TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

William B. Travis Building
Room 1-111
1701 Congress Avenue
Austin, Texas

April 27, 2017
9:02 a.m.

BOARD MEMBERS PRESENT:

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

 TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
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AGENDA ITEM PAGE

CALL TO ORDER 8
ROLL CALL
CERTIFICATION OF QUORUM

Resolution recognizing May as Community Action Month

Resolution recognizing May as National Mobility Awareness Month

CONSENT AGENDA

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EXECUTIVE

a) Presentation, discussion, and possible action on Board Meeting Minutes summary for the meeting of January 26, 2017

LEGAL

b) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Oakridge Apartments (HTC 93159/CMTS 1189)

c) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Autumn Creek (HTC 70071/CMTS 906)

d) Presentation, discussion, and possible action regarding the adoption of three agreed final orders concerning Pinnacle properties, including Rosemont of Oak Hollow (HTC 01435/BOND MF048/CMTS 445), Rosemont at Timber Creek (HTC 010157/CMTS 300), and Rosemont at Sierra Vista (HTC 04482/CMTS 4179)

e) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Lakewood Gardens (HTC 91059/CMTS 2305)

f) Presentation, discussion, and possible action regarding the adoption of agreed final order concerning Vicksburg Ltd. (HTC 91104/CMTS 980)

ON THE RECORD REPORTING
(512) 450-0342
ASSET MANAGEMENT

g) Presentation, discussion and possible action regarding Ownership Transfers prior to IRS Form 8609 Issuance or Construction Completion
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14024 Creekside Village Apartments Jacksonville
14025 Heritage Place Apartments Jacksonville

h) Presentation, discussion and possible action regarding Material Amendments to Housing Tax Credit
16057 Silverleaf at Mason Mason
16105 Tuscany Park at Arcola Arcola
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BOND FINANCE

i) Presentation, discussion, and possible action on Resolution 17-015 regarding the annual approval of the Department’s Investment Policy

j) Presentation, discussion, and possible action on Resolution 17-016 regarding the annual approval of the Department’s Interest Rate Swap Policy

COMMUNITY AFFAIRS

k) Presentation, discussion, and possible action on release of the draft Federal Fiscal Years 2018-2019 Community Services Block Grant ("CSBG") State Plan for public comment, with a link to be published in the Texas Register

l) Presentation, discussion, and possible action on the Program Year ("PY") 2017 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan and Awards

m) Presentation, discussion, and possible action on release of the draft FFY 2018 Low Income Home Energy Assistance Program ("LIHEAP") State Plan to be made available for Public Comment and to be announced in the Texas Register

ON THE RECORD REPORTING
(512) 450-0342
MULTIFAMILY FINANCE
n) Presentation, discussion, and possible action on the issuance of Determination Notices for Housing Tax Credits with another issuer
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17417 Fenix Estates Houston

o) Presentation, discussion, and possible action on the 2016 State of Texas National Housing Trust Fund Allocation Plan

RULES
p) Presentation, discussion and possible action on proposed amendments to 10 TAC §1.13, concerning adjudicative hearing procedures, and directing that they be published for public comment in the Texas Register

q) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an Order proposing new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing its publication for public comment in the Texas Register

r) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and an Order proposing new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing its publication for public comment in the Texas Register

s) Presentation, discussion, and possible action on orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and orders adopting new 10 TAC Chapter 23, Single Family HOME Program ("HOME Rule"), concerning HOME single family activities, and directing their publication in the Texas Register

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities,
April 2017 B May 2017

ON THE RECORD REPORTING
(512) 450-0342
b) Report on the reallocation of recaptured 
Program Year 2015 Emergency Solutions 
Grants Program funding 

c) Report on increase to the escrow account 
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c) Presentation, discussion and possible action on proposed new 10 TAC §1.25, concerning information security and privacy requirements for contractors, the repeal of 10 TAC §1.24, concerning Protected Health Information, and the repeal of 10 TAC §5.18, concerning information technology security practices, and directing that they be published for public comment in the

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a) Presentation, discussion, and possible action on Resolution 17-017 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2017 Series A, Single Family Mortgage Revenue Refunding Bonds, 2017 Series B (Taxable) and Single Family Mortgage Revenue Bonds, 2017 Series C (Taxable); approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this Resolution, and containing other provisions relating to the subject

b) Presentation, discussion, and possible action on Resolution No. 17-018 authorizing the issuance and delivery of Texas Department of Housing and Community Affairs Series 2017 Issuer Note; approving the form and substance of related documents; authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this Resolution; and containing other provisions relating to the subject (PULLED)

ITEM 6: MULTIFAMILY FINANCE
a) Presentation, discussion, and possible action on timely filed appeal of application termination under the 2017 Uniform Multifamily Rules
b) Presentation, discussion, and possible action regarding a request for waiver of rules for Blue Flame, HTC #17330

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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS none

EXECUTIVE SESSION none

OPEN SESSION --

ADJOURN 153
PROCEEDINGS

MS. BINGHAM ESCAREÑO: Good morning. Welcome to the April meeting of the Texas Department of Housing and Community Affairs. We'll call the meeting to order and check for quorum.

Mr. Gann?

MR. GANN: Here.

MS. BINGHAM ESCAREÑO: Mr. Goodwin?

MR. GOODWIN: Here.

MS. BINGHAM ESCAREÑO: Dr. Muñoz?

DR. MUÑOZ: Present.

MS. BINGHAM ESCAREÑO: All right. And I'm here, so we have quorum.

Let's stand for the pledges.

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

MS. BINGHAM ESCAREÑO: There were a few votes to have the meeting outside today. We thought that might be a little distracting, though.

We have a couple of resolutions to be presented this morning to get us started. Michael, do you have those?

MR. LYTTLE: Yes, Madam Chair. The first one deals with Community Action Month. I will go ahead and read it and then the Board will consider it.
The resolution reads as follows:

"Whereas, Community Action Agencies are nonprofit private and public organizations established under the Economic Opportunity Act of 1964 to ameliorate the effects of poverty and help persons experiencing poverty to transition to self sufficiency;

"Whereas, Community Action builds and promotes economic stability, enhancing stronger communities, and ensuring the opportunity to live in dignity;

"Whereas, nationally Community Action has enhanced the lives of millions by providing essential, life-changing services and opportunities;

"Whereas, Community Action serves 99% of America’s counties in rural, suburban, and urban communities and works towards the goal of ending poverty in our lifetime;

"Whereas, Texas has a strong vibrant network of Community Action Agencies to deliver Community Action to Texans in need;

"Whereas, Community Action will continue to implement innovative and cost-effective programs to improve the lives and living conditions of the impoverished; continue to provide support and opportunities for all eligible households in need of assistance; and continue to develop and carry out
effective welfare system reforms; and

"Whereas, the Texas Department of Housing and Community Affairs and the State of Texas support the Community Action network in Texas in working to improve communities and make Texas a better place to live not only during Community Action Month in May, 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 May 2017, as Community Action Month in Texas, and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of the hard work and dedication of all Texas Community Action agencies.

"Signed this twenty-seventh day of April 2017."

MS. BINGHAM ESCAREÑO: Thank you, Michael.
This is a resolution for which we would like to take action. Do I hear a motion to so resolve?

DR. MUÑOZ: So moved.

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Dr. Muñoz moves and Mr. Gann seconds.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?
(No response.)

MS. BINGHAM ESCAREÑO: That motion carries.

Good.

MR. IRVINE: And might I recognize that leadership of the Texas Association of Community Action Agencies is here to share in our recognition of all that their group does and the entire network of community action agencies is just fantastic. Thank you so much.

MS. BINGHAM ESCAREÑO: Thank you.

(Applause.)

MR. LYTTLE: The second resolution is in honor of May 2017 also being National Mobility Awareness Month.

The resolution reads as follows:

"Whereas, May 2017 is National Mobility Awareness Month, which is dedicated to showing the community at large how People with Disabilities can live active, mobile lifestyles, and raise awareness of the mobility solutions available in the local community;

"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, it is the policy of the Department to support equal housing opportunities in the administration of its all its Single Family and Multifamily Programs, especially in regards to People with Disabilities
accessing new home construction, home rehabilitation, housing vouchers, and rental assistance programs and services;

"Whereas, this year, the Department is celebrating 7 years of offering the Amy Young Barrier Removal Program, named in honor of the late advocate for Texans with Disabilities who helped shape the state-funded program to improve the quality of life for People with Disabilities throughout the State of Texas;

"Whereas, the Amy Young Barrier Removal Program provides one-time grants of up to $20,000 for Persons with Disabilities, both renters and homeowners earning up to 80% of the Area Median Family Income, who need home modifications to increase accessibility and eliminate hazardous conditions in their homes;

"Whereas, since 2010, the Amy Young Barrier Removal Program has completed approximately $16.8 million worth of accessibility modifications on approximately 880 homes of Texans with Disabilities, such as constructing roll-in showers, installing shower wands and lever faucets, widening doorways, modifying kitchens and laundry rooms with accessible cabinetry and appliances, building ramps, and improving walkways with handrails, paving, and lighting to accommodate program participants' specific needs;
"Whereas, the Department applauds the approximately 25 nonprofit organizations and local governments around the state who are Amy Young Barrier Removal Program Administrators who advocate for improving mobility and longevity of their clients through quality construction, pragmatic solutions and compassionate service; and

"Whereas, the Department encourages Texans to explore the numerous TDHCA programs and resources related to increasing and maintaining mobility during National Mobility Awareness Month and throughout the year;

"Now, therefore, it is hereby resolved, that in the pursuit of the goal and responsibility of increasing mobility opportunities of Texans with Disabilities, the Governing Board of the Texas Department of Housing and Community Affairs, does hereby celebrate May 2017 as National Mobility Awareness Month and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of National Mobility Awareness Month.

"Signed this Twenty-Seventh Day of April, 2017."

MS. BINGHAM ESCAREÑO: Do I hear a motion to so resolve?

MR. GOODWIN: So moved.
MS. BINGHAM ESCAREÑO: Mr. Gann makes the
motion.

DR. MUÑOZ: Second.

MR. GANN: J.B. made the motion.

MS. BINGHAM ESCAREÑO: So I have a motion by
Mr. Goodwin?

MR. GOODWIN: Yes, ma'am.

MS. BINGHAM ESCAREÑO: Okay. And a second by
Dr. Muñoz. Thank you very much.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

Anybody we need to recognize?

MR. IRVINE: No.

MS. BINGHAM ESCAREÑO: Okay. So housekeeping
item, this first row for people that wish to speak on an
item, and just remember, if you're speaking today on a
item, that there will be something to sign right up at the
podium.

Well, move to the consent agenda. Does anyone
have anything that needs to be pulled or further discussed
or moved from the consent agenda?

(No response.)
MS. BINGHAM ESCAREÑO: If not, we'll entertain a motion.

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

MR. GANN: I'll second that.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

Sorry.

MR. SAMUELS: I would like to speak on a consent item.

MS. BINGHAM ESCAREÑO: Thank you very much.

MR. SAMUELS: First of all, my name is Eric Samuels. I'm the president and CEO of Texas Homeless network, and my comment is in regard to agenda item 1(k) which references the Community Services Block Grant State Plan, and it's specifically on Section 7, item 7.9 of that plan where the Department lays out activities under the CSBG discretionary funds.

I'd like to ask the Board to consider adding two additional activities under that funding allotment, number one, funding for training and technical assistance
for programs ending homelessness in Texas. We've made a lot of headway in this work over the past five years, reducing homelessness by 32 percent over that time. And then number two, I'd like to ask for funding to support the coordination and implementation of Texas's Annual Conference on Ending Homelessness. This is a conference that last year brought together 500 advocates, homeless education liaisons and service providers to learn about the most up-to-date practices on ending homelessness, and more important, to form partnerships that make ending homelessness an easier and more efficient process in the communities.

Funding for these activities is currently provided to my agency through state general revenue funding. Unfortunately, that funding looks like it will be cut and most assuredly will be cut, and that will halt some of our momentum. That funding we've used, that $50,000 we've used to leverage $200,000 in federal funding for the same purpose and we've helped 20 programs get over $5 million in rapid rehousing and permanent supportive housing for people to end homelessness, so it would be a shame to discontinue this service. So if we could allocate some of these funds to this discretionary allotment for this purpose, we could continue this momentum and hopefully continue to reduce homelessness in
Texas.

MS. BINGHAM ESCAREÑO: Very good. Any questions from the Board members?

(No response.)

MS. BINGHAM ESCAREÑO: Any comments from staff?

MS. BOSTON: Brooke Boston.

I just wanted to clarify that if that is something you want to do, that is something staff can add before it goes out for public comment. This is the draft version, so a benefit of adding it now would potentially be that there's an opportunity to get comment on that suggestion. Much the way we do with rules, it's helpful to have ideas out for comment.

And I would also just mention I think we'd want to specify an amount in the section of the plan that he's talking about outlined out of the amount that's set aside for discretionary. We kind of break out amounts into different activities. We do come back to you guys later in the year to firm that up in a subsequent VAR, but because this is broken out, I do think we would want to specify that.

MR. IRVINE: And if they're not added at this time, they could not later be added in response to comment.

MS. BOSTON: I don't know whether that's the
case with a plan the way it is with rules, because I know that HHS would expect us to be responsive to comments from the network, for instance, if there were a criticism of something in the plan. I do think it's probably more transparent for us to try and put it in at this point if there's an interest to do so.

MR. ECCLES: Does staff have a recommendation on adding this at this point?

MS. BOSTON: I mean, think it's a great cause. In the past we've used some CSBG discretionary to fund homelessness activities. I think with budget cuts it's really unfortunately that they're experiencing the loss. I do think the funds could be effectively used. That being said, I think the use that would be channeled right now for the network is also an effective use. It's always hard when you have a limited resource to decide where it goes, so at least if we put it in there, you could get comment on whether people think that's the right active use or not.

MS. BINGHAM ESCAREÑO: What kind of timeline do we have? Does it need to go out for comment?

MS. BOSTON: Yes. We'd need to take action today and then it goes out for comment for about 30 days, I think, and then we're bringing it back in July.

MS. BINGHAM ESCAREÑO: Okay. So if the Board
wants to take action, shall we pull it from the consent agenda and move to action?  Okay.  Do I need a motion to pull it from the consent agenda because we moved to approve it.

MR. IRVINE:  It was just pulled.  You would have the motion to approve the consent agenda be for everything but this item.

MS. BINGHAM ESCAREÑO:  Very good. Did Mr. Goodwin make the motion?

MR. GOODWIN:  Yes.

MS. BINGHAM ESCAREÑO:  Are you okay amending your motion to pull is it 1(k)?

MR. GOODWIN:  Yes.

MS. BINGHAM ESCAREÑO:  And then Mr. Gann?

MR. GANN:  Yes, that's fine.

MS. BINGHAM ESCAREÑO:  Thank you.  Sorry about that.  Any other comment on the consent agenda?

(No response.)

MS. BINGHAM ESCAREÑO:  All right.  So we have a revised motion to approve the consent agenda with the exception of 1(k) that we'll move to the agenda, motion from Mr. Goodwin, second from Mr. Gann.  If there's no further discussion, all those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO:  Opposed, same sign.
(No response.)

MS. BINGHAM ESCAREÑO: Great. Motion carries, the consent agenda is approved.

Do you want to take on item dealing with 1(k) then?

MR. IRVINE: Yes.

MS. BINGHAM ESCAREÑO: So we just heard about item 1(k) from the consent agenda, now moved on to the action agenda. 1(k) was the presentation, discussion and possible action on the release of the draft Federal Fiscal Year 2018-2019 Community Services Block Grant, CSBG, State Plan for public comment, with a link to be published.

We heard public comment and a request to use some of the discretionary funds to support homelessness training and technical assistance. We have a staff recommendation to include that in the draft for public comment.

Brooke, did you have anything else?

MS. BOSTON: Sure. So this would be on page 23 of your plan, and on page 22 of your plan it shows that we would be doing $1.5 million for other activities, but then in a paragraph at the top of the subsequent page 23, we outline what the breakout of that $1.5- is. I think what we would do, if we were able to do $50,000 for his first request which was the T and TA on homelessness state
activities which is the funding that had been cut, and then if we did, for instance, $50,000 for the second request he had, for $100- total, and I can just proportionately pull that a little bit out, maybe like 20- here and there out of each of those categories that were already identified so no one area takes much of a hit. And I'll also clarify that it's for both years of the plan.

MS. BINGHAM ESCAREÑO: '18 and '19.

MS. BOSTON: Correct.

MS. BINGHAM ESCAREÑO: Great. That was pretty nimble. Good thinking on your feet.

Any other comment about that?

(No response.)

MS. BINGHAM ESCAREÑO: So we'll entertain a motion for staff's recommendation, I think might be the easiest way.

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

Second?

DR. MUÑOZ: Second.

MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds.

Any other discussion, questions?

(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. Great.

Thank you very much.

