GOVERNING BOARD MEETING

The University of Texas at Austin
Thompson Conference Center
Room 3.102
2405 Robert Dedman Drive
Austin, Texas

May 25, 2017
9:02 a.m.

BOARD MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
TOM H. GANN, Member
ASUSENA RESÉNDIZ Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director
INDEX

AGENDA ITEM Page
CALL TO ORDER 7
ROLL CALL 7
CERTIFICATION OF QUORUM

Resolution recognizing June as Homeownership Month 12

CONSENT AGENDA 9

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:
EXECUTIVE
a) Presentation, discussion, and possible action on Board meeting minutes summary for February 23, 2017

LEGAL
b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Angelica Homes (HOME 539109 / CMTS 2605)

c) Presentation, discussion, and possible action on Agreed Final Order of Debarment for Avalon Apartments, L.L.C., Xheladin Jasari, and Flaza Jasarioski for a period of ten years

HOME AND HOMELESS PROGRAMS
d) Presentation, discussion, and possible action to amend the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA"), and the notification of the posting of the NOFA amendment to the Department’s website, and directing its publication for public comment in the Texas Register

e) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA")
COMMUNITY AFFAIRS
f) Presentation, discussion, and possible action on the selection of an Eligible Entity to administer the Community Services Block Grant ("CSBG") to provide services in Dimmit and La Salle counties.

g) Presentation, discussion, and possible action on awards for Federal Fiscal Year ("FFY") 2017 Community Services Block Grant ("CSBG") Discretionary Funds for education and employment services to Native American and Migrant Seasonal Farm Worker populations.

HOUSING RESOURCE CENTER
h) Presentation, discussion, and possible action on the Draft 2018 Regional Allocation Formula Methodology.

ASSET MANAGEMENT
I) Presentation, discussion and possible action regarding Material Amendments to the Housing Tax Credit Land Use Restriction Agreement ("LURA")
01165 McMullen Square Apartments
San Antonio
02036 Gateway East Apartments El Paso
060629 Villas at Henderson Place Cleburne

j) Presentation, discussion and possible action regarding an Ownership Transfer prior to IRS Form 8609 Issuance or Construction Completion
16164 Saralita Senior Village Kerrville
16370 The Providence Lubbock

k) Presentation, discussion and possible action regarding Material Amendments to the Housing Tax Credit Application
16172 Lumberton Senior Village Lumberton

MULTIFAMILY FINANCE
l) Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer
17406 Heights on Parmer Phase II Austin
17410 Lakecrest Village Houston
17418 Alton Park Fort Worth
17415 Campus Apartments Fort Worth
17424 Creekview Apartment Homes Austin
m) Presentation, discussion, and possible action regarding an amendment to the Construction Loan Agreement for Chicory Court Lake Dallas, LP

BOND FINANCE
n) Presentation, discussion, and possible action on Resolution 17-019 authorizing request to Texas Bond Review Board for annual waiver of Single-Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

o) Presentation, discussion, and possible action on Resolution 17-020 authorizing down payment assistance funding sources for Program 79; authorizing the execution of documents and instruments relating to the foregoing; and containing other provisions relating to the subject

RULES
p) Presentation, discussion, and possible action on orders proposing actions to 10 TAC Chapter 7, Homelessness Programs to amend §7.1002, Distribution of Funds and Formula, and directing its publication for public comment in the Texas Register

q) Presentation, discussion, and possible action on proposed new 10 TAC, Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.3 concerning Sick Leave Pool, and directing its publication in the Texas Register

r) Presentation, discussion, and possible action on an order proposing the new 10 TAC Chapter 1 Subchapter E, §1.501 Housing Finance Corporation Reporting Requirements and directing that they be published for public comment in the Texas Register

s) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC Chapter 6 Community Affairs Programs, including the 1) amendments in Subchapter A, General Provisions, of §6.2 Definitions, §6.4 Income Determination, and §6.5 Documentation
and Frequency of Determining Customer Eligibility; and 2) amendments in Subchapter C, Comprehensive Energy Assistance Program ("CEAP"), of §6.308 Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16, and §6.310 Household Crisis Component; and directing that they be published for adoption in the Texas Register

CONSENT AGENDA REPORT ITEMS
ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
   a) TDHCA Outreach Activities, May-June 2017
   b) Report on the Department’s 2nd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
   c) Report on the Department’s 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures
   d) Report on Request for Proposal ("RFP") for Program Administrator for the Texas First Time Homebuyer Program, the My First Texas Home Program, and the Texas Mortgage Credit Certificate ("MCC") Program
   e) Report on 2018 Qualified Allocation Plan ("QAP") Project

ACTION ITEMS
ITEM 3: MULTIFAMILY FINANCE
   a) Presentation, discussion, and possible action on an Amendment to the 2017-1 Multifamily Direct Loan Notice of Funding Availability
   b) Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of a Direct Loan Funds 17402 Harris Ridge Apartments Austin
   c) Presentation, discussion and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(3) related to Applicant Disclosure of Undesirable Neighborhood Characteristics 17008 East Meadows Phase II San Antonio 17013 Rio Lofts San Antonio 17028 The Vineyard on Lancaster Fort Worth 17186 Oasis on Ella Houston
ON THE RECORD REPORTING
(512) 450-0342

17273 The Residence at Lamar  Wichita Falls
17336 Westwind of Lamesa  Lamesa

d) Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.901 et seq. of the Department’s Multifamily Program Rules (Subchapter G) related to Fee Schedule, Appeals and other Provisions
17151 Albany Village  Albany
17036 Merritt McGowan Manor  McKinney
17134 Vista Park West  Fort Worth
17253 Samuel Place Apartments  Corpus Christi
17275 Aria Grand  Austin
17331 Westwind of Killeen  Killeen
17363 Residences of Long Branch  Rowlett
17708 Cedar Ridge Apartments  Dayton
17724 Liv Senior at Johnson Ranch  Bulverde
17736 Providence at Ted Trout Drive  Hudson

e) Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability
17503 The Reserve at Dry Creek  Hewitt
17504 Merritt Heritage  Georgetown
17505 Merritt Monument  Midland

f) Presentation, discussion, and possible action regarding a waiver of 10 TAC §13.11(b) of the Multifamily Direct Loan Rule

209

22

g) Presentation, discussion and possible action regarding a request for waiver, appeals under 10 TAC §10.901 et seq. of the Department’s Multifamily Program Rules, and disclosures under 10 TAC §10.101(a)(3) related to Applicant Disclosure of Undesirable Neighborhood Characteristics for Blue Flame, HTC #17330

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

EXECUTIVE SESSION

OPEN SESSION

ADJOURN

ON THE RECORD REPORTING
(512) 450-0342
MR. GOODWIN: I want to call to order the meeting of the Texas Department of Housing and Community Affairs for May 25, 2017, and ask that we begin with Tim leading us in the Pledge of Allegiance.

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

MR. GOODWIN: We will begin with calling the roll.

Ms. Bingham?

(No response.)

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Gann?

MR. GANN: Here.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Now we'll move into the consent agenda, but before we do that -- ah, Ms. Bingham is present.

MS. BINGHAM ESCAREÑO: Tardy but present.

MR. GOODWIN: Tardy but present. Glad to have you.
MR. IRVINE: I would just like to begin with a couple of introductions. As everyone has noticed, there is a new person in the center of the room. J.B. Goodwin has been named by the governor as the presiding officer of this Governing Board, and we are thrilled to have him.

MR. GOODWIN: Thank you.

(Applause.)

MR. IRVINE: I would also like to note that we have several new Board Members. We have Paul Braden from Dallas, we have Asusena Reséndiz from San Antonio, also hailing from the Cap Rock, and we have Leo Vasquez from my second hometown, Houston. So these members have all been appointed, been confirmed by the Senate, gone through their statutorily required training, and completed and filed their statutory oath of office.

I believe we also have Sharon Thomason somewhere in the room. Yes, there's Sharon. She has been through all of the steps except for the statutory oath of office which she is holding off on because she is unable to stay for the entire meeting today.

One of the things about transition is these are important people with busy schedules and sometimes they get booked a little farther out than some of us. So anyway, she's here to observe but not participate. I know that everybody in this room, certainly the staff, but also
the development community and the community affairs community will give her your unwavering support but also honor assiduously our ex parte communication.

So welcome aboard.

(Applause.)

MR. GOODWIN: Thank you, Tim.

Getting into the consent agenda, are there any items that staff or members of the public or Board members would like to pull from the consent agenda?

Would you please identify yourself?

MS. BOSTON: Yes. Brooke Boston with the Texas Department of Housing and Community Affairs.

Item 1(g) which is the section about the Migrant Seasonal Farm worker awards, the Native American awards, we request to pull into non-consent. There's folks here who would like to speak. And then item 1(s) we would like to pull, some community affairs rules, and we're pulling those so we can continue to work with the public on it a little bit more before we bring it back to you.

MR. GOODWIN: Thank you, Brooke.

Any Board members have any items?

Yes, ma'am. Identify yourself, please, for the record.

MS. YOUNG: I'm Angela Young. I'm the CEO of
the Urban Intertribal Center of Texas. We're located in Dallas, Texas, and I'm here to discuss 1(g).

MR. GOODWIN: 1(g) has already been pulled and we'll be taking it up at a later time. So unless you have another item that you'd like to pull from the consent agenda, leave your remarks until we get to that item.

MS. YOUNG: I do have some remarks that I would like to add, so I'll just bring those up at the end?

MR. GOODWIN: Yes. When we get into the discussion of 1(g).

Any other items? Tom, did you have another item you want to pull?

MR. GOURIS: 1(r) is also pulled, just for the record.

MR. GOODWIN: 1(r) has been pulled. Is it pulled for discussion, Tom?

MR. GOURIS: I'm sorry. It's postponed till next month.

MR. GOODWIN: Okay. So 1(r) is removed from the agenda.

Any other items? Do I hear a motion to approve the consent agenda?

MS. BINGHAM ESCAREÑO: Move to approve with the exception of items (g), (r), which have already been pulled, and (s).
MR. GANN: Second.

MR. GOODWIN: Motion made by Ms. Bingham, seconded by Mr. Gann. All in favor?

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: Motion passes.

MR. GOODWIN: Michael.

MR. LYTTLE: We have a resolution in honor of June being Homeownership Month in Texas.

"Whereas, June 2017 is Homeownership Month in Texas;

"Whereas, the goal of the Texas Department of Housing and Community Affairs("Department") 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 homebuyer and homeownership programs and services;

"Whereas, this year, the Department is celebrating 36 years of offering affordable first time homebuyer assistance to eligible buyers throughout the State of Texas;

"Whereas, since 1981, the Department has served as the State's housing finance agency, providing a choice of mortgage products and services to accommodate market
opportunities and buyer needs as appropriate;

"Whereas, the Department offers a free online homebuyer education tool, Texas Homebuyer U, and administers funds to support the Texas Statewide Homebuyer Education Program to inform and prepare buyers for successful homeownership;

"Whereas, the Department applauds all those who work to achieve and maintain affordable, responsible homeownership and recognizes those who provide services and resources to all home buyers regardless of race, color, national origin, religion, sex, disability, or familial status; and

"Whereas, the Department encourages Texans to explore the numerous resources available during Homeownership Month and throughout the year;

"Now, therefore, it is hereby resolved, that in the pursuit of the goal of affordable homeownership opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs, does hereby celebrate June 2017 as Homeownership Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of Homeownership Month.

"Signed this Twenty-Fifth Day of May 2017."
MR. GOODWIN: Do I hear a motion to accept the resolution?

MS. BINGHAM ESCAREÑO: Move to so resolve.

MR. GOODWIN: Second?

MR. GANN: Second.

MR. GOODWIN: Moved by Ms. Bingham, seconded by Mr. Gann. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Hearing none, it passes.

We have so many new Board members, we are going to move into executive session, and I need to read this to you so the Board can properly move into that session.

The Government Board of the Texas Department of Housing and Community Affairs will go into a closed executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive legal advice of its attorney, pursuant to Texas Government Code 551.072 to deliberate the possible purchase, sale, exchange or lease of real estate, and/or pursuant to Texas Government code 23.06.039(c) to discuss issues related to fraud, waste or abuse with the
Department's internal auditor, fraud prevention coordinator or ethics advisor.

The closed session will be held within this building in the Thompson Conference Center on this the third floor, this date is May 25, 2017, and the time is 9:14 a.m.

We will be in closed executive session for 15 minutes so we will be back in in approximately 15 minutes.

We will adjourn at this time.

(Whereupon, at 9:14 a.m., the meeting was recessed, to reconvene this same day, Thursday, May 25, 2017, following conclusion of the executive session.)

MR. GOODWIN: The Board is now reconvened in open session at 9:45 a.m.

During the executive session the Board did not adopt any policy, position, resolution or any regulation or take any formal action or vote on any item.

Next on our agenda is item 1(g), which we pulled from the consent agenda. Brooke, do you want to talk about that?

