TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Dewitt C. Greer State Highway Building
Ric Williamson Hearing Room
125 E 11th Street
Austin, Texas

March 23, 2017
9:00 a.m.

BOARD MEMBERS:

LESLIE BINGHAM ESCAREÑO, Vice Chair
T. TOLBERT CHISUM, Member
TOM H. GANN, Member
J.B. GOODWIN, Member
JUAN S. MUÑOZ, Member

TIMOTHY K. IRVINE, Executive Director
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AGENDA ITEM

CALL TO ORDER
ROLL CALL
CERTIFICATION OF QUORUM

Resolution recognizing April as Fair Housing Month

CONSENT AGENDA

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

LEGAL

a) Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Order concerning Royal Palm (HTC 91017 / CMTS 947)

ASSET MANAGEMENT

b) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")

   99201 Sea Mist Town homes
   Rockport
   01130 Port Arthur Town homes
   Port Arthur

c) Presentation, Discussion and Possible Action regarding Placed in Service Deadline Extensions

   14087 Cypress Creek at Joshua Station
   Joshua
   14292 Cypress Creek at Parker Boulevard
   Royse

d) Presentation, Discussion and Possible Action regarding Ownership Transfer Prior to IRS 8609 Issuance or Construction Completion

   12413 Sienna Pointe San Marcos

BOND FINANCE

e) Presentation, Discussion, and Possible Action regarding Resolution No. 17-013 approving an underwriting team and containing other provisions relating to the subject
HOME AND HOMELESS PROGRAM
f) Presentation, Discussion, and Possible Action Regarding Additional Authority to Reallocate Recaptured Program Year 2015 Emergency Solutions Grants Program Funding (PULLED)

HOUSING RESOURCE CENTER
g) Presentation, Discussion, and Possible Action on the re-release of a draft 2017 State of Texas Consolidated Plan: One-Year Action Plan

MULTIFAMILY FINANCE
h) Presentation, Discussion, and Possible Action on the Issuance of a Determination Notice for Housing Tax Credits with another Issuer 17400 Casa Del Rio/Villa Hermosa Del Rio

I) Presentation, Discussion, and Possible Action on Inducement Resolution No. 17-014 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List for Emli at Liberty Crossing Apartments

TEXAS HOMEOWNERSHIP
j) Presentation, Discussion and Possible Action regarding publication of a Request for Proposal ("RFP") for a Program Administrator for the Texas First Time Homebuyer Program, the My First Texas Home Program, the Texas Mortgage Credit Certificate (MCC) Program, and other first-time homebuyer programs that may be implemented by the Department

RULES
k) Presentation, Discussion, and Possible Action on an order proposing actions to 10 TAC Chapter 6 Community Affairs Programs, including the 1) proposed amendments in Subchapter A, General Provisions, of §6.2 Definitions, §6.4 Income Determination, and §6.5 Documentation and Frequency of Determining Customer Eligibility; and 2) proposed amendments in Subchapter C, Comprehensive Energy Assistance Program ("CEAP"), of

ON THE RECORD REPORTING
(512) 450-0342
§6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component; and directing that they be published for public comment in the Texas Register

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
   a) TDHCA Outreach Activities, February-March 2017
   b) Quarterly Report on Texas Homeownership Division Activity
   c) Report on Department=s Fair Housing Activities

ACTION ITEMS

ITEM 3: EXECUTIVE
   a) Presentation, Discussion, and Possible Action to adopt additional clarifying guidance on Resolution 02-056 separating the policy-making functions of the Board and the management responsibilities of staff
   b) Presentation, Discussion, and Possible Actions to address syndication issues on 2016 9% awards

ITEM 4: REPORTS
   Report on 2018 Qualified Allocation Plan ("QAP") Project

ITEM 5: MULTIFAMILY FINANCE
   Presentation, Discussion, and Possible Action on Timely Filed Appeals of Application Termination under the Department=s Multifamily Program Rules

   17029 Cibolo Senior Gardens Boerne
   17043 Maplewood Gardens Caldwell
   17045 Rock Prairie Village College Station
   17049 Oak Creek Senior Village New Braunfels
   17060 Artisan at Old Tezel Road San Antonio
   17087 Artisan at Potranco San Antonio
   17038 Columbia Renaissance Sq II Fort Worth
   17084 Country Place Apartments Atlanta
   17144 Derbyshire Court Villas Lindale

ON THE RECORD REPORTING
(512) 450-0342
17351 The Heritage Apartments Houston
17069 Arlinda Gardens Bryan
17742 Las Villas del Rio Hondo Rio Hondo
(ABOVE TWO ITEMS PULLED)

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

EXECUTIVE SESSION none
OPEN SESSION --
ADJOURN 74
MS. BINGHAM ESCAREÑO: Good morning. Welcome to the March 23 meeting of the Board of the Texas Department of Housing and Community Affairs.

Yep, it's me. The girls are taking over. There's even a Lieutenant Tweety here today.

(General laughter and applause.)

MS. BINGHAM ESCAREÑO: Glad to be here. We'll take roll. Mr. Tolbert is not here.

Mr. Gann?

MR. GANN: Here.

MS. BINGHAM ESCAREÑO: Mr. Goodwin?

MR. GOODWIN: Here.

MS. BINGHAM ESCAREÑO: Dr. Muñoz?

DR. MUÑOZ: Present.

MS. BINGHAM ESCAREÑO: We do have a quorum. Let's go ahead and stand for the pledge.

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

MS. BINGHAM ESCAREÑO: Before we start the consent agenda, do we have a resolution for Fair Housing Month?

MR. IRVINE: We do. This is, as you all know, a very, very important principle and this is the time of year when we commemorate Fair Housing Month, and I would
offer the following resolution for your adoption.

"WHEREAS, April 2017 is Fair Housing Month and marks the 49th anniversary of the passage of the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968), signed by U.S. President Lyndon Baines Johnson on April 11, 1968;"

"WHEREAS, the Fair Housing Act provides that no person shall be subjected to discrimination because of race, color, national origin, religion, sex, disability, or familial status in the sale, rental, financing, or advertising of housing and charges the Secretary of the U.S. Department of Housing and Urban Development ("HUD") with administering HUD programs in a manner that meets the requirements of the law and affirmatively furthers the purposes of the Fair Housing Act;"

"WHEREAS, the Texas Department of Housing and Community Affairs administers HUD and other housing programs that promote the development and supply of safe, decent, affordable housing for qualifying Texans;"

"WHEREAS, it is the policy of the Texas Department of Housing and Community Affairs to support equal housing opportunity in the administration of all of its programs and services, including encouraging equitable lending practices for its homebuyer programs and ensuring compliance with Fair Housing rules and guidelines for its
multifamily developments;

"WHEREAS, the Texas Department of Housing and Community Affairs, through its programs, workshops, trainings, and materials seeks continually to educate property managers, consultants, program administrators, architects, contractors, developers, engineers, lenders, real estate professionals, and others about the importance of their commitment and adherence to the requirements of the Fair Housing Act;

"WHEREAS, the Texas Department of Housing and Community Affairs encourages the development of educational fair housing programs in local communities throughout the State and is seeking to build new opportunities for fair housing education and training; and

"WHEREAS, the Texas Department of Housing and Community Affairs and the State of Texas support equal housing opportunity and housing choice in accordance with the Fair Housing Act not only during Fair Housing Month in April, but throughout the entire year;

"NOW, therefore, it is hereby

"RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate April 2017 as Fair Housing Month in Texas, and encourages all Texas individuals and organizations, public and private, to join and work
together in this observance for free and equal housing
treatment and opportunity for all."

And we recommend your adoption of that resolution.

MR. GOODWIN: So move adoption of the resolution.

MS. BINGHAM ESCAREÑO: Mr. Goodwin motions.

DR. MUÑOZ: Second.

MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, none. The motion carries. Thank you very much. Fair Housing Month, that's awesome.

Okay. The consent agenda, are there any items that the Board or staff recommend to be pulled from the consent agenda? I had 1(f), so we're going to pull 1(f).

Any other changes to the consent agenda? Any comments from staff, management, Board, public on items on the consent agenda?

(No response.)

MS. BINGHAM ESCAREÑO: Just housekeeping for anyone that isn't aware, so if do have any comment to make on an agenda item, if you'd move close to the front, the first two rows would be great.
There appears to be no comment on the consent agenda. We'll entertain a motion for approval of the consent agenda.

MR. GANN: I so move.

MS. BINGHAM ESCAREÑO: Mr. Gann moves.

MR. GOODWIN: Second.

MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

All those in favor?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

None of the report items need to be reported?