Then we'll move on to action items. The first item is number 3, a report item. Item (a), Marni, would you like to report?

MS. HOLLOWAY: Good morning, Madam Vice Chair, members of the Board. I'm Marni Holloway. I'm the director of the Multifamily Finance Division.

Item 3(a) is a report item. Should the Board wish staff to reconsider anything that we're reporting to you as a result of public comment, you may direct us to do that, but this is just a report item. Understood?

MR. IRVINE: And the way that we would do that would to bring it back next month as a possible action item.

MS. HOLLOWAY: Right, as a possible action item.

Okay. So item 3(a), staff will present a summary of determinations under 10 TAC 11.10 of the 2017 QAP related to third party requests for administrative deficiency. Today we're discussing the results of RFAD -- we call them RFAD -- RFAD requests for three applications
and the determinations that were made as of April 17.
These applications are: 17165 Merrit Headwaters, 17204
Vista Bella, and 17736 Providence at Ted Trout Drive.
Additional RFAD results will be reported to the Board as
they are received and processed.

So under the RFAD rule at 10 TAC 11.10, an
unrelated person or entity may bring new material
information about an application to staff's attention.
Third parties may request that staff consider whether an
application should be the subject of an administrative
deficiency. Staff will consider the request and proceed
as it deems appropriate under the applicable rules.
Requesters must provide sufficient credible evidence that
if confirmed would substantiate the request. Where staff
determined that the request substantiated the release of a
notice of administrative deficiency for the application,
the applicant was provided the opportunity to respond to
the submitted request. Staff has reviewed both the
request and response in making its determination.

Each request has been posted to the applicable
applications, along with the deficiency notice released,
supporting documentation received from the applicant, and
staff's determination, and that's all posted on the
Department's website. You'll recall that last year and
now again this year, full applications are posted on our
website and then they're updated in real time as we're going through our review process. Every night they're updated and all of this information is up there on the website.

Of course, the Board has final decision-making authority on any of these issues, and thus the determinations are subject to change. However, a requester may not formally appeal any staff determination if it's precluded by 10 TAC 10.902(b) related to the appeal process. So someone who submitted an RFAD or any other person may not submit an appeal related to someone else's application.

Where staff is recommending that a request result in a loss of points or other action, the applicants are notified and given an opportunity to appeal staff's recommendation. Staff has also provided notice of the results of the request to the requester.

So for a little bit of background information, you'll recall at the end of 2017 we had a lot of drama around an application, including RFAD requests that were really about staff's review process, that other applicants disagreed with how we had reviewed. As a result of those conversations, I -- it was me -- inserted language into the RFAD item rule for 2017 that said the RFAD process may not be used to question staff's review, that it couldn't
be you didn't do this right, your staff didn't do this right. Because of response from the community, that line came out. So what that tells staff is that the community is out there watching us review and waiting for us to do something that they don't agree with and then they're going to submit an RFAD and we're going to be standing up here trying to defend a decision that we made in the review process. As a result of that, this year we are following the rule to the letter as much as possibly can, so if the rule says this must be there, then this must be there.

We understand that in years past, applicants have been able to potentially supplement applications by providing other documents. That's actually prohibited by statute. So probably a lot of what you're going to hear -- and I know there was a letter that was provided -- is about how staff reviewed these items in the past. That's not how we're doing it anymore. We are by the book, by the rule, to the letter just as much as we possibly can. So just so that you have that background information.

So the first application is 17165 Merrit Headwaters. The request asked the Department to review whether the applicant met the requirements of 11.9(e)(3) of the QAP regarding pre-application participation.
Specifically, the requester questioned whether the applicant failed to properly notify all required individuals potentially rendering the applicant ineligible for six points for pre-application. Staff issued a notice of administrative deficiency to the applicant requesting evidence that the superintendent of the local school district had been properly notified. The applicant failed to respond to the administrative deficiency within the time frame specified in 10 TAC 11.2 and was terminated for failure to provide timely response, and that termination has not been appealed.

The second application, Vista Bella, the request asked the Department to review whether the applicant met the requirements of 11.9(e)(3) regarding pre-application participation, particularly whether the applicant failed to properly notify all required individuals. This request actually came from a community member, it did not come from another applicant. An administrative deficiency was issued to the applicant requesting evidence that they had properly notified the appropriate neighborhood organization. The applicant provided evidence that the development site is not within the boundaries of the neighborhood organization, thus notification of that body was not required, and that all other required notifications had been properly made.
Based on this evidence, staff determined that no further action was required.

The third application, number 17736 is Providence at Ted Trout Drive. The request asked the Department to review whether the applicant met the requirements for points under 11.9(c)(6) of the QAP. This is regarding underserved areas. Particularly, the request asked us to review whether the application qualifies for points under that subparagraph as portions of the census tract lie outside of the incorporated area.

This subparagraph states: 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, that's a three-point scoring item.

The next subparagraph down: For areas not scoring points under (c) above -- so under the one I just read to you -- a census tract that does not have a development subject to an active tax credit LURA or has received a tax credit award but has not yet reached the point where its LURA must be reported is two points. So there's two different underserved area items.

Staff issued a notice of administrative
deficiency to the applicant regarding the matter. In response, the applicant stated: the applicant mistakenly thought the development qualified for points under both subparagraphs (c) and (d) because the development is within the boundaries of an incorporated area and the census tract has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation. The applicant now understands that TDHCA staff's position is that the entire census tract and not only the development itself must be contained within the boundaries of the incorporated area in order to qualify for points under (c). As such, it appears that the application only qualifies for points under (d).

Staff reviewed the response provided and determined that the applicant, in fact, was not eligible for three points under subparagraph (c). Because the applicant did not request points under (d) and did not provide information supporting that request, the application cannot score points under that item. The applicant will receive a scoring notice indicating the change in the score and will have the ability to appeal that determination.

Any questions?

MS. BINGHAM ESCAREÑO: Just remind me the requester for that third one.
MS. HOLLOWAY: The Providence at Ted Trout Drive?

MS. BINGHAM ESCAREÑO: Yes. Who was the requester?

MS. HOLLOWAY: The requester on that one, BETCO Consulting, so another applicant.

And I believe that most of the folks here are speaking on that one, and there was a letter that was provided out on the table also.

MS. BINGHAM ESCAREÑO: Before we hear public comment, are there any questions for Marni, any other questions?

(No response.)

MS. BINGHAM ESCAREÑO: I don't think I have any right now.

MS. HOLLOWAY: Okay. Thank you.

MS. BINGHAM ESCAREÑO: So let's start with then is anybody here to speak on Merritt Headwaters?

MR. JACKSON: Madam Chair, may I make a general comment, please? Thank you very much. Board members, nice to see you. Staff, Bo, Jim, Michael. My name is Frank Jackson, and I'm proud to be the executive director of the Texas Affiliation of Affordable Housing Providers, an organization that we refer to as TAAHP. Thank you for the opportunity to speak today to represent TAAHP's
members.

Generally, we enjoy a good working relationship with the Department. Sometimes we disagree and sometimes we get confused. This is one of those times. Our concern is with the new staff policy regarding point awards in the 2017 9 percent tax credit round. It has come to TAAHP's attention that TDHCA staff appears to have departed from historical precedent in their approach to scoring adjustments during the 2017 9 percent credit application round. TAAHP is concerned about the staff policy direction.

Historically, during staff's review process it if it is determined that an applicant requested points that the application did not ultimately qualify for but where documentation was present in the application to justify a lesser level of points under the same scoring item, staff has awarded the lesser level of points. New in 2017, under the same circumstances, staff is now deducting all points under a scoring category when evidence is present to justify some of those points being awarded.

This new policy of deducting all points when some level of points is justified is contrary to years of historical precedent, it is not supported by any TDHCA rule change, statutory change or staff guidance that we
are aware of. In the past five years, staff has consistently awarded the level of points an application qualifies for across a broad range of scoring items. Further, the Board has upheld the practice of partial point awards in a number of appeals during this same period.

We would request the Board direct staff to conform with the use of award points to the 2017 applications in the same manner as has been standard practice for years and to award the level of points to applications that are justified by the documentation submitted with the application.

Thank you for your time.

MS. BINGHAM ESCAREÑO: Thank you, Frank.

Any questions?

(No response.)

MS. BINGHAM ESCAREÑO: Just a reminder, this isn't an action item.

Any comments specific to Merritt Headwaters?

(No response.)

MS. BINGHAM ESCAREÑO: If not, we'll move on to first speak for Vista Bella 17204. No comment on Vista Bella? So we're all here for 17736 Providence? Very good.

MS. MARTIN: Good morning, everyone. My name
is Audrey Martin. I'm with Purple Martin Real Estate, and I'm speaking on behalf of the applicant for Providence at Ted Trout Drive, which is what you've heard a lot about just now.

The reason we're here speaking to you about a report item really relates a bit to procedure. We're in an in-between period where there's a staff determination in this report item but we haven't received a scoring notice just yet that has triggered our appeal rights, so we wanted to come in front of you and speak about this issue because we have a little bit of concern that by accepting the staff report that maybe, in effect, that's an acceptance of staff's recommendation and that might hurt our appeal chances later. So that's why we're all up here and speaking before it's actually an appeal item.

And as Marni mentioned, you all have a handout. It's a letter that I provided to staff that explains this issue in more detail than I can cover in three minutes. But essentially, in the case of Providence at Ted Trout Drive, as Marni explained, the applicant requested three points under underserved area and it was ultimately found that the site didn't qualify for three points, but the site does qualify for two points. The three and two point items are nearly identical in that your census tract needs to be clean in terms of having previous tax credit awards,
but for three points your full census tract needs to be in
the incorporated area, for two points there's no such
requirement for the location of your census tract.

So we did provide documentation within the
application that showed basically a search for all tax
credit developments in that census tract and that there
were none. And to be clear, there actually is no
documentation required by the application itself or the
procedures manual, but we did provide some.

So really we do want to relate back to what
Frank mentioned on behalf of TAAHP which relates to
historical practice and precedent. There has not been a
rule change at all related to adjustments of self score.
The rules have been exactly the same verbatim since 2013,
but there's a new interpretation. And you know, in this
program we, as applicants, do have to rely on historical
practice and what has been done in the past under similar
sets of rules, and that's what we've done here. So we
were a little taken aback by the deduction of all three
points when we clearly qualify for two.

And you can see in the letter is submitted
there are a number of examples over the last at least five
years of what I kind of refer to as partial point awards,
and this is a practice that the Board has upheld on a
number of occasions as well. And the examples I was able
to find run the gamut of scoring items, so there are some
that are menu-based where points stack on top of each
other. That's not the case for underserved area. But I
found examples of scoring items where there are mutually
exclusive options under a particular scoring item and in
those cases staff awarded those partial points. That is
the case here.

So there's a historical practice, there's been
a departure this year. We think it's going to affect
quite a lot of applicants. You all just haven't seen
appeals just yet, those probably are going to start next
month, but we thought it probably affects enough
applicants that having some Board direction on this might
be helpful to everyone really. And so we're simply asking
staff to implement scoring adjustments in the same way
that has been done over the past several years under
exactly the same rules, and for this particular
application we're asking that the two points that the
development's location qualifies for and for which we
submitted documentation should be awarded to this
development.

Thank you.

MS. BINGHAM ESCAREÑO: Thank you, Ms. Martin.

Any questions from the Board?

(No response.)
MS. BINGHAM ESCAREÑO: Just a reminder, too, the little bell is a friendly reminder to wrap up and we appreciate comments staying succinct and address things that the prior speakers haven't already addressed.

Good morning.

MR. LARBAU: Good morning, Board and Mr. Irvine. Thank you for letting us be here this morning.

The issue at hand is related to --

MR. ECCLES: I'm sorry. Could you state your name, sir?

MR. LARBAU: Yes. Don Larbau, Orange, Texas.

Sorry about that.

The issue at hand is related to 11.9(c)(6) of the 2017 QAP, the underserved area. The scoring item allows applicants to choose only one point in that section there, only one block to choose from there in that five point option, which have different point values. The applicant for Providence at Ted Trout requested three points under paragraph (c) being in a census tract which is an incorporated area and the census tract in a city should qualify for three points and we didn't see anything in the guidelines to fill out that there was a qualification for that census tract but there has become one.

So getting to where we are there, I think that
even though we did not qualify for three points, we did qualify for two points and had sent in the documentation to earn the two points. So we would just like to ask you to take a good long hard look at this because it's really changing precedent probably for about a 15-16 year period here that's been like it is now and then all of a sudden we get this that we're not going to be allowed any points for this section. We'd just like to appeal to you to look at this and I think you'll decide that we're right and I hope that you'll help us out on this. Thank you very much.

MS. BINGHAM ESCAREÑO: Thank you.

MR. AKBARI: Madam Chair, Tim, and Board members. I'm Chris Akbari. I'm the president of the ITEX Group.

First of all, I'd like to say thanks to staff. They're doing a great job in a very tough time. As we all know, there's a very limited amount of time to get these applications scored.

I think the key point that I'd like to bring to the Board today is that our applications have two types of scoring items: you have menu items where you can select multiple things, or you have items where you can select a single item. We believed that we could score three points because we were in an incorporated city in a census tract.
that never had had a previous development. Unfortunately, it was brought to our attention after we submitted the app that there was an FAQ where staff had determined that they felt like it was necessary for the whole census tract to be inside of the city. For us, we believe that in the spirit of this line item or this point item that we should get three points but we determined that it was correct based upon the FAQ that was out there.

The problem is you have a limited number of selections. You can only choose five, three, two, one. We selected three. We put documentation in there that clearly showed that we met what we thought was a three point item but it's very clear that the documentation in there is that we met the two point item also. For us, we are seeing the direction that it's going is that if you do not select the right single check box, then you lose all your points, and for us that is a major difference from what we've seen over the past few years, the past eleven years that I've been involved with TDHCA.

So for us we're here to request two things. We're here to request that the Board evaluate this and possibly bring up a future action item to enforce that the staff will recommend application points based upon what they qualify for and what documentation that they put into the application.
So thank you very much. I appreciate your time.

MS. BINGHAM ESCAREÑO: Thank you.

MR. BUMP: Good morning, Madam Chair, Board members, staff. Casey Bump with Bonner Carrington.

In the Ted Trout application they requested three points and are going to receive zero even though they qualify, arguably, for two. We had exactly the opposite situation in two applications that we filed with the underserved area. Our interpretation was the same as Ted Trout's applicant. Based on our reasonable interpretation of the language, we thought we did not qualify for three points because the city had received an allocation, so we selected two.

We relied upon the workshop materials which stated in part 2 on page 58 regarding the requirements for tab 9, "So if your census tract is within a city whose last tax credit development was 15 or more years ago and that one is still in the inventory, you can set three points." Our city was not devoid of tax credits although our census tract was. Using the workshop explanation as our guide, we thought we did not qualify for three and selected two. Staff ultimately interpreted the language differently, and under staff's interpretation we would qualify for three points. We feel we should get three
points even though they were not requested.

The lack of clarity in the underserved area scoring requirements has created a number of difficulties this year. We think that under the circumstances the only fair way to resolve these issues is for each applicant to receive the highest number of points that they qualify for or adjust accordingly. There is a precedent for awarding maximum points for which the application qualifies where applicants were misled into claiming fewer points due to lack of clarity in the QAP.

Under the 2013 QAP, points were awarded for disaster declarations as long as they were not preemptive. Changing staff guidance concerning what constituted a preemptive declaration meant that applicants scored their projects differently even though all counties had declared disasters. Ultimately, the confusion caused staff to suggest and the Board to direct staff that all applicants that qualified for seven points, with the exception of Dallas, Tarrant and Kaufman, which would receive eight points regardless of the number of points claimed. This is a solution that would be appropriate for scoring the underserved area points. Staff awards the points that the application qualifies for regardless of the points requested.

This year in the QAP there were a number of
changes and with interpretation there does come some
unintended consequences. Staff is doing a great job and
doing what they think is right, and while the change in
points may not completely benefit us, we think that
setting the precedent of situations like this that are
specifically tied to a census tract that can be proven
would be best for all applicants, and we ask that you
direct staff to award the points up or down based on what
the applicant actually qualified for.

Thank you for your time.

MS. BINGHAM ESCAREÑO: Thank you, Casey.

MS. DULA: Good morning. Tamea Dula with Coats
Rose.

Last month in the public comment session I
talked to you about problems that we were seeing in the
language in some of the QAP and rule items, and in
particular I talked about the underserved area language
where I did a little grammar brush-up with regard to what
the item (c) meant, whether the project had to be in a
municipality that had no previous awards for the last 15
years or whether it had to be in a census tract that had
no such awards. And subsequently, I wrote a letter to the
executive director discussing the two possible
interpretations and proposing a course of action that I
felt would be equitable which was to ignore which box was
checked because of the confusion and just simply determine
the number of points based upon the documentation in the
application.