MS. BOSTON: Yes. Brooke Boston with the Department.

Item 1(g) is relating to the awards of Federal Fiscal Year Community Services Block Grant funds. The Community Services Block Grant program is funded by the
U.S. Department of Health and Human Services, and about 5 percent of those funds each year are set aside for discretionary purposes. We come to the Board at a point earlier in the year to get permission from you guys on how you'd like to see us spend that money, and then we proceed with programming it into different activities under that direction.

The activity up for discussion today was $300,000 of the funds were set aside for Native American and Migrant Seasonal Farmworker education and employment initiatives. We released a notice of funding availability for that purpose. We had three applications and all were reviewed. All three were found to be eligible applications; however, one of them was not approved by the Executive Award Review Advisory Committee, which is called EARAC, and that's a committee that has to review and recommend any awards to the Board.

The EARAC recommendation for that one was denied based on extensive simple findings that that organization has. They were notified and given an opportunity to appeal and they are in that appeal process right now. So the recommendation today for the item is for the two remaining applicants which was the Family Services Association of San Antonio for $100,000 and the Opportunity Center for the Homeless for $100,000.
MR. IRVINE: And the funds available for the applicant going through the appeal process, we were negative on depending the outcome of that appeal.

MS. BOSTON: Correct.

MR. GOODWIN: Any questions from Board members?

MS. BINGHAM ESCAREÑO: So Brooke and Tim, that award isn't pulled from the other two awards.

MR. IRVINE: Right. There's enough money to do all three awards. We're going ahead with two but reserving the money that would be available to them depending the outcome of their appeal which would be next month, I guess.

MS. BINGHAM ESCAREÑO: Okay.

MR. GOODWIN: Any other questions?

MR. GOODWIN: Do I hear a motion to approve staff recommendation?

MR. GANN: I so move on the awarding of the two that were approved.

MS. BINGHAM ESCAREÑO: I'll second.

MR. GOODWIN: So a motion is made by Mr. Gann, seconded by Ms. Bingham. But any other discussion, any other additional questions, we have people that want to speak.

MS. YOUNG: I'm Angela Young. I'm the CEO of the Urban Inter-Tribal Center of Texas, and we are that
program, that was at the recent meeting. I understand I
have three minutes to discuss what I would like for you to
know about our program.

I've been with the organization for 15 years.
Most recently, about a year ago, I was appointed the CEO
of the organization after our longtime CEO suddenly passed
away of a heart attack. Right before he passed away, it
was discovered our accounting director was mismanaging the
program.

During that same period, our 20-year veteran
that managed our Community Services Block Program
announced that she was moving, got a job offer at the
Department of Labor. Well, when Dr. Scott passed away, it
left me to take care of the problem with an accounting
director that didn't manage our program appropriately, I
had a department that didn't have a leader to manage our
Community Services Block Grant funding.

So on May 17 we met with the Executive Review
Advisory Committee concerning their recommendation not to
fund our American Indian Services Program. We are the
only program in Dallas County currently that has Community
Services Block Grant funding, and we've had this funding
for over 20 years.

The State of Texas ranks fourth with the
largest Native American population. We have 25,000 Native
Americans just in Dallas County alone. We are the only organization in the State of Texas of this kind to take care of our Indian people.

We’ve had a 20-year history with TDHCA; we have appreciated your support. Back in 2016 you made a decision to stand by us. We appeared before you and explained our situation and you stood behind us to support us, and I really appreciate that. I'm here today again asking for your support.

I have three bullet points to bring to your attention. One, our organization experienced a sudden unexpected death of our longtime CEO just over a year ago. We discovered our director of accounting had fallen behind on most of her duties, including required reporting and audits. We took immediate steps to take care of this issue but it has taken some time to resolve the problems as to findings of our independent audit.

Number two, our calculation of indirect cost rate was criticized by a most recent submitted audit. We wish to point out that there was an approval of a rate of an appropriate authority after making full disclosure of the method used in our calculation. No facts were hidden and no attempt was to mislead your program or any other funding agency that funds our program.

Three, our method for allocating payroll costs
was criticized for not using time studies, rather we used
time sheets. In our Indian clinic that we have, the
medical facility, we have many grants that several of our
medical providers are paid from all different sources, so
the recommendation is that we do a time study to make sure
that the monies are being allocated appropriately.

However, under our Community Services Block
Grant funding we have two employees that administer those
funds and the majority of the funding that we do receive
goes to direct services. So we see that when the audit
was conducted, the recommended method of using time
studies, we are going to go towards that immediately.
Matter of fact, last night I had a conversation with our
CFO and he has taken measures, we are going to start
implementing next week this new time study.

We understand EARAC has a responsibility to
protect the Department and make recommendations to deny
funding when programs have unfavorable audits; however,
our audit was completed by a young man, very thorough. I
asked him to do a deep cleaning down to the bottom audit
for the organization since I'm the new CEO, and as you
know, anyone of you in this room, when you take over a new
program, you want to make sure that you understand what
you're leading. I got what I asked for.

Thank you.
MR. GOODWIN: First, I want to thank you for the job that you do in your organization and the work that you do and I appreciate what you've done, and we have stood behind you in the past. I'm a little lost, is the appeal being heard today? So the appeal will come back to the Board once a determination by EARAC has been made if it's not made already?

MS. YOUNG: Yes. Thank you again for your time.

MR. GOODWIN: Thank you.

Any questions from Board members?

(No response.)

MR. GOODWIN: Thank you very much.

Did you want to speak also?

MS. TAYLOR: Good morning. My name is Kendria Taylor. I'm a member of the Choctaw Nation of Oklahoma. I also serve as the board secretary for the Urban Inter-Tribal Center.

Part of why I'm here today is just to simply tell you that part of our audit was maybe board members and lack thereof or the streamlining of processes for board meeting minutes. Gentlemen, I'm going to leave you out for a minute. Ladies, if you've ever been part of a Junior League in any way, you know that we are very adamant about what our meeting minutes look like, so parts
of my job as the board secretary is to streamline those processes, make sure that everyone on the board, from committee reports to our board meetings, are perfectly done in every way.

So it's a great program. I'm not from here, I'm originally from Kansas. Part of my joining the board was years ago I used the services of the Urban InterTribal Center. So it's a great program, and thank you so much for your support.

And a really fun fact, one of our board members that could not make it here today, Peggy Roddy, was a very instrumental person in getting House Bill 174 passed for American Indian Heritage Day.

So thank you so much for listening.

MR. GOODWIN: Thank you.

Any other speakers, comments? Brooke, anything that you want to add?

(No response.)

MR. GOODWIN: Okay. We have a motion and a second. Any other discussion by Board members? If not, all in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: So the motion carries.
So next we are moving into our appeals. Marni.

We're going to do Blue Flame first. We're go a little out of order, folks, so we're going to take item -- which one is Blue Flame?

MS. HOLLOWAY: 6(g) -- I'm sorry -- 3(g).

MS. HOLLOWAY: Chairman Goodwin, members of the Board. My name is Marni Holloway. I'm the Director of the Multifamily Finance Division.

This item is presentation, discussion and possible action regarding a request for waiver appeals under 10 TAC 10.901 of the Department's Multifamily Program Rules and disclosures under 10 TAC 10.101(a)(3) related to applicant disclosure of undesirable neighborhood characteristics. This is for Blue Flame, application number 17330.

This item was tabled last month and the Board asked staff to complete our review of the application which had been held for resolution of the waiver question.

Staff completed the scoring review of the application and had initially issued a notice that took away seven points because it appeared that the site was not within the boundaries of the concerted revitalization plan.

As we were doing more work and looking at exactly what the historic incentive district meant -- which is where the site is -- we actually found an
amendment to the TIRZ plan, the Tax Increment Reinvestment Zone Plan, that brought that historic incentive district into the financing for the CIP. So with that, I don't know if I'm putting words in Tim's mouth, but with that, he granted the appeal after we found that information. So the application currently has all of the points requested and we're not dealing with an appeal on scoring.

Staff also completed review of the application for undesirable neighborhood characteristics. The applicant had disclosed that according to Neighborhood Scout, which is our measurement, the violent crime rate for the area, including the development site, is 22.19 per 1,000 residents. Our threshold is 18, and if it's more than 18, it just means that the applicant needs to do more work to prove up that the site should be eligible.

The development is in the attendance zone of Bowie High School which does not have a Met Standard rating. It also reported that it was within 1,000 feet of blight.

In looking at the information that was provided to us regarding the blight, yes, there are vacant buildings nearby, they do not appear to be blighted. They are boarded, they are vacant but up for lease, that kind of thing, so we did not consider that to be blight.

In contrast, and this was brought up last
month, the crime rate at Blue Flame is more than double
the rate in the area of the existing Pooley Apartments,
which are the units that are being relocated to Blue
Flame. Also, the schools for the Pooley site have all Met
Standard ratings and several of them with distinctions.

Staff has reviewed the undesirable neighborhood
characteristics report and has found that the applicant
has demonstrated actions being taken that would lead a
reader to conclude that there is a high probability and
reasonable expectation that the undesirable
characteristics will be sufficiently mitigated or
significant improved within a reasonable time.

The differences between the two sites, Blue
Flame and Pooley, is not required to be taken into
consideration for this action. For that reason, staff
finds that the applicant has provided the necessary
recommendation and we're recommending that the Board find
that site eligible.

So that leaves us with the waiver which was the
request that we were talking about last month. 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. Along with
the application, the applicant timely filed a request for
waiver of the requirement that in order for a development
that includes demolition of existing units -- so those would be the Pooley units, so those would be the public housing Pooley units -- to relocate, the relocation site must qualify for points under the opportunity index under 11.9(c)(4) of the QAP.

There is information in your Board book that the applicant provided after the last meeting that list what would be considered high opportunity amenities. That information was not included in the original application, and that would be a supplement to the application and was not considered during our review.

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

There was no comment on this rule item as were working through the 2017 QAP. There was no request to change this or modify it, and this year, because we have
the new urban core points, we actually are seeing applications that are urban core and high opportunity, so these are not mutually exclusive items.

Our rules regarding waivers require that the 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 is beyond the control of the applicant. The applicant further asserts that locating the development at the Blue Flame building will enable the Department to meet goals established under our code, including adaptive reuse of a certified historic building.

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 or they could reconstruct on the site that they have now in a higher opportunity area with lower crime and better schools. 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.

MR. GOODWIN: Before we can hear comments or
questions we have to have a motion, and in the past we've asked for motions that have supported staff or rejected staff's recommendation, and I'm going to change that a little bit and ask from a Board member, if there's a motion to accept public comment and possibly further questions to staff, and then after that takes place, we'll ask for another motion to either accept staff's position or to reject. So do I hear a motion?

MS. BINGHAM ESCAREÑO: I'll so move to hear public comment.

MR. GANN: And I'll second.

MR. GOODWIN: Motion made by Ms. Bingham, seconded by Mr. Gann. I suspect we have some people that would like to speak about this, and as we all have done in the past, those that want to speak should be located up here on the first row.

We're going to read a letter into the record.

My apologies, Barry.

MR. LYTTLE: Mr. Chairman and Board, we have three letters submitted from elected officials on this issue I'm reading into the record.

The first comes from State Senator José Rodriguez. It reads as follows:

"To the Board: I'd like to start out and respectfully restate my request that the TDHCA Governing
Board grant a waiver of Section 11.5(e)(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. I also would like to ask that the Governing Board consider a request to move the waiver application up to the front of the meeting."

Already did that.

(General laughter.)

MR. LYTTLE: "First and foremost, I'm 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 located in a high opportunity area based on the data with which that determination is made. However, the sole reason that the Blue Flame's 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 downtown El Paso has been significant and includes construction of the Art Space Lofts, the Mountain Lofts, as well as pending construction of the Ballpark Lofts, the Savoy Lofts, and other apartment complexes planned for construction downtown. Another is 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 that will connect downtown to nearby neighborhoods, the pending construction of a $180 million multipurpose arena downtown, and several new or renovated downtown hotels, including a $7 million renovation of the Camino Real Hotel, the newly construction 100-room Aloft Hotel, and 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 redevelop 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 vote from the TDHCA Governing Board for the Blue Flame, this present opportunity to place affordable and market rate 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 will 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. Should you have any questions or need additional information, please contact my chief of staff, Sushma Smith. Sincerely, José Rodriguez."

Now, I have two other letters, one from El Paso County Judge Veronica Escobar in support of the waiver request, and from Mayor Oscar Leeser, if I'm pronouncing that correctly, the mayor of El Paso. We don't always read local official letters into the record, and so I was
going to ask if you want me to read those or just notate that they've been received?

MR. GOODWIN: I'd prefer you notate they've been received.

MR. LYTTLE: Got it. Very good.

MR. GOODWIN: Unless people speaking in favor would like to have them read, then we'll have you come back up and read the letter.