MR. IRVINE: No.

MS. BINGHAM ESCAREÑO: Okay. So we'll move on to agenda item 3, Mr. Irvine.

MR. IRVINE: Thank you, Madam Chair.

First, we have item 3(a). Back in 2002, in response to a Sunset recommendation, there was a provision put into statute that asked the Board to delineate its policymaking functions and clarify their extent and then reserve managerial functions to the staff. This is obviously an appropriate separation.

And we came upon a situation recently where we were kind of pondering what was the real staff authority
and what was the Board authority in this regard, and it specifically related to procurements. And it seemed to me that a really simple and logical way to do this would be by consulting that resolution 02-056, so I went back to the resolution, which is now quite old, and while I think it should remain in effect, we saw a desirability of providing some additional clarity, specifically in the context of procurement.

Procurements are a very important subject, they're getting a lot of scrutiny through our oversight offices, and we believe that it's appropriate that the Board be appropriately engaged on a procurements, and as we view it, the policy decision to enter into a procurement activity is clearly something that the Board should be focused on, you should know about our significant procurement.

But the way the procurement itself works, it really kind of disengages the Board from the procurement process itself, and the way that procurement occurs is we put out requests for proposals or applications or information or qualifications, whatever the particular procurement is, we specify what the criteria for selection are, and then we have internal selection committees that use those objective criteria to evaluate applicants for procurements, so we make the decisions in accordance with
the procurement documents themselves, and then we end up reporting those to the Board but the Board is not making those actual selections.

When we engage in a new area of procurement, we are going to bring those to the Board, and this document makes that clear. We want you to have the opportunity to weigh in and figure out how we should be going about these things, and frankly, if we should be going about them. However, where we've got an established area where we are using procurement, we view things like re-procuring for the exact same service, although it might be through a different provider, or even simple renewals of procurements, that those are things that are managerial and appropriately reserved to staff.

So with that background, I would ask if you would adopt this resolution confirming this expansion of the guidance under Resolution 02-056.

MR. GOODWIN: So move.

MS. BINGHAM ESCAREÑO: Mr. Goodwin motions. Is there a second?

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds. Is there any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye.
(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

MR. IRVINE: And in full disclosure, you should begin to expect that we will have periodic reports to the Board about our procurement activities. The agency tries very hard to be a leader in procurement, to do it fairly and compliantly and publicly.

MS. BINGHAM ESCAREÑO: Thanks, Tim.

MR. IRVINE: Sure.

MS. BINGHAM ESCAREÑO: Tim, there's another item (b).

MR. IRVINE: The next one, this is regarding the syndication issues that are frankly impacting the ability of a lot of 2016 awardees to proceed to close. Yesterday we had our monthly meeting which is a meeting with the development and investor and lender and advisor and consultant community, the collective group of folks who really come together to make multifamily programs work -- it was probably the best attended one of these meetings I've seen, at least in recent memory, and we talked about these issues.

I think that one of the things that's important to me is that we send, to the extent that we can, signals
that will calm markets and help people appreciate that we are committed to working within the constraints of our law and our resources to help these deals get done, but on the other hand, we do have constraints, and unfortunately, one of our constraints is time. Some of the things that might be accomplished are things that cannot be done except through rulemaking, and those would occur as we develop the 2018 QAP.

Anyway, I wanted to just kind of go over some of the things that we think can be done to help these deals and to seek your guidance as to whether you endorse any, all or none of them, and also to seek additional input from the public. If you've got other ideas, this is the appropriate forum to bring them forward and present them.

The first thing that obviously is available to anybody is that you can return your credits. Unfortunately, in current rule, the return of credits involves a potential for a penalty item in subsequent applications, so one of the things we recommend is that for these deals we simply waive that penalty as a way to encourage people who just can't get it done to go ahead and return the credits so that hopefully we can give them to somebody who can move them along and get them done.

The second thing that is a possible solution is
providing gap financing. You know, if you had a 10
percent decline in your syndication price on a $10 million
deal, a million times ten, that's roughly a million dollar
shortfall that's created as a gap that you have to
address. You do have other tools that can address that
gap, but they can only go so far. One of the things you
can do is you can defer developer fee if it's sufficient,
you can look to other lending sources and potential
additional sources, and one of the things you can do is
come to the Department and seek multifamily loan funds.

Our primary sources are HOME funds. HOME
funds, by law, must be used 95 percent out of
participating jurisdictions. In other words, they are
directed predominantly to rural Texas so they would not be
available to assist large urban deals.

The next source of funding that we have is the
TCAP repayment funds. TCAP, of course, is the Tax Credit
Assistance Program which was created under the American
Recovery and Reinvestment Act of 2009. It was kind of
controversial at the time back in 2009 when we were
putting together the TCAP program, we made it repayable
loans, and thank goodness we did because we now have a
significant income stream coming off of TCAP and that
generates lendable funds. Unfortunately, at the moment
virtually all of the TCAP funds are spoken for and
oversubscribed, so as additional TCAP repayment funds do become available, however, they could potentially be redirected in some fashion to this activity.

The next option we've got is the concept of material amendment to our deal. If you, for example, want $10 million to develop a property and it's going to be five buildings serving 100 units, perhaps you might reduce that to four buildings serving 80 units. As long as your salient characteristics that supported your scoring remained the same and there's no Fair Housing impact, for example, like cutting back unduly on larger units that might serve households with children or cutting back on units that would serve persons with disabilities, as long as you continue to meet those criteria and have an amended application that would have supported your award, that seems like a possible viable path.

There are other things that I think can be done to value engineer these deals. You know, instead of a 75-foot swimming pool, you might consider a 50-foot swimming pool; instead of a 3,000 square foot clubhouse, you might consider a 2,000 square foot clubhouse. But these kinds of value engineering things can only get you so far, and if your gap is huge, you may need actually to deal with units themselves. So that's a possibility.

The final one is probably the most ill-formed
and controversial. People have spoken about using force majeure to deal with these situations. Under force majeure under our current rule if you have a force majeure event, you can return your credits and basically get those credits re-awarded as new credits in the year when they're re-awarded. That, in effect, allows you additional time to get your deal done and hopefully it would allow you enough time that markets could stabilize and you could engineer one or more aspects of your development and/or financing in a way that could enable it to move forward and get done.

We really don't think that the kinds of declines that have been seen in the market right now constitute force majeure. It's the nature of markets that they are volatile, there is variability from day to day, month to month, year to year. I don't think what we're seeing is anywhere near on the magnitude of the decline that we saw, for example, in the 2008 economic situation. But they are significant and we would be open to looking at a proposal for possible inclusion in the 2018 QAP that we would present to you for consideration where there was some opportunity for discreet treatment of these 2016 deals to return and refresh.

I think it's important, however, to bear in mind that there's a dearth of information, we know of a
few deals that have been able to close. These seem to be predominantly deals that had already pre-sold into funds or deals where they had some important Community Reinvestment Act characteristics that made them highly desirable to the investors. We don't have a lot of information on the other deals. We have asked for the Texas Affiliation of Affordable Housing Providers to conduct a poll and give us some more granular data about these deals. And I think it's really important that as we look at this data we bear in mind that if folks were able to get deals done, especially in very difficult markets -- for example, I heard of a deal that went ahead and got closed in a smaller South Texas market and that's a real challenge.

So we don't want to just have a one-size-fits-all approach to this where if you're a 2016 deal and you had some kind of pricing deterioration, congratulations, here's a bunch of help. We want to provide continuing incentives for the people that have the capacity and have the grit and determination to get their deals done.

So that's pretty much where we are. We have a recommended action item for you to consider to approve moving forward with some or all of these concepts, and as I said, we certainly solicit input from the community at large.
I'll be glad to answer any questions.

MR. GOODWIN: I've got a question. So if I'm a developer and I have a 2016 approved deal and I return the credits, and then in 2017, let's assume that I file for three developments. Do each one of those developments in 2017 receive a five-point penalty, or just one?

MR. IRVINE: It's my understanding that only one of those would be penalized, but five points basically knocks it out.

MR. GOODWIN: So now take a different situation. I've got three in 2016, I can't do any of the three, I go to do one deal in 2017, do I have a five-point penalty or a 15-point penalty?

MR. IRVINE: Five.

MR. GOODWIN: Five-point penalty.

MS. BINGHAM ESCAREÑO: But you're saying there's almost no difference between five and 15 because with the margin, the way they look as competitive as they are, five would knock you out regardless.

MR. IRVINE: Typically five would be a D-Q.