Additionally, staff's new vigorous approach to
situations where too many points are claimed in the
application but the application does qualify for some
fewer points is complicating matters too. Staff's current
position that they should score zero points because you
didn't check the box for the fewer points is a real
problem here because in many of those instances you were
directed that points could only be claimed under one of
the following items, which to me at least suggests that
you could only check one, like check three points if you
think you get it, or check only two points if you
interpreted it a different way.

We are now seeing many instances where the
directions in the application caused these difficulties
and the language is subject to multiple interpretations.
So we are suggesting that you in some instances direct
staff that under the 2017 round the highest score that can
be substantiated within the application itself should be
what is awarded, regardless of what number of points were
selected by the applicant.

There is precedent for this with regard to the
preemptive disaster declarations that Casey was talking
about. The language was new, it said that you can get a score of seven points if you're in a statewide disaster declaration or eight if you were in a localized one, but preemptive disaster declarations didn't count and preemptive disaster declarations, the definition of it changed as we went through the pre-application period. As a result, staff came to the Board and said, We're seeing a problem here, we suggest that you give us direction to score everybody appropriately. You did and they did, and that's what we think needs to be done here.

Any questions?

MS. BINGHAM ESCAREÑO: I have a question, and it probably goes to most of the folks so far, maybe with the exception of the folks in this specific development. When you're asking for Board direction to award the highest point, are you referencing specifically this scoring item? Because obviously part of I think what Casey is bringing up, or some of the other speakers, is some of these are exclusionary, kind of pick one, and then some of them are layered and can be any combination of several. Are you referencing specially this scoring item section 11.9(c)(6)?

MS. DULA: Yes. I am referencing this in particular, but I also know that this is going to be a problem with the cost per square foot points where you're
required to indicate how many points you are asking for, the maximum being twelve, I think, and if you don't qualify for the twelve because of interpretive issues -- and those interpretive issues have to do with amenities and high opportunity area and whether or not you qualify for those amenities -- that's going to be a problem too, so I would include that also.

MS. BINGHAM ESCAREÑO: Any other questions?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you.

MS. DULA: Thank you.

MS. VACHETTI: Good morning. I'm Lisa Vachetti with BETCH. So we represent the developer whose application is in direct competition with Providence at Ted Trout Drive.

As you've heard, the applicant for Providence has come to the conclusion that they do not qualify for the three points requested in their submitted application. They're now asking to change their application to request a lower two points. We do not believe that they should be allowed to change their application and also that they explicitly declined the two points.

I want to point out there are several speaking up here because there are other sites in this application round that were chosen specifically by developers due to
similar characteristics to the one for Providence. These sites that were chosen by these developers are also within boundaries of both an incorporated area and a census tract with no TDHCA development within their first 15 years of affordability. We chose these sites because we thought that characteristic would qualify us for the maximum three points, but as explained by staff, the census tracts also had to be entirely within the boundaries of an incorporated area.

With this further clarification from TDHCA through the FAQ process, we realized that our sites do not qualify for the higher three points. As a result, we went ahead and lowered our point request for the more appropriate two points. Like the rest of us, the site for Providence at Ted Trout Drive does not qualify for the three points, but unlike the rest of us, they happened to decline the lower two points and continued to request the higher points despite the clarification provided in the FAQs.

There's been some argument about being able to select only one item underneath that category in the application and that the instructions were a little bit unclear as to what you should be able to do. This one is a little bit unique from some of the past examples, I think -- and maybe staff can clarify or correct me if I'm
wrong -- but it's different in that the way that you could select your point items you could put yes or no as far as whether you qualify for those points, not necessarily that you're requesting those points. So the way that the workbook works is that you could have left it blank, you could have put or you could have put yes.

In this case, this applicant chose no for every other category and yes for the three point item. I'm sure it was an honest mistake but I do feel like with all of the information that was out there that was provided by staff that it's not a mistake that should be correctable because there is information out there clarifying what actually qualifies for the three points.

Thank you.

MS. ANDRÉ: Good morning. I'm Sarah André. I am a consultant in the tax credit field. I have no relation to this application, anything that's being discussed or any of these applicants. I have nothing to gain from my comments, and for all I know, I might have something to lose, I haven't done an analysis of what would happen.

I think that it is very important for you to hear that if an applicant qualifies for points and they provide documentation to that effect, they should receive those points. I do not agree with Casey that TDHCA should
award points that you don't ask for. It's been very clear
that the burden is on the applicant to ask for points and
it's also been very clear that if you don't ask for
something, you can't get it. And that's stated at the
various training sessions and that would just be onerous
on staff. You know, why not submit a blank application
and have them tell me what I score for?

But in this case the applicant did qualify for
two points, there is a historical precedent of TDHCA
looking at various factors and saying you don't get eleven
here but you get ten, you didn't quite make it to that
level but you do qualify for the lesser points, and I
agree with Tamea that if we change that, it's just going
to be sort of a world of hurt on these types of hearings.
So I do think that if you provide the documentation and
you qualify, you should get the points.

And I thank you very much for your time
listening to this issue.

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

MS. ANDERSON: My name is Sarah Anderson and
I'm also a consultant, and I would like to echo everything
that Sarah André said in that I have no connection to any
of these deals, I'm not in this region, and I don't even
want to speak on their issue. It appears to be a little
bit of a tangential issues, and our concerns are a little bit on the review as we're going through.

And I was a little surprised when I saw the write-up for this, but again, I don't want to speak specifically on it, but my concern is what we're seeing in the reviewing which is an all or nothing review and look. The administrative deficiency process works specifically that if we submit something and if the Department wants more information, they have the ability to ask for more information. So I'm a little concerned when I hear staff talking about if it's not there, we're not asking for anything more.

The rules this year there were a lot of changes and a lot of new information being requested, and unfortunately, the first year you do that, the definitions and what staff wants isn't as clear as we would like it to be, and we go through a process and staff goes through a process of learning what it is. When they say that we're next to something and the manual doesn't reflect exactly what we're supposed to submit, we submit something, we haven't read someone's mind correctly, and all of a sudden what we submitted doesn't meet what we're supposed to do but we haven't been told what to submit and we find ourselves in this weird nether region of we don't want any more information even though we didn't tell you what we
wanted exactly.

So I think you're going to see a lot of that as we're struggling with staff meeting a lot of new -- this high opportunity, almost everything on high opportunity was new as far as proof that needed to be submitted. So I just wanted to lay that out that I think you're going to see that, and it's similar and tangentially that if someone submits something, if staff has a question, if they want clarification, they can ask for is and they should ask for it rather than just say this doesn't meet what we want and we're done. Just a personal opinion, and that is all.

Thank you.

MR. PALMER: Barry Palmer with Coats Rose.

I think this is more than just one deal here that we're talking about, this issue of all or nothing on the points. We're going to see this on a number of deals and if we follow this change in policy, it's going to reflect in the outcome of the number of deals that get awarded.

And it seems to me that to change from longstanding practice of how the staff reviews and scores applications is something that needs to be put out for public comment and discussed and considered by all the stakeholders and by the Board before that gets
implemented. It shouldn't be something that staff just
decides. This is the first time I've heard that this is
how we came to this is Marni deciding that because we
didn't get a change in the QAP that she wanted that we
were going to totally change the way that we score
applications. That's something that you all should have
been presented with comments on both sides as to whether
that's even good policy rather than just implement it.

MR. COMBS: Good morning. My name is Ryan
Combs. I'm with Palladium, and I don't compete against
this application but we do compete in the process.

And as I look at these, I don't see this as a
change. I want to support staff because I don't see this
as a change in policy. What I've understood for years is
that when you submit an application -- I think the rules
support this -- you submit an application, you don't
change your application. And we have months, if something
is unclear, we have months to go to staff. I do it all
the time, shoot an email and say: What do you mean,
what's the intent? And they addressed this issue about
underserved at the work sessions in multiple cities, in
the FAQ which that's what the FAQ is for, they did their
best to make this clear. If it was still unclear, you
could reach out to staff.

In the past -- and I disagree with Barry's
comment -- I don't believe this is change in policy, in the past what we have always been asked to do is through the administrative deficiency process is if you choose points for something, prove to us why you think you get those points. And that's the opportunity that everybody has and that's my understanding that everybody has right now is we have the opportunity to prove why we believe we get those points.

Now, in the past, a few years ago when they introduced the community revitalization plan, you could qualify potentially for both, revitalization plan or high opportunity, and so there were applications that would request community revitalization, but then if it was determined by staff that, well, your revitalization plan didn't really meet, well, then you could go back and go: Okay, but everything in our application also would qualify for this, so just give us those.

And I think it's a very dangerous precedent to say, okay, well, then let's just figure out what you might could qualify for. This is a competitive process and when we submit our applications, we go in -- we're not guessing, we know what we're doing when we submit these applications because we're competing with so many people.

And so my argument would be for exactly what staff is doing, the process needs to be very fair, it needs to be...
very consistent, it is what it is, and if there's any misunderstanding, we all have the same opportunity to go figure out that understanding.

You know, there may be applications that misunderstood this, there were a lot of applications that didn't. You know, we figured it out because we reached out and if there was a question, we found out.

MS. BINGHAM ESCAREÑO: Thank you.

Claire, are you the last?

MS. PALMER: I think I am. Claire Palmer.

I do have a dog in this hunt on this application, but more importantly, I have a bunch of other people who have been through the review process and the all-or-nothing rules have applied to all of them and I've had applications that have lost points and have been terminated back in the earlier part of the review process.

If this changes now, it's going to be real unfair to the people who have already played by the rules and didn't appeal and accepted their points deductions or their terminations.

MS. BINGHAM ESCAREÑO: Thank you, Claire.

Any questions from the Board members?

(No response.)

MS. BINGHAM ESCAREÑO: Any other comments from staff?
MS. HOLLOWAY: I have no further comment.

MR. IRVINE: And I just would like to offer one comment. I do think it is appropriate when the Board accepts the report to either refrain from accepting on this particular report or make it clear that in accepting the report you're not prejudicing any appeal of the scoring notice. I do not think that it's posted for action, and even if it were posted for action, I do not think it's a good idea to fashion policy structures on the fly, that's the rulemaking process. I think when as scoring notices are issued and appeals occur that you will take into account all of the facts and circumstances that are presented on each appeal and hopefully make good and consistent decisions.

MS. BINGHAM ESCAREÑO: So let's do this just quickly just since this isn't an action item, does the Board have any instruction regarding the report on the first item which was 17165 Merritt Headwaters, Dripping Springs? Does the Board have any instruction to staff regarding that report?

(No response.)

MS. BINGHAM ESCAREÑO: The second one was Vista Bella in Lago Vista.

MR. IRVINE: We cannot take instruction, all you can do is accept the report or not.
MS. BINGHAM ESCAREÑO: Okay.

MS. HOLLOWAY: But I believe the Board can direct staff to bring something back as an agenda item.

MR. IRVINE: Yes.

MS. BINGHAM ESCAREÑO: So it's not appropriate for me to say then does the Board have any direction for staff on the first two report items? Is that still not appropriate?

MR. IRVINE: That's correct.

MS. BINGHAM ESCAREÑO: Hearing none. Does the Board have any direction for staff regarding the third item, TDHCA 17736 Providence at Ted Trout Drive, Hudson?

(No response.)

MS. BINGHAM ESCAREÑO: Hearing no instruction, the Board accepts the reports. Thank you.

Let's move on to item 4, our rules section.

MS. HOLLOWAY: We actually have 3(b).

MS. BINGHAM ESCAREÑO: Oh, pardon me. 3(b), report on the 2018 QAP project. Thanks, Marni.

MS. HOLLOWAY: So on March 22 of 2017, we held the third 2018 QAP roundtable. The theme of this discussion was market issues for housing tax credits.

While discussions with the Board have occurred, as you're aware, at past meetings and last month the Board took action to provide relief for 2016 9 percent awardees who
have to return credits, this roundtable last month was the first opportunity for affordable housing stakeholders to discuss market issues together with TDHCA staff in a more informal environment.

We began the discussion by noting that while there is a great deal of discussion regarding syndication issues, it has been difficult to gauge the true impact on the 2016 allocations. TDHCA won't be able to make a preliminary assessment until the 10 percent test which is not until July. Until then, the Department is unable to determine the extent of the issues unless developers speak openly with us. We pointed out that in order for us to find solutions, we must have clear signals from the entire development community and not just a few individuals.

Responses to the discussion were mixed. One developer shared that of two 2016 deals, one was able to close, another was unable to. For the deal that was able to close, the credit price had only dropped 4-1/2 cents so they were able to adjust their deal to make it work. Another developer shared that the allocation awarded to them probably would not work. And a third developer shared that their team was able to close one deal and another was coming back for a material amendment. So there's really this mixed bag across all the 2016 deals.

One thing that we're hearing generally is that
the community is waiting for results of proposals of comprehensive tax reform. Of course, that's now been published but we don't know what's going to happen with that, and that has pushed many recipients just to bide their time.

There was some discussion of changes to the direct loan requirements but with our current NOFA oversubscribed by six times for TCAP ARRA funds, there is no potential to make the requested changes at this point.

Participants discussed the allocation of returned credits to 2016 deals who are having equity issues but statutory requirements governing reallocation require that anything that's returned to us goes into the 2017 round.

Staff encouraged participants to propose new rules for 2018, help us develop those tools that would assist distressed 9 percent deals from 2016.

That is our report.

MS. BINGHAM ESCAREÑO: Marni, so just remind the Board why won't we know more until the 10 percent test.

MS. HOLLOWAY: That's the first time that we have an official deadline, that those 2016 deals have to come back to us with evidence that that is moving forward.

MS. BINGHAM ESCAREÑO: When you do the
roundtables, you get a smattering of feedback on where people think they'll be but the vast majority of the community either doesn't know or won't say.

MS. HOLLOWAY: I was doing a lot more talking in that roundtable than the other people in the room. I think there's a great deal of uncertainty out there. The other part of it is not everyone goes to the roundtables so it's not necessarily all of the '16 deals.

MS. BINGHAM ESCAREÑO: Any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: Tim, any other developments?

MR. IRVINE: Yes. I actually have a comment. You'll, of course, next month get the report on this month's work group meeting, but I wanted to make this announcement because this is a way to spread information. In addition to our substantive discussions yesterday, I put out for consideration that we would develop a 2018 QAP that only had minimal technical changes to improve the various issues that we've identified during this round and that we would not include any significant new policy-based substance changes. That would form the basis for getting a QAP done and out more quickly, thereby giving developers more time to find sites, get them ready to move forward, and so forth. I'm not saying that we will do that or even
that if staff recommends it that the Board will embrace it, but I wanted to offer that out there as a discussion and consideration item.

If you've got some significant policy concern that you really think would be new and very important to include in the 2018 QAP, we'd very much appreciate your reaching out to us to discuss it. Unless we hear of such things, we may well go down this course of a streamlined expedited QAP.

MS. HOLLOWAY: We actually will be putting this proposal up on forum and getting a LISTSERV email out so that people who weren't at that meeting or at this meeting know that this is an option that we're considering.

MS. BINGHAM ESCAREÑO: Great. Thank you.

Thanks for the report.

Now we'll move on to items under item 4, Rules, and Patricia.

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

Agenda item 4(a) proposes changes to the compliance monitoring rules to address requirements of the Violence Against Women Act, or VAWA. This federal law provides protections for applicants and residents at housing tax credit, HOME and many other affordable housing properties. Covered housing providers cannot deny
occupancy or terminate occupancy because of domestic violence or because of events and circumstances directly related to domestic violence.

HUD has recently released two forms, a notice of occupancy rights and a self-certification. These forms must be provided at the time of application, if the application is being rejected, if the household is going to be evicted, or if their lease will not be renewed. So if an applicant was evicted from a conventional apartment complex because of a domestic disturbance, that should not be taken into consideration when evaluating their qualifications at a TDHCA assisted property. Affordable housing providers must provide applicants and residents with notification about their protections under VAWA so that people are not inappropriately turned away or displaced from affordable housing properties.

All HOME, Neighborhood Stabilization, National Housing Trust Fund and Multifamily Direct Loans using HOME match that were funded after December of 2016 have additional requirements. Those developments must adopt an emergency transfer plan, so if a resident is experiencing domestic violence and they want to transfer on site, and they also must allow households impacted by domestic violence to break their lease without penalty.

HUD's recent regulations also required TDHCA as
a participating jurisdiction to adopt an emergency
transfer plan. That item is also attached to your Board
writeup. Since the Department does not control housing
that is subject to VAWA, the Department's plan focuses on
the training of Department employees, procedures for
handling calls from people looking for housing and
services because of domestic violence, and procedures for
tracking and reporting to HUD.

Since the rule needed to be amended, there are
a few other nonsubstantive additional amendments that are
proposed within these changes.

I recommend approval of the rule as presented
in your Board book for publication in the Texas Register,
and I'm available to answer any questions you might have.

MS. BINGHAM ESCAREÑO: Thank you, Patricia.

Any questions from the Board members on item
4(a) regarding VAWA/HUD?

(No response.)

MS. BINGHAM ESCAREÑO: We'll entertain a motion
to approve.