MS. BINGHAM ESCAREÑO: Mr. Chair, while Barry is coming up, I have a question in clarification. So Senator Rodriguez's letter just now, did I understand is he still asking for consideration of the waiver or was he saying that he does think that development meets the qualification for points under opportunity index.

MR. IRVINE: He's in support of the waiver. He believes that if you look at more current information -- that's what he stated -- that the area would meet the definition of a high opportunity area, but he acknowledges that under the rule construct as it currently exists and the data that we currently use, it would not meet those criteria.

Is that accurate, Marni?

MS. HOLLOWAY: If I may? We actually use the most current census data available, so it would be the 2015 is what we're using for our site demographic
reporting. So yes, 2010 was the last time the census was performed, but those numbers are updated based on census data.

MR. IRVINE: And is it basically the poverty data that's driving?

MS. HOLLOWAY: Right. So as I understand it, the Blue Flame site is not able to meet threshold for opportunity index in order to score those points. They would be able to score under the menu of items but they're not able to get through the threshold items to those menu items.

MS. BINGHAM ESCAREÑO: Okay. Thank you.

MR. GOODWIN: So the discussion is going to be about the waiver.

MR. PALMER: Yes.

MR. GOODWIN: You realize those of us -- I know some of us, not all of us, but I know one who would like to see this project move forward is wrestling with how do you qualify with those two requirements for a waiver.

MR. PALMER: Right. My name is Barry Palmer with the Coats Rose Law Firm, and I'm representing the Housing Authority of the City of El Paso. We presented substantial testimony at the Board meeting last month on the importance of this project and how important it is to the City of El Paso.
Some of you will recall, there had been a motion made to support staff's recommendation. That motion was withdrawn and it appeared that the Board was moving towards a motion to approve but was tabled and sent back to staff to give staff time to review the full application, and also, Dr. Muñoz had asked that we submit information about the high opportunity nature of the project, and that's when we submitted the information showing that the project meets ten of the 13 high opportunity characteristics in the menu of high opportunity areas.

On the waiver, as we talked about at the last meeting, it's a two-part test: is this something that's beyond the applicant's control, and then secondly, is it something that's necessary to further the statutory mission of the Department. And we talked about the ability to further the statutory mission of the Department to renovate historic buildings, to do adaptive reuse of this building as a historic structure and how rare that is that you have the opportunity in a major downtown city to do a historic renovation using tax credits to provide affordable housing. It's been done a couple of times but very rarely. So I think I sensed that there was some consensus that this further the statutory mission of the Department.
The issue of beyond our control, there are a number of things that are beyond our control. Certainly the location of the building is beyond our control, but I think more importantly, you heard all the testimony of all that's going on in downtown El Paso, and we have other speakers from El Paso to talk about that, but what we have is a high opportunity area where the numbers just haven't caught up with it being technically a high opportunity area for purposes of the Department's definition. And that's beyond our control that the census data hasn't caught up with what's actually on the ground.

And I think in the writeup for this in the Board writeup, the staff mentioned that you could find by a totality of the evidence that's been presented, the totality of the circumstances that it's beyond our control for several reasons. The fact that it is a historic building, it's going to be in a downtown area, that's the only place you're going to find a historic building, so we think that the record supports the finding that it's beyond our control.

MR. GOODWIN: Any questions for Barry?

MS. BINGHAM ESCAREÑO: Barry, did you say that you felt like in the writeup that staff possibly gave a bit of a nod to factors beyond the applicant's control? Did I hear you say that?
MR. PALMER: That you could consider a totality of the circumstances. That was what I read in the writeup for today's meeting was that the Board could look at the totality of the circumstances. And as far as I'm concerned, you don't have to all come to the conclusion it's beyond our control for the same reason. I mean, some of you may think it's beyond our control because it's a historic building downtown and that's the only place you're going to find them. Others may feel that it's beyond our control because it is in a high opportunity area, it's just that the census data hasn't caught up with it yet. But if you take the totality of the record, you can certainly find that this is something that's beyond our control.

MS. BINGHAM ESCAREÑO: Thank you.

MR. GANN: I've got a general statement. Can I make it?

MR. GOODWIN: Sure.

MR. GANN: My history is history so I like the building and renovations downtown. My past history is development. It's obvious to me that this is a high opportunity operation -- I also am a low-income housing builder -- so if this is an opportunity spot, we're going to have to prove it and it's got to be proved by data that's come after what our staff has come up with it, and
I'm sure it's out there.

But to me, with the ballpark that's going in, these are the people that we could give the jobs to in the ballpark through this kind of thing, or just working downtown in the department store that's there or in the hotels that are going up downtown. This is the kind of information we need and be on record with that's not showing up over here since 2015. That stuff is current and we need to hear about the new stuff that's going in there so we can make a better judgment of what's going on.

MR. PALMER: Right. And we have speakers from the city who can speak to that. But one thing that you bring to mind in saying that is in order to do affordable housing in an area that is redeveloping quickly and in effect gentrifying, you've got to get in early. If you wait too long, it gets too expensive to go in there. We've seen that in downtown Houston, we've seen that in downtown Austin. If you wait until all the numbers are great and everybody knows it's a great area, then it's too expensive to go there.

MR. GANN: That's my point.

MS. BINGHAM ESCAREÑO: So it becomes financially not feasible at that point.

MR. PALMER: Right.

MS. BINGHAM ESCAREÑO: Like if you waited for
the numbers to catch up, if you waited for what you can
see with your eyes is happening, but if you waited for it
to manifest in some kind of long-term data, you'd miss the
opportunity for the financial viability of the
development.

MR. PALMER: Right.

MS. BINGHAM ESCAREÑO: That furthers the
statutory mission.

MR. GOODWIN: Or beyond your control. I
thought you were going to add that at the end.

MS. HERRERA: Hi, everyone. Good morning. My
name is Jessica Herrera, speaking on behalf of the Housing
Authority. I'm the city's Economic Development Department
Director, and I am thanking you for the opportunity to
come out and speak to your Board today related to item
3(g) regarding the request for waiver of 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 with more than 2-1/2 million
people that really stem from the border of the State of
New Mexico and the state of Chihuahua, Mexico as well. Our
location allows for the daily commute of individuals
coming into El Paso, and specifically, when you're looking
at downtown, to work, shop, visit family, attend school.
Our downtown has a port of entry that has an average of more than 550,000 northbound pedestrians and vehicles coming into El Paso per month.

In 2012, the city overwhelmingly supported our Quality of Life Fund of more than $475 million for projects citywide, and specifically in downtown El Paso, $205 million were approved for signature projects in downtown which were our Children's Museum, our multipurpose center or the arena, the Hispanic Cultural Center as well. And in April of 2014, we opened the doors to our downtown Triple-A baseball team which is now home to the El Paso Chihuahuas, and that has been a huge home run for the city, huge home run, and the fact that in 2019 we're going to be holding our All Star Triple-A ball team as well.

Within the last four years we have seen additional and very, very significant public and private investment all throughout downtown of more than close to $400 million. To give you a snapshot of the private investment underway, we have actively participated in more than 18 economic development incentive agreements that are now adding 300 new residential units, more than 760 hotel rooms, and more than 394,000 square feet of new commercial and office space. Some of these projects have already been completed and several others are under construction,
and this has just happened within the last two years.

The Blue Flame development is a 62-year-old building that occupies an important part of our downtown revitalization efforts currently underway. It's been vacant for more than a decade, and it's an opportunity, really an opportunity to breathe new life into this building and this is going to be a game-changer for the area.

It is located within walking distance of several of these projects that are already underway and some have already opened, and just to give you an example, literally right across the street from this project is a historic building that's currently under construction, expected to open in the fall of next year, and it's going to be the Aloft Hotel, adding more than 100 rooms with ground floor retail space and restaurant space as well. There are at least three mixed use residential projects within walking distance, and really it's been adding more than 160 residential units just within the last two years.

The project's location provides ample access to transportation, employment, government, educational and healthcare services for future residents, which equates to expanded growth opportunities for all. As an example, and really what's driving this too, is the $97 million streetcar system that's operational and it's going to be...
up and running by 2018. And it's connecting our downtown
to the University of Texas at El Paso, and within that
connection there's a number of healthcare services that
are available, hospitals and such that have experienced
some significant expansion as well, not to mention our El
Paso Community College campuses that are also located
within that route.

Our public transit system also feeds into
downtown, and three of these four corridors are feeding
into downtown, one of which is open and one of which is
currently underway that's connecting the Medical Center of
the Americas, which is a huge healthcare complex in El
Paso as well. These are all critical efforts for the
continued redevelopment and ease of access for these
opportunities as we continue to move forward.

These opportunities and improvements have and
will undoubtedly continue to enrich the quality and
livability of El Paso's downtown area. We are excited at
the prospect of affordable housing being available in this
part of town and believe that it fits in very well with
the revitalization efforts currently underway.

Thank you all very much for this opportunity.

MR. GOODWIN: Thank you, Jessica.

MR. VASQUEZ: Chair, I have a question.

MR. GOODWIN: Okay.
MR. VASQUEZ: Jessica, it may be buried in the materials here you gave me, but what is the City of El Paso doing, if anything, contributing funds, or how are they financially helping the project?

MS. HERRERA: Well, in terms of looking at the project, just scope, I know that just related to the fact that it's affordable housing, there will be a small number of units that will be market rate, is my understanding as well. There are potential for site improvement grants, but because the building is historic, we still have to look at what the city would be able to contribute, whether it's a portion of our property tax as well as a portion of our sales tax rebate as well.

We have an incentive policy currently underway in El Paso in that in downtown specifically for historic buildings we can provide a rebate of up to 15 years for historic buildings, but we would have to factor in the project's investment and then take a look at how it's going to be structured when they're leveraging tax credits and other sources of revenue and then see what the city could feasibly do.

MR. VASQUEZ: So for the City of El Paso, nothing?

MS. HERRERA: Nothing has been approved yet, no, sir.
MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Thank you.

MR. CICHON: Good morning, everybody. Gerry Cichon with the Housing Authority for the City of El Paso.

And just as quick background, the Housing Authority of El Paso is doing the largest RAD conversion in the United States. It's the relocation of 40,000 people and the construction of 6,400 units. Blue Flame is part of that, and as we look at the infrastructure and look at our needs, we've determined that Blue Flame fits directly into that.

Now, what I'd like to do is talk directly about the issues that are beyond our control because obviously that is a critical and key component in making your decision. So as you know, the tax credit equity has decreased with the announcement of the president's tax plan, so we went from $1.06 in equity down to about 88 cents which creates gap in a lot of the construction that we're doing. So as we started looking at opportunities for this next year, we saw that historic tax credits were an opportunity to reduce that.

Now, we found that historic buildings were unfortunately in the areas that didn't have high opportunity index as determined by the staff here at
TDHCA. So that was beyond our control to actually find the buildings that gave us opportunity to address the funding issues that we find ourselves in.

Additionally, the issues regarding support of our residents to climb out of what they find themselves in, which is economic challenges, necessitates being around infrastructure. The infrastructure is found right now in downtown. That's the transportation of the trolley that's being put in, that's access to the government buildings, that's to the other transportation around the city to the hospitals and everything else. So again, the opportunities that were being provided to our tenants was much higher in the center of the city where all the infrastructure and investment is actually going in, again, beyond our control.

The city also has determined that to give us support, they were looking to keep us in the at-risk set-aside. So finding ourselves in that one side of this which is the at-risk, which you find yourself in the opportunity index issue which you wouldn't have had in the regional side was also beyond our control, so that also necessitated us being over here in this side.

The support from the city also came with their strategic plan which is infill development. As they looked at infill, it was defined also as we walked forward
into the support for the downtown area. Again, that was beyond our control.

The opportunity also for not just the infrastructure for the supportive services but also the jobs. The jobs right now as a massive growth area is downtown. As you know, the ballpark with the $400 million in investment has created a large opportunity for new jobs.

There's new investment going in, there's new businesses, new bars going in every single day. Again, the opportunity for the jobs in that area for people that don't have cars, which is very, very walkable, is beyond our control, and that's the area of town that you find it.

So the definition of beyond our control is really yours, and that opportunity to make that call is yours. And so like Barry had mentioned, you have the opportunity to take some of the evidence that you have, all of it, a combination therein, in order to make that call. If you guys make that decision, and the decision is that whether it's outside of our control and that failure to grant the waiver would not fulfill a necessary requirement under the law, then that would be sufficient for us to go forward with this and this investment in downtown El Paso.

MR. GOODWIN: Any questions for Gerry?
MR. GOODWIN: Thank you, Gerry.

MR. BLUMENFELD: Good morning. My name is Robert Blumenfeld. I'm from El Paso, I'm a lawyer, I represent the Housing Authority of the city of El Paso.

Other than living in Austin when I was in law school, I'm basically from El Paso. El Paso is unique, it's different than the rest of the state, and I want to focus in on the two factors that you all need to determine as part of what you're doing here today on our request for a waiver.

