That's correct.

MR. THOMAS: I mean, practically, are we killing
the deal if they don't get those 14 points?

MS. LATSHA: I don't have a log in front of me so I
don't know.

MR. OXER: The answer is because of the incredible
competitive nature of this program, if they don't get the 14
points it would effectively kill the deal. However, given the
fact that you have preexisting financing from another municipal
entity -- is that correct, Claire? She's indicating yes. If that's the case, you could basically bump that, knock out the EDC financing, they would still qualify for the points under that?

MS. LATSHA: I can't say but if there is a qualifying source out there, we would certainly be willing to award the points for that qualifying source.

MR. THOMAS: Would it replace the 14 points in this appeal? Are there enough points potentially to replace it?

MS. LATSHA: Potentially. Yes, sir.

MR. OXER: Effectively, they would get the 14 points from having financing from somebody else, as opposed to the EDC

MS. LATSHA: Potentially. If there is documentation in that application that indicates that there is funding directly from the city that's in an amount that is enough to award them 11 points, is in the form of a permanent financing or an in-kind contribution in order to give them another point, and then also that includes a resolution from the city dated before February 28 for an additional two points, they could conceivably have 14 points on that application.

MS. PALMER: We would not get the 14 points under that scenario. Based on Barbara's discussion of the tabling and coming in with a substitution of additional funds from the city, we could get to the 14 points, but as it stands today,
what's in the application, because we believed the EDC funding would count sufficiently for the 14 points, the city in-kind contribution that we have would not make the 14 points.

MR. IRVINE: So you would effectively be retooling the city funding.

MS. PALMER: Retooling the city funding.

MR. IRVINE: Which, because hard dates have already expired, they're in the rearview mirror, you would effectively need one or more waivers to provide for that.

MS. PALMER: That's correct.

MS. DEANE: Claire, did you at any point request a waiver related to the related party issue?

MS. PALMER: No. Mainly because, honestly, I didn't even know about it until we lost the 14 points, got the notice and lost the 14 points, I didn't even know that that was an issue that was out there. That was my first involvement with it. These people have been filing these applications since the '80s, they didn't even see it as rising to needing to be a question to the Board, they saw it as so clear that it didn't rise to the level of asking for a staff determination on it.

After the fact, hindsight is great, you can look back and go: Yeah, we probably should have asked staff how they would treat this. But when you're in the middle of the application process and things seem very clear to you, you
don't see that as needing to be questioned. I've been through
that a lot of times with a lot of clients when they read the
QAP, they read the law, they feel like they're absolutely on
100 percent solid ground and then staff sees it differently.
People can see these things in different ways, and that's just
what happened here.

MR. OXER: Tim.

MR. IRVINE: I would suggest, Mr. Chairman, that
even though you have an active motion under consideration, it
might be very helpful to take about a five-minute break and
have us line out for you several very specific options so that
you have a clear articulation of them. There's a lot of detail
that's necessary to manage this process, and I'm leery of
somebody going down one particular path and then finding, oh,
my gosh, there's some detail we overlooked that sort of
forecloses our getting to the desired result. I would suggest
that might be something that a small group of us, including
Claire, might just go off somewhere and sit down and write out
three or four clear ways that you might approach this and give
you, effectively, a menu from which to select.

MR. OXER: Mr. Mayfield, did you have another
comment?

MR. MAYFIELD: Mark Mayfield, Texas Housing
Foundation.

Just again, we have to hire attorneys because this
is way over my pay grade.

MR. OXER: For the record, for all of us up here, it doesn't take much to get over our pay grade.

MR. MAYFIELD: As a practical matter, everybody in this deal, with the exception of one, is a public body. You've got the Texas Department of Housing and Community Affairs, you've got the United States Department of Housing and Urban Development -- everything that's being done here is on a HUD approved plan that was approved back in 2009, we're just trying to implement it -- you've got the City of Marble Falls, you've got the Marble Falls Economic Development Corporation, you have the Marble Falls Housing Authority, you have the Texas Housing Foundation, and upon the HUD approved plan, because of the complexity of 9 percent deals and such as that, we had to go out with RFPs in order to secure a developer to help us through this process. That is what has brought the years of experience to this. This is a public effort for the public good, every bit of it. There's nothing in here that doesn't speak to anything but that. Sometimes we get kind of caught up in the minutiae and we can't see the forest because of the trees.

MR. OXER: And we appreciate your comment to that point, Mark, and while it seems like we're being caught up in some minutiae, there are reasons that we're trying to maintain the integrity of the process and the rule that we have, while giving you an option to get through this so that by the next
time we come to this point we don't have this little quirk in it and we can seal this little crack in the wall. So please understand that we're not up here opposing you, I'm trying to figure out a way to get both of us through this process.

MR. MAYFIELD: This is our third year, again, that we've applied, we've been patient, we're trying to wait our turn, if you will.

MR. OXER: Thanks for your comments.

Tim, let me ask again, do we have five minutes, give us some counsel, let us take a quick exec session?

MR. IRVINE: It wouldn't be an executive session.