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

Second?

DR. MUÑOZ: Second.

MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds. Any
other 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.

Okay, Jennifer, item 4(b).

MS. MOLINARI: Good morning, Madam Chairman, Board members. Jennifer Molinari, HOME and Homeless Programs director, and I have to say from the get-go I've got a cold so if my voice breaks up just ignore it, and I'm not alone in this room so we'll just move on and talk about item 4(b) which is actually related to item 4(a).

Item 4(b) is a request to add new sections to our Chapters 5 and 7 related to the Violence Against Women Act requirements. This is being presented to you as a separate item from 4(a) because, as you might have noticed, ESG was exempted from the programs as discussed in item 4(a), and that is because the ESG or subrecipients are also required to develop an emergency transfer for other federal funding that they might receive from the Federal Government, so this is a separate rule. And in addition, we believe that giving the subrecipients the option to develop an emergency transfer plan helps with
their local control of such plans at the local level.

So to maintain compliance with federal requirements for the Department's existing ESG subrecipients, staff is proposing actions to add new sections 5.2014 and 7.2007 that will be published concurrently in the Texas Register for public comment, and also that 5.2014 will be published as an emergency rulemaking for immediate adoption.

The new section in Chapter 5 is being proposed as an emergency rule to take effect immediately upon publication in the Texas Register in order to be applicable to our current ESG subrecipients. These regulations relate to public health and safety of the clients of ESG subrecipients and need to be adopted on an emergency basis because the development and adoption of the emergency transfer plans must also be completed by June 14, 2017.

So the rule for Chapter 5 is simultaneously being proposed to become effective following final Board approval and public comment which is anticipated to occur in July, and what that means is the emergency rule will be in effect until we have our standard rule in place, expected to occur in July, and that will cover us through the end of the year for our current subrecipients.

Another item of note, last summer the ESG rules
in their entirety were separated from Chapter 5 and put into Chapter 7, so we also have in the Board book a new section for Chapter 7, which is similar to what we're doing for Chapter 5. That rule will take effect at the same time as the Chapter 5 rule will take effect and will cover our new 2017 subrecipients and any subrecipients after the 2017 program year.

So this item is being presented to you for public comment on the emergency rulemaking for Chapter 5 and also for us to go out for public comment on the new sections in Chapters 5 and 7. So in addition, it should be noted that the actual form of the preamble for submission for the new rule in Chapter 5 may be altered or split into two separate Texas Register filings rather than a single preamble that you might see in your Board book. That will be done in an effort to make sure that we meet Texas Register requirements, but the substance and authorization as presented in the Board action, as well as the rule itself and the language in the draft rule itself will not be materially different than what is being presented to you at the meeting.

And so with that, I would be happy to answer any questions you might have.

MS. BINGHAM ESCAREÑO: Thank you.

Does the Board have any questions for Jennifer?
MR. IRVINE: Might I make just one comment to the public at large? This Board very rarely engages in emergency rulemaking. The Administrative Procedures Act has very tight constraints on when emergency rulemaking is appropriate and please do not assume that the emergency rule is the be-all and end-all because the Administrative Procedures Act requires us at the same time to propose the permanent rule which goes through the usual public comment and reasoned response process, so please stay engaged on these issues.

MS. BINGHAM ESCAREÑO: And Tim, when we do emergency rules, there's those considerations, right, financial impact considerations, on the public?

MR. IRVINE: Health and safety.

MS. MOLINARI: And an emergency rule may only be in effect for 120 days and then it must come back before you.

DR. MUÑOZ: It cannot exceed 120 days?

MS. MOLINARI: It cannot exceed 120 days as an emergency rule.

MS. BINGHAM ESCAREÑO: If there's no further questions, we'll entertain a motion to approve item 4(b).

MR. GANN: I so move

MS. BINGHAM ESCAREÑO: Mr. Gann moves approval.

MR. GOODWIN: Second.
MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.
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: Great. Motion carries.

Thank you.

Item 4(c), Jeff.

MR. PENDER: Good morning. Jeff Pender, deputy general counsel.

I have no other comments other than what appears in your Board books on this rule and the repeals, but I'd be more than happy to answer any questions you might have about it.

MR. IRVINE: And this is on the action agenda basically so that the world at large will know that this is creating some new requirements that will ripple down and impact a lot of people, so it has to do with safeguarding sensitive information.

MS. BINGHAM ESCAREÑO: So regarding the item on protected health information, item 4(c), does the Board have any other questions? If not, we'll entertain a motion to approve.
MR. GOODWIN: So moved.

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

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Mr. Gann Seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: Seeing none, all those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

We're probably due for a break. It is 10:20 by the clock in front of me. Why don't we take a break until 10:40, 20-minute quick break, and then we'll resume the agenda.

(Whereupon, at 10:20 a.m., a brief recess was taken.)

MS. BINGHAM ESCAREÑO: We're reconvening the meeting, ready to review items under item 5, Bond Finance. Monica.

MS. GALUSKI: Good morning. This is a presentation, discussion and possible action on Resolution 17-017, authorizing the issuance, sale and delivery of
Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds 2017, Series A, Single Family Mortgage Revenue Refunding Bonds 2017, Series B (Taxable) and Single Family Mortgage Revenue Bonds 2017, Series C (Taxable), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject.

So this is about our upcoming bond issue. The proposed bond issue consists of three series, all fixed rate. Series 2017-A would be tax-exempt bonds, proceeds used to purchase Ginnie Mae mortgage-backed securities, backed by tax-exempt eligible newly originated mortgage loans. The tax-exempt eligible mortgage loans are loans that meet the IRS restrictions, such as borrower income, purchase price limits and first time homebuyer requirements. These loans are only eligible for inclusion in the tax-exempt bond series if they did not receive a mortgage credit certificate. The maximum par amount of 2017-A is $100 million but the issue size is expected to be closer to $60 million, and it really just depends on how many loans we still get purchased and ready to pool prior to pricing the bond issue.

2017 Series B will be taxable bonds but will
refund the Department's outstanding 2007 Series B which currently have bond rates of 5.15 to 5.30. Ginnie, Fannie and Freddie Mac mortgage-backed securities will be transferred to support the 2017 bonds. Par amount of 2017-B bonds won't exceed $30,375,000. Debt service savings are expected to exceed 5 percent of the principal amount of the Series 2007-B bonds being refunded and should exceed $3 million on a present value basis.

The 2017 Series C will be taxable bonds proceeds used to purchase Ginnie Mae and Fannie Mae mortgage-backed securities which will be backed newly originated mortgage loans that are ineligible for the tax-exempt financing -- in other words, loans that either had MCCs or are conventional mortgage loans related to Fannie Mae which we don't currently have as eligible for tax-exempt. The maximum issue size is $60 million; staff expects the issue to be closer to $35 million.

Underwriters for this issue are Ramirez, Jeffries, and RBC, with Ramirez as the senior manager. We expect to price the bonds in early to mid June and to close by the end of June. Contribution by the Department will not exceed $16 million. That sounds like a big number but that factors in all of the maximum bond issues which would equal $190,375,000, not the expected size.

MS. BINGHAM ESCAREÑO: On all three?
MS. GALUSKI: $16 million total, and that would include down payment and closing cost assistance on the new originated loans, lender compensation, and a portion for the cost of issuance on the bonds. Contribution will funded from amounts on deposit under the single family indenture and other single family related funds.

Staff recommends approval of Resolution 17-017, and I'm available to answer any questions that you might have.

MS. BINGHAM ESCAREÑO: This action is in the form of a resolution. If there's no questions, we'll entertain a motion to approve.

MR. GANN: I'd like to move it.

MS. BINGHAM ESCAREÑO: Mr. Gann moves for approval. Second?

MR. GOODWIN: Second.

MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

Any other discussion, any comments from staff, Board members?

MR. IRVINE: Just have a comment that I see a lot of folks from our team in the audience. I see our senior managers there, I see our financial advisors, I see our disclosure counsel, our bond counsel. It takes a lot of people to put together complex issues like this and it takes the best of the best to really do it right and
thoughtfully and prudently, and a big shout out to that team.

MS. BINGHAM ESCAREÑO: Great. They make it look and sound really easy.

MR. GANN: I take personal pleasure in making that motion, by the way.

MS. BINGHAM ESCAREÑO: Very good.

No further discussion, all those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: The motion carries.

Are we doing 5(b).

MS. GALUSKI: No. Staff is requesting that to be pulled.

MS. BINGHAM ESCAREÑO: Okay. So we're going to pull 5(b).

Thank you, Monica. Thank you, team.

We're going to move back into item 6. Marni, you're going to take care of (a) and (b) and then we'll see Andrew probably for (c) and (d)?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Very good.

MS. HOLLOWAY: All right. Item 6(a) is presentation, discussion and possible action on timely
filed appeals of application terminations under the 2017 Uniform Multifamily Rules. These are three different applications that we will take in succession.

The first one is application number 17069, this is the Arlinda Gardens supportive housing application. It was terminated for failure to meet the requirements of multiple provisions of the 2017 QAP and Uniform Multifamily Rules. The applicant timely filed an appeal which the executive director has denied in part and conditionally granted in part. The executive director reviewed the information presented by the applicant and found that the information provided for 811 participation and the lack of organization of the development narrative both warranted the opportunity to provide clarification via administrative deficiency.

Multiple material deficiencies remain unresolved. The applicant did not disclose that the proposed development site is located within the attendance zone of a high school that does not have a Met Standard rating. The applicant incorrectly certified on the development owner certification that the development is not located in an area with any of the undesirable neighborhood characteristics which renders the development owner certification invalid.

The applicant did not provide information
regarding the mitigation of undesirable neighborhood characteristics as required by the rule and application, nor did they provide the required undesirable neighborhood characteristics report. The application includes a materially deficient request for multifamily direct loan funds. The applicant did not provide letters from utility providers stating that services are present and available. The applicant did not provide a statement explaining how the proposed development will promote greater housing choice.

The architectural drawings are incomplete. The proposed development has four stories but does not include the required elevator. The 15-year rental pro forma does not include the debt service for the direct loan funds requested or the permanent loan described elsewhere in the application. This omission renders the lender certification invalid and the application therefore lacks support for 18 points for financial feasibility. The architect certification is not included. The site design and development feasibility report does not include the required survey or site plan prepared by a civil engineer.

As part of their appeal, the applicant requested an accommodation, specifically that the material deficiencies be treated as administrative deficiencies. The result of that request for accommodation may be
presented to the Board at the May meeting. Staff
continues to recommend termination of the application and
denial of the appeal.

    Given the applicant's March 17 request for
accommodations under 10 TAC 1.1, and the Board's ability
to review the applicant's request for accommodation, if
the Board sustains staff's recommendation for termination, it will become effective only after the Board has the
opportunity to review the request for accommodation if the
applicant chooses to have the Board review it at the May
2017 meeting.

    Staff recommends denial of the appeal of
termination for application 17069. We need to be very
clear that this action today is only about programs
recommendation of denial of the appeal based on the
material deficiencies in the application. This is the
only item that we're discussing.

MR. ECCLES: Just one other point of
clarification on this. Since it was revealed in your
presentation that the executive director conditionally
granted elements of it, the condition was that if the
Board reversed on all of the other bases that the appeal
was granted on -- or not granted but that the application
was terminated for, so he addressed a couple of them. Two
issues were conditionally granted by the executive
director but unless he were able to show that the
termination was improper and should be returned to staff,
the application would still be terminated, and in essence,
there's no reason to go back and review for administrative
deficiency purposes two matters when there are a host of
other reasons that would make the application terminated.

MS. HOLLOWAY: Correct. We have not issued an
administrative deficiency on these two items pending
outcome of the other issues with the application.

I would also need to let you know that this was
not a full in-depth review of this application so there
may be other issues. These are the material deficiencies
that we identified through a limited review.

I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: So the action today is
only whether to deny the appeal of the termination or
uphold staff's recommendation?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Any questions of Marni
before we ask for a motion?

(No response.)

MS. BINGHAM ESCAREÑO: We'll entertain a motion
then on this first appeal which is 17069, Arlinda Gardens.

MR. GOODWIN: I would move we approve staff's
recommendation to deny the appeal.
MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

MR. GANN: I'll second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

Thank you, Marni.

We'll take comment.

MR. IRVINE: No comment on this item.

MS. BINGHAM ESCAREÑO: Very good. Any other questions from staff?

We have a motion and a second to approve staff's denial of the appeal of termination for Arlinda Gardens. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

MS. HOLLOWAY: The second application that we're discussing today is 17742 Las Villas del Rio Hondo. The application was terminated for failure to meet the electronic filing agreement deadline requirements of 10 TAC 11.2, so that's in the QAP.

The Department receives some full applications for which pre-application was not submitted. In order to set up the file transfer protocol account for application submission, applicants that did not submit a pre-app must submit the electronic filing agreement which was due to
the Department on February 17. This is a deadline date that was included in the QAP.

On February 23, the applicant submitted an electronic filing agreement which staff originally declined to accept. After discussion, staff determined that the applicant would be allowed to submit the application in order to preserve any appeal rights that the applicant might have. So if we had just said no back then, then they wouldn't have had an application in and we wanted to make sure that they were afforded every opportunity for appeal. The applicant was informed at the time that they received access that the application would be immediately terminated if and when it was submitted.

The applicant's appeal asserts that there were no intervening or conflicting rules under the QAP and the statute that alter the March 1, 2017 application submission deadline under the QAP and statute not related to the scoring. The deadline for submitting the electronic filing agreement does not conflict with the application submission deadline. The deadline is a prerequisite that allows staff to plan time and resources needed to ensure a reliable application review process.

The appeal indicates that the applicant gained site control from the land seller on February 17, 2017, the day the request was due, so the applicant had an
opportunity to request access to the electronic filing system and they did not. Three other applicants timely requested access such that the subregion is now oversubscribed without this application. It is notable that a representative for the applicant stated in an email at the time: If there are other viable apps in that area that met the requirements and use the area funds, I don't think Rise plans to appeal.

The applicant timely filed an appeal of the termination which the executive director has denied.

Staff recommends denial of the appeal of termination for application 17742 Las Villas del Rio Hondo Apartments.

MS. BINGHAM ESCAREÑO: Any questions from the Board for Marni?

MR. GOODWIN: Move staff's recommendation.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves staff's recommendation on 17742 Las Villas del Rio Hondo.

Is there a second?

MR. GANN: I'll second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

MS. ADAME: Good morning. My name is Melissa Fisher Adame. I'm here on behalf of the applicant for 17742.

Marni did a good job of just telling you basically the timeline of what happened. And we thank
staff for working with us and letting us submit because we
did submit what we think is a really strong complete
application by the deadline. We were terminated for not
requesting online access by the 17th. So just cut to the
chase, why didn't we apply. Right? So the 17th we got
site control late in the day. We didn't think we were
going to get it. We had a full application, it was
brought to us by constituents in the area, they really
needed some affordable housing, and at that time there
weren't any pre-apps in the region. So we had it fully
baked but we kind of put it on the shelf because we didn't
think we were going to get site control because the seller
wasn't being 100 percent gung-ho for it. So we did get it
over the weekend, we applied, and they graciously allowed
us to get access.

And I get it. So the biggest issue is by
having the February 17 deadline, you're effectively making
the application date for people who did not have a pre-app
the 17th which is two weeks before March 1. We did
request access one week before the deadline for the full
app instead of two weeks, so that's the issue. Now, it
could have been March 1, I wouldn't be here, I wouldn't be
wasting your time because that's obviously a big pain for
the staff. So we're just contending that a week before
the deadline, if it's just a paperwork issue, I think we
should be allowed just online access.

The other issues is we had three other pre-apps that we decided not to take to full app, so we actually did have three other FTP online access sites that we could have used. That worked for staff in the past when we've been asked for information request inefficiencies, they've asked us if we didn't have access to an FTP folder for that specific deal, they asked us to upload to other deal folders and they can just grab it from the FTP site. So we could have done that if they had allowed us to do that as well.

So that's pretty much it. I'm here if you have any questions for me.

DR. MUÑOZ: You're saying that in the past you've used a different access?

MS. ADAME: We have at the request of staff, and not for an application but for deficiency requests and information. Because basically the whole issue now is instead of the binders, right, we're doing it online, and so it's just an access point to get the information to the staff so that they can read these voluminous files.

DR. MUÑOZ: Thank you.

MS. ADAME: Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

MS. SNEDDEN: Good morning. Michelle Snedden
from Shackelford, and I am here to talk on behalf of Rio Hondo.

I want to bring really three points to the table that we believe warrant reinstatement of this application. Obviously, as we know, the deadline is 11.2 of the QAP. What's notable is that it's not mentioned anywhere else in the rules, not in the QAP, not in the Multifamily Rules, it's not an eligibility requirement. Section 10.201 of the rules talks about the general rules, what do applicants have to do at the very beginning when they submit their application, it says they have to submit it by March 1. That date, the February 17 date, is not mentioned as a requirement. Obviously, as Melissa said, the developer did submit by March 1.