But before I do that, I just want to say there was a meeting about a month ago, there's 40 pages of testimony. I don't want to rehash that or even go into it, but I do want to state for the record that I believe even the new Board members can take into account what we've summarized today and the 40 pages of testimony that was provided to you at the last meeting.

In addition, I don't want to read letters, but I want to point out for the record that at the last meeting we had something that's unique for El Paso, basically our entire delegation of elected officials support this project, including Congressman Beto O'Rourke, who wrote a letter in support of it, State Representative Joe Moody, and then today we also provided you with
letters from Mayor Oscar Leeser, the mayor of the City of el Paso, and from our County Judge Veronica Escobar, all asking the Board to -- all informing the Board to support the waiver and encouraging you to exercise your discretion appropriately in support of this project.

I want to focus on two points which are really the focal points of your decision today. One is circumstances beyond our control. As Mr. Cichon, as Gerry just referred to, we didn't draw the lines of what zones are judged for high opportunity, we didn't draw the boundaries. This boundary cuts across a very complex area that's very diverse.

The center of downtown El Paso where this is located is incredibly safe, it's becoming incredibly nice, it's by no means a low income or high crime zone, but it's nearby other areas of El Paso that are more challenged. The testimony from the last hearing, they explained about six blocks away there's a homeless shelter that might add to the crime, or about three or four blocks in the other direction as you get near the border, you're in a much lower income area, and so it's beyond our control as the housing authority that the zones that you're judging things on are a certain way yet the actual neighborhood where this is a very nice and getting a lot of investment and becoming a very nice neighborhood.
The other thing that's beyond our control is that at the local level, before we submit our application to TDHCA, we have to go through a local screening process, and the City of El Paso has adopted a strategic plan that is encouraging governmental entities, like the housing authority, to provide infill. The City of El Paso is growing away from itself, it's growing to its fringes, and the rule in the QAP when applied to El Paso encourages growth at the fringes of the city, which is contrary to our city plan and it's beyond our control.

The city adopts its strategic plan, they want walkable, livable neighborhoods. We've got to comply with the local screening process in selecting the site, and we did that here, and we think that would also qualify as a circumstance beyond our control why we need this waiver.

Finally, I think Mr. Palmer, Barry, provided you with some information that I don't want it to be buried in the record -- apologize -- that your agency, your governing body is here to assist local governments, like the housing authority, providing services for residents, and these are beyond the second prong of the test why the statutory mandate would be supported by a grant of a waiver. Fulfilling the policy of the government at all levels should be assisting people at all income levels, participating in the development and
diversification of the economy and supporting the adaptive re-use of historic properties.

We think the record, both when you take into consideration the last hearing and today, is very rich in reasons and justifications that will support you granting our waiver. Thank you.

MR. GOODWIN: Thank you, Robert.

Questions for Robert?

MR. ECCLES: I have a legal clarification point. The second part of the waiver rule reads: how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. It continues: in this regard, the policies and purposes articulated in Texas Government Code, Sections 2306.001, .002, .359, and .6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit Program.

I heard both you and Mr. Palmer talk about furthering the purposes of the Department and policies of the Department as being synonymous with this second prong. Is that your legal position?

MR. BLUMENFELD: And I'll defer to Mr. Palmer, and as introductory statement before he comes up and speaks, I will say that not granting this waiver would be tantamount to not performing these functions that are in
Mr. Palmer's materials that he's provided to you all where there is an affirmative obligation to work with the housing authority to do the things that we're here today to try to do.

MR. PALMER: And I think we would focus on the statutory direction to support that reuse of historic structures, and that without this waiver, that's not going to happen, not going to happen in this cycle. Next year, who knows if this building will be available but even if it is and we still have the same rule, we've got the same result, that you're not going to be funding historic buildings if they have to be in a high opportunity neighborhood.

MR. GOODWIN: Any additional questions?

MR. GANN: One comment I'd like to make.

MR. GOODWIN: Sure.

MR. GANN: Marni, you and your group -- who I think is fantastic, you know that.

MS. HOLLOWAY: Thank you.

MR. GANN: But your decision is based on the rules, that you have to come up with criteria according to what the information is you have.

MS. HOLLOWAY: Exactly.

MR. GANN: And I think that's where you are and I think that's where we are. I think this might be one of
those cases where there's no way you could have come up with this new information that we see is not already there yet, but the trend is so strong going that direction and this is really one of those projects we really would want to be doing if we possibly could figure out a way to do it. And I just want to make a statement that I know that where you came down is where you had to come down, but I think this is such new information that we have to really consider it carefully and see where we will go with it.

MS. HOLLOWAY: Well, and that's exactly why waiver requests are all brought to the Board.

MR. GANN: Thank you so much.

MR. GOODWIN: Any other comments or discussion?

(No response.)

MR. GOODWIN: Hearing none, is there a motion on how the Board should proceed?

MS. BINGHAM ESCAREÑO: Mr. Chair, I'd like to make a motion to grant the waiver for Blue Flame on the ground that granting the waiver is necessary to address circumstances that are beyond the applicant's control, and that if we didn't grant the waiver, that we would not be able to fulfill specific requirements of law for our Department.

MR. GOODWIN: Do I hear a second?

MR. VASQUEZ: Second.
MR. GOODWIN: So the motion is made by Ms. Bingham and seconded by Mr. Vasquez. Any questions or discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: The waiver is granted.

Moving on the agenda, Marni, do you want to take 3(d), those appeals we discussed?

So that everybody will be aware, I've kind of given Marni the latitude to read these appeals and talk about them in an order that made sense where some of the same issues were in some of the different bundles. So Marni, if you will, just for everybody's information, kind of give us the numbers that you're going to do first.

MS. HOLLOWAY: So for item 3(d), actually three of the appeals that are listed on the agenda have been pulled. 17151 Albany Village, was posted on the agenda before the executive director granted the appeal, so we're not going to be discussing that one today. Vista Park West which is 17134, the applicant withdrew their appeal after the agenda was posted. And then 17253 Samuel Place Apartments, the applicants withdraw their appeal after the
Board book was published. So we're taking those three off.

MR. GOODWIN: Those three will be removed.

MS. HOLLOWAY: Right. I have a couple of requests for reorder, one, so that you're considering items that are similar together, and then another, Mr. Shackelford has three items that he's going to be presenting on that he wanted to have reordered, so if you'd like, I can just go down through the list.

MR. GOODWIN: Okay.

MS. HOLLOWAY: The first one will be 17036 Merritt McGowan, the first one is the first one. 17275 Aria Grand will be number 6. 17331 West Wind of Killeen will be number 5. 17363 Residences of Long Branch will be number 4. 17708 Cedar Ridge Apartments will be 2. 17724 Liv Senior at Johnson Ranch will be number 7. And 17736 Providence at Ted Trout will be number 3.

All right. So this is presentation, discussion and possible action on timely filed scoring appeals under 10 TAC 10.901 of the Department's Multifamily Program Rules. This is Subchapter G related to fee schedules, appeals and other provisions.

Some background on this item from staff so the Board will understand how we have arrived at some of the appeals you'll hear today. Staff has taken a stricter
approach to what falls under the definition of administrative deficiency this cycle. We also have not granted points that were not requested in the application. We have taken this approach out of an abundance of caution and are requesting Board direction today regarding these questions that are going to be presented.

For the first time last year, the online applications were updated daily throughout our review process, so all the competitors could see exactly what we were doing with everyone else's application in real time. So also new last year was the third party request for administrative deficiency, or the RFAD. Last year one applicant used the RFAD process to question decisions that we had made about administrative deficiencies for a competitor's application. So they weren't presenting new information, they were questioning our decision.

During the current legislative session, two bills were filed that linked directly back to that RFAD. If House Bills 1834 and 2261, filed by Representative Dutton had passed, they would have reached into our application review process on the same two questions raised by the competitor's RFAD last year.

Staff is left with a very clear message that however we handle deficiencies, somebody is likely to take offense and we will wind up exactly where we are today,
either with the applicant if we are strict, or with the competitor if we are lenient. We also run the risk for future legislative action.

Similarly, in the past staff has granted points that weren't requested for certain scoring items. These are graduated items. So if you don't prove up your score on one level, you may be able to score on the next one down. This action falls in line with the situation you find yourselves in regarding administrative deficiencies.

There is no provision in rule that says staff can do that we could find.

Applicants are accustomed to staff making these adjustments rather than taking a stricter approach that you only get the points you've requested and proven. If we grant the next score down, we create a situation where a competitor can submit an RFAD regarding that decision.

At the meeting last month, I did not fully develop staff's position, and unfortunately, my comment regarding language in the RFAD rule for 2017 was misunderstood, and that's my fault. The RFAD rule for 2018 will include reference to 2306.6715(b) which prohibits an applicant from appealing a decision on another application. We will find an avenue for applicants to point out mistakes made by staff through our ongoing QAP-planning process that does not involve that
RFAD rule. So yes, there absolutely has to be an avenue
to say staff made a mistake under this rule, but that's
different from I'm challenging that decision regarding
that administrative deficiency.

   So starting with that first one, do we want to
   just work right through them?

   MR. IRVINE:  Actually, before you jump in, I'd
   just like to make a statement to sort of reinforce what
   you're saying and reinforce to the development community
   that we really aren't trying to pick on anybody, we're
   trying to create a level workable playing field, and it's
   challenging.

   At issue in several of these appeals is the
   question of authority. It's long been the practice of
   staff and the applicant community that when you claim a
   scoring item, you need to provide support for the claimed
   score. 10 TAC 11.1(b) states, in part, that it remains
   the sole responsibility of the applicant to perform
   independently the necessary due diligence to research,
   confirm and verify any data, opinions, interpretations or
   other information on which an applicant bases an
   application or includes in any submittal in connection
   with an application.

   I concede that neither this provision nor any
   other specific provision of the rule states unambiguously
that when an applicant claims points under a scoring item
they must also include materials to substantiate the claim
of points. However, the long-standing practice has been
to include such support and the application form is
constructed to direct applicants to provide certain
corroborating data.

In considering the appeal to me, I felt
constrained to place this matter before the Board because
although I can readily construct, as the applicants'
counsels have done, the legal argument to support one
outcome, it seemed a better course, in light of historic
treatment of these matters, to have the Board publicly
consider the issues and provide staff and the public
clarity on how the Board reads and administers its rules.

For staff to have used discretion to allow applicants to
provide additional materials presented the risk of
tripping third party requests for administrative
deficiencies, and that's a process that's previously taken
as long as several months to play out. We need to have
closure on these matters quickly as the tax credit round
is quickly approaching its midsummer deadline.

So don't take my denial letter as an absolute
rejection of the various arguments on both sides, but as a
vehicle to place the question before you for your
interpretation and direction. Let me assure you that all
of your staff, including me, are trying to administer --
including Marni, I strongly underscore that -- are trying
to administer a very complex program in the most
transparent possible manner, and I anticipate that there
will be proposed rule changes for your consideration as we
develop the 2018 rules but we're not there yet, we've got
to deal with what we have. So on with the show.

MS. BINGHAM ESCAREÑO: Mr. Chair, I have a
couple of observations too. I know that Marni mentioned
that no matter what decision is made, somebody is not
going to be happy. We had a wonderful Board chair for
years that reminded us of that at every single Board
meeting, so we're aware of that. And I see your staff as
having very thick skin and that this isn't about this is
going turf to the Board because you guys get your
feelings hurt or somebody gets mad or whatever.

But I would say is everybody is on tight
timelines when it comes to these applications, and what we
noticed was it is time consuming to have it go through
that third party request regarding administrative
deficiencies and then to have it come to the Board. I
mean, my oversimplification of this is we're just cutting
to the chase.

It isn't by any means, I think, now you've got
the Board. But what I would say is this -- since I see

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lots of happy faces that want to talk to us -- we understand the way that staff used to do it, so we'll save some time today if you don't have to remind us that the way staff used to do it was they used to go ahead and default to the next score if your application, you tried to get it to score some points, so we completely understand that that was the way that staff did it.

I'll just speak for myself and say I see it as even though I think every year everybody in here does a collaboratively heroic job trying to simplify the QAP, and we're still trying, but I do believe and I really appreciate staff's efforts because where you've been kind enough to acknowledge some miscommunication or some shortfalls in your testimony last time, the fact that we are obviously very open to want to see what we can do to address is it in the QAP. And would it be presumptuous to think that there would be roundtables over that?

MR. IRVINE: No. There absolutely will be.

MS. HOLLOWAY: I can't imagine that we would not include this in our regular group therapy.

MS. BINGHAM ESCAREÑO: Yes. So I think the Board came today having reviewed the packet and are very interested in hearing each one of these today and we understand that they have compelling issues. I just was going to put my little two cents worth in to just say
we'll probably save 12 minutes or so if everybody doesn't remind us that this is what staff used to do.