MS. BINGHAM ESCAREÑO: And if you did the force majeure thing -- which I have a hard time getting my arms around, but something like that, and you said something about contemplating a provision in the 2018 QAP that would allow for it -- if somebody returned their credits, then
what your work group or what you guys were discussing was
are they kind of reserved?  Like in other words, they
return them, they want to try to do a deal and get them
back, and when the conditions change or in 2018 when
something in the QAP allows it to happen, are those kind
of earmarked credits for that developer?

MR. IRVINE: Right. It would be a one-for-one
exchange where your 2016 credits would be returned and
whenever you get them, your placed in service deadline
would be two years out, so you would have basically bought
additional time with what are effectively refreshed or
extended credits. But from a legal perspective, we can't
refresh or extend credits, we can only take them back and
re-award them. Because of the one-for-one character of
this, it would not impact the ongoing competition for the
other credits.

MS. BINGHAM ESCAREÑO: Okay.

MR. IRVINE: I also want to talk a little bit
more about the loan terms. We've talked previously about
this and there's a lot of pressure for soft financing,
cash flow loan structures, zero percent interest
structures, and I want to underscore that repayment of
loans is critical to providing the resources to keep these
programs going and to do future deals. And there's a
special interest for the repayment of the interest
component because that is our primary source for permanent supportive housing, and without some aggressive approach to identify an alternative source, what would effectively happen would be permanent supportive housing would be the one bearing the brunt of subsidizing the other deals.

MS. BINGHAM ESCAREÑO: So did you completely depress everybody that knows and wants to come up and comment, or were they worn out yesterday or whenever the meeting was?

MR. IRVINE: They are a very engaged bunch, and I hope that rather than depressing them, I'm fairly and neutrally putting out everything that was discussed.

MR. GOODWIN: I've got a question for Brent. Brent, do you mind?

I know in theory Tim has brought up the possibility of re-engineering some of these transactions, and I know you can't say absolutely no and absolutely yes, but in the general realm of things, is that truly an alternative in many of these transactions, in your opinion?

MR. STEWART: Brent Stewart, Real Estate Analysis.

I certainly have experience in being able to value engineer a property and changing some design elements, roof pitches and some of the amenities, some of
the quality of cabinetry, different ways of being able to
carve a few bucks out. I have no idea in the current
climate whether that's enough, whether there's enough of
that kind of stuff to be able to do. Certainly
eliminating some units, being able to go from particularly
market units where you can get an applicable fraction back
up to 100 percent so you're at least getting paid credits
on the units that are you building, there's some of those
options.

You know, the cost information and stuff that
we get, the information kind of falls in this competitive
world of in prior years we had a number that was kind of
set, that if you stay under this number you get points for
staying under the $75, or whatever the number is for your
particular deal type, and so magically, all the deals that
came in were between $74 and $75.

So the cost numbers that we get -- and I've
said this publicly before -- it's a creative way of being
able to put a deal together and make sure you have
sufficient basis and sufficient costs in your deal to make
it work. This year, 2017, we changed that such that we
want the real cost numbers and you just basically select
or choose the amount of costs you're putting into eligible
basis, and I think that will help us better understand
what's happening out there with costs.
So having said that, and me being personally out of the market for so long, I'm not really sure what's happening with costs, and so therefore, I don't know how those costs and that relationship between the current debt and equity climate really work. My conversations with people have been there's some help there but it's not going to go all the way.

MR. GOODWIN: Thank you.

MS. BINGHAM ESCAREÑO: Joking aside, obviously we've been through difficult times as a community and an agency and it is encouraging that we're all putting our heads together to try to come up with some solutions. And I think we also like trying to do a more granular study of the deals that are getting done, what are the characteristics of those deals and is there anything that we can take away from that.

So what you're asking for today is I've got the return of the credits without penalty; being able to look at gap financing, whether it's HOME funds for the rural deals or maybe TCAP repayment funds in the future when they're not oversubscribed; like re-scoping projects to allow material amendments that we typically wouldn't allow as long as they don't put in jeopardy Fair Housing and those kinds of things, so you'd like the Board to approve moving forward with those. And then where do you stand on
the force majeure? You'd like us to ask you to further
explore it in terms of how you would word it in the next
QAP?

MR. IRVINE: I think it's basically crafted in
terms of being okay with exploring that concept.
Obviously, any QAP is a phenomenally complex work of
hundreds of people and comes back through this Board and
through the Governor's Office for ultimate approval, so
you'd have plenty of opportunity for input.

DR. MUÑOZ: Explore just that one or all four
of those options?

MR. IRVINE: I think that the others we would
probably in one form or another move forward with them.
The gap funding, obviously the biggest constraint is lack
of available gap funds, but as more funds become
available, I would imagine we would take this into
consideration in crafting SOFAS.

DR. MUÑOZ: Move forward with them or come
forward and say here's what it would look like were we to
move forward?

MR. IRVINE: I think the NOFA concept would
probably come back to this Board for your approval. I
think that material amendments, on a case-by-case basis,
some are already in the hopper and will probably
ultimately come to this Board for consideration under the
current rule. I think it would require Board action to waive the penalty point item for voluntary returns right now. And if you want to provide any more guidance on developing specialized treatment for the 2016s in the 2018 QAP, we're open to it.

    MS. BINGHAM ESCAREÑO: Barry, good morning.

    MR. PALMER: Barry Palmer with Coats Rose.

    I'd like to encourage the Board to support some of the recommendations from staff. What I'm seeing out there is very few 9 percent deals have closed so far, and the ones that have closed have, for the most part, been in the big cities where the pricing has held up better because of CRA needs, so Houston, Dallas, some of those cities we've closed some 9 percent deals. But as you go outside the big cities, pricing gets down to 88-89 cents and it could go lower. Some people have been holding out hoping things will get better, and they might, but who knows. If the president introduces his tax reform bill and he's got in there a 15 percent corporate tax rate, pricing will probably go lower.

    And in making some of the changes that Tim mentioned about material changes to reduce your units perhaps, I think that's a very good possible alternative.

    The thing is it takes time because you've got to go back and redo your architectural plans and go back through the
city. So that's going to cause people to get pushed further and further back into the year which is another reason to consider supporting some kind of force majeure alternative so that people who can get their deal together, but maybe not until the end of this year and there's only twelve months left, they may at that point have trouble getting an investor and lender to close because there's not enough time left.

So I support all of these alternatives that Tim suggested.

MR. IRVINE: There's one other factor that I think it's really important to understand and appreciate. It's not just what's going on in the markets or what's going on in your deal, a lot of it is who are you. There are people with strong balance sheets, ability to utilize credits themselves, who can get deals done that other people can't get done. Because this is a governmental program, as long as you meet the minimum requirements for participation, you're eligible to compete and perhaps win. But it's a simple truth of real estate that strong professional developers with healthy balance sheets can do things that newer developers who haven't build those capacities can't get done.

MS. BINGHAM ESCAREÑO: Tim, so what I thought I heard you say is the Board has an option today to go ahead
and move to approve the return of credits without penalty.

How about allowing material amendments, that one would probably need to go back through another process?

MR. IRVINE: They're already permitted under the existing rules, I just wanted to include that as one of the solutions that we have heard people pursuing.

MS. BINGHAM ESCAREÑO: And gap financing really too. Right?

MR. IRVINE: Sure.

MS. BINGHAM ESCAREÑO: So maybe what we'll do is entertain a motion for the 2016 return of credits without penalty and then maybe encourage staff and management to continue to work with the community on exploring these other options?

MR. IRVINE: The only question that I've just had whispered --

MS. BINGHAM ESCAREÑO: Very discreetly.

(General laughter.)

MR. IRVINE: -- is whether there would be any time limit for return without penalty. Does anybody on staff have any thoughts on that issue?

I mean, obviously, the sooner we get them back, the sooner we can reallocate them. They would come back for reallocation in the 2017 round. If they aren't back in time to factor into the 2017 round, then we can't
prioritize the underwriting and all of that stuff.

MS. HOLLOWAY: Exactly.

Marni Holloway, director of Multifamily Finance.

Really, the sooner the better. We have a process that we have to go through. When credits come back, they originally go back to the subregion or set-aside that they came out of, and so we evaluate like what's next one down on those, and then can eventually roll into collapse.

DR. MUÑOZ: Marni, let me help you out. Today is the 23rd, give us a date. Sooner the better is a little too open-ended.

MS. HOLLOWAY: No pressure, though. In order for us to be able to roll into the awards on July 28, we would need to be able to bring that list to you at the end of June at that Board meeting, so we would need to have those credits back if we're going it include them in those awards within the next month, absolutely.

DR. MUÑOZ: June 1?

MS. HOLLOWAY: Absolutely. We can manage the process afterwards.