And so in the Board book we see that the reason for this date is to really allow staff to kind of manage the process, manage the applications, and really have the electronic submission kind of set up. So we understand the intent. Obviously, staff has a mammoth job with all these applications but it seems to me that happens on the 17th or it happens, in this case, five days before the app is due, or any time before the app is due, so long as it gives staff enough time -- which I believe doesn't take too long -- to set up the access, that should not affect the fact that all apps are due on March 1.
So the fact the applicant submitted on March 1, got access five days before, we feel like that still kind of follows the intent of the February 17 date, that staff just needs that time to get things in process and we feel like doing that five days before March 1, so does that.

Most importantly, there's nothing in the rules that state that by not meeting that February 17 deadline that renders an application ineligible or that it should be terminated. So Section 10.202 of the rules does talk about when is an application ineligible. Obviously it has a bunch of different things in there, but specific to ours, it talks about if an application is submitted after the March 1 deadline, and if it is, the application is terminated. It references nothing about the February 17 date.

So we would ask that the Board consider allowing this application to move forward because based on the requirements set forth in the rules and based on what is and isn't an ineligible application which requires termination, that date is not included. We understand why it's there but we feel like the rules don't support termination of the application.

Thank you.

MS. BINGHAM ESCAREÑO: Any questions?

(No response.)
MS. BINGHAM ESCAREÑO: Thank you.

MR. PHILLIPS: Hi. My name is Clifton Phillips, I am with Brownstone Development. We have a competing application, I'll state that right off the bat. We feel like if the application is let back in, we still would be successful in the region.

So putting that aside, what I would like to address is I understand that the Board can take action to overrule staff at certain times when it creates undue burdens maybe on a deal, a community, et cetera, but I just don't think that is the situation that we're seeing here.

And the QAP is pretty clear on the first page that all the deadlines should be considered firm and should be held to, and in this situation there's no undue burden on us as developers. They even admitted that they submitted pre for three deals that they never took to application. There's no financial penalty. Obviously no one wants to overwork staff, so if you have a reasonable thought that you could have a deal move forward, I mean, you just submit the form. It's not something that if they had submitted, as in their other deals, and then the contract did not materialize, they just wouldn't have submitted the deal.

And also kind of to that same point, their
contract was February 17, the day it was due. They can under the rules ask for an extension, so even at that time they still had the potential to say give us five more days to get an extension and they could have filed later, which they didn't do.

So I think, again, bad precedent being tossed around a lot today, I'm not sure that given that's in the rules, it's in the critical time chart in the QAP, why you should overrule staff, and we would agree with staff on that position.

Thank you.

MS. BINGHAM ESCAREÑO: Any questions?

DR. MUÑOZ: I have a question for Marni.

It says here in the background, the final paragraph --

MR. FISHER: Excuse me, Dr. Muñoz. I wanted to speak on the item.

DR. MUÑOZ: I thought most people sit up here.

MR. FISHER: I'm sorry. I thought Michelle was going back, so I apologize.

Bill Fisher, Sonoma Housing Advisors. I apologize, and I'll try and be quick here.

DR. MUÑOZ: Take your time.

MR. FISHER: The application deadline is March 1. I think one of the things that staff missed in our
appeal is three minutes. It took them three minutes to
give us FTP access, so the two-week deadline is
unnecessary. Now, somebody is going to ask should you
have a deadline. No. If you wait until March 1 to ask,
staff has got a warning in there that says computer
glitches or whatever to upload your app and recommend
everything be done as early as possible because it's
really on you. So there is no reason for the February 17
and we don't believe that there's anything that can
prevent the applicant from submitting their app by the
application deadline which is March 1, and that's exactly
what they did.

Now, let's assume staff had said we're not
going to give you FTP access. Rise would have simply used
the ones they had that they got months earlier and
uploaded the app there and we'd be in the same place. We
would have had credentials, the applicant would have had
credentials timely, and we would have uploaded. Then
there would have been some other argument, I guess, about
whether or not there was some other rule that would
preclude the applicant from using that access.

I think all of us support the electronic filing
mechanism. We think that that's the wave of the future,
we think that's modern, we think that's efficient. The
flip side is we don't believe that the protocol can create
a deadline that moots the most important date that you have in the QAP which is full application, 5:00 p.m., March 1.

And we respectfully request that the Board overrule staff in the spirit of competition. The next applicant down is in Uvalde County, this application is in Cameron County. We think it's in the state's interest for more competition and not less competition, and we request the Board overrule staff and allow the application to proceed through the review process.

Thank you.

MS. BINGHAM ESCAREÑO: Any questions for Mr. Fisher?

(No response.)

MS. BINGHAM ESCAREÑO: Great. Thank you, Bill.

DR. MUÑOZ: I was going to ask, Marni, in the last paragraph of the background section it talks about three other applicants did request such access, like right around what time?

MS. HOLLOWAY: I don't know for sure. Actually, I believe those requests are in the Board book in the background material and I don't know exactly what time they did but it was prior to that deadline.

MS. BINGHAM ESCAREÑO: Remind me what's the significance of that. Are we saying three more in that
region or three more that did it late and we said no?

DR. MUÑOZ: Three more that did it on time and you said yes.

MS. HOLLOWAY: That timely requested within that subregion.

DR. MUÑOZ: meaning the request could have been proffered and theoretically you would have responded affirmatively had you asked.

MS. BINGHAM ESCAREÑO: Meaning that there's other applications in that region.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Can you talk to us about the whole FTP and would the agency have a way to know if applicants were using other FTP access?

MS. HOLLOWAY: So the way that we use the FTP access is that for each pre-application that we receive, we set up a file for it and that's the file that the applicant uses to submit the full application and all supporting information. So we get the pre-application from another source, from JotForm, but that includes the request for FTP access and we use that as the tool to create that, so everything within that FTP file is all the same application. So if a full application or other information is submitted in the wrong file, I don't know that it's ever happened but I would imagine that we would
question the eligibility of that application because it
wouldn't be matching the pre-application that came with
it.

MS. BINGHAM ESCAREÑO: So the purpose is to
request one that's unique but then it becomes the
electronic binder that everything goes into for that
application.

MS. HOLLOWAY: Exactly. And all the way
through the review process, any deficiencies, any
additional documents that are submitted later, the market
analysis because the market analysis is due a month after
the full application, that also goes into that FTP file.
That's how we collect all of the information in one place.

MS. BINGHAM ESCAREÑO: Okay.

Melissa, do you mind coming back up? And I'm
not trying to pin you down, it's just a learning
opportunity for us. Are you saying that you have been
able to do that in the past, that you've stuck -- my
computer expertise is about this deep -- you've stuck
stuff in a different electronic binder than the one that
should have been allocated for a specific application and
that that's been okay with staff, that you say, hey,
that's there, you'll find it in my other FTP access?

MS. ADAME: Yes, that's exactly right. We've
been directed by staff, because what it is, it's just a
vehicle to get the information to them so that they can
work with it and manipulate it. So they have asked us in
the past to just use this log-in for this other deal to
get us this file just so we can have it, it's too big,
it's too large to email, and we will go in there and check
that one file from it and review it and we'll get back to
you. Because it is like a large binder but it is also
just like a big file folder. It's just way to get to the
staff. So yes, we have been instructed.

   DR. MUÑOZ: So did you ask to do it this time
   and were told no?

   MS. ADAME: We didn't ask because they took a
day to discuss it amongst the staff members and it was the
23rd when we asked, they initially said no, we're not
going to be able to do that, and then on the 24th they
came back at 2:52 and said, We've discussed it, we're
going to allow you the ability to appeal so we're going to
allow that. And at 2:55 we got the email with the FTP
access.

   Had they not come back, we were prepared to ask
if that would be okay and just let them know we're doing
to use one of our dormant pre-apps that we're not going to
be using for a full app, it will be here if you choose to
review it. And we'll pay the fee, we're sending in all
the other items that you have to mail in hard copies of,
so we did pay the full application fee and did it the way that they requested us to do.

Does that answer your question?

MS. BINGHAM ESCAREÑO: Yes.

MR. GOODWIN: The gentleman here that said you could have done it on this application. Why didn't you?

MS. ADAME: I would have, it was just late in the day and it was a scramble to get the seller to grant us site control, and by the end of the day we were so elated and had been through all the confusion of finally getting site control, we just didn't look at it again until Monday. And in my head it's March 1.

MR. GOODWIN: I understand that day, but why wouldn't you have done it a few days before in hopes of getting that site control? That was my question, it wasn't what happened on that day.

MS. ADAME: Right. We didn't think we were going to get site control. Like I said, we just kind of benched it and we didn't want to waste their time, it was off the table, and we had other deals we were working and we were putting our effort there. So we were basically surprised.

MS. BINGHAM ESCAREÑO: Thank you.

Any other questions for the commenters or staff?
MS. BINGHAM ESCAREÑO: Marni, anything else?

MS. HOLLOWAY: No. My only comment would be that this is a deadline that's in the QAP, along with all of the pre-app deadline, the application deadline, the market analysis, the third party requests, cure rate, over 10 percent, placed in service. These are all deadlines that are published in the QAP every year and some of them change every year. Last year it was a recommendation to get these requests into us by mid February and that created a great deal of confusion. What does that mean, what day in mid February?

MS. BINGHAM ESCAREÑO: Picked a day.

MS. HOLLOWAY: So we set a deadline.

I would also say that there was no comment on this deadline being included here as we were going through the QAP drafting process.

MS. BINGHAM ESCAREÑO: Regarding the recommendation by staff to deny the appeal of termination for Las Villas del Rio Hondo, application 17742, Mr. Goodwin made a motion to approve staff's recommendation, Mr. Gann seconded. Is there any further discussion on this item?

(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.

MS. HOLLOWAY: All right. Our third and final for today is application 17403 for Lord Road Apartments. This appeal relates to a 4 percent housing tax credit and direct loan layered application.

The application was terminated for two reasons. First, the application did not include language in the purchase contract pursuant to the requirements of 10 TAC 13.21 of the Multifamily Direct Loan rule. This is a threshold item and attempts to resolve the issue through the administrative deficiency process were unsuccessful. Second, the applicant is only able to compel title upon closing the underlying purchase contract which does not meet the requirements of 10 TAC 10.204(10)(a) which describes the site control requirements for our applications.

On January 30, February 22, March 9, March 14 and March 28, staff contacted the applicant with either an administrative deficiency request or an email requesting additional information. There were phone calls in between also. Because the Multifamily Direct Loan NOFA was oversubscribed by more than five times, staff could no
longer wait for the applicant to provide the required information and the application was terminated.

In the past, direct loan NOFAs have generally been under-subscribed, so the termination wasn't likely to make its way to the Board. Applicants have been able to resubmit their application without negative impact. Similarly, terminations of 4 percent applications generally result in a resubmission, not an appeal. Due to the over-subscription of the NOFA, they are able to resubmit, the NOFA is still open, but we're so over-subscribed, there wouldn't be any funds for them.

The appeal to the termination that was dated April 10 of 2017 included a first amendment to the purchase and sale agreement which included the required environmental language for the direct loan. It also included a second amendment to the purchase and sale agreement dated April 7 which would presumably correct the site control issues. These amendments were clearly executed after the date of the termination, despite prior efforts by staff, both in writing via email and via phone conversations to resolve the issues.

The administrative deficiency rule states, in part: Applications with unresolved deficiencies after 5:00 p.m. on the 10th day following the date of the deficiency notice will be terminated or suspended from
further processing so long as the active application does not impact the processing or underwriting of other applications. The applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any terminations. Department staff may or may not assess an administrative deficiency notice late fee for or terminate applications for tax-exempt bond or direct loan developments during periods when private activity bond volume cap or direct loan funds are under-subscribed.

The rule allows us to, when we're under-subscribed, spend that time, do the multiple notices, do the working back and forth on the direct loans, on the 4 percent side if there isn't that competition going on. And that is traditionally what we've done. These applications, some of those 4 percent applications take a long time to get through the process.

When the direct loan application log reflected that funds in the general set-aside were over-subscribed, it was evident that staff could not continue to process an application that had not satisfactorily addressed threshold issues. While the applicant's appeal asserts that staff failed to provide notification of the imminent threat of termination, staff maintains that the initial administrative deficiency notice required all items to be
resolved within a required time frame.

In addition, the applicant included certification that they had read and understood the 2017 Uniform Multifamily Rules, which they gave us a certification saying they understood this was a potential.

Should the Board grant the appeal, it is important to understand that pursuant to 10 TAC 13.5(c) in the Multifamily Rules, the received date of the application will be reestablished based on the date of the second amendment to the purchase and sale agreement was submitted which was in conjunction with the appeal to the termination submitted on April 10. So if you grant the appeal, we would, under 13.5, reset the received date to April 10. This is part of the Multifamily Direct Loan Rule that once everything is received, well, then we'll reset the date to that last receipt.

Staff recommends denial of the appeal of termination for Lord Road Apartments.

MS. BINGHAM ESCAREÑO: Questions from the Board?

(No response.)

MS. BINGHAM ESCAREÑO: So oversimplifying, but historically, if there were problems with the applications and NOFA was under-subscribed, then they would just resubmit.
MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: In this case the NOVA is over-subscribed so there is no opportunity to resubmit, it becomes --

MS. HOLLOWAY: Well, the NOFA is still open so they could resubmit, but we are somewhere between five and six times over-subscribed for TCAP ARRA funds right now. The likelihood of an application submitted now being successful is very slim.

MS. BINGHAM ESCAREÑO: Thank you.

DR. MUÑOZ: Move staff recommendation.

MS. BINGHAM ESCAREÑO: Thank you very much.

Dr. Muñoz moves staff's recommendation on denial of the appeal for termination. Is there a second?

MR. GOODWIN: Second.

MS. BINGHAM ESCAREÑO: Mr. Goodwin seconds.

MS. GUERRERO: Good morning. My name is Debra Guerrero and I am with the NRP Group, and thank you very much for the opportunity to be here to actually ask that you grant our appeal and maintain our place in line from the time of when we originally applied for TCAP HOME funds.

We've had almost a 15-year history with TDHCA. We've built over 10,000 units and we've gone through some pretty complex sort of issues throughout all of our
applications and we've worked very, very well with TDHCA
staff and I'm very proud of our relationship together, so
I'm going to tell you I was very surprised when there was
this abrupt termination. And I say that only because --
and not to discount anything that Marni is saying -- I say
that because we had been working through these issues as
we had done in the past.

We'd been working with issues dealing with the
direct loan language, and then other site control issues
that Teresa had brought up in March, the beginning of
March. And so as we were working through these issues,
the termination letter indicates that it was given in part
due to the direct loan language, but Teresa did confirm
and you have email documentation that that wasn't what was
holding us up, it was really site control questions that
she had.

We continued to respond to those site control
questions and it was only in the termination letter that
was sent after March 28 that the idea of the language was
what was really of concern. And we from the very
beginning, since the original contract, know that we can
compel title and we can do that. And so the amendment
that Marni is referring to is just a confirmation about
compelling title.

But at the end of the day I really wanted to
focus on one essential thing. March 28 seems to be that
date when the world changed for everybody in terms of the
way that staff and everybody looked at over-subscribed
versus under-subscribed. Well, in that March 28 notice we
were not told this is it, we are now over-subscribed. And
in fact, that notice or email was sent to the consultant's
assistant. That is not who the official notification for
especially something of such urgency and a milestone is
sent to. It is John Kenny, myself, and our consultant,
Sarah André, that are listed as the principal formal
notification, those that are to be notified, the contact
people. None of us were notified or even cc'd, and it was
sent merely as an inquiry: Hey, where are you on these
issues.

And then after that, one of the people on our
team -- it's given the perception that somehow we were
unresponsive -- we also have email documentation showing
that one of our principals on the team that was working
with Teresa on the site control questions actually
responded on March 29. So there still continued to be
conversations even after that 3/28 notification.

So all of that to say we are asking that the
appeal be granted. We are doing so and we understand that
it has changed in terms of the practice of how TDHCA is
responding and reviewing these applications, but we feel
that it is compelling enough that the formal notification was not provided to the appropriate people.

Thank you.

MS. ANDRÉ: Well, as you know, my name is Sarah André, I am a tax credit consultant and working with NRP on this project. And I wanted to just, first of all, say thank you again for allowing us the time. I know these are lengthy issues and I appreciate you listening and considering what we're here to talk about.

It's a complex issue, there are several different things in here kind of muddying the waters, I think. You know, staff's presentation was really good and focused on the rules and we certainly don't deny the rules, we absolutely understand the rules and believe that we were following them. I'm going to talk about two of the items to try to bring a little bit of clarity. First, I'm going to talk about the direct loan language and then I'm going to talk about just notification and communication.

The direct loan language that was in question and a deficiency is not standard contract language. It's basically a warning, both to the seller and really to the applicant, that until TDHCA approves some environmental items related to the site, your transaction may not close.