Thank you.

MR. GOODWIN: Thank you. Any other comments or questions before Marni starts?

(No response.)

MS. HOLLOWAY: The first application, 17036 Merritt McGowan Manor, requested 12 points under 10 TAC 11.9(e)(2). This is cost of development per square foot for which the application does not qualify and the point reduction for this item is more than six points from the self-score, rendering the application ineligible for the six pre-application points.

Under this cost of development per square foot item, an application may qualify as a high cost development if the site qualifies for a minimum of five points under 11.9(c)(4) related to opportunity index and it's located in an urban area. This is similar to the Blue Flame situation in that they have opportunity items in the menu but they don't pass the threshold.

In their appeal, the applicant takes the position that because the site qualifies for five points under the menu section of the opportunity index, it should qualify as a high cost development. The applicant cites the concerted revitalization plan section which allows an
additional point if the site could score four points under just the menu part of the opportunity index.

So the concerted revitalization extra point is very specific to you can score four under the menu part, it doesn't require passing the threshold part. That distinction was added to the concerted revitalization plan in direct response to stakeholder concerns about CRP site having to meet threshold. That same concern was not raised about the high cost development item.

The application does not meet the threshold requirement because it is in a census tract with poverty rate greater than 20 percent, and therefore, does not qualify without this designation. As I mentioned, one of the requirements for an application to qualify to receive six points under pre-application is that the application final score does not vary by more than six points from the pre-application self score. Due to the loss of 12 points on cost per square foot, the application is not eligible to receive those pre-app points.

Staff is recommending denial of the appeal. I'll answer any questions.

MR. GOODWIN: Is there a motion to accept public comment and possible further questions to staff?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Ms. Bingham. Second?
MR. BRADEN: Second.

MR. GOODWIN: Second by Mr. Braden. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Now we'll take questions.

Questions for Marni?

MR. JACKSON: My name is Frank Jackson. I'm the executive director of the Texas Affiliation of Affordable Housing Providers, which is a long name for our little organization. I am not here to speak about a particular application. If it pleases the Board, I'd like to make general comments that apply to all six motions that you're going to face, we're not speaking on a particular application at all, we're speaking in general about process.

MR. GOODWIN: Frank, I don't think that's appropriate at this time.

MR. JACKSON: All right, sir. When would you like it to be appropriate?

MR. GOODWIN: Our action right now is to take questions and comments as it relates to this application, so if you want to make questions and comments in general, I think we'd have to wait till we get to a point in the agenda where that would be appropriate.

MR. IRVINE: I would respectfully say that if
it applies to the way that you consider and treat each appeal, so rather than repeating it at each appeal, it might just be easier to hear it once.

MR. ECCLES: Do your comments relate to this application and these appeals that have been posted?

MR. JACKSON: Yes.

MR. GOODWIN: So can you not just speak to this, bring up your points as it relates to this case, and we're all smart enough to remember them, I think, through the next seven presentations.

MR. JACKSON: I'd hate to do that because this is not about a particular case, this is not about the case that you're about to hear or any other case, this is about the process that you are using to make determinations on all of the cases.

MR. ECCLES: That have been posted and are being presented right now.

MR. JACKSON: Yes.

MR. ECCLES: Okay. That's fine.

MR. JACKSON: Thank you very much. I appreciate it.

Again, Frank Jackson with TAAHP. I'm here today to express our concern over how TDHCA staff has administered the 9 percent competitive program this year with regard to administrative deficiencies. It is a
departure from past practice.  

In the past, applicants were allowed to submit supplemental information in response to an administrative deficiency. This year staff will only consider information that was contained in the original application. Moreover, in addition to precedent from prior years, the rules as written give staff clear direction as to how to conduct application reviews. That clear direction is found in terms used in the sections of the rule.

For example, the definition of administrative deficiencies, that is information requested by department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original application, or to assist staff in evaluating the application that in the Department staff's reasonable judgment -- I'm sorry. Excuse me. Reasonable judgment. Excuse me. To assist staff in evaluating the application, that in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or reevaluation of the application.

The administrative deficiency process, the purpose of which is to allow the applicant to provide
clarification, correction and non-material missing information to resolve inconsistencies in the original application or to assist staff in evaluating the application.

The general information regarding the competitive housing tax credit selection criteria acknowledges that because of the highly competitive nature of all of these programs, applicants that elect points where supporting documentation is required but fail to provide any -- emphasis any -- documentation will not be allowed to cure the issue through an administrative deficiency. We believe the rule, as written, clearly allows staff to request information from applicants. More importantly, we believe that this is an essential part of the application review process.

These applications, as you know, are lengthy and technical and history shows us that it is virtually impossible to assemble an application that is flawless. It is our understanding that 100 percent of the applications reviewed by the Department in the years since this process has been place have received administrative deficiencies 100 percent of the time.

We also think it's important to be consistent in applying these rules through the review process and that the consistency needs to exist among applicants and
within applications. If one applicant is allowed to submit supplemental information and/or correct a form under a particular section of the application, then another applicant should also be allowed to submit different supplemental information or correct another form in another part of the application.

With respect to threshold items and scoring items, two sections of the rules make no distinction between the two, so we believe the rule applies to both parts of the application.

One section does address scoring items, we think, where it clearly defines a specific situation under which an issue could not be cured via administrative deficiency. That is where no documentation was submitted. Supplemental documentation should be allowed where there is a need for clarification or explanation.

Thank you very much for listening today. I appreciate your time.

MR. GOODWIN: Any questions? Frank, you made the comment, I think, that the rule allows staff to request, but what I didn't hear was you stating that the rule requires staff to request.

MR. JACKSON: I'm going to have to think about that for a minute.

MR. GOODWIN: Okay. If you would, think about
it. Is this regarding 17036?

MS. MARTIN: This is similar to Frank's comments, in that it applies to all of the appeals you are going to hear. And I hope to be a little efficient in speaking to you just once, rather than seven times.

MR. GOODWIN: Okay. And I would point out to you, and the others as well that want to speak, that the more times we hear the same thing, if you've got something new to add, it's okay to stand up and say I agree with Frank 100 percent.

MS. MARTIN: Absolutely.

MR. GOODWIN: And sit back down, if you'd like.

MS. MARTIN: I agree with Frank 100 percent.

My name is Audrey Martin. I'm with Purple Martin Real Estate.

This morning I'm speaking on behalf of -- I'm speaking as a former TDHCA staff member, and on behalf of several other former TDHCA staff members who in recent years worked in the Multifamily Division. That includes Robbye Meyer, Jean Latsha and Valentine Deleon.

We felt compelled to speak to you all this morning, again, about the administrative deficiency process which leads to these appeals that you're hearing this morning. You know, we've all been in staff's shoes. We've reviewed countless applications, and truly have
respect for what they go through, and the way they have to parse details and make these difficult decisions.

And you know, the way the process works is that when staff isn't doing these tough reviews, they're writing new rules. And then they're trying to implement those new rule changes into a new revised application and a new revised procedures manual.

And then they try to put presentation materials together to applicants to help them understand the rule changes every single year. And they have to go through all of that in about two months. It's a lot of work and it's exhausting.

At the same time, being in the private sector side now, you know, we understand how much work similarly goes into putting these applications together. Despite the madness of real estate development in general, you know, you have to -- again, in about two months' time -- put together these development proposals that involve coordination between attorneys, engineers, architects, all these different folks. You know, this two-month effort is also very exhausting.

So what happens? Well, we all miss things. This is a very technical program on both sides, the rules change every year. You know, maybe the review sheet calls for staff to check for items that came out of the rule.
Maybe an applicant missed an edit to the procedures manual. And so how do we deal with these imperfections? We deal with them through the administrative deficiency process. We allow for human error in the administrative deficiency process.

You know, we understand that staff took some bullets last year in some certain challenges and appeals. I get it. Again, I've been there.

But unfortunately, it comes with the territory and staff has to still use the administrative deficiency process in order to administer the program in a way that advances the Department's policies. And so when staff doesn't feel like they can do that and to allow clarifications, what happens is, applicants are dinged for whatever and they lose points.

And what happens then is the applications win awards that don't adhere to policies of TDHCA as much as the deals that had points docked. I think this is a bad practice. You know, it prioritizes administrative functions over policy.

And so we just ask that the Board consider this when hearing these appeals. Human error exists on both sides. We all do our best job to, on the staff side, administer the rules and policies; on the applicant side, to put together strong proposals that meet those policy
objectives.

And the administrative deficiency process has always existed in order to allow us to correct human error in non-material ways so that we can all work toward a common goal of putting housing on the ground that advances the Department's policies. So those are my comments. Any questions?

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MS. MARTIN: Thank you.

MS. ANDERSON: Good morning. My name is Sarah Anderson, and I am your third and I believe final speaker who would appreciate the privilege of speaking one time as opposed to on every item, if that would be allowed.

I would like to start by saying I agree with both previous speakers. And so you know, I very much appreciate the Board outlining how you're looking at it. And I appreciate Tim explaining staff's view on how we got there, and what you're going to be looking at. So most of my comments have been covered at this point. But I would like to reiterate that what you're going to see with all of the appeals that are coming forward to you are falling into three basic categories.

The first has to do with the rules perhaps not
being as specific in outlining what staff wants and there
being disagreement as to what needs to be submitted and
what staff is now saying needs to be submitted. The
other, again, as I said, a perceived, not firmly
established, policies of the deficiency process is also
concerning. And then again, this issue of all or nothing
scoring which is new to us.

I think the hardest thing on our side is that
there were no real rule changes that would have
telegraphed this much of a change in the way items are
being reviewed. That's where a lot of heartburn is coming
from, so at least we feel better to know that this is
because we're looking for the Board to give a little bit
more direction.

I would just like to say on our side when we
are putting these together the only thing we have to look
at and to make sure that we're doing it right is we have
the rules, we have an application manual and we have an
application. And most of us follow those documents to the
letter. And when we find ourselves with a little bit of
gray area, I believe, and I think there's law out there
that says that tie goes to our side and the applicant.
And the least amount of harm should be done to the person
who is adhering to the language of the law.

And I would say outside of what we can read, we
also operate off of established procedures and precedent.

And so again, the concern that you're seeing from our side is in that -- a rather large departure from that. And we're very happy that we're going to be able to have this discussion.

I did neglect to say that I'm here representing the Texas Coalition of Affordable Developers. We are, again, another organization made up of developers and development consultants. They are the people in the first three rows here. We just wanted -- they're not going to speak, thank goodness.

MR. GOODWIN: Thank you.

MS. ANDERSON: But they are here. And we just wanted you to know that we're representing a rather large group who are very interested in what we're about to see laid out. And we thank you very much for your time.

MR. GOODWIN: Thank you, Sarah.

MS. ANDERSON: Thank you.

MR. GOODWIN: Any additional questions for Sarah? Comments?

(No response.)

MR. GOODWIN: Anyone else want to speak regarding application 17036?

MS. LATSHA: Hi. I'm Jean Latsha. And I'll again make some very brief comments that are related to
the process in general. For those Board members who don't know, I've spoken with a lot of you several times over the last several years, but I'm Marni's predecessor.

So I left just about two years ago. And so I would say this process is near and dear to my heart. I often joke that the only things that I think about are housing tax credits and if my kids ate any vegetables that day. And so it is disheartening, a little bit, to see the policy objectives that are laid out in this program that are well thought out by this Board and by staff be potentially jeopardized by elevating this administrative situation.

It is true that I never in my almost twelve years now in this business have heard of an applicant not getting a deficiency. I worked for a nonprofit developer before I came to the Department. I know that all of those applications had deficiencies.

When I was at the Department, and served as the director and as the manager of the program, there was not one application that did not have a deficiency. In fact, I think we looked at the average one year, and it was 13.

Just to give you guys a sense of what goes on, having an application deficiency is not an anomaly. It is the norm, absolutely. And so not to be able to correct those mistakes I think is difficult not just for the
development community but also for staff. In a very practical sense, you're not going to get to July. You won't find that perfect application. You'll review these, deny the appeals, go on to the next one, and you'll be in the same situation.

And worse, you know, we talked about how one person is happy, and one person is unhappy, you know, at the end of these decisions. So if that's going to be true, then think to yourself which application really is fulfilling those policy objectives? Well, it was the one that really does deserve those additional points. And even if they had to get there by making a small correction or clarification, the fact is that application is closer to fulfilling those policy objectives. And I think that's a broader picture that really should be considered.

And of all people here, you know, I remember having to have a cigarette, after ten years of not having a cigarette, after dealing with one of these appeals as the Director. Staff, not to be named, let me have that cigarette.

(General laughter.)

MS. LATSHA: So I get it. And I really appreciate y'all's consideration.

MR. GOODWIN: Any questions for Jean, comments?

(No response.)
MR. HENDERSON: Good afternoon. My name is Will Henderson. And you'll be happy to know I actually am the applicant for 17036.