DR. MUÑOZ: June 1, though, works. Right?

MS. HOLLOWAY: It works.

DR. MUÑOZ: I appreciate your sort of mental
gymnastics of we can manage it after that date. I don't
know how much more management you want.

MS. HOLLOWAY: Well, and I also don't want to
create a situation that a developer is saying, well, you
know, I'm talking to these folks and I may be able to get
this deal done but then the only way I can avoid the
penalty is to return the credits right now. There's a
balance there. So while my preference is that the awards
would come back very quickly, I would say absolute drop
dead for not having a penalty would be October in order
for us to be able to evaluate through the waiting list and
get carryover out and make sure that awards that we're
making down into the waiting list are actually deals that
will move forward.

DR. MUÑOZ: I'm not clear. Is it June 1 or
October?

MS. HOLLOWAY: I would say October, because
then we can manage into the waiting list and get those
deals awarded through the end of the year.

But Raquel has something to say too.

MS. MORALES: Raquel Morales, director of Asset
Management.

So the next time that we would see these 2016
deals would be at 10 percent test. At that point they
have to prove up that they've forward far enough to get to
closing or will soon thereafter, and so I can understand by October we can manage that, but I think July 1 at 10 percent, I would hope that most of these applicants would have an idea of where am I, where can I go, can I move forward or not. So I'm just throwing that out there as an option.

DR. MUÑOZ: We started at June, went to October, back to July.

MS. BINGHAM ESCAREÑO: So that sounds like a good compromise.

And so then the other thing would be so somebody is considering returning their credits but they're wondering if the force majeure thing is going to work out. They take the risk if they don't return their credits, and for whatever reason, the force majeure related option doesn't work out, then they have a penalty. Right?

MR. IRVINE: Correct.

MS. HOLLOWAY: Marni Holloway again.

I believe that there's an option within rule for if we are imposing a penalty, that applicant of course can appeal and come to the Board.

MS. BINGHAM ESCAREÑO: Okay. Very good.

MR. IRVINE: On a case-by-case basis.

MS. BINGHAM ESCAREÑO: All right. So let's do
this, is there a motion?

MR. IRVINE: Madam Chair, one other thing I'd like to point out is Real Estate Analysis is down a couple of underwriters and there is a pretty strong likelihood that between these issues, the current round, bond activity, amendments and other matters that we will have a cycle this year where we will be making recommendations that may be subject to additional underwriting. That's a very real possibility.

MS. BINGHAM ESCAREÑO: Would anybody on the Board provide a motion to approve returning tax credits without penalty if they're returned before July 1, and to support management and staff working with the community to further explore the other options for getting the 2016 deals done?

MR. GOODWIN: I will so move.

MS. BINGHAM ESCAREÑO: Mr. Goodwin motions.

MR. GANN: I'll second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

Is there any further discussion on the issue?

MR. GOODWIN: I've got a question. Are there any developers in the room who have deals pending that might think their deals are in jeopardy, and if there are, would they mind coming up and telling us what they think about this and what the situation
(No response.)

MR. GOODWIN: I guess the answer is no.

DR. MUÑOZ: Crisis averted.

(General laughter.)

MR. IRVINE: The only thing I would add with respect to the specifics of that motion is that because statutorily the list has to be published in June, if someone returns after the publication of the list but before the awards, that would mean that they would de facto be handled as wait list items, not as July award items.

MS. BINGHAM ESCAREÑO: Mr. Goodwin, are you okay with that recommended modification?

MR. GOODWIN: I am okay.

MS. BINGHAM ESCAREÑO: Mr. Gann, are you okay with that?

MR. GANN: Yes.

MR. ECCLES: Megan is running to the dais.

MR. GOODWIN: Legal advice.

MS. SYLVESTER: I was just looking at the calendar -- Megan Sylvester, Legal Services -- I just want to clarify that you mean that credits would have to return without penalty by June 30 because July 1 is a Saturday.

MS. BINGHAM ESCAREÑO: Mr. Goodwin, are you okay with that?
MR. GOODWIN: I'm okay with that amendment.

MS. BINGHAM ESCAREÑO: Mr. Gann?

MR. GANN: I'm also okay with that.

MS. BINGHAM ESCAREÑO: Great. Thank you.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

Thanks very much.

MR. IRVINE: Thank you very much.

MS. BINGHAM ESCAREÑO: We have a report item.

Marni, a report on 2018 QAP project.

MS. HOLLOWAY: Good morning. Marni Holloway, director of Multifamily Finance.

This is a report on our continued 2018 Qualified Allocation Plan project. As you're aware, last year we had a series of meetings, out monthly group therapy sessions, that led to quite a bit, actually, of work on the current QAP, and now this year we're continuing on that effort but now that we have Patrick with us, it's a much more organized effort and I think we're going to have some really good results out of it.

We did not have a roundtable meeting in February. You'll recall the Board meeting was rescheduled...
and it was a day or two before the looming March 1 deadline, and we didn't think anyone would show up so we just canceled it. So in lieu of a report on that meeting, I thought I would talk to you about our tenant survey.

This is something that we've mentioned a couple of times. We are making really good progress in getting that survey started. The idea is that the households served by TDHCA developments hold a wealth of information as to what they desire in terms of unit and development features, the social services offered by the development, and the neighborhood where the development is located. The goal of the survey is to develop a repository of data, both quantitative and qualitative, that reflects the opinions, experiences and preferences of households so that the data may be considered in the development of scoring items in future QAPs.

TDHCA intends to secure an interagency partner in the coming months -- or coming month, actually. The survey is planned for the summer of 2017 and the data collected will be analyzed in the fall of 2017. While the results of the survey may influence some aspects of the upcoming 2018 QAP and rules, it's more likely that they would be discussed in more depth during the 2018 QAP roundtables that discuss the 2019 rules.

That's it. I'm just offering this as a report
item.

MS. BINGHAM ESCAREÑO: Thank you very much. Any questions or discussion on the overview of the survey?

(No response.)

MS. BINGHAM ESCAREÑO: Good. Thank you very much.

Let's move on agenda item 5, Multifamily Finance. Marni, hi, again. Presentation, discussion and possible action on timely filed appeals of application termination under the Department's Multifamily Program rules.

MS. HOLLOWAY: And from the list of applications included under this item -- this was in the book but just so that everyone is clear -- we are pulling application number 17069 Arlinda Gardens. That one may be presented in the future; we're continuing to work with that applicant. 17742 Las Villas del Rio Hondo, we did not receive an appeal. I was wrong, let me correct my statement. On 17742, Las Villas del Rio Hondo, that will be presented at the April meeting.

MS. BINGHAM ESCAREÑO: So we'll pull for later.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Okay. Thank you.

MS. HOLLOWAY: So of the remaining
applications, they have all been terminated for the same reason. We have terminated twelve 9 percent applications because they failed to upload the Excel spreadsheet required for submission of a full application. All of the appeals presented today relate to the same issue.

The applicants, through appeals submitted by their counsel, have claimed that because the separate Excel workbook was not listed in the application manual, they did not know it was required. The application manual cannot be considered a substitute for the 271 pages of rules that govern the Multifamily programs. Applicants are expected to understand the requirements at 10 TAC Subchapter C related to applications, and in particular, regarding this item 10 TAC 201, Procedural requirements for application submission, at number 1, item (c), the first line: the applicant must upload a PDF copy and Excel copy of the complete application to the Department's secure web transfer server. This clear requirement has not changed since 2011 when the electronic application was first introduced. The Department received a total of 138 applications that did, in fact, include the required spreadsheets.

I also would add that all of these applications are in regions that are oversubscribed at this point.

It's important to note that the entire list of
items to be uploaded for an application was removed from the manual this year, yet these same applications appear to have uploaded the environmental site assessments and feasibility reports that also had been previously listed. So that whole part came out but they still managed to get these other things into their apps.

The other statement that's common across the appeals is that the Excel spreadsheet contains the same information found in the PDF document, so it therefore is not material and should be treated as an administrative deficiency rather than a termination. The Excel file, in fact, is not alternative depiction of the same information but provides critical functionality necessary for staff to evaluate the application. This live data is used at multiple points in the evaluation process, for instance, in creating the application log. We were first alerted to these applications when we pulled the data to create the log and we had more applications than we had listings in the log. REA uses the information in the spreadsheets extensively in creating their underwriting reports.

There are a number of applications here. I would assume that there's some folks that will want to speak to the issues. I have no other information to present on this item at this time.

MS. BINGHAM ESCAREÑO: Staff's recommendation
is to deny the appeals?

    MS. HOLLOWAY: Is denial of the appeals.