And so it's not something that you would normally put in
a contract, it's a little bit ominous, and it's very commonly added later once you know you're going for direct loan funds because it's not language that's required for any other funding, it's generated by the HOME program rules. And as I said, it is a little bit ominous and so sometimes it takes a while to negotiate that language with a seller because it's basically saying TDHCA has to approve something before the transaction has to take place, before you can close, and if you're already waiting a year, year and a half, two years to get your money, you're a little wary of something that is out of your control and that you don't provide any input on.

So TDHCA in the past has been great, the Department has been great, staff has been great about allowing use enough time to get that, and in fact, last year one of these direct loan language issues went on for seven months and that deal was still approved and moved forward. And I'm telling you that only for the context in which we were operating, not because that's ideal, certainly not ideal.

The second thing I want to talk about is just the communication. Debra mentioned the application has space for three names: John Kenny, Debra Guerrero, me, those are the official people that can be notified. None of us were notified that a termination was pending, none
of us were even contacted officially the week before. The rules are pretty quiet on notification, and really the only place you can find anything is in the administrative deficiency process, but you can infer from this that there's going to be a process. It says staff will send a deficiency notice via an email to the applicant and one other contact party if identified by the applicant in the application.

And that's what did happen in all the deficiencies, but the final communication that occurred was a request for a status update to a staff member on my team, no cc to anybody else, and there was nothing in that to indicate we're running out of time, we're now over-subscribed. You know, this application went in on January 6, I believe; it certainly was not over-subscribed on that date, it became over-subscribed during the review period.

And so I do understand that the situation was changed, staff needs to treat things differently, but it seems common courtesy to notify us prior to a termination that you're going to be terminated unless we get this today.

Thank you.

MS. BINGHAM ESCAREÑO:  Sarah, who is Liz? Is Liz the person?

MS. ANDRÉ: Who sent that final email?
MS. BINGHAM ESCAREÑO: Who is the person that received the final email?

MS. ANDRÉ: Rebecca Broadbent.

MS. BINGHAM ESCAREÑO: We have a little log that shows Rebecca on pretty much everything.

MS. ANDRÉ: Yes, she was on a number of items.

MS. BINGHAM ESCAREÑO: Thank you.

Any other questions for Sarah?

(NO response.)

MR. PALMER: Barry Palmer with Coats Rose.

And I won't repeat a lot of the facts that have been gone through by Debra and Sarah, I just want to point out a couple of things.

When the deficiency was sent regarding the direct loan language, the applicant came back and asked for an extension because that was going to take some time to get the land seller to agree to that, and that extension was granted but there was no deadline put on the extension, it was just a grant of the extension. And then after that, the applicant and the Department had numerous communications, as you see in the log where they're going back and forth with questions and answers on a number of different issues.

And so the applicant thought that there was no imminent danger of being terminated because they were
working together and there had been no deadline imposed, no warning letter sent saying if you don't get this resolved in three days, you're going to get terminated. And circumstances changed with the direct loan program now becoming over-subscribed while this was going on, but there was never any communication to the applicant saying you have to get this resolved in a specific amount of time.

So the practice that they had gone through on not just this deal but a number of 4 percent deals in the past was that you would have some time to work through issues with the Department and not be under imminent termination if you didn't meet a certain deadline.

So we'd ask that you consider reversing this termination and allowing the application to remain in place at the time that it applied. Thank you.

MS. BINGHAM ESCAREÑO: Any questions for Barry?

(No response.)

MS. BINGHAM ESCAREÑO: No other comments on Lord Road.

Marni, would you come back up? The request for the extension we can see in the log where it talks about the request for the extension and it looks like it applied to the first issue with the direct loan language.

MS. HOLLOWAY: The direct loan language first
appeared in an administrative deficiency, at least according to these records, on January 30, an extension was requested and granted, and the conversations continued regarding that item. As we discussed earlier, in the past we have been able to go months and months and months working through these issues. When we're over-subscribed and there are applications behind this one that need these funds, we are not able to do that any longer and our rule clearly states that that's what we should do in those situations.

I learned a hard lesson last year about don't call people the day before and say we're going to terminate your application tomorrow. And having that kind of communication prior to a termination really muddies the waters.

MS. BINGHAM ESCAREÑO: When did we become over-subscribed, or when did we know, when did we have a level of confidence?

MS. HOLLOWAY: February 3. We first became over-subscribed early on, and then when the 9 percent applications all came in is when we hit that somewhere around five to six times over-subscribed.

MS. BINGHAM ESCAREÑO: So the request was granted actually like February 6. Do we know why, like if we were already over-subscribed, do we know why we would
have approved a request to extend?

MS. HOLLOWAY: I believe at that point we weren't fully aware of exactly how over-subscribed we were. I think also there's a certain amount of we're dealing with two fund sources and two sets of requirements and trying to coordinate those efforts. Teresa said yes, it could wait, but I don't know that she understood at that point in time that we were over-subscribed.

MS. BINGHAM ESCAREÑO: Okay. I mean, I hate that but it's just a different situation this year.

MS. HOLLOWAY: And too, but then that was early February and then there were at the end of March and we still didn't have that information, and the amendments to the purchase and sale agreement are dated after the termination. So clearly they were able to get those amendments earlier would be my guess, but it needed the termination notice in order to make that happen.

MS. BINGHAM ESCAREÑO: The extension becomes less and less relevant, you know what I mean? I guess my observation would be if you were still under-subscribed then maybe that's relevant, but at some point when you're over-subscribed. I hate that, but --

Any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: So we have a motion by
Dr. Muñoz --

DR. MUÑOZ: I have one question.

MS. BINGHAM ESCAREÑO: Okay.

DR. MUÑOZ: Marni, we've heard repeatedly -- and I appreciate the hard lesson that you learned last year about the day before, but what about a few days before? You've heard several people say why weren't we notified. Is it typical, it is anticipated to get something a few days before, or is that just a courtesy?

MS. HOLLOWAY: I mean, it would have been a courtesy. It's not anything that's required in our rule. Typically, as I stated earlier, if we're terminating these applications, they're able to just come back and there's really no impact. When we are issuing a termination, we generally follow the same process that we follow for the 9 percent applications, and that is there is this body of evidence, there is this list of things, this is the basis for termination, we're going to terminate it. And actually, the hard lesson I learned was on the 9 percent side.

Perhaps we should have in this unique circumstance done that, but still the rule is very clear regarding termination when we're not getting a response on these deficiencies.

MS. BINGHAM ESCAREÑO: And I guess the other
observation is from all of the communication that we got, it looks like a lot of both parties' communication was coming through surrogates or folks where they're worker bees and they're working, okay, we found this, let's do this, there's kind of that going back and forth. Maybe at a higher level there were folks saying the axe is getting ready to drop, it's looking worse and worse, but because the worker bees are in the middle of the actual concrete detail of exchanging information, the trail looks like there wasn't a whole lot of -- and I'm not assigning responsibility to anybody because the applicant is ultimately responsible, right, for following the rules and the deadlines.

But there looks like there was an absence of somebody at a high level at the applicant side saying are we still okay. Because you're used to let's satisfy as many of these as we can in the event that it becomes viable and you've got worker bees that are doing that, that are getting the concrete information.

MS. HOLLOWAY: And I would add that I was not aware that this was going on until that very last week of March towards the end of the week, and at that point there was this whole body of evidence, we need to move forward with the termination.

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

MS. BINGHAM ESCAREÑO: There's a motion from Dr. Muñoz and a second from Mr. Goodwin to approve staff's recommendation to deny the appeal on the termination of 17403 Lord Road. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Hearing none, the motion carries. Thank you.

Item 6(b).

MS. HOLLOWAY: Item 6(b) is presentation, discussion and possible action regarding a request for waiver of rules for the Blue Flame development. This is application number 17330.

The application for the Blue Flame development was submitted under the at-risk set-aside due to the relocation of rental assistance demonstration program units, so RAD units. And we're seeing more and more of these applications this year. Along with the application, the applicant has requested -- and it was timely filed -- a waiver of the requirement under 10 TAC 11.5(3)(c)(iii) that in order for a development that includes demolition of existing units that have received financial benefit described in Texas Government Code 2306.6702(a)(5) -- so
that's the RAD part -- in order for them to relocate, the site must qualify for points on the opportunity index under 11.9(c)(4) of the QAP.

In their request the applicant asserts that the requirement that the site to which RAD units are relocated must be in a location that meets the criteria of the opportunity index scoring item is an inadvertent remnant of the 2016 QAP. They also state that there has been redirection toward urban core historic preservation and CRP, concerted revitalization, all of which are rarely found in high opportunity areas, and that the fact that the relocation of RAD units is still limited to high opportunity areas is inconsistent with the updated approach to evaluate inappropriate and preferential locations for affordable housing.

I would let you know that there was no comment on this item as we were working through the 2017 QAP, and actually, we are seeing applications this year for 2017 using urban core points and high opportunity, so these things are not mutually exclusive.

Our rule regarding waivers requires that he request must establish how the waiver is necessary to address circumstances beyond the applicant's control, and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. The request
asserts that the waiver is necessary because the location of the development site is beyond control of the applicant. The applicant further asserts that locating the development at the Blue Flame building will enable the government to meet goals established under Texas Government Code, include adaptive reuse of a certified historic building. So they're saying they had no other choice because this is where this building is.

Staff does not find that the request has established that the waiver is necessary to address circumstances beyond the applicant's control because they could relocate those units to another location. This isn't a rehabilitation, they're relocating units. And we do not believe that the Department would fail to fulfill any requirements by not granting the waiver. Accordingly, staff recommends that the request for waiver of 10 TAC 11.5(3)(c)(iii) be denied.

It is important to note that because the Blue Flame location is not eligible to participate in the at-risk set-aside, it fails to meet the requirement that the pre-application and application are participating in the same set-aside and therefore is not eligible to receive six points. So if the waiver is not granted, the application will lose six points.

The staff recommends denial of the request for
waiver.

MS. BINGHAM ESCAREÑO: Thank you.

Any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: We'll entertain a motion on the request for waiver, staff's recommendation to deny for Blue Flame, application 17330. Is there a motion to approve staff's recommendation or other motion?

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves to approve staff's recommendation. Is there a second?

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

Michael, do you have some letters to read?

MR. LYTTLE: Yes, Madam Chair and Board members. I've got three letters on this item, one from Congressman Beto O'Rourke, one from State Senator Jose Rodriguez, and one from State Representative Bill Moody.

First the letter from the congressman:

"Dear TDHCA Governing Board,

"I understand that the Housing Authority of the City of El Paso is applying for a waiver related to an application for low income housing at the Blue Flame Apartments in my district of El Paso, Texas. The Blue Flame Apartments project is generally good for my district
as it contribute to the renovation of a historic 17-story high rise building in downtown El Paso. The project is also part of an ongoing community-wide effort designed to improve the overall quality of life for all El Pasoans.

"Please provide their request full and fair consideration.

"Sincerely, Beto O'Rourke, Member of Congress."

The next letter from Senator Rodriguez reads as follows:

"Dear Chairman and Board Members,

"I write this letter to respectfully request that the TDHCA Governing Board grant a waiver of Section 11.5(3)(c)(iii) of the Qualified Allocation Plan which requires satisfaction of the opportunity index scoring criteria contained in Section 11.9(c)(4) of the QAP, with respect to the Blue Flame Apartments, application 17330.

"First and foremost, I am of the opinion that the Blue Flame project is located in a high opportunity area based on a current assessment of the downtown area of El Paso where it is located. I understand that the Blue Flame site may not score as being in a high opportunity area based on the data with which that determination is made, however, the sole reason that the Blue Flame's proposed site does not qualify as within a high opportunity area is that the 2010 census data used for
this determination is not aligned with the influx of new
housing and other investment in the immediate vicinity of
the proposed Blue Flame site.

"Specifically, not reflected in the 2010 census
data is the fact that there has been significant
investment in downtown El Paso, both in terms of new
housing and business development. The private and public
investment in housing in downtown El Paso has been
significant and includes construction of the Art Space
Lofts, 51 units, TDHCA 14037, and the Martin Lofts, 42
units with street level retail, as well as the pending
construction of the Ballpark Lofts adjacent to the new
downtown baseball stadium, the Savoy Lofts, 27 units, and
other apartment complexes planned for construction
downtown, including a 14-unit complex by the ballpark
stadium and the conversion of the historic popular
department store building into loft apartments.

"The private and public investment in
commercial and civil projects has also been substantial.
Since the 2010 census data collection, the city has
partnered with others to develop Southwest University Park
Baseball Stadium, a $97 million streetcar project,
completion pending, that will connect downtown and nearby
neighborhoods, the pending construction of a $180 million
multipurpose arena downtown, and several new or renovated
downtown hotels, including a $70 million renovation of the Camino Real Hotel, the newly construct 100-room Aloft Hotel, a new Courtyard Marriott across the street from the baseball stadium, and the recently completed Indigo Hotel.

"Second, I am concerned that if the Blue Flame project cannot be rehabilitated at this time, it will have a lasting negative impact on affordable housing in El Paso and the city's downtown redevelopment. Put simply, there is a small window of opportunity to develop the historic Blue Flame high rise building. The requested waiver for the Blue Flame project will ensure that more affordable housing is constructed in El Paso in a centralized downtown location. Without a waiver from the TDHCA Governing Board for the Blue Flame, this present opportunity to place affordable and market rate housing in downtown will be missed before redevelopment of the area surges, thereby making it too expensive to locate affordable housing in downtown El Paso in the future.

"Furthermore, without the requested waiver, the Blue Flame building will likely spend years as a vacant, unused historic building in the heart of downtown El Paso because there are no other options for its use. Such an outcome would negatively impact the development of downtown El Paso.

"Thank you in advance for your consideration of
my request and for your service to the State of Texas. If you have any questions or need additional information, please contact my chief of staff, Sushma Smith."

And then finally, the letter from Representative Moody that's addressed to you all, to the Board members:

"I'm writing in strong support of the request from the Housing Authority of the City of El Paso and its co-developer for a waiver related to the application for low income housing tax credits to construct the Blue Flame Apartments in El Paso, Texas.

"The project, which has widespread local support, will expand affordable housing in El Paso through the renovation of an historic high rise in downtown El Paso. Both El Paso City Council and its Downtown Management District, made up of leading downtown real estate and business owners, passed resolutions in favor of this development opportunity. The project also has support from HACEP's existing residents who will have the opportunity to join new residents living in downtown El Paso.

"I ask that you vote to approve a waiver of the Qualified Allocation Plan to address the provision at issue, Section 11.5(3)(c)(iii) of the QAP which requires satisfaction of the opportunity index score and criteria."
I'm confident that your favorable consideration will lead to an increase in the high quality housing options in my community.

"Respectfully, Representative Joe Moody."

MR. PALMER: Barry Palmer with Coats Rose.

So this is a rare opportunity that the Department gets to participate in the redevelopment of a historic building in one of the major cities in the inner city. Very rarely does that happen. There have been a few over the 24 years that I've been in this program but not many. And here we have the Housing Authority of El Paso who has an innovative program to convert their entire portfolio under the RAD program. They're doing a number of properties onsite where they're rehabbing the properties in different areas of the city, but some of the properties that they have are so physically obsolete that it doesn't make sense to rehab, and in those situations they have to move many times the assistance to another site, and here they have an opportunity to go downtown.

Now, there's this rule which is a site rule that affects your sites saying you need to be in a high opportunity area if you're moving RAD. Well, I think Senator Rodriguez really hit the nail on the head when he talked about this area. This is a high opportunity area, it's just the numbers haven't caught up with it yet for it
to be qualified as high opportunity area yet, but it will, but by the time it does, it will be too expensive to go there. We've seen that happen in Houston, we've seen that happen in Austin when there's massive redevelopment in the downtown area and all of a sudden you look around to try and build some affordable housing and it's too late, it's too expensive.

You've got to go in early, and here's a chance to go in early where the momentum is clearly there. I mean, we all know that in two, three, four years this will qualify as a high opportunity area but by then we won't have this opportunity.

Now, what we're asking for here is a small ask, it really is. We're asking you to waive something that affects a location. You've done that a number of times this year in this program, you do it several times a year. People come in and say: I'm within 500 feet of a railroad line and so I need a waiver for that site restriction. You've passed a number of those, so it's not like you're staking out new ground here where you're doing something outside the box of what you've normally one. You've given site waivers where it makes sense.

Well, this certainly make sense in this situation to give this site waiver, all this project to go into this booming area of downtown El Paso.
And I'd like to get some of the folks we have here from El Paso who are more on the ground to talk more specifically about just what's happening in downtown El Paso. Thank you.

MS. BINGHAM ESCAREÑO: Thank, Barry.

Any questions for Barry?

(No response.)

MS. HERRERA: Good afternoon. My name is Jessica Herrera and I'm with the City of El Paso Economic Development. I am the director of the Economic Development Department there at the city, and I thank you for the opportunity to come out and speak to your Board today related to item 6(b) regarding a request of waiver rules for our Blue Flame project located in the heart of downtown El Paso.