(General talking and laughter.)

MR. GOODWIN: I'm sorry. Are you in the right room?

MR. HENDERSON: I didn't know that the speaker list would be so crowded. I had to sit in the back there. But I would like to start off and say I do appreciate all the time that Ms. Bingham and Mr. Irvine have obviously put into their comments ahead of time.

But I do agree with what Frank and Audrey and Sarah and Jean all said, so my comments will be a little briefer than they were going to be because they said substantially a lot of what we were going to say. But I do have a couple of other things to add.

This project is the second step of the McKinney Housing Authority's redevelopment through RAD, their entire portfolio. Ms. Miller is their executive director. She will speak here in just a moment, and talk a little more about that.

What I wanted to center on, is this particular case is under 10 TAC 11.9(e)(2) of the 2017 QAP regarding cost of development per square foot. Applications can get up to 12 points. The scoring for this item is based
partly on cost per foot, and partly on eligibility for
points in the high opportunity index, as was discussed
earlier.

Our application requested all of those 12
points. It was determined by staff that we were
ineligible for the twelve, and therefore, we received a
score of zero which also resulted in the loss of the pre-
application points, so you can imagine an 18-point swing
is not just something that hurts you a little bit. It is
a deal killer. It moved us to last in the region.

In the response that we received to our appeal
from Mr. Irvine, he noted that only one of the 12 points
was due to being in a location that would qualify for the
four points on the high opportunity index. Therefore, the
other eleven must be based solely on the cost per square
foot, since there are only two criteria in the scoring
item.

My point here today is not to argue that we're
eligible for the extra point in the high opportunity area,
although we disagree with staff's determination that it's
kind of a subjective thing. And that's not what I'm
trying to argue today.

My point here today is that we are eligible for
the remaining eleven points, and our score should have
been changed from twelve to eleven, not from twelve to
zero. And I ask that the Board reinstate those eleven points, along with the six pre-application points.

While Mr. Irvine confirmed staff's determination that we were not eligible for the one point, at no time did staff or Mr. Irvine indicate that the costs included in our application would disqualify this application from receiving the eleven, or from achieving eleven points based solely on our cost per square foot.

So what would be required to get the eleven points? Two things. One, you have to ask for them. So I would argue that if we asked for twelve, then one of those was for high opportunity index, and eleven was for cost per square foot. So we did in fact ask for those eleven points. We asked for eleven, plus one.

Second, you have to document eligibility for these points. We also did this in the application. If we had not requested twelve and we requested eleven, there would be no additional documentation required in the application. Our documentation was clearly in the application speaking to our eligibility for the eleven. Therefore, we feel we met the qualifications for these eleven points, and request that they be reinstated.

One thing I do want to touch on, kind of related to some of the things that have been said. This administrative deficiency process in the past would have
been handled simply, and would have accepted the eleven
points, and moved on and not been here before you.

   It was noted that it is a stricter approach.
And we didn't see a rule change, or any kind of guideline
showing that this was going to be the new approach, so it
was kind of out of left field. So we would ask that those
eleven points be returned to us.

MR. GOODWIN: Any questions for Will?

MR. ECCLES: I actually have a quick question.
The 12 points that were requested were under a high cost
development? Are we talking about that one?

MR. HENDERSON: Yes, sir. To achieve the 12
points, we would have had to have been qualified as a high
cost by achieving the points on the opportunity index.

MR. ECCLES: And that was under 11.9(e)(2)(A)
but you would like for staff to have allowed you to
proceed under (e)(2)(C) which is eleven points.

MR. HENDERSON: Yes, sir. I don't have the
(e)(2)(C) citing in front of me. But the eleven points,
yes, is what we would -- we feel we qualify for.

MR. ECCLES: And that would require you change
your self score which is something that if staff had asked
you to do that you would be able to do?

MR. HENDERSON: Correct.

MR. ECCLES: Okay.
MR. GOODWIN: And by asking you to do it, you're talking about through the administrative deficiency?

MR. ECCLES: Yes.

MR. GOODWIN: Okay. Thank you. And you say someone else wanted to --

MR. HENDERSON: Yes, sir.

MR. GOODWIN: Okay.

MS. MILLER: Good morning.

MR. GOODWIN: Good morning.

MS. MILLER: I am Roslyn Miller, McKinney Housing Authority executive director. I want to take a moment to thank all of you for your service to the State of Texas. And to thank all of you all for your comments as well.

The McKinney Housing Authority and our clients, we all thank you for this opportunity to consider this appeal. The City of McKinney, McKinney Housing Authority was built over 50-plus years ago. And the Merritt Homes property is an 86-unit property that has been serving this community for that 50-plus years.

That 86 units haven't been upgraded or redeveloped in that entire time. So you can imagine, you've go the old public housing property with the clotheslines outside, and so we're happy to do our laundry
and get that fresh air. However, they do need some upgrades.

With that being said, our entire city has joined us in this effort. Not only the mayor and city council, the largest homeless shelter there, as well as our church community, all of them are joining in this effort to bring this project to redevelopment.

The East side community has come together to do a community revitalization plan. And we are all looking forward to revitalizing this property and bringing in additional housing units to our community.

As you are well aware, the City of McKinney was noted as the first and second best place to live in the country for two times since 2010. And it has grown tremendously. We don't have all of the infrastructure, nor housing or transportation that we need, but our officials in the area are certainly moving forward to do just that.

Our State Senator Scott Sanford also sent a letter approving this project in hopes that you all would join us in revitalizing this area as well. I'll be happy to take any questions if you have any.

MR. GOODWIN: Any questions?

(No response.)

MS. MILLER: Thank you all very much.
MR. GOODWIN: Thank you. Anyone else that wants to speak to this application?

MR. PALMER: I will be the last speaker on this application.

MR. GOODWIN: Good morning.

MR. PALMER: Barry Palmer with Coats Rose, and we represent the developer on this.

This is one of the appeals -- and I believe that there are three of them -- that fall into the all-or-nothing category, where people signed up for points. In our case it was twelve. We clearly qualified for eleven. Or, we thought that we qualified for twelve, but the interpretation of the language -- I give staff the -- certainly it could have gone either way. But staff determined we only qualified for eleven, but we got zero.

Now, this to me is really the hardest of the changes in policy, or scoring of the applications to take, because this has really been a well documented precedent of how the staff has handled this over the past ten years and I think -- I know the other applications that's coming up on this same issue, the Ted Trout application, Audrey Martin has documented a number of cases.

I think it is seven or eight or whatever, include some from last year where this exact same thing happened on point items where you signed up for three, you
only qualified for two, they gave you two, they didn't
give you zero.

So I can understand that there might be policy
reasons for making this change. But I think that there
are policy considerations to not make the change. But
it's something that's so big a change, it's something that
should have gone through the discussion process.

I mean, to the Department's credit, they spend
an enormous amount of time and energy getting input on the
QAP itself. I mean, they've already been having workshops
for the last couple of months on next year's QAP, on every
scoring item, every word in the QAP. And to do all that,
but then to totally change your scoring process just
overnight without giving any notice to the development
community --

This item in particular, if it had been changed
in the rules and people were told this is the way we're
going to score, I think you would have found developers
taking a different approach on how they scored their
applications. If they thought that they definitely would
get eleven, twelve was a stretch, you can make a case for
it, but maybe not, then they probably would sign up for
eleven if that's going to be the rule.

But these applicants have all spent enormous
time and money. The average cost of one of these
applications is $50,000 to $75,000. This is something, if you're going to change your entire scoring process, that you need to let people know before the round starts. We just found out last month, I believe, that this was the new way of scoring applications.

So that's all I really have to say about it. I would say that there are two other applications that have pretty much the exact same issue on a different scoring item. And that you might want to hear what they have to say, before making a decision on all three. But that's your decision.

MR. GOODWIN: Thank you, Mr. Last Speaker.

(General laughter.)

MR. GOODWIN: Any questions or comments for Barry?

MR. GANN: No.

MS. BINGHAM ESCAREÑO: No.

MR. GOODWIN: Okay.

MS. LATSHA: If you don't mind, I just want to make a quick clarification. And I think I said this at the beginning of my earlier comments, that I was simply making comment on the process, and not on any particular appeal or application.

MR. GOODWIN: Correct.

MS. LATSHA: Thank you.
MS. BINGHAM ESCAREÑO: Mr. Chair, I'm prepared to make a motion, if we're ready.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: I'd like to move to approve the appeal for applicant 17036, Merritt McGowan Manor.

MR. GOODWIN: Do I hear a second?

MR. BRADEN: Second.

MR. GOODWIN: Second, Mr. Braden.

MS. BINGHAM ESCAREÑO: Yes. I should have said to approve the appeal for the eleven points under 10.11(e)(2)(C). And that my understanding is, that would then reinstate the pre-app points, the six.

MS. HOLLOWAY: The pre-application points, yes.

MS. BINGHAM ESCAREÑO: Okay. So Mr. Applicant, is that what your request was in the appeal?

MR. HENDERSON: Yes, ma'am.

MR. GOODWIN: Okay. Second okay, with that addition?

MR. BRADEN: That was my understanding of that.

MR. GOODWIN: That was your understanding as well.

Any other discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.
(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: So the appeal is granted.

MS. HOLLOWAY: So this is -- our second application is 17708, Cedar Ridge Apartments. This applicant does not qualify for three points related to underserved area, because the census tract includes areas that are not within the boundaries of an incorporated area, and does not qualify for four points related to input from community organizations, because the letter submitted is not eligible for points under that item.

The Applicant did not appeal the loss of four points related to input from community organizations. So on 11.9(c)(6), Underserved Areas, in order to qualify for those three points, the application must include evidence that the development site is in the census tract that is within the boundaries of an incorporated area.

Documents in the application indicated that portions of the census tract are outside of the incorporated area. The appeal asserts that the language of the rule does not contain any indication that the census tract must be entirely within the incorporated area of the city.

The appeal also asserts that they should have
been allowed to change that scoring selection under this item, via the administrative deficiency process. So that would have taken them from three points to two.

The application requested three points under this scoring item, indicating on the application form that the development site is located in a census tract within the boundaries of an incorporated area. But real, the application showed that the census tract extends beyond bad incorporated area, and therefore, the application does not meet the requirements for that three point scoring item.

Staff recommends that the Board deny the appeal. Questions?

MR. GOODWIN: Any questions?

MS. BINGHAM ESCAREÑO: So the only points in questions are those; the requested three that weren't qualified for. And then the appeal is relative to requesting the two.

MS. HOLLOWAY: Yes.

MR. GOODWIN: So again, I am going to ask for a motion to accept public comment and possible further questions for staff.

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. GANN: Second.
MR. GOODWIN: Moved and seconded by Ms. Bingham and Mr. Gann. All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. Questions? Comments. Oh, I'm sorry. Michael has a letter to read into the record. You just told me that three minutes ago.

MR. LYTTLE: Letter addressed to the Board from State Representative Ernest Bales.

"I have the honor of representing the good people from House District 18. There is an acute need for quality affordable housing for the hardworking families I serve, who live in small towns in rural areas. I greatly appreciate the fact that the Texas Department of Housing and Community Affairs has worked with the Texas Legislature to find innovative ways to serve rural areas and small towns.

"Texas Government Code Section 2306.6725 Subsection A requires that, 'in allocating low income housing tax credits, the Department shall score each application using the point system based on criteria adopted by the Department that are consistent with the Department's housing goals, including the addressing the ability of the proposed project to serve traditionally underserved areas.' Additionally, Texas Government Code Section 2306.6725(b) requires that the Department shall
provide appropriate incentives, as determined through the Qualified Allocation Plan to reward Applicants who agree to locate the development in a census tract in which there are no other existing developments supported by Housing Tax Credits.

"The Texas Legislature's clear intent is manifest in the above provisions. Support should be provided to underserved areas and census tracts not supported by tax credits.

"The above referenced application is for a development proposed to be located in the City of Dayton, within Liberty County, Texas. The proposed site is within a census tract that has not received credits previously. Therefore, it falls squarely within the statutory provisions cited above.

"However, it has come to my attention that the Department has denied points to this application because the underserved census tract is not entirely within the City of Dayton. The Department should endeavor to find solutions for serving underserved areas, not look for reasons to deny resources for areas such as District 18.

"If only census tracts that are entirely within cities may be utilized as a vehicle to serve small towns and rural areas, then every city in Liberty County would be ineligible for the points and incentives the Texas
Government Code clearly intended to focus on these areas.

"It is my sincere hope that the TDHCA will work to find ways to expand rather than limit housing opportunities for families in rural areas. To that end, I urge you to support the Cedar Ridge application. Respectfully, Ernest J. Bales IV."

MR. GOODWIN: Thank you, Michael. I might point out, before we hear them, but you want them to come on up. I think it was kind of a direction in the first vote that was given as it relates.