    MS. BINGHAM ESCAREÑO: We have a recommendation

from the staff to deny the appeals and terminate

applications on these twelve projects.

    MR. GANN: Madam Chairman, I think it's really
ten, is it not, rather than twelve?

    MS. BINGHAM ESCAREÑO: Ten after the two that

are pulled?

    MR. GANN: I heard twelve, too, but for

clarity, I think we need to say it's ten.

    MS. BINGHAM ESCAREÑO: But I'm wondering if we

should entertain the motion on the ones that are

represented together?

    MR. IRVINE: You can break them out by the

tabs.

    MS. BINGHAM ESCAREÑO: Okay, very good. So

we'll entertain a motion to approve staff's recommendation

to deny the appeals on applications -- I'm going to read

and make sure I have them correct -- the first set of

four: 17029, 17043, 17045, 17049.

    MS. HOLLOWAY: Correct.

    MS. BINGHAM ESCAREÑO: Is there a motion?

    MR. GOODWIN: So moved.

    MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.
MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

MS. HOLLOWAY: Thank you.

MS. BINGHAM ESCAREÑO: Good morning.

MR. GUTTMAN: Good morning, Board. My name is John Guttman. I'm representing JES Dev Co, the developer for the four deals currently considered for termination, and really I want to use my time right now to go through kind of what happened to us specifically.

So we received deals in the past, we received awards in 2016, 2014 and 2012 and 1998, and on the three deals from 2016 to 2012, our staff has relied heavily, if not solely, on the procedures manual as the full required documentation for submitting our application. As you can see, we've successfully submitted applications that received awards, based on using solely the procedures manual to put together, assemble and submit our application.

And so this time around, using the procedures manual, I could say there was a lot of confusion, actually, in the room and that our decision to submit just the PDF was not a decision come to lightly, there was debate, talk, and when it came down to it, the answer was the procedures manual has had all the information in the past, it's been reliable, and so let's rely on it this
time as well moving forward.

It's true, going through the Multifamily Rules do state it, but just with how we've experienced and how we've been able to put it together, and out of 210 pages and looking through the procedures manual and the Multifamily Rules and the FAQ and the QAP, there's a lot of documentation to go through to put together this application, and I'm going to state again that the procedures manual has collected everything prior that we've needed to submit a full and complete application, and so it's been a tremendous resource, a reliable resource historically from 2012 to 2016 to contain everything that we've needed.

Each of these applications for us, we spend months and months on them, we spend $50,000 or more putting these together, a lot of time and effort go into these for each one, and it hurts to kind of see it all go away because we submitted a PDF which we believe contains all the information that is needed to evaluate an application. The Excel file is a tremendous benefit for staff to go through and quickly evaluate the application, to pull together the log for REA to evaluate, to pull it into their spreadsheets and everything else. I completely agree with staff that that is essential for them to make a quick and thorough review of the application.
And if we can handle this through an administrative deficiency process, we can provide our PDF which has not been altered, the metadata and everything will have a date before the application deadline. We are happy to submit that through the administrative deficiency process, there will be no discrepancies from the PDF to the Excel files.

MS. BINGHAM ESCAREÑO: Thanks, John.

Any questions?

(No response.)

MR. RACKLEFF: My name is Neal Rackleff. I'm with the law firm of Coats Rose -- Locke Lord.

(General laughter.)

MR. RACKLEFF: The law firm of Locke Lord. The Coats Rose people are great, but I'm not with them. Thank you. Good to have partners around you.

We at Locke Lord represent the developer, JES Development Company, of Cibolo Senior Gardens, Maplewood Gardens, Rock Prairie Village, and Oak Creek Senior Village, which Mr. Guttman just spoke to.

I think it's really important to recognize the number of applicants who have had the same problem here. These twelve applications out of 138 is almost 10 percent. I mean, this is not an anomaly and these are folks that made earnest efforts to follow the instructions that they
received from the Department.

The Department has conceded that the 2017 Multifamily Program procedures manual did omit key information that has been included in past years. And while the Multifamily Rules do provide very helpful information, I think it's very reasonable to expect that applicants can look at the procedures manual and gain clear instructions on what they should do. We shouldn't have a system that has some mixed signals in it such that folks are dropped into a system so complicated that they need to hire a lawyer or a high-paid consultant to make sure that they don't miss one jot or tittle in the law and end up getting crucified for it.

So the Department has a mechanism to provide precisely the kind of relief that we're asking for, and that mechanism is to call this an administrative deficiency rather than a material deficiency. So while it's true that the live Excel file is important and helpful to those who are reviewing the applications, we need to see what does material mean and what does administrative deficiency mean in this context, where important is not the same as material.

And so let's go to the rules. In 10 Texas Administrative Code, Section 10.3, an administrative deficiency is defined as: information requested by
Department staff that is required to clarify or correct one or more inconsistencies; or to provide non-material missing information in the original application; or to assist staff in evaluating the application that may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or reevaluation of the application.

Then let's go to the specific definition of material deficiency. In 10 Texas Administrative Code, section 10.3, it reads very clearly: any deficiency in an application or other documentation that exceeds the scope of an administrative deficiency. So material doesn't just mean important, something that's helpful, it means it exceeds the scope of the administrative deficiency. Well, this falls squarely within that scope. This was clearly either information requested by Department staff that would provide non-material missing information from the original application, or would assist staff in evaluating the application that can be cured. So we feel very, very strongly that you have the mechanism before you to be able to provide reasonable relief.

This situation, I would liken it to -- if I may have a moment more -- let's say we had ten pedestrians that were standing at a signal waiting to cross the street and when the little white pedestrian indicator person
showed up saying it's safe to cross, the red light starts flashing, and let's say we have 138 pedestrians and twelve of them decide, they look both ways, and say we're going to cross, it seems to be safe, and we have mixed signals, we're not sure what to do. A police officer watching this could give them a warning or instruction, he could write them a ticket, or in the extreme, he could go get the department's new T-1 terminator robot to come out and pursue them to the death.

And we feel that if there was a crime here that the punishment certainly doesn't fit. We're coming to you, we're the pedestrians that have run to court, running from the terminator -- literally -- and are asking for reasonable relief. You have the ability to do it and we would respectfully -- I would, on behalf of the great law firm or Locke Lord and my client, request your reasonable review of this and that you would grant us mercy in this instance.

MS. BINGHAM ESCAREÑO: Any questions for Neal?

MR. IRVINE: May I make a comment and offer a question or two?

First the comment is I don't think that your characterization of what staff has conceded is something that staff is nodding north and south that they've conceded. But be that as it may, I think everyone so far
sounds as if they're acknowledging the materiality of the functionality embedded in the Excel spreadsheet, and it was missing. And I understand that it was not specifically pointed out in the procedures manual, yet your prior witness said that you agonized over whether to submit or not, knowing full well that the rule unambiguously said PDF and Excel. I submit that Marni and Sharon were the traffic cops standing at that intersection who could have told you if it was okay to cross in the face of the blinking red light. Did you contact them?

MR. RACKLEFF: So I accept in part and reject in part your characterizations, respectfully. Our client did not recognize that the Multifamily Rules clearly indicated a different path than what was indicated for them in the procedures manual. Had they understood that, they would have complied with that. That recognition did not come until after the fact, and they did pore through hundreds of pages of documentation, they also did provide information that is identical to the live Excel file.

I agree with staff and the characterization that the functionality in the live Excel file is important, but a PDF copy of an Excel document is the same information. That's the point of a PDF. You have PDF capability so that if you have a Word document or an Excel document and you want to communicate it to someone
electronically in a form where it will remain the same in a manner where they can't manipulate it or change it, they use a PDF. Right? So the functionality, I agree, is different with the live Excel file, but that difference does not constitute material information, the information is identical. It's just the functionality, which is what you have maintained and I completely agree with, and I believe that's why we have an administrative deficiency. I mean, we shouldn't be terminated for something as simple as not providing two copies of the identical information, one with better functionality. I mean, look at how many folks are up here. We don't all need to be here. We could have just said, hey, this is important functionality but the material information was provided and sent us the copy, and move on.

MR. IRVINE: And I remind everyone that every applicant does certify that they have read and understood the rules.

MS. BINGHAM ESCAREÑO: Any other questions for Neal?

MR. ECCLES: I have a few questions. You're not saying that the procedures manual said do not file the Excel file.

MR. RACKLEFF: The procedures manual says to provide a copy of the Excel file and not a scan of the PDF
for the Excel file, so in addition to omitting the clear
instruction from previous years, the language that was in
there is frankly confusing. You know, what is a copy of
the Excel file versus -- in one sense, a PDF copy of that
same data is a copy of the Excel file. And I think that
was part of the crux of the confusion for folks.