El Paso is one of the largest international border metropolitan areas that has a regional population of more than 2-1/2 million people. It borders the State of New Mexico and the State of Chihuahua, Mexico, and our location really allows for that daily commute of individuals coming into El Paso to work, shop, visit family, attend school, et cetera. Our downtown has a port of entry that has on average more than 550,000 pedestrians and vehicles coming into El Paso on a monthly basis, just to give you an idea.
In 2012 the city overwhelmingly supported the Quality of Life fund of more than $475 million of which $205 million of that was dedicated to signature projects located within the downtown. In April of 2014, we also opened the doors to our Triple A baseball team, home to the El Paso Chihuahuas, and that's been a huge home run -- no pun intended at all -- in our downtown. Within the last four years we have seen additional public and private investment all throughout downtown that's really amounted to more than $360 million.

But just to give you a snapshot of the private investment that's currently underway, we have actively participated in more than 18 economic development incentive agreements that are now adding more than 300 new residential units, more than 760 hotel rooms, and more than 394,000 square feet of office and commercial space. Some of these projects have already been completed and several others are under construction.

The Blue Flame development is a 62-year-old building that occupies an important part of our downtown revitalization that's currently underway, and it's been vacant for more than a decade, and an opportunity to breathe new life into this building would be a game changer for this area. It is located within walking distance of several of these catalytic projects that are
currently underway, and as an example, just right across
the street -- I believe our state senator mentioned -- is
a historic building that's currently under construction
and renovation and is expected to open in the fall of next
year that's going to be an Aloft Hotel adding 100 rooms.
There are also at least three mixed use residential
projects that are all within walking distance of this
project and they've recently opened, adding more than 160
residential units.

The project's location provides ample access to
transportation, employment, government, educational and
health care services for future residents, which equates
to expanded growth opportunities. As an example, the
current construction of the streetcar system, that's going
to be operational by 2018, will connect our downtown and
our university, as well as other hospitals within that
area. Our bus rapid public transportation system also
feeds into downtown and allows overall access all
throughout the city which is critical for the continued
redevelopment and access opportunities for all.

As you can see, these opportunities and these
improvements have and will undoubtedly continue to enrich
the quality and livability of El Paso's downtown area,
attracting more economically and socially residents to the
area. The Blue Flame development will contribute to this
growth by enhancing the area's product demand capacity
through the expansion of downtown's residential sector,
thus supporting a more vibrant, stable and commercial
environment.

We are excited at the prospect of affordable
housing units being available in the heart of our city and
believe that it fits in well with the revitalization
efforts currently undertaken. Thank you.

MS. BINGHAM ESCAREÑO: Thank you very much.

Any questions?

(No response.)

MR. CAMACHO: Good afternoon, Board, Vice
Chairman Bingham. Thank you so much for the time. My
name is Javier Camacho. I'm the public information and
government relations officer with the Housing Authority of
the City of El Paso, and we are extremely happy to be with
you.

Also with one of our residents, Ms. Rosa Lopez,
who has been a resident at our Tays community, located in
south central El Paso, for the past 15 years, and she has
actually not only served our housing authority and her
community very well, she actually is the director of
Modesto Gomez Food Pantry where she works hand in hand
with all of our communities, passing out food to all of
our families at all of our communities, along with the
youth and many types of services that they provide. She has offered her time to come and speak to you and offer you what this can benefit for the City of El Paso and truly for the entire community. So we'll have Rosa Lopez.

MS. BINGHAM ESCAREÑO: And we have a translator here too.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: Good afternoon. My name is Rosa Lopez. I've been a resident in public housing for 15 years.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: She thanks you very much for the opportunity to speak before you. It's emotional for her.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: I'm very grateful. I'm a resident of public housing, I've lived there, my children have graduated from there. I have a daughter who is now an attorney and a son who is in criminal justice. So she said earlier the opportunity that public housing gives you to advance, and a family to advance.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: So she works with a nonprofit that works on donation and they go to different public housing and they have a food pantry and all the things for people that are on Medicaid and Medicare.
MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: To me it's very important to continue serving the community in public housing.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: The Blue Flame property in the downtown area is very important. There isn't very many opportunities for living in the downtown area and especially for the elderly. This is going to be an important location, it will be a comfortable location.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: It's very important, the hospitals are close by.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: Little stores and what-have-you.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: So you're going to be close to everything, you're going to be closer to public transit, it's very convenient.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: I go and I visit people's homes and there's great poverty in El Paso and there is a great need for decent housing for low income persons.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: So she's in the process of purchasing a home. She is very, very grateful for the
different programs that public housing offers the residents. She came here from Chihuahua and has lived in public housing and graduated and she's very grateful for these opportunities.

And I had not translated something she said earlier, that she would be proud to be able to bring good news to the people back in El Paso.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: So it's a beautiful problem for her to be able to speak before you as a Hispanic and representing the City of El Paso. There's a great need in the City of El Paso for the housing in the downtown area.

MS. LOPEZ: (Speaking Spanish).

MS. PINEIDO: Do you have any questions?

MS. BINGHAM ESCAREÑO: Any questions?

(No response.)

MS. BINGHAM ESCAREÑO: Gracias.

MR. CICHON: Good afternoon, everybody. Sorry I was a little aggressive on the last thing jumping up here and trying to talk. It's just such an important thing for the Housing Authority of the City of El Paso.

So as you may know --

MS. BINGHAM ESCAREÑO: Just for the record.

MR. CICHON: Gerald Cichon, CEO for the Housing Authority of the City of El Paso.
The Housing Authority of the City of El Paso is going through a renaissance with a $1.5 billion investment across the entire city. With that comes the moving of 20,000 people, of which one-third are elderly and/or disabled.

As we moved into this, the construction that HUD has placed us under was supposed to be over by 2018. Moving 20,000 people, doing the construction, getting the tax credits, making the closings happen and being successful within that time frame would have been a magnificent challenge. So I will say it to you this way: I went to HUD at the highest levels not more than twelve months ago and I begged them for the opportunity to have an extension, and part of that extension that I begged them for was based upon opportunities like the Blue Flame building, and I said what we could do is we could get a 4 percent and we could take what we currently have in neighborhoods that may not be great for our people and we can make them a little bit better, but if you give us a little bit of time, we can find opportunities and we can make something really fantastic for our people and really change the dynamic of the City of El Paso.

And with that came an opportunity. We went to Paul Foster, the guy who helped build the Texas Tech Medical School, the guy who brought the baseball park, the
guy who singlehandedly built the plaza and is doing so much for downtown, and we said, Can you help us? This is an opportunity that you can bring with us to help the elderly and the poor, to give them opportunity with something that's happening in El Paso. And he said yes. He said, I think there's a great opportunity in downtown El Paso right on the rail line that we're putting in, right next to the new buildings and the hotels and the convention centers and the civic centers, that gets you right to the hospitals and it's close access to the government buildings and you have the museums all around.

I said, How do we do this? He said, You know what, we're going to help you. This Blue Flame building, he was like I'm going to give you great incentives to make this happen. And we can do it right here in this location. There isn't another location that this happens at. You don't want to take that population and put them to the external areas of the city when you don't have access to transportation, where a lot of our people don't have cars. You don't put them far away from the hospitals where it's too difficult to get to. You want to put them where the city is putting the Quality of Life fund, you want to put them where the investment from the city is happening right here.

And that's what we did and that's what this
application is, so much so that it's got broad support, as
you saw from politicians that aren't even from that
particular area writing you and letting you know that's
this important. The downtown business group that normally
says no, not in my backyard, don't put those people next
to us, voted unanimously in our favor.

This is a project that but for happening right
now will never happen again because we do not have time to
do it. By 2020 we are done, our construction schedules
are finite. This only works with the housing authority.
If we don't do this, this building with where it sits it's
going to be an empty hole the way it has been for the last
decade, and the opportunity that we could give the people
who could I've there will be lost.

This is something that can't be done anywhere
else. This is a waiver just like any waiver that you've
done in the past. As we stood here and we talked about
railroad tracks and other opportunities, this is that
opportunity, this is something could be great for El Paso
of which all of El Paso wants to have. Honestly, with
these points, this is the highest scoring application in
the state in the at-risk set-aside. If you look at all
the other criteria that the QAP says is important, we've
got it.

This is what this is and this is what it means
for us. Ms. Lopez flew all the way out here, she's
leaving public housing, she's worked for 15 years to get
self-sufficient and move out, but she's not going to leave
from helping the people in these units because they need
it that much. These are people that make less than $4,000
a year, they can't even afford a car. The opportunity to
put them in this location at that building with the help
from Mr. Foster can only be done now and it can only be
done because of you.

We respectfully ask that you grant this waiver
and let us go forward, let us finish this massive
renaissance that we started in El Paso. Thank you very
much.

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

MR. COWAL: Good afternoon, Board members. My
name is William Cowal. I'm with Triton Mountain
Management which is Paul Foster's company, one of his
companies, and everyone that has come before me has pretty
much said a lot of the things that I was going to say, so
I'm going to keep my comments short, and have also done, I
think, a wonderful job, but I'll add a little bit of
flavor and a little bit of color to that.

Mr. Foster, just to give you a little
background, Paul Foster is chairman of the board of
Western Refining, he's also the largest shareholder and he's the founding shareholder. That company is going through a merger right now with Tesoro out of San Antonio, so we'll be seeing some changes pretty soon. He's also chairman of the University of Texas Board of Regents of the UT System. He is the benefactor, as Gerry mentioned, of Texas Tech Medical School, made a $50 million contribution to that that's made a huge difference in the City of El Paso. He's the benefactor of the Baylor Paul L. Foster School of Excellence -- or Success Center, I believe it's called, to the tune of $35 million.

And he's been instrumental in the redevelopment of downtown El Paso. He and Mr. Woody Hunt of El Paso went in as partners to develop the ballpark downtown which is, as Jessica said, just a magnificent success and it's been a catalyst and an enzyme for other development that's happening in El Paso. He also was a pioneer in redeveloping downtown El Paso. The building that I office in and he offices in, known as the Mills Plaza Complex, are two of the finest buildings in downtown El Paso, a very large investment in the city, and then also on the first floor has Anson11, now regarding as probably the city's finest restaurant, fine dining restaurant.

And this was a very pioneering effort, it took a lot of guts really to make that kind of investment. Now
downtown is coming along much faster, much better. We're in the process right now of redeveloping Paul's building right across from the Mills Plaza Complex, it's the old Plaza Hotel. And that was not mentioned earlier, this is in addition to all the other hotel activity that you heard about, but we're working on redeveloping that hotel. It will be about a $70 million project, and it's going to be a wonderful project, by the way.

And then you heard everybody talk about the Blue Flame building and the amenities that it offers. It's a quarter of a block away from the new trolley line, within walking distance of all kinds of jobs that are beginning to occur in the downtown area. The service sector will really pick up because the hotels, the office buildings, the ballpark, all of these businesses need employees, some of who will be residents of the Blue Flame building.

And when you put all this together, you can see that Paul Foster is very much about economic opportunity, and I don't think that he would be doing all the things that he's doing in downtown El Paso and serving as a catalyst for many other investors who are now doing a lot of things in downtown El Paso, if he didn't believe that there was economic opportunity in downtown El Paso. So I think I agree completely with the thoughts that are
expressed earlier that the statistics have not caught up
with what's actually going on in El Paso.

And then I'll just personally share my story
growing up in El Paso. I grew up as a poor kid very near
downtown El Paso, and back then it was a different
downtown, and it provided me with lots of opportunities
because back then you had libraries, you had
transportation, you had good high end retail shopping, you
had jobs, and my first job was working at the Ramada Hotel
in downtown El Paso which is now the Indigo Hotel. And so
we're seeing all of that come back and it's going to
create wonderful opportunities for the next generation of
El Pasoans.

So thank you.

MS. BINGHAM ESCAREÑO: Any questions?

DR. MUÑOZ: Gerry, you said something about
your build-out being completed in 2020. What is that
exactly?

MR. CICHON: So RAD has a time frame and it's
five years, and we asked for an extension from HUD, and
from what I can tell, we're the only housing authority to
have received it. We're also the first housing authority
to do a full conversion, so a lot of times we're the first
asking for anything from HUD. HUD only gave us that
because we were able to show them what we could do with
historic tax credits in additional opportunity for our people. So at 2020, December 31, whatever we don't have done, we don't have done, it's over, and so that's the time frame that we're dealing with.

MS. FINE: Hi. I'm Tracey Fine. I'm with National Church Residences, and I sit behind this application, so this is not a request from my perspective. But I wanted to highlight some of the reasons why I do not think this waiver should be granted.

The development community depends on the QAP rules to make major business decisions on potential development projects. It would be really unfair for competing applications to play by a different set of rules after submitting applications. Many of us made decisions not to submit applications because we did not get the qualifying factors to be in the right set-asides.

The requirements to qualify for at-risk are black and white. The Blue Flame clearly does not qualify for the at-risk set-aside as a new location does not qualify for any opportunity points, a requirement to move residents to a new location. Had the Blue Flame Apartments competed in the El Paso regional pool and no the at-risk set-aside, they would have gained an additional five points for urban core, giving it a score of 161. Not only would this be the highest scoring
application in the El Paso regional pool, but it would have been the highest scoring application in the entire 2017 round. Had they submitted in the regional pool, this waiver would not be on the table, we would not be having this discussion.

The conversation of moving at-risk properties from one location to another has been brought up at nearly every QAP. I bring it up. For those of us trying to preserve existing affordable housing stock in the communities that they currently serve cannot compete against properties that can pick up and move to higher scoring sites, yet time and time again TDHCA has insisted that these properties can move only if they improve access to better scoring schools and lower poverty rates. The current residents of Pully [phonetic], which are being looked at to be moved into Blue Flame, currently enjoy higher-scoring schools and a lower poverty rate than the new proposed location.

I just want to reiterate that the rules are the rules and we have to be able to trust that they won't be bent for certain competing applications. This is not the same as asking for a site waiver for a railroad, which you can cure with noise-resistant windows. This is a qualifying factor for a preservation set-aside, and if it had been put in the regional pool, they would be a top
scoring application, and they have another opportunity to submit another application next year.

MS. BINGHAM ESCAREÑO: Thank you.

Any questions?

MR. GOODWIN: Gerry, I see you shaking your head no about these comments, so would you come up and respond to that?

MR. CICHON: Sure. We do not have a chance to come back on this one. The time frame associated with RAD with our current construction schedule and the amount of vacancies that we currently have mandate that as we have the agreement with HUD, this is our one shot, and so that's why we're so emphatic with our presentation to you today. If we thought we had another chance, we'd probably approach it very differently.

MR. GOODWIN: Thank you.

MR. PALMER: Just to address the comment that the rules are the rules, the fact is that you commonly grant waivers for site issues, and someone could come up and make the same argument if they were behind somebody who was within 500 feet of a railroad track saying if you grant that waiver, I'm not going to get funded. But the fact is the Board has typically had the discretion and used it to grant waivers on certain site issues, and we believe that this is no different than a waiver for
railroads or for high crime in the neighborhood or for
blight in the neighborhood that you've granted on a number
of applications.

MS. BINGHAM ESCAREÑO: Thank you.

MR. ECCLES: If I could ask a question, because
you are asking the Board to waive a rule, if you could
couch all of this, because no one is saying that this is a
bad idea, HACEP is doing amazing work and renovating
historic buildings and putting them downtown, it all
sounds great, but we're dealing with, as Ms. Fine said, a
mechanism, a vehicle, if you will, for tearing down units
in one place and constructing them in another, and to that
end, the rule contemplates making sure that the
opportunities are improving.

And all said, what is going on and what may be
coming in that area sounds extraordinary, it really does,
but the issue in the waiver rule is -- and if you could
address this point -- how is this addressing circumstances
beyond the applicant's control? And in that I mean not
that you have no control over where the Blue Flame
building is, it's that you're going to be demolishing
units in one place, where else could they go, and if
there's no other place they could go, that would be what's
out of your control. At least that's how I see it; maybe
you see it differently.
MR. PALMER: Clearly there are other places in the City of El Paso that you could go, but what we say is outside our control is to the extent that you want to do a historic renovation and adaptive reuse of a building -- which is one of the statutory priorities of the department -- that there are no historic buildings outside of downtown El Paso, or pretty much any city that you go to, that you have to go to a downtown area to do a historic renovation or adaptive reuse. And with this restriction, none of those downtowns in any city are probably right now a high opportunity area under TDHCA's definition, so you would be foreclosing the opportunity to do at-risk deals in historic developments.

MS. FINE: May I counter that? The rules that were adopted in this year's QAP really promoted downtown historical preservation, you just had to submit your application in the right regional pool. You can get seven points for revitalization, you can get seven points for high opportunity, you can get five points for urban core, you can't get that in the at-risk set-aside, particularly because it makes it unfair competition, it separates those out if they got the points for historic.

So the rules did promote this kind of urban growth.