MR. OXER: Like a break. Just to recess for a discussion. And I might add, Barbara, do we run potentially afoul of anything on ex parte?

MS. DEANE: That's what I was just talking to Tim about. I'm not sure that we can meet with the party to work it throughout outside of the -- it's very strict, we have to be in our office and we have to record, so I'm not sure visiting on a break is allowed, but we can certainly try to work through some of these issues based upon what we've heard them say.

MR. OXER: Tim.

MR. IRVINE: I've actually listed what I think the three options are. I think option number one is the rule says what the rule says and staff's recommendation is upheld. Option number two would be to waive the appropriate deadlines
to allow the applicant an opportunity to go and retool its qualifying city funding in a manner that would enable it to access 14 points. Option number three would be to waive the application of this specific rule in question for the rationale that, as we've now fully developed, this was not necessarily the type of situation that was contemplated when the QAP prohibition was drafted. And I would say that those are basically the three options.

MR. OXER: So we need to have much discussion, we've just heard what we're looking for. I'm going to poll the Board individually.

MR. THOMAS: You can't do that.

MR. OXER: I want to ask a question and everybody on the Board can answer in their own chosen fashion. Does the address the issue of the ambiguity that we've encountered here?

MR. McWATTERS: My turn? Well, my concern was I'm trying to go back to a real life situation. You're in the trenches, someone brings you a document, you look at the document, and you say: Yeah, let's follow the Local Government Code. And you follow it, and then you look at the QAP and you see the word "related party" in there, and you just naturally think that if I follow the Local Government Code, then I really no longer have a related party transaction because somehow I cured any problem with respect to it under the other law, and therefore, I'm okay under the QAP.
Although Leslie makes an excellent point, it's a point I've made myself more than one time, is pick up the phone and call. But there's a possibility here that the law and the QAP could be perceived as so clear that you wouldn't take the time to pick up the phone and call. And maybe that's not the best lawyering in town, but I can see it happening in good faith. So along those lines, I don't think we would do grievous harm by thinking about the ED's second option.

MR. IRVINE: And that's, in my opinion, clearly the option that takes most into account the fact that they were relying on advice of counsel.

MR. OXER: As Chair, I'll recognize that this is clearly not a circumstance we were trying to prevent, or was it an exemplar of the issues that brought us to the point of creating this rule in the first place last year, mark. What we're trying to do is get through this with a mechanism that satisfies the rule but provides an opportunity to move this forward. That's what I'm trying to do.

DR. MUÑOZ: I'd like to withdraw my motion and provide an opportunity for some other motion that would then permit us to further advance.

MR. GANN: I would concur.

MR. OXER: Mr. Gann withdraws his second, Dr. Muñoz withdraws his motion. So we'll consider a second option -- not second, it's like twelfth now -- we'll consider another option.
MS. LATSHA: If that option is waiver, there wasn't a waiver requested.

MR. OXER: The period for waiver request and the date has passed?

MS. LATSHA: That's correct.

MR. OXER: So we'd have to waive the date for the waivers?

MS. LATSHA: That's correct.

MR. THOMAS: So option three because option two is a waiver, so now we're going to be coming back and asking to waive more of our rules, and now we figure out what of our rules we actually stand on and jam down people's throats in this forum of trying to either having us avoid making tough decisions, or two, convince people that they better pick up the phone and call our staff every time they want to breathe. And I don't mean that rudely, I'm just saying I think that our staff has been more, Jean has been more than gracious with about three other incredibly smart people behind her, shaking their head in support every time she tried to figure out how to get us out of our jam without taking a hard vote.

As a lawyer, I wish we didn't have to go to the nuclear option, but my boss, when I was a baby lawyer, said, Robert, always give the judge three or four different pegs to hang his hat on. I don't know that I would have started with the nuclear option because I think that that created a lot of
anxiety at the dais, but I'm not going to tell a good lawyer how to do his or her job. I respect that she was doing the best that she can to try to get this point out about how silly the application of this rule is, and extreme, when we didn't talk about it.

That was the sole reason why I made the motion that we deny, with all due respect to our staff, so that they're not jumping through hoops, since I know that this does not kill this deal, but causes them to still have to comply with all of the other requirements, to deny the staff's motion. Either that, or have the staff make it easy for us. If we really want it easy for us, the staff can change their recommendation, and that would make it real easy and we could go home. But if the staff is not going to change their recommendation from the podium, if they're not allowed to do that, then my motion that we deny the staff's recommendation, or in the alternative, that we grant the appeal to allow the rest of the process to go forward so that we are not subject to now figuring out what additional rules we're going to have to waive next month or the month after that.

MS. LATSHA: And I do appreciate that. I have to agree that either a simple granting or denying of the appeal is probably the most appropriate. I don't know if I can really make that suggestion. As far as our recommendation, one of many of the reasons that we wouldn't be compelled to change
that recommendation is that it basically provides a provision
in the rule for if you have one board member who is in common
between the funding entity and the applicant and that one board
member recuses himself, then we are willing to make an
exception and consider that not a related party transaction.
But I'm not sure where we stop that, if it's two board members
or three board members, and it's for that type of slippery
slope reason, and I believe that that's part of the reason a
recusal provision wasn't written into the rule, wasn't
suggested by staff in our drafts of that rule in the first
place because it's difficult to say if one board member's
recusal is acceptable, then why not two.