MR. ECCLES: But in previous years your client
had provided just an upload of the Excel file?

MR. RACKLEFF: They provided both in the past
because both were clearly indicated. In this procedures
manual, both were not clearly indicated.

And I would agree with Mr. Irvine that there
was a recognition that there was a difference here. The
difference that they recognized was between the previous
procedures manual and this procedures manual. They didn't
dig back into the Multifamily Rules to find further
guidance. Now, could they have? Certainly. But I think
that in this situation it's understandable and quite
reasonable that this was an error based on some mixed
signals that were given and that it could be easily
remedied with an administrative deficiency.

MR. ECCLES: Well, with respect to your client,
that's their confusion and their interpretation of the
procedures manual, but you would agree that you have to go
to the Multifamily Rules if you have any questions.
internally about the procedures manual, don't you? Isn't that what we all have to go by, the rules?

MR. RACKLEFF: As general counsel for the organization who understands the law very thoroughly, you understand that and I understand that, however, I think that in using my analogy, let's say that the police officer understands that technically if the red light is flashing it should override the white walk sign, would a judge reasonable expect your average citizen to understand that distinction. Should they have to go hire a lawyer to look up the specific provision in the traffic code to know whether they can go or not?

That direction is clearly in the rules, however, there is ambiguity here and lack of clarity, and so we are asking for reasonable relief for folks who did everything right other than that one minor issue.

MR. ECCLES: To staff I would ask the question, it's been repeatedly asserted that a PDF of the application is going to contain identical information to that which is contained in the Excel file and it's merely functionality. Is there any substantive difference?

MS. HOLLOWAY: Frankly, yes, there is a huge difference. You can print out a print, an Excel page and print the PDF of that same Excel page and they look exactly the same, but behind the Excel page are formulas...
and information that's gathered and calculated that is not captured in the PDF that we need in our process.

And if I could just a moment. The line in the manual that talks about don't send a scanned copy of your PDF, print it, relates back to more than two pages of that manual that discuss how to properly turn your Excel file into a PDF so that we're not getting scanned ones.

MS. BINGHAM ESCAREÑO: It relates back to the rules?

MS. HOLLOWAY: Yes, it does. And it also relates back to information that we spend a lot of time on in the application workshops.

DR. MUÑOZ: So Marni, just to be clear. So you're saying in the Excel document that there's additional content, explanations, formulas perhaps that are accessible by your office and necessarily accessible by your office that is categorically not contained in the PDF version?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Any other questions for Marni or Neal?

DR. MUÑOZ: Make the jaywalking analogy a little tougher.

MR. RACKLEFF: I don't think that it does because I still maintain -- and I bet that my colleagues
here are going to argue the same point -- that the fact
that there's functionality -- I mean, you have a
spreadsheet, you can put it in electronic form so you can
see --

DR. MUÑOZ: That's not what I'm understanding,
and so help me understand your point. It's not a matter
of functionality, it's a matter of access to new content,
new information. It's not exercising this manipulation of
this kind of electronic function in this platform but
accessing information that exists in this file that
doesn't exist in this one.

MR. RACKLEFF: So I don't understand that there
is additional explanations, et cetera in the live Excel
file. What I believe that staff is referring to is that
when you're looking at an Excel file you can click on the
cell that has a sum, for example, and you can drill down
deeper and you can see the formula that shows you where
that came from. That's functionality. But the data, the
information that's in that cell is identical to the
information in the PDF. So we're not disputing that it's
very helpful for staff to have this, we understand the
need for them to have that.

DR. MUÑOZ: You heard Marni -- I'm sorry to
interrupt -- but you heard sort of -- what I understand --
not agree with your sort of description. Right?
MR. RACKLEFF: Yes, sir. And I think that reasonable minds could come to different conclusions based on deciding what is the information in an Excel file versus what's the functionality. And I think here clearly staff is saying that functionality equals information which equals material. We're saying functionality is important but functionality falls right within the definition of administrative deficiency where it talks about information that can be helpful to staff in reviewing the application.

So that's the distinction, and I think you have the latitude legally to go either way. And so what we're asking, respectfully, is that you have mercy and recognize the fact that there are two different interpretations that could be valid here and please don't kill our applications based on not providing an alternate copy of what we think is the same information.

MS. BINGHAM ESCAREÑO: Thanks, Neal.

MR. RACKLEFF: Thank you.

MS. BINGHAM ESCAREÑO: In light of your prediction that your colleagues are all going to argue the same thing, I would just ask that you not repeat the exact same thing, that you bring to us anything that you think would help us in addition to whatever has already been contributed.
MR. CAMPBELL: Good morning. Jonathan Campbell, and I'm speaking about 17351, the Heritage Apartments, so I will respectfully not echo anything, but I would address some data that was included in your Board books about how we submitted.

MR. IRVINE: It's a different appeal.

MS. BINGHAM ESCAREÑO: So thank you very much and we definitely want your comments. Right now we're going to look at 17029, -043, -045 and -049. Thank you, Jonathan.

MS. DULA: Tamea Dula, and I am a Coats Rose attorney.

(General laughter.)

MS. DULA: Respectfully, I understand you're only dealing with the first four of these appeals, but all of these appeals ride together, and if we can't speak to the argument now because you haven't gotten to ours, you want to make a decision, presumably, and our appeals will be a foregone conclusion. So I would respectfully request that you take all argument before handling any group of appeals.

MS. BINGHAM ESCAREÑO: So we have a motion that's only on the specific four. I'm okay with taking all.

MR. GANN: I am too, on my part of the motion.
MR. GOODWIN: I am too.

MS. BINGHAM ESCAREÑO: So does that mean we revise the motion and take them all together?

MR. GOODWIN: Take them all together.

MS. BINGHAM ESCAREÑO: Very good. Let's do that then. So Mr. Goodwin, you're going to modify your motion to approve staff's recommendation to deny the appeals for all ten that are still active on the agenda under item number 5?

MR. GANN: I so agree.

MS. BINGHAM ESCAREÑO: And Mr. Gann agrees to that.

Okay, thank you.

MS. DULA: Is it okay for me to proceed?

MS. BINGHAM ESCAREÑO: And then Jonathan.

MS. DULA: Thank you.

I take issue with Marni's representation of the Excel file. It does have functionality in it. When you fill in an Excel spreadsheet, you put numbers in it. If you are, for instance, doing your operating expenses, you fill in the number that you think will be the operating expense for lighting, electricity. The Excel's functionality is that it takes that number and it automatically adds it up, it subtotals it when it's necessary. All of that is background functionality in the
Excel file. It does not appear when you do a PDF of the Excel file or when you make a copy, a scanned copy of the Excel file.

Now, I truly do understand that the staff needs the Excel file, but with a PDF of it, they could take those numbers and with a pencil and piece of paper and a long, long, long time, they could evaluate the application. Nothing in that functionality is changed by the applicant. The applicant puts in the number, the functionality works the numbers to come up with the subtotals and the totals. The staff can go in and say this number was wrong, and they can change it in the Excel file and then see how it affects the total or the subtotal.

But that functionality is not part of what the applicant works with, it is not part of the information relating to the application, it is merely accelerating the review of the application because Brent Stewart doesn't have to sit down and go, well, three plus four is seven. So it is something that they need but it's not material to the application, it is the same functionality for all applications. The form has the functionality in it before you put any numbers in the form. The numbers, the total is dictated by the functionality, but as I said, it is a mere case of adding up, subtracting, doing mathematical
calculations.

I don't think there's anything else in that functionality that would make a change in the application itself, in the data that relates to what the project is presenting to TDHCA. And so for that reason it accelerates the staff's review of the project, of the application, but it doesn't add to the application, nor does the missing functionality subtract from the application. It only makes the review of the application much more arduous, and we don't want to do that to the staff, we're happy to provide the Excel files.

However, in the past it has said specifically include an Excel file, this year it was changed, it's the only year it was changed to not refer to that, and it says: the submitted application should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file.

Thank you. Any questions?

MS. BINGHAM ESCAREÑO: Any questions for Tamea?
(No response.)

MR. GRAULEY: Madam Chair. Thank you for the opportunity to speak to you. I'm Jim Grauley. I'm the president and chief operating officer of Columbia Residential. Our application was 1703, Columbia at Renaissance Square Senior.
Our arguments follow the similar lines and they're threefold, there's one that's additional. First is that the Multifamily procedures manual was, in fact, changed, and it hasn't been discussed why that was changed, but clearly, as you've seen in the documentation, it was changed from the prior years. Our staff followed that to the letter. We submit applications in multiple states and have in Texas and been successful with prior years following that manual. This year the manual did not require the Excel file to be uploaded, and at best was unclear.