And these are all kind of the -- the next two are about the same thing, are they not, Marni? So you know, sometimes you don't want to say things that might hurt your case. Just a little tip.

MS. BAST: Thank you.

MR. GOODWIN: I was wrong.

MS. BAST: I am Cynthia Bast of Locke Lord. And representing the Applicant on this appeal. I do want to take the opportunity to thank and welcome our new Board members for your amazing commitment to this agency.

Mr. Goodwin, you are absolutely right. This is same song, second verse, and a continuation of our ongoing struggle with regard to underserved areas. One day, we are going to get it right.
In the past few years, I have had to talk to you about interpretations about colonias, and on census designated places. And now this year, I have the juxtaposition of Paragraph (c) and Paragraph (d) and the interpretation of those paragraphs.

Marni spoke about giving all or none of the points and some perceived leniency for applicants. And I just want to return us to the rules for just a brief moment and to show us that I don't think that we are granting leniency if we are squarely within our rules. And there are three sections of this rule that I think firmly establish the grounds for this appeal.

First, the rule says, an Applicant may qualify for up to five points if the development site is located in one of the following areas. So that says up to.

Then it says, and the application contains evidence substantiating qualification for the points. This application had evidence substantiating qualification for two points, but not three points.

Finally, if you look at subparagraph (d) offering two points for which we would propose to qualify. It starts with the phrase, for the areas not scoring points for (c) above.

So there you have it. The rule clearly indicates that you have the ability to award two points.
when they are substantiated in the application, if those three points are not substantiated in the application. Thus, I believe that two points should be awarded to this application.

I will not hammer on the administrative deficiency issue that you have heard so much about, but I would say, this is an inconsistency, and both the Government Code and our rules allow the correction of inconsistencies. The Applicant requested three points, but in other pages of the application provided substantiation for two points. That is inconsistent, clearly. So we request that you grant this appeal, and appreciate your time. Thank you.

MR. GOODWIN: Thank you. Any questions?

(No response.)

MR. GOODWIN: Anyone else speaking to this application?

(No response.)

MR. GOODWIN: If not, I would entertain a motion from the Board, how the Board might proceed.

MS. BINGHAM ESCAREÑO: Mr. Chair, I will move approval of the Applicant's appeals for 17708, Cedar Ridge Apartments to provide two points.

MR. GOODWIN: I hear a motion. Do I have a second?
MR. VASQUEZ: Second.

MR. GOODWIN: Second by Mr. Vasquez. Any other discussion, questions?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: The appeal is granted.

MS. HOLLOWAY: Our next item is 17736, Providence at Ted Trout Drive. This is that same three-point item. In order to qualify for three points, the application must include evidence that the development site is in a census tract within the boundaries of an incorporated area.

Documents in the application indicated that portions of the census tract are outside of the incorporated area. The Applicant has confirmed that the application does not qualify for three points under this item.

It states in their appeal that historic precedent related to the use of the administrative deficiency process and scoring adjustments. They asserted the Applicant should have been allowed to change its selection to two points.
The appeal also mentions the treatment of another application, 17148 Shady Shores, regarding this same scoring item. That application requested three points, checked the box for two points and provided evidence for two points. So it was a -- this is where we get to this human error -- what is human error, and what is truly a deficiency. On this one, we could see that the intent really was to get those two points. So that is the parsing out that we need your assistance with today.

MR. GOODWIN: Okay.

MS. HOLLOWAY: So the Applicant has requested points for which he is not eligible and staff recommends denial of the appeal.

MR. GOODWIN: Okay. Do I hear a motion?

MS. BINGHAM ESCAREÑO: Move to approve the appeal for 17736, Providence at Ted Trout.

MR. GANN: Second.

MR. GOODWIN: Second. Motion made by Ms. Bingham, seconded by Mr. Gann. Any discussion?

(No response.)

MR. GOODWIN: Comments?

MS. MYRICK: Hello. Let me do this, before I forget.

MR. GOODWIN: Okay.

MS. MYRICK: The mind is not what it used to.
Congratulations on your appointment, Mr. Chair.

MR. GOODWIN: Thank you.

MS. MYRICK: We certainly look forward to working with you. And we certainly welcome the new Board members. It will also be a pleasure to work with you in the future as well.

My name is Laura Myrick. And I am within Beckett Consulting. And I am here to speak on Ted Trout. Probably a little different position.

We also filed a third party administrative deficiency request on this application in this very application, in this scoring criteria. You probably have it in your Board packet.

But what we thought to -- what we thought of was, that in this category, the application did request three points for underserved. They clearly did not meet the requirement for the three points. They did meet the requirement for the two points.

We certainly understand that. However, if you look at their application, what they did, they took a step further. They actually put "no" next to the box where the points that they are eligible for -- they actually put no there.

So what we looked at was, they didn't -- they weren't eligible for the three points that they asked for,
where they put yes. But they further put "no" on the box
where the points that they were eligible for. So that is
what we wanted to bring up.

That is a very difference stance, is that what
we wanted to bring up -- that is a very different stance,
is that what we wanted to do is to point out that not only
did they not have the three points, but they actually put
next to the box where they did qualify for those two
points, the Applicant declined it.

We didn't do that. TDHCA didn't do that. The
Applicant put "no." So that is probably the distinction
that we want to make.

The other thing is that before the filing of
the application, there was some comment on this rule. But
there was an FAQ that was also issued before the
applications were filed, where an Applicant could have
seen that this side would not have qualified for the
three.

It would have qualified for the two. Again,
there was information out there. There was a way to look
at this. What we also looked at in the application was
that the Applicant declined the two points. And that is
the distinction that we wish to make.

MR. GOODWIN: Any questions?

(No response.)
MS. MYRICK: Okay.

MR. GOODWIN: Thank you.

MS. MARTIN: Hello again. My name is Audrey Martin, with Purple Martin real estate. This time, I am speaking on behalf of the Applicant for Providence at Ted Trout Drive. So I just wanted to respond to a few of the comments that Laura just made.

First off, this is exactly the same situation as the appeal that you just granted. So kind of departing with -- I am not really sure what would be the reason for that. The distinction that Laura made is a categorization that I don't agree with.

She is stating that we checked a "no" box on a form. We checked a "no" box so that we didn't leave blanks in an application. It is as simple as that.

We weren't declining points. There is a form that says, choose one of the following. We chose one and we didn't leave blanks on the others. We provided documentation that the application qualified for two points.

We didn't have to provide anything supplemental to prove that up. The documentation that existed in that application, the development's location that is unquestionable, and existed on March 1st supports two points. And we would just respectfully request that the
Board grant our appeal, and award two points to this application.

MR. GOODWIN: Thank you.

MS. MARTIN: Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Any other speakers?

(No response.)

MR. GOODWIN: If not, we will take a vote on the motion. All those in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: The appeal is granted.

MS. MARTIN: Thank you.

MR. GOODWIN: Thank you. The next group?

MS. HOLLOWAY: You ready? The next application is 17363, for Residences of Long Branch. The application does not qualify for three points under 10 TAC 11.9(c)(6), related to underserved area. Because the site does not include -- the application does not include evidence that the development site is in a census tract within the boundaries of an incorporated area.

And four points under 11.9(d)(6) related to input from community organizations. Because the
application did not include evidence of the organizations that provided letters to score points under this item are tax-exempt organizations.

This one is a little bit different than the ones that we talked about. Because we just don't have evidence within the application. This is something that potentially would have been curable in the past. I can't tell you that for sure.

So this is one of those places that we need your direction. For 11.9(c)(6), part of that rule says, the application contains evidence substantiating qualification for the points.

The appeal asserts that staff could use various documents within the application to conclude that the site qualifies for the points. The application did not include documentation of the boundaries of the entire census tract, or of the positioning of those boundaries relative to the boundaries relative to the boundaries of the incorporated area.

So there was a map somewhere else in the application that we could go to, to verify that. On input from community organizations, the development site must now fall within the boundaries of any qualifying neighborhood organization.

And the application must include support
letters from a tax-exempt community or civic organization that serves the community in which the development site is located. The Applicant included such letters and screenshots from the organization's websites, but did not include evidence that the organizations were tax-exempt.

The rule states in part that if the community or civic organization must provide evidence of its tax-exempt status. The letters and screenshots of the organization's website self describing themselves as nonprofit are not commonly accepted as reliable evidence of a tax-exempt status.

The appeal states that they should be able to correct these omissions through an administrative deficiency. Staff is recommending that the Board deny the appeal.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Since the circumstances are a little different on this one, compared to the others, how many would fall into this similar category?

MS. HOLLOWAY: Probably several.

MR. GOODWIN: Several?

MS. HOLLOWAY: Several.

MR. GOODWIN: Okay.

MS. HOLLOWAY: This one is not as -- we are
requesting two points instead of three points. It is, we are requesting three points. And if you would have let us provide additional information, we could prove it up.

    MR. GOODWIN: Okay.

    MS. HOLLOWAY: And the same with the community organizations.

    MR. GOODWIN: And was the additional information, should it, or should it not have been included in the original application?

    MS. HOLLOWAY: It should have been included in the original application. This is, again goes back to that -- what is allowable under an administrative deficiency. What can we fix. What can we not fix?

    MR. GOODWIN: And the others, we had that information within the application.

    MS. HOLLOWAY: Right.

    MR. GOODWIN: It is allows us to go from three points to two points, or twelve to eleven.

    MS. HOLLOWAY: Uh-huh.

    MR. GOODWIN: But here, there is no information in the application. It would have to be supplied as supplemental information?

    MS. HOLLOWAY: Yes.

    MR. GOODWIN: Okay.

    MS. HOLLOWAY: Absolutely.
MR. GOODWIN: So this time, I look for a motion to accept public comment before we get into --

MS. BINGHAM ESCAREÑO: I will so move.

MR. GOODWIN: So moved?

MR. GANN: Seconded by Mr. Gann.

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: Mr. Chairman, can I ask Marni a question real quickly.

MR. GOODWIN: Sure.

MS. BINGHAM ESCAREÑO: Because I may not have heard you. Did you say just a minute ago that this one, just this one right now that we are doing, that something like this in the past was satisfied with an administrative deficiency?

MS. HOLLOWAY: Potentially.

MS. BINGHAM ESCAREÑO: Okay. That is fine.

Yes. I didn't mean to pin you in. I just didn't know if I heard "was" or "wasn't."

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Okay. I have got you.

MR. GOODWIN: Okay.

MR. LITNER: Good morning, Chairman. Members of the Board. My name is Craig Litner with Pedcor
Investments. And I am representing the Applicant, of Residence of Long Branch.

Pedcor has submitted several applications over the past few years, and we are very familiar with the review process. We do a good job, to the point that staff used our 9 percent application from last year as an example at this year's workshop.

That being said, like everyone else has said today, it is impossible to submit a perfect application. And when we received the mistakes or deficiencies, we own the mistake. We correct those deficiencies in a timely manner and we try not to make those mistakes again.

The difference here is that we are having trouble owning mistakes that don't exist. First, the site definitely qualifies for three underserved points. There is no doubt that the site is within a census tract with no other existing tax credit developments.

The application requires that we submit a census tract map showing the location of the site, and indicate that we are requesting three points, which we did in Tabs 8 and 9. Tab 10 is a checklist of supporting documentation, which is in your supplemental Board book on page 188.

And it is important because unlike a colonia or an economically distressed area, there is no requirement
to submit another census tract map. And this makes sense because a census tract map is already submitted, which is all you needed to determine eligibility for points.

As we pointed out in our appeal to the Executive Director, we submitted the exact same thing last year, and were awarded points. And neither the application or scoring is changed in a material way. So there was no lesson that we should have learned from a previous application.

Still, when staff issued the deficiency this year, we went ahead and sent in another map, zoomed out slightly farther, to show the entire census tract. Nowhere in the rural application, manual, anywhere, did staff ask for a map that shows the entire boundary of the census tract or the city boundaries, which is again, the same as last year.

And this is where our frustration comes in, where it is hard to take ownership of a mistake. We submitted the map in the original application. When there was a request for another map, we submitted that. But we are still in a position where staff wants to dock points.

So we have done everything we have been asked to do. And as you just heard from Marni earlier today, relative to Blue Flame, staff actively went out and
researched that site to make sure that it was in a community revitalization area.

But yet, the write-up for this item says, staff does not engage in proving that an application qualifies for points. So those two things contradict each other.

This application also qualifies for points for input from community organizations. The fact is we submitted two letters from two organizations that are tax-exempt. As was suggested in the workshop this year, we were to submit screenshots, which we did. Yet the supplement of the Board book says that letters and the screenshots of the organization's websites self-describing them as being nonprofit are not commonly accepted, even though this was suggested in the workshop.

So again, another contradiction. But again, the real key here is that the application materials for this item do not require specific documentation. There is nothing specific that is required.