MS. BINGHAM ESCAREÑO: Marni, I know you
mentioned it earlier but just for our edification, one of the letters talked about and you mentioned that there was some perception that maybe keeping the high opportunity requirement in the specifications was inadvertent, that the letter said it was inadvertent, that it was a leftover.

MS. HOLLOWAY: That was an assertion in the appeal. Throughout our discussions last year and our rule drafting and everything, I don't recall anyone ever mentioning we should make this adjustment. It could be that that's something that we would look at moving forward. We haven't looked at the CRP plan or the progress within the City of El Paso -- it sounds very impressive. But the rule as it sits right now says that if you are relocating RAD units, it must go into a higher opportunity area.

I need to just make a clarification here. I've heard a couple of times mentioned that seems to equate this waiver request to a request for an eligibility determination because of proximity to a railroad. Those are two very different things. Undesirable site has a very clear path to that exemption; undesirable neighborhood characteristics, talking about crime and blight has a very clear path to that eligibility determination. Those are not waivers, which this is.
MS. BINGHAM ESCAREÑO: I don't think the Board is unclear on that.

MS. HOLLOWAY: I just wanted to make sure.

The other thing I would mention is that there are two other Housing Authority of the City of El Paso applications that have been submitted in the at-risk set-aside. At least one of those, if you grant this waiver today, will put them over the $3 million cap and that application would be ineligible. So they have three applications with us right now; one of them will put them over the cap.

DR. MUÑOZ: They're making the argument for this one they understand that consequence, that potential consequence, I'm sure. Well, they do now.

(General laughter.)

MS. HOLLOWAY: They have signed a certification that they understand the rules.

MR. CICHON: We're going to win. No one behind this is not going to get funded because we put that many applications in and our applications are that good. We've hit our cap every year for the past three years and we're going to keep doing this until we run out of RAD. That's just how good this team is. We're saying that this is the one we want, it's not like the detriment of anybody else but this is the one we want because it has the most impact
for the City of El Paso and for our residents. That's all this is.

DR. MUÑOZ: I think you made it clear, Gerry. I was just making the point that I'm assuming you're aware that something could have a consequence for one of your other applications.

MR. CICHON: I am. Thank you very much.

MS. BINGHAM ESCAREÑO: Thank you, Gerry.

Any other questions, comments from the Board?

MS. ANDERSON: I'm sorry, just one very quick comment.

MR. ECCLES: I'm sorry. We've gotten away from the protocol of announcing who you are.

MS. ANDERSON: Sarah Anderson. And just a quick comment on this, that yes, we are aware that there are three, this is the number one choice. You know, we spent two hours yesterday having a discussion about gentrification and how are we ever going to address a place, find a place that we affordable housing providers get in before gentrification takes off and we can no longer get access to downtown areas. We've missed it in Austin, we've missed it in San Antonio, we've missed it everywhere. This is it, this is probably one of the last times we'll ever have that opportunity to beat the gentrifiers and get affordable housing in a downtown
area.

So I just wanted to make sure that that was on the record, and that yes, we are aware that something drops out, but the hope is that this may be the one time you get to make a decision that nobody is adversely impacted, that if there's three rotating around, that we believe that the impact would be negligible.

DR. MUÑOZ: Just a minute, just a minute. Once we've made our points, let's make our points. This is not going to be a round-robin where every comment sort of evokes someone to sort of lift themselves from their seats.

But I do want to say something about having recently relocated to an urban center. I don't know that I agree with the categorization that this may be the last time that the Board ever contemplates this sort of scenario, but having recently moved, I've been impressed by how much is coming back into the urban center and how much investment. I leave where I'm staying and I turn a corner and there's a place called Burger Theory that's open until 2:00 a.m. in the morning. You go around and there's churches, there's parks, there's dog walks, there's just amazing amenities that are sort of returning. And I can't imagine that that's going to be available indefinitely for affordable housing.
Where I moved, the point was made to me you want to be as close to the center of the city as possible, you want to be close, close, close, and it's becoming increasingly prohibitive for people to be close, close to those newly re-arriving amenities. So I just want to make the point that I don't know that this is the last deal in the whole State of Texas, but I do know that it seems to me from just recent experience that the availability of affordable housing for working people close to downtowns is becoming more prohibitive and less available.

MS. BINGHAM ESCAREÑO: Thank you, Dr. Muñoz.

So we have a motion from Mr. Goodwin and a second from Mr. Gann.

MR. GOODWIN: I'd like to withdraw my motion.

MS. BINGHAM ESCAREÑO: Mr. Goodwin withdraws his motion. Mr. Gann, do you withdraw your second?

MR. GANN: I do.

MS. BINGHAM ESCAREÑO: All right. So with a clean slate, I may need your help again. Counsel, we may need your help also.

So here's the challenge. I mean, obviously, awesome team, great project, we are blessed with hearing from awesome teams and great projects every day, we're blessed with that. We have a challenge here, so it sounds like there's a withdrawal of the original motion to deny
the request for a waiver, which is leading me to believe that there may be some support for approving or accepting the request for the waiver. Can you help us? Because you did remind us also about the points that are kind of in play. Can you remind us of what our options are, or if someone were to make a motion to accept their request for the waiver, to approve the request, what grounds we would need to support in order to approve the request?

MR. IRVINE: The rule just lays out that you need to find that it's to address circumstance that were beyond the applicant's control and that the waiver is necessary to fulfill some purpose or policy of Chapter 2306. I think the purposes and policies are laid out in the statute and they've already been brought on to the record, so I think that the real necessity is probably the more challenging piece to define.

MS. BINGHAM ESCAREÑO: The beyond control?

MR. IRVINE: Yes.

MS. BINGHAM ESCAREÑO: And if we were to word a motion that we believe the circumstances were beyond the control in that the area appears to have the components of a high opportunity area that has not yet been formally recognized as such?

MS. HOLLOWAY: So recognition as a high opportunity area is something that the applicant builds
that case for us. So yes, there's thresholds about poverty levels, that kind of thing, but that's something that the applicant would have brought to us as: Here's all of the amenities, the grocery stores, the parks, the childcare all of those things.

DR. MUÑOZ: All the investments that are being described, I mean, they're not insignificant. I've been to a game to see the Chihuahuas. I was there when it was being built and when it was finished. There's a lot. I mean, how do you capture that in progress?

MS. HOLLOWAY: That would have captured though the concerted revitalization which, as I mentioned earlier, we have not reviewed yet; because of this waiver, we haven't gotten to that point. So all of that progress, all of that work that's going on would come through that concerted revitalization plan.

And it sounds like a lot of great things. I would point out that other apartments, other development, hotels are not on an amenities list for us. Yes, they indicate that there are good things going on in the area, but those are necessarily something that we would count as an amenity.

MS. BINGHAM ESCAREÑO: So there's more hurdles.

MS. HOLLOWAY: Absolutely.

MS. BINGHAM ESCAREÑO: One of the things I have
seen, there are definitely hurdles after this one.

Because I guess what I'm struggling with -- and Mr. Palmer, not to use your words against you -- but in terms of out of control as in we couldn't place it anywhere else is kind of off the table, so that's not an out of our control deal.

I guess I was just trying to find if the high opportunity, if the definition of the high opportunity, the fact that there are those amenities and those supportive elements in that community would be enough for us to articulate to move the waiver.

DR. MUÑOZ: And easily documented current active investments that would bring very soon additional resources that would qualify in our traditional definitions of amenities.

MS. HOLLOWAY: So my assumption is -- and it is an assumption -- that if the development did qualify as a high opportunity or qualify under the opportunity index, that that would have been the application that was submitted rather than requesting the waiver. If they had submitted an application that says, look, they qualify under the opportunity index -- and they didn't even have to get seven points, they just have to qualify -- that that would be the application that was submitted to us rather than the request for a site waiver.
And again, the amenities that are being described sound like there's a lot going on there, but other apartments or hotels are not amenities under our opportunity index. It's not something that we would be viewing as a positive for residents of this building.

DR. MUÑOZ: Access to transportation, Marni, access to medical care, access to retail?

MS. HOLLOWAY: Depending on the distances, yes, absolutely those would be part of an opportunity index, but without having been submitted as an opportunity index, that's not something that we would be looking for now. If it's something that's part of the CRP plan and it's part of what we're evaluating on a concerted revitalization plan, then of course we would be looking at those items.

MR. PALMER: So could I address the necessity, the outside of our control issue? So again, to the extent that you're going to do a historic renovation, the only place that you're going to be able to do it, while not necessarily this building, is in a downtown area. The only way that an adaptive reuse like this works financially is with the additional funds that come from historic tax credits. So this project would also get historic tax credits that helps make it viable, and again, it's outside our control, we're in the historical building and in El Paso they're all downtown.
And this project is not in the first or second quartile is why it doesn't qualify for the opportunity index points.

MR. GOODWIN: Is there an opportunity of delaying this allowing to work it out for our next meeting?

MS. BINGHAM ESCAREÑO: What kind of timeline are we on?

MR. GOODWIN: Obviously, I think we all want to vote for it.

MR. GANN: I'd like to see it postponed till the next meeting so we could have more time to digest and they can too, if it's possible.

MS. HOLLOWAY: So for staff, for us, our evaluation of the waiver request and our recommendation is going to be based on does this meet the rules, and what we would be looking for is does not granting the waiver keep the Department from fulfilling its purpose. We are not seeing that in the information that we have and in the conversations that we've had. And keep in mind also that applicants can't supplement their application.

DR. MUÑOZ: Well, they're not supplementing their application if we'd like additional information regarding the beyond their control, this particular building, maybe some additional specifics related to what
could be potentially high opportunity amenities that maybe haven't been clarified. Is that an embellishment of their application or a response to our questions?

MS. HOLLOWAY: That would be a response to your questions. This is what I would propose. Let us work a little deeper into the application, let us review the CRP plan first to see if it would even meet our requirements, let us take a look at a couple of other things. I was just reminded that we also have three undesirable neighborhood characteristics to work through on this site. Staff could work through those issues and bring you back a more complete picture of the application, if you think that that would assist you in making a decision.

DR. MUÑOZ: Yes. So what, then the motion would be to table, for you to continue to do your due diligence and then come back to the Board?

MR. ECCLES: I think probably the way that this is worked out in staff's mind, and certainly would make sense, is the waiver request came along with the application, as the rules require.

MS. HOLLOWAY: Yes, it did.

MR. ECCLES: So that would be the threshold determination, and the staff hasn't worked this application as it would in order to determine other threshold things that would kick it out and other
administrative or material deficiencies that might preclude it going forward because the waiver issue had to be presented first. So if you would like to table this for a month for essentially staff to engage the underlying application and then bring this back, perhaps there would be other issues that have arisen, but it would also allow staff the opportunity to engage such things as the CRP and have a bit more of a full picture.

However, there still is the underlying, and somewhat unresolved, I have to say, issue of really phrasing this waiver request as the rule requires and really satisfying that this waiver is necessary, not just to do a good deal, not just even a smart municipal planning deal, but in terms of doing it as an at-risk RAD transaction as opposed to anything else, because that's what this rule is about. So this may buy a month but this really needs to be couched in terms of the rules.

MS. BINGHAM ESCAREÑO: Understood.

Is there a motion to table? I'm assuming at this point table is probably the best that we can come up with. Is there a motion to table?

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves to table this item until the meeting next month. Is there a second?
DR. MUÑOZ: Second.

MS. BINGHAM ESCAREÑO: Dr. Muñoz seconds. All those in favor of tabling, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: The motion carries to table. Thank you, guys, very much.

We're going to roll with our last two. We're starving, you used up almost all our brain energy on that one.

(General laughter.)

MS. BINGHAM ESCAREÑO: Andrew gets us.

MR. SINNOTT: Good afternoon. My name is Andrew Sinnott, Multifamily Loan Programs administrator. Given that these items are the only things between us and lunch, I'll try and be succinct.

So first up we've got possible action to assist 9 percent layered direct loan awardees and applicants, and this is regarding both 2016 9 percent layered direct loan awardees and 2017 9 percent layered direct loan applicants. So within this action there's something for each of those transactions.

For 2016 9 percent layered direct loan awardees, this action would allow them to return direct
loan funds, if they are also returning their credits, without being penalized under the Multifamily Direct Loan Rule at 10 TAC, Chapter 13.11(b), as long as they can document the loss in equity attributable to a decline in syndication pricing. Specifically, these awardees would not be subject to the prohibition laid out in that section of the rule that prohibits awardees that return direct loan funds from applying for direct loan funds in any future application for a two-year period. The Board took similar action as it relates to waiving the point penalty in the QAP at last month's Board meeting, but it only dealt with 2016 9 percent HTC awardees without any consideration of direct loan funds.

As it relates to 2017 9 percent layered direct loan applicants, staff is recommending that those applicants be given an opportunity over the next several months, but not later than commitment notice execution which is typically early September, to replace the direct loan funds or other local gap financing that they have applied for as a result of over-subscription issues that we are seeing.

You can see in the 2017 Multifamily Direct Loan NOFA application log -- it's actually, I think, attached as the last page behind item 60, the next item -- that there is more demand than supply for our TCAP repayment
funds under the general set-aside specifically. Over $52 million has been applied for while we have only about $8-1/2 million available. Typically in the past couple of years we've seen applications requesting about $5- to $6 million in TCAP repayment funds, so this is a severe over-subscription.

Of that amount, $23 million has been requested by 4 percent layered and 2016 9 percent layered applications that were received prior to 2017 9 percent layered applications, meaning that there is little to no chance that we will be able to award any of the 2017 9 percent layered direct loan applications that have development sites in participating jurisdictions where we would typically award TCAP repayment funds, and that's the only source for those applications.

So that's item 6(c). Do you have any questions?

MS. BINGHAM ESCAREÑO: Do you anticipate that we would do any other communication about that as we got closer to commitment dates, or do you think it will be fairly broadcast?

MR. SINNOTT: And I failed to mention that we actually sent a letter to the 2017 9 percent layered direct loan applicants who have development sites in participating jurisdictions notifying them of these over-
subscription issues.

MS. BINGHAM ESCAREÑO: Okay. Great, awesome.

MR. SINNOTT: Like I said, this will allow them to maybe perhaps defer more fee, add to their first lien debt to make up the debt, what we won't be able to fund with TCAP repayment funds.

MS. BINGHAM ESCAREÑO: Any other questions for Andrew? If not, I'll entertain a motion for staff's recommendation on 6(c).

DR. MUÑOZ: So moved.

MS. BINGHAM ESCAREÑO: Dr. Muñoz moves.

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Doctor -- Mr. Gann seconds.

MR. GANN: I'll take the doctor.

DR. MUÑOZ: You can have it.

(General laughter.)

MS. BINGHAM ESCAREÑO: If there's no further discussion, all those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

And then (d).

MR. SINNOTT: So finally, item 6(d) concerns
possible action that may be taken to add TCAP repayment funds to the 2017-1 Multifamily Direct Loan NOFA.

MS. BINGHAM ESCAREÑO: Is it $52 million?

MR. SINNOTT: It's not $52 million, fortunately, but as you can see, the over-subscription of our direct loan fund has been a common theme throughout this meeting, so this is one small way that we're trying to address that issue.

This amendment would approximately $2.3 million in TCAP repayment funds to the 2017-1 NOFA. When the NOFA was published in December, TCAP repayments received through November 30, 2016 were allocated for the NOFA. By adding this $2.3 million, we are including TCAP repayment funds received through March 31, 2017, as well as $1 million in TCAP repayment funds that were returned as a result of a 2016 application not moving forward. Adding these funds should allow for one additional 4 percent layered direct loan application to receive an award, so net effect is not much but it's something.

Staff may look at further amending the NOFA with additional funds, be it HOME, TCAP repayment funds, or potentially National Housing Trust Fund, should there continue to be severe over-subscription issues, with the caveat that, obviously, whatever additional funds that we put into this NOFA comes at the expense of 2018 and future
NOFAs.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for Andrew on 6(d)?

MR. GOODWIN: Motion to approve.

MS. BINGHAM ESCAREÑO: Mr. Goodwin moves.

MR. GANN: Second.

MS. BINGHAM ESCAREÑO: Mr. Gann seconds.

No other discussion. All those in favor, aye. (A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank you.

Thank you, Andrew.

That concludes the action agenda. Are there any other comments from the public on any items that aren't on the agenda but for consideration for future agendas?

(No response.)

MS. BINGHAM ESCAREÑO: How about any comments from staff?

(No response.)

MS. BINGHAM ESCAREÑO: Any comments from the Board?

(No response.)
MS. BINGHAM ESCAREÑO: Good. Then I'll entertain a motion for adjournment.

MR. GOODWIN: So moved.

MS. BINGHAM ESCAREÑO: Okay. I'll second it.

Thank you, guys, very much.

(Whereupon, at 12:53 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: April 27, 2017

I do hereby certify that the foregoing pages, numbers 1 through 154, 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.

5/3/2017
(Transcriber) (Date)

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