We did not agonize over that, we followed the manual to the letter, we double checked it, triple checked it. I was on the receiving end of the receipt, that we always look for the receipt from the agency upon the application being submitted, and at that point we thought we had a successful application. Immediately upon finding two days later that we did not have that and that there was an issue with the Excel file, we uploaded it. We're used to uploading that with Texas and with other states for the very reason that Ms. Dula spoke to which it makes it easier for staff to analyze the data and to process the data, but in fact, all the answers to the application, all the content of the application is included in the PDF file.
I'm not a software expert but it's a simple matter of the software, what PDF does and Adobe does is take the content of your document and put it into a printable, non-changeable file, whereas, the Excel file remains changeable. But the data itself, there's no difference and there's no materiality.

Our second argument falls to the fact that upon realizing this and upon the fact that there was lack of clarity in the procedures manual -- which is what, when you're in the firing line putting that application in, you follow -- since that was not clear, this could be treated as an administrative deficiency. Again, there's no difference in the information provided, there is a matter of convenience for staff that we acknowledge and we routinely provide to Texas and other states, but it was not called for in this year's procedures manual.

But we find in the rules, if you're going back to the rules, that there is an ability for an administrative deficiency to be cured. We tried to do that by immediately uploading the file well before we received any letter, but once we knew there was any issue, we would be happy to follow nay procedures that you outline to allow for that administrative deficiency to be cured, and we believe those do exist in the rules.

Third, I just want to highlight -- and I'm sure
it's the case for all the applicants -- that these applications have many, many people behind them other than ourselves, and those people were part of who submitted letters on behalf of our appeal after understanding the circumstances. Our state representative of the City of Fort Worth, the councilwoman from this district all have submitted letters to you that are part of the package in terms of that. And this development in Fort Worth was designated as that which had the greatest impact on community revitalization in the city, and so to throw it out over an administrative technicality, that's the nature of those requests from our state rep and from our city.

And so I ask respectfully that you would consider that, consider that the procedures were changed, that the procedures that you use when you're actually uploading did not require this, and give us an opportunity to cure that administratively. Thank you very much.

MS. BINGHAM ESCAREÑO: Thanks, Mr. Crawley.

Any questions?

MR. CRAWLEY: I'll be glad to answer questions.

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.

Would you sign in? And if I've neglected to ask anyone that came up to make public comment, if we could just get you to sign in at some point, that would be
great. Thank you.

MR. PALMER: Barry Palmer with Coats Rose.

I'll be brief, I don't want to rehash the things that have already been mentioned. I just would like to point out that there were twelve applications terminated for exactly the same reason out of about 140. I can never remember something like that happening in the program in the years that I've been working in it. There may be one or there might be two some years where they make that same mistake. And the reason for it is because the procedures manual in 2016 called for the Excel version to be uploaded, the 2017 version did not, and people preparing the applications followed the procedures manual to the letter and because it was not listed there, that's why you had twelve applications not include the Excel version.

So I would urge you to treat this as an administrative deficiency and allow these applications to remain in play.

MS. BINGHAM ESCAREÑO: Thank you, Barry.

Any questions for Barry?

(No response.)

MS. BINGHAM ESCAREÑO: Another speaker?

MR. SETH SULLIVAN: Good morning, Madam Chair.

Good morning, members. Good morning, Executive Director.
Seth Sullivan. I'm speaking on behalf of Cass County Communities II, Ltd. I'm staff counsel for the general partner.

I don't want to touch on what the colleagues have already hit, but I would like to address some points that have been made in the questions and that Marni has made here today.

First of all, Atlanta, Texas, where our development is, has never been awarded credits, and the city there has consistently supported our efforts in rehabbing that property, and so I don't know if it's oversubscribed or not, but the credits are still desperately needed there.

I also want to touch on what we were discussing in the Excel spreadsheet and the functionality as opposed to the PDF version. We believe it to the same information. We're not arguing that the functionality is different, it's clearly different. I think everybody here would willingly submit the Excel version if we were allowed to through the administrative deficiency process.

I think that what we're trying to touch on is the difference from the 2016 to the 2017 procedures manual. I think everybody thought that the language could have said one or two different things, and I think that's why we all took the time to be here today. I know with
our application, we had a certified public accountant helping us, and they misinterpreted the language as well, and we tried to focus on that in our appeal.

We also would like to ask that the Board considers the merits of the application. We think the whole policy purpose of this program is to put the credits to use where housing is needed the most. We think our application deserves to be scored with the other applications, and we wish we wouldn't have made the omission and that we would have interpreted it in a different manner, but we think that the language was ambiguous and that's not the fault of the applicant.

That's all I have.

MS. BINGHAM ESCAREÑO: Thank you for your comments, Seth.

Any questions for Seth from the Board?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.

MR. WINSTON SULLIVAN: Good morning, Madam Chairman and the rest of the Board, staff. I'm Winston Sullivan. I'm the general partner, the father of Country Place Apartments, 17084, and we've had a long struggle with this property. It's in the rural set-aside, it's an acq rehab. The property itself is 35 years old, started in 1979 when we started construction. We have struggled
with the new application process. We have 15 real successful tax credit properties that are all in compliance, scattered, all rural properties, all senior properties. Country Place is a family property.

And I'm not going to go back and repeat what these lawyers have had to say because I'm certainly not an attorney. Proud of my grandson. He represents us and he's very astute. He's been a part of housing for a long time because he grew up seeing it done.

And so the way we did this year was we felt like we had a great application. When we self-scored, we were the top three in the rural set-aside. We would also like for you to judge the merits of our application.

I did just some stats, and I didn't get to the last two because I didn't see them on the log, but it was kind of unique because the ten applications that are represented here today were almost 500 units, within just a few units, and they were almost equally divided between elderly preference and general population. There was only two, I think, that were acq rehab deals. But when I calculated kind of the number of people that's involved in that, I come up with almost -- you could say that the elderly would have less residents per unit than probably the general population, but I kind of calculated about almost 1,500 people that are involved in that process. Of
course, the people that live in 17084, a lot of them have been there for 35 years, and the property is in real dire need of rehab.

We're willing to upload the spreadsheet. We interpret the rules to be that we would not have to, but we're willing to do that. We were willing to do that the day we discovered that we didn't have it in there, that it was a deficiency or it was just stated that it wasn't there. But we didn't do that, we wanted to wait to see just exactly how we should do it.

But anyway, respectfully, I ask that you grant our appeal, give us a chance to follow the administrative procedures, and get this thing done. Thank you.

MS. BINGHAM ESCAREÑO: Thank you, Mr. Sullivan. Any questions for Mr. Sullivan?

(No response.)

MS. MYRICK: Good morning, my name is Lora Myrick, and I'm with BETCO Consulting, and I also work with several developers who actually did upload the Excel spreadsheet file to the server.

While we understand the merits of all applications, they're all good, we all have submitted, I think, good and meritorious applications that should be considered, but I believe it was 138, that I heard earlier, applications that were filed, twelve did not
submit the Excel file, 126 did, so we follow the rule.

The application, my understanding of when I read the rule, is the PDF and an Excel file with all of the third party reports that are required at that time. That is a full application, that is what TDHCA prescribes and that is now they define a full application. 126 of us submitted a full application. I think lack of that Excel shows that that is not a full application.

The other thing is that we've seen in the past where if you don't bookmark your application, that is a termination right there. That's not figures or formals, that is that you did not bookmark your application, so that would also terminate your application.

I guess I just want to have a voice for the clients that I've worked with and others that did do this process right, that we also have a voice and that you consider us as well.

DR. MUÑOZ: How did you know? I mean, you said you went to the rule. Why would you have gone there and just not relied on the manual?

MS. MYRICK: Because I did not see language that I've seen previously, I went back to look at Subpart C of the Multifamily Rules, and it said PDF and Excel. And if I still had confusion, I could have picked up the phone and called staff to ensure that: You've asked me
for this since 2011-2012, did you mean to not ask me for it this year? If the answer would have been no, you don't need to, I wouldn't have uploaded it. But I went to the rule, it seemed very clear to us, so we uploaded the Excel file. If there was any confusion even after the rule, I have the ability to call staff.

DR. MUÑOZ: Thank you.

MS. BINGHAM ESCAREÑO: Any other questions?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you.

MS. MYRICK: Thank you.

MS. BINGHAM ESCAREÑO: Does the Board have any questions of staff at this point in time?