MR. THOMAS: But that really wasn't what we were
trying to address. We have so many different legally distinct
concepts of conflict here we're actually talking about. We're
talking about at least three that I can think distinctly, that
I think are getting us confused. There's the direct legal
conflict of interest, the recusal for I'm going to get a
vested -- kind of like as Mr. Gann was trying to tell us, that
even collecting a salary is in some instances legally
considered a potential conflict.

We're also worried about the perception of conflict
where it looked like we would have entities create subsequent
entities that shared 100 percent board membership that gave
those local governmental entities a benefit over the private
development community, and that was a huge concern, as our
Chair pointed out.

My concern is where do we stop, and what you just
told me is: I need you to make a tough decision, Board, either
way, I don't care, we have no personal stake in it, don't put
us in a tough situation, make a decision up or down. That's
what I heard you say.

MS. LATSHA: That's probably accurate.

MR. THOMAS: And your concern of if we asked you to
come back and talk to us about rule modifications that talked
about how many recusals was appropriate, that that would then
put ambiguity on the staff's side of where that rule gets drawn
and we're still putting it back to the Board. The Board still
has to decide if those exceptions apply that are going to come
when someone says we've got two, you guys have said that it has
to be a minimum three or whatever the example is.

MS. LATSHA: I think staff would later ask for
similar guidance in a more general sense when coming to the
rulemaking process. Yes.

MR. THOMAS: So if this is a unique circumstance
that we did not anticipate, this is just one of those judgment
calls that we need to as a Board make, that the staff would
like to see us vote to make a judgment call, and if it is to
grant the appeal, then it's to make sure that we properly
document why we're granting that appeal to make sure it's

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clearly and narrowly understood by the staff and the
constituents in the community so if they came back to us again
we could clearly say this is why we did it, this was absolutely
a unique circumstance, and only in this circumstance -- until
there's another unique circumstance -- will we grant it again.

MR. OXER: And there will be plenty of unique
circumstances but we want to keep wiping those off the map,
make it harder to be unique in the future.

This was clearly not the issue we were trying to
protect against in terms of the allocation process. There
again, we're trying to figure out a way through this. We can
deny the appeal or we can deny staff recommendation and then
have it in the record, just as Robert said. Anybody that comes
back and steps on that, you stepped on it once and armed the
trigger, the next one is going to take your leg off.

Are there any other questions? Anything else you'd
like to say, Claire? Mark, anything there?

(No response.)

MR. OXER: Okay. There's currently a motion on the
floor to be considered by Dr. Muñoz, who, as we must reflect in
the record, has had to depart, but we retain a quorum currently
with the other five members of the Board. It's a motion by Dr.
Muñoz, second by Mr. Gann. Is that correct?

MR. THOMAS: No. He withdrew his motion.

MR. OXER: That was the original one. So there's
no motion current?

MR. THOMAS: I spoke all over it. I move to grant
the applicant's appeal.

MR. OXER: There's a motion by Mr. Thomas to deny
staff recommendation and to grant the appeal on this one item.
Do I hear a second?

MS. BINGHAM ESCAREÑO: I'll second. On the 14
points. Right?

MR. THOMAS: The 14 points only.

MR. IRVINE: Only on the 14 points.

MR. OXER: Only on the 14 points in this issue.

MS. DEANE: And strictly in this limited
circumstance and not to be applied with regard to any other
rule using the term "related party" or anything else. This is
very narrowly applied.

MR. IRVINE: Nor precedential.

MR. THOMAS: Not precedential, very, very narrowly
limited.

MR. OXER: Which was the whole point of trying to
prevent this is in the future was to limit the precedent being
set by scrambling our rule on this one.

Is there any other comment?

(No response.)

MR. OXER: Motion by Mr. Thomas, second by Ms.
Bingham to deny staff recommendation and to approve the appeal.
All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

MR. GANN: No.

MR. OXER: Opposed, there's one by Mr. Gann.

(General talking and laughter.)

MS. LATSHA: I think we're done.

MR. OXER: We've reached the point in the meeting where we offer an opportunity for anybody to speak for items to be added to the future agenda, particularly for the meeting coming up in three weeks from today on June 26. Is there any public comment?

(No response.)

MR. OXER: Is there any comment from the staff? Any comment from the Board members or staff on the dais?

(No response.)

MR. OXER: So I'll entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. OXER: Motion by Ms. Bingham to adjourn.

Second by?

MR. THOMAS: Me.

MR. OXER: Mr. Thomas. Motion to adjourn. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?
MR. OXER: There are none. See you in three weeks.

(Whereupon, at 1:18 p.m., the meeting was concluded.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: June 5, 2014

I do hereby certify that the foregoing pages, numbers 1 through 143, 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.

/s/ Nancy H. King 06/09/2014
(Transcriber) (Date)

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