MR. ECCLES: I'd like to just say something. It's less of a question and more of a statement about staff's process because it may seem to folks out there that staff is being heartless or mindlessly bureaucratic. 10.2(a) talks about resources, such as the procedures manual, when it says: While these resources are offered to help applicants prepare and submit accurate information, applicants should also appreciate that this type of guidance is limited by its nature and that staff -- like Marni and her folks -- staff will apply the Multifamily Rules to each specific situation as it is presented in the submitted application.
Furthermore, in the QAP itself when it's talking about general information in 11.9(a), it says that failure to provide supporting documentation will not be allowed to cure the issue through an administrative deficiency. That's why when staff comes up against an omission from an application, it's not I wonder if we should ask questions about why it was not submitted, it's a hole in the application.

And regardless of how some might see the procedures manual, keep in mind -- as a question I asked earlier -- the procedures manual doesn't say don't submit the Excel file. It's been the same way, some interpreted that -- twelve apparently -- that perhaps it wasn't necessary, but from staff's perspective, staff is constrained by the rules, the rules are very clear on this point.

So I just wanted to put out that's the motivation, we're not trying to be mean, that's just the way the rules read.

MS. HOLLOWAY: And if I could just correct some of the numbers. We did receive 138 applications that did have the spreadsheet, ten did not, six of those ten came from two applicants.

MS. BINGHAM ESCAREÑO: So we have a motion by Mr. Goodwin, second by Mr. Gann to approve staff's
recommendation to deny the appeals for the ten applications on the agenda. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: None opposed. Motion carries to approve staff's recommendation to deny the appeals.

MS. HOLLOWAY: Thank you.

MS. BINGHAM ESCAREÑO: So I think, unless we've skipped something, we're at the part of the agenda -- there's no need for executive session today. Correct?

MR. ECCLES: It's your call, Chair.

MS. BINGHAM ESCAREÑO: Any need from the Board for executive session?

(No response.)

MS. BINGHAM ESCAREÑO: So we'll move to public comment on matters other than the items that were posted agenda items.

MS. DULA: Tamea Dula with Coats Rose.

I would like to bring to your attention another language issue that has arisen in connection with the current round of applications. That has to do with the underserved area points, and the underserved area points, there is an alternative that provides three points and one
that provides two points. The three-point alternative says: a census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation, or a 4 percent non-competitive tax credit allocation for a development within the past 15 years and continues to appear on the Department's inventory (three points).

There's a big problem in how this is being interpreted. What we have here is what is called a relevant pronoun. I had a big lesson in English grammar recently. A relevant pronoun: that.

DR. MUÑOZ: I thought that was a demonstrative pronoun.

MS. DULA: Well, I think it's relevant and demonstrative. It's relevant to this issue.

What does the "that" refer to? There is a general rule that when you have a relevant pronoun, it refers to an antecedent. The antecedent is the noun, the subject for which the pronoun is being substituted. There is a rule that it's the closest, the immediately preceding antecedent. The immediately preceding antecedent here is the word "area" so it would read: incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation. And that is how many people interpreted it.
However, there's an alternative interpretation that the relevant pronoun is actually referring not to the immediately preceding antecedent but another antecedent which is the words "census tract" that it is the census tract that has not received a competitive tax credit application or a 4 percent non-competitive tax credit allocation for 15 years.

We are given to understand that although there is an indication in the FAQs -- well, let me restate that. The FAQs asks this particular question; the unfortunate fact is that the answer didn't answer the question: Can you please clarify points for item (c) under underserved area, an existing property in the same census tract as the proposed development will be okay for points as long as its credit award is over 15 years old, regardless of whether or not it's on TDHCA's property inventory. Right?

And the answer was: If the tract has received an award in the last 15 years and the development is still in the inventory, the tract would not be eligible for the points. So it kind of approached the question being asked but didn't get to the gist of it.

And I think that this should be taken into consideration in the scoring of these items. You will find that some people have asked for three points when they are not qualified for three points because the
municipality has had applications, the census tract may not have but other census tracts in the municipality have. And the alternative point item reads like this: For areas not scoring points for (c) above -- which we've just been talking about -- a census tract that does not have a development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where it's LURA must be recorded) two points. I am requesting that the Board take this into consideration if and when issues come up before you that you possibly consider an instruction to staff that they should make a determination and then look at the two together and figure out where the applicant's property fits. Maybe they asked for three points but they only qualified for two, it should be a case of you can get the two points. In the application it said you can only check one box, so you had to make a determination. If you happened to choose the determination that was not the same determination as staff, then you're out of luck completely.

So that is what I'm requesting, consideration for instruction to staff with regard to how to handle these. Thank you.

MS. BINGHAM ESCAREÑO: Thank you, Tamea.

Any other comments? Staff, any comments?
MS. HOLLOWAY: Marni Holloway, Multifamily Finance.

I wanted to inform the Board that one of our colleagues and dear friends at HUD will be retiring soon, Steven Eberlein is the manager of a big chunk of the programs out of the Fort Worth office. We deal with him through our HOME funds, we've dealt with him through NSP, a little bit through National Housing Trust Fund. He has proven himself over and over again to be a reasonable, reliable, thoughtful colleague, and I for one will very much miss having that guidance and that just huge body of knowledge, also one that he applies with a sense of what we as a state are capable of doing.

So I wanted to let you know that Steve is retiring. Staff will be sending him a small appreciation, but I also wanted it to be on the record and to let you all know.

MS. BINGHAM ESCAREÑO: Thank you, thanks for doing that.

DR. MUÑOZ: Hey, Marni, just one final thought before you sit down. Has the manual for next year been created?

MS. HOLLOWAY: For next year, no.

DR. MUÑOZ: Is it going to have a sentence about -- are we going to restore that statement about the
Excel sheet?

MS. HOLLOWAY: Probably. We'll probably make a big swing at some other changes too. And I would point out that our application workshop completely covered all of these issues and several of the people sitting here were in that workshop.

DR. MUÑOZ: I get it. I guess what I'm saying is it should be more than just probably, if for no other reason than to avoid ten, twelve. I mean, it's a sentence. Right?

MS. HOLLOWAY: Actually, it was a whole section that we took out, but we certainly will put that back in.

DR. MUÑOZ: If you could put a sentence back in.

MR. ECCLES: Respectfully, this beyond the call of the Public Meetings Act.

MS. BINGHAM ESCAREÑO: Just general public comment.

MR. ECCLES: This is really a public comment section.

MS. BINGHAM ESCAREÑO: Good observation.

DR. MUÑOZ: Okay.

MS. BINGHAM ESCAREÑO: Thanks, Marni.

And I hope that whoever your new contact is at HUD had Steve as a role model.
MS. HOLLOWAY: Well, so remember that the Federal Government is under a hiring freeze and HUD hasn't been filling positions. They did not fill the position for the last manager that left; Steve has been down by two or three staff for quite some time.

MS. BINGHAM ESCAREÑO: So we may have to share with Louisiana or Arkansas?

MS. HOLLOWAY: Something. But he will be very much missed.

MS. BINGHAM ESCAREÑO: Thanks for recognizing him.

Any other comments from staff?

MR. IRVINE: I have one additional comment about Steve. One of the thing I really treasured about Steve is he would tell you point blank exactly what he thought, why he thought it, and how it was grounded in statute or rule, whether you liked it or not, and it's nice to have that kind of directness and clarity.

MS. BINGHAM ESCAREÑO: Thanks, Tim.

Any other comments from staff, management, Board?

MR. GOODWIN: What happened with the Fenix project that we discussed at our last Board meeting? Is that is an appropriate time to get a briefing?

MR. IRVINE: We are not permitted by the Open
Meetings Act to provide briefings on matters not posted on the agenda, but we'll provide an update at the next Board meeting if you so desire.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: Thank you.

So we'll let the record reflect that the ladies managed a very time-efficient Board meeting today. As time efficient as it was, a couple of major take-aways. Just the continuing struggle with our 2016s, and again, just an appreciation because I can tell everybody that comments, staff, community, that we're all working together to try to figure out the way to get the deals done.

And then unfortunately, the appeals, a difficult position because as Lora said, every one of these applications has tremendous merit in their communities, so it's not easy for the Board to make some of those difficult decisions, but I appreciate the desire to get that information and to make the best decision and to recognize opportunities to clarify for the future. So thank you for that.

If there are no other comments or additions, we'll adjourn the meeting. Thank you very much.

(Whereupon, at 10:43 a.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: March 23, 2017

I do hereby certify that the foregoing pages, numbers 1 through 75, 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.

3/24/2017
(Transcriber) (Date)

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