So when staff issued the deficiency, asking about the status, we pointed to the information in the letters themselves, which clearly state that they are nonprofits. We also sent in more information, as well as the determination letters from the IRS, and we did this in a timely manner.
So once again, we are struggling to understand when it was that we didn't do what was requested. And again, we have done everything we were asked to do.

So I am here today to respectfully request that you award our appeal, or grant our appeal and award the points for both underserved areas and input from community organizations. Thank you.

MR. GOODWIN: Thank you. Any questions?

(No response.)

MR. GOODWIN: Thank you.

MR. SHACKELFORD: Good morning. John Shackelford, with Shackelford, Bowen, McKinley and Norton in Dallas, and we represent the Applicant on this matter.

Good morning, Mr. Goodwin -- Chairman Goodwin, the rest of the members of the Board and Mr. Irvine and Mr. Eccles. To the new Board members, welcome to the circus. We appreciate you giving of your time.

As Mr. Litner just described, you know our first position is that we think that we did satisfy the rules. The people that put together the applications, as Mr. Litner mentioned to you, had done these in the past. We have been a model for doing good applications.

We think we have satisfied the rules as written. We try to be cognizant of what the new rules...
are. Nothing really changed in this point-scoring item from the previous year.

The things that Mr. Litner mentioned that we had provided to staff was what was provided in previous years. And so we think we complied.

Alternatively, just assume for a moment, if we did not, in this view that staff is taking this year, let me speak to that.

In addition to agreeing with what Mr. Jackson said earlier, and Ms. Martin and Ms. Latsha and Ms. Anderson, agree with all of what they had to say. And Ms. Bingham, Commissioner, what you said at the outset, too.

Staff and Board members already recognize that there has been a shift. What I would like to say to the new Board members is, this is not just a small shift by staff. This is a seismic shift by staff in how the approach is to the administrative deficiency process.

And I appreciate what Marni said earlier today as well, as just sort of clarifying her comments that she made at the last month's Board meeting. I think that was very generous on her part to do that. So we think, first off, that we complied with the rule as it is.

But secondly, if we did not, we think this does fall under the administrative deficiency process under the 10 TAC rules that Marni mentioned earlier, that was read...
into the record by Mr. Jackson. We think this is just supplementing material that could be supplemented.

The rules don't require that the census tract map show that it is entirely within the boundaries. Staff easily could have asked us, hey, can you supplement your application with respect to this, and we would have done so. Same for the community points as well.

In addition to the screenshots, the letters from the nonprofit entities themselves saying that they are nonprofits. If they had said, you know, can you supplement that by providing us with the IRS determination letters, we could have done that.

So we have been consistent with what we have done in the past. And the other point I would like to make before we get off this administrative deficiency process is, I want to echo what Barry Palmer said as well, in connection with the change in the point system is, you know, if staff wanted to make a change in policy on how they are going to interpret what complies with the administrative deficiency process, I feel like something that has changed this dramatically from a historical perspective, fair notice should have been given to the development community. And I feel like there was an oversight, probably on staff, that that wasn't done, starting last year, in the workshops, leading into this
year. But by the time the applications got put together, and then we find out just last month that staff is taking a different position. I think that is inequitable.

And as Mr. Palmer mentioned, these applicants, they spend $50,000 to he said, maybe $75,000. I have seen some use as much as $100,000 on these applications. That is no small amount of money to have at risk, and to have their application be jeopardized.

And not being able to just provide some supplemental information that we think we have already complied with in the first place. So I respectfully request that you grant the appeal of this Applicant.

MR. GOODWIN: Any questions?

MR. BRADEN: Mr. Chair?

MR. GOODWIN: Yes.

MR. BRADEN: When was the 501(c)(3) determination letter provided?

MR. SHACKELFORD: Well, we got an administrative deficiency notice. But it said please explain our position on why we thought we were entitled to the points. But we were not allowed to submit any additional information and that sort of that approach that has taken this year on the administrative deficiency process.

Despite the statement, don't provide us
anything, we provided it anyway. Just to try to make -- play it safe. So we ended up providing to the Department those IRS determination letters.

MR. BRADEN: It wasn't provided as part of the original application?

MR. SHACKELFORD: No, because we didn't think we needed to, under what is required in the application. Our interpretation of what is required in the application or in the procedures manual, or by what is required by the rules.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Thank you, John.

MR. SHACKELFORD: Thank you.

MS. BAST: Cynthia Bast again, from Locke Lord, here to support the appeal for this Applicant. For our new Board members, I will note that you will be seeing a lot of the Shackelford firm, the Coats Rose firm, and the Locke Lord firm, because we regularly represent these applicants.

But what you don't normally see is all of us getting up here and agreeing with one another, and being on the same page. And today, we pretty much are, with regard to seeking the Board's determination that we need to continue with the long-standing practice.
While we are here arguing about administrative deficiencies, and whether a map was zoomed out far enough, or placed behind one tab or another, I would like to point back to something that Ms. Martin brought up, which is the policy objectives of this program, as given to us by the Legislature in a very legislative QAP with certain priorities.

This particular development meets so many of the policy objectives, in the Government Code and the rules. And the Applicant simply wants to point those out, so that that concept doesn't get missed in the minutiae of these arguments.

This is a site that is right on a bus route, within a half mile of commuter rail. It is rich in amenities, with a library, a park, grocery store, jobs, good schools. Even the community organization which provided a letter of support is within walking distance with a thrift store and a food bank.

Now, everyone thinks that they have a good deal. And for the most part, that is true. Everyone does. And it is going to make a tremendous impact on whatever community gets a tax credit deal, but that is exactly why we have these point priorities.

And to take these points away for this level of technicality does not meet the policy objectives set forth
in our governing statute, and our rules for this agency. And so we ask you to consider that as you regard this appeal. Thank you.

    MR. GOODWIN: Any questions?

    MR. ECCLES: I have a question for Marni, actually.

    MR. GOODWIN: Okay.

    MS. HOLLOWAY: Yes.

    MR. ECCLES: Now, on this appeal, we are talking about two things; underserved areas under 11.9(c)(6).

    MS. HOLLOWAY: Yes.

    MR. ECCLES: Which includes the requirement that the application contain evidence substantiating qualification for the points.

    MS. HOLLOWAY: Yes.

    MR. ECCLES: And in this instance, a census tract within the boundaries of an incorporated area where the census -- an incorporated area that has not received a competitive tax credit allocation, and it continues from there.

    MS. HOLLOWAY: That is correct.

    MR. ECCLES: The staff's position was, such evidence did not exist in the original application. But it, upon request has provided now?
MS. HOLLOWAY: The administrative deficiency that -- how we are approaching deficiencies this year is, we found this issue on their application. Please explain to us how you still meet this criteria without submitting additional information.

Going back to, Applicants may not supplement their application. That is kind of the crux of this one. In many cases, they have been able to say, oh, there is this other map for this other thing somewhere else in the application. And we would say, okay, that works. In this instance, we did not have that available to us.

MR. ECCLES: The same for the second part of this appeal where 11.9(d)(6) includes the requirement that quote community or civic organizations must provide evidence of its tax-exempt status.

MS. HOLLOWAY: Correct.

MR. ECCLES: Such a proffer from the community organization was not made initially, but subsequently upon not you asking for it under an administrative deficiency, but it was proffered anyway.

MS. HOLLOWAY: Correct.

MR. ECCLES: So really, the crux of this is whether staff should have asked under an administrative deficiency for these things that were not in the application as stated by the rule and interpreted by
staff.

MS. HOLLOWAY: Yes. I would agree with that.

MR. ECCLES: And this is the question that is, I think going to be most relevant to what the Board does next. Had these materials now, whether you ask for them or not, joined the record such that if the appeal were granted, points would be available under the requested sections.

MR. IRVINE: In other words, phrased another way, if it is granted, will the record have substantiation for the points that are conferred?

MS. HOLLOWAY: I would imagine that if the deficiency response included those items and they are posted to the application, in the deficiency response section, of course, that becomes part of the application document.

MR. ECCLES: However, here they were not asked for in the administrative deficiency process.

MS. HOLLOWAY: Well, and I don't know that we are sort of parsing out what we asked for and what we didn't ask for. We are just putting it in there.

MR. IRVINE: Well, I also think that to the extent that we are asking for more guidance on how to administer the administrative deficiency, it is within their larger authority to say yes. Treat this one as an
administrative deficiency and accept that as a response.

MR. ECCLES: Indeed. And that is what I am trying to delineate where the record is, where the application is at this moment, as it relates to the points initially requested.

MS. HOLLOWAY: As it relates to the points, they have received a scoring notice that takes away the points for these two items. Because their response in their administrative deficiency, while it provided this information we didn’t ask for, they did not tell us how the application as submitted meets these requirements.

MR. ECCLES: But the matters that they have submitted at this point, would they satisfy --

MS. HOLLOWAY: Had they been in the application to begin with, there never would have been a deficiency.

MR. ECCLES: Yes. That is where I am going.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: But you have them in your hand now. You have the two -- whatever documents satisfied those two --

MS. HOLLOWAY: The Applicant went ahead and sent more than we requested, and included the information that should have been in the application to begin with.

MR. GOODWIN: Okay.

MR. BRADEN: So historically, with respect to
the evidence of tax-exempt status, have we asked for and received 501(c)(3) letters?

MS. HOLLOWAY: Actually what I found out that I thought was a little distressing was that in years past, if that information wasn't there, that program staff, reviewers were going and looking for it and doing that research for the Applicants. And actually, I need to speak to this -- the research comment about Blue Flame. I was actually doing research to shore up my position that that site was outside of the CRP when I found that terms thing. So I mean, I was getting it all together to come talk to you all and found out that in fact, this was the true situation. And you can't unknow what you know. So there is the distinction.

MR. GOODWIN: Great.

MR. BRADEN: But the factual matter, the Applicant was a 501(c)(3) entity. This determination is probably years old. It is not like they got a recent determination?

MS. HOLLOWAY: I don't know the age of that particular organization that was providing that support. I am aware that yes, sometimes letters get stale. We do not have a current requirement and rule for --

MR. BRADEN: No. What I am trying to determine is, they didn't neglect to put it in the file, because
they were waiting for it to show up in the mail.

MS. HOLLOWAY: I don't believe so. I would imagine, if that was the issue, we would have heard that.

MR. GOODWIN: But Paul, I want to make sure that it is -- this is some entity supporting the application, not the Applicant.

MR. BRADEN: Right. That is correct.

MS. HOLLOWAY: Right.

MR. GOODWIN: Okay. John, you wanted to make another comment?

MR. SHACKELFORD: Just real quick, Mr. Eccles. John Shackelford, here on behalf of the Applicant. We did provide a map in the original application, just for clarity's sake.

There was a map in there, showing the location of the site, showing the census tract. The map that staff is asking for, in hindsight, that is not required by the rules. I would say it is almost as if we have to read their minds for what they were looking for -- is a map that shows, like it was mentioned, a wider view, that shows that the entire boundaries of the census tract are located in an incorporated area.

That is the map that was being sought. We provided a map that showed again, the census tract and where our site is. But it just wasn't a wide enough view
back that showed the entire boundary of the census tract being located within an incorporated area.

And then I would say, on the IRS letters, you know, you can get IRS determination letters for a nonprofit last year, and it has already been revoked. And so even providing IRS determination letters really isn't full evidence that currently the nonprofit is a nonprofit, tax-exempt entity.

MR. ECCLES: Well, and just to the point of needing to read staff's mind on this one, the rule states that the Applicant has to proffer evidence substantiating qualification for the points. And the points are, a census tract within the boundaries of an incorporated area.

So whether it is one map or two maps that show that, it is just to say that, if you included that evidence, they would have seen it. Did you -- are you saying that the application included maps or information that would have enabled staff to determine that the development was in a census tract within the boundaries of an incorporated area?

MR. SHACKELFORD: Let me first say, I think the discussion we are having proves why the administrative deficiency process would be applicable. Because your interpretation of what that says, I think is different
from my interpretation of what that says.

MR. ECCLES: I understand.

MR. SHACKELFORD: Because we are in the census tract. That satisfies the requirements. We are in an incorporated area, and inside it, is inside that census tract. I think we just satisfied the reading that you just gave.

And so therefore, I think if we have an issue like this come up, that is then incumbent upon staff to say, okay. This is where you put the administrative deficiency process, Applicant. Can you come back with another map that shows that 100 percent of the boundaries of your census tract lie within the incorporated area?

MR. ECCLES: And I understand your position. I was actually addressing something else that you had said.

MR. SHACKELFORD: I think Mr. Litner would like to talk also.

MR. LITNER: Yes. I would just like to clarify a couple of things. So just to make sure we are clear, we did submit a map as required in a previous tab.

As I mentioned in my speech, Tab 10 lists what is required to go behind it, if you are claiming those points in the manner that we were. And there is nothing that is listed that should have gone in the application.

Okay.
But we did submit a census tract map. We were not requested to submit another one. But on our own, we went ahead and submitted one. It is in the Board book, and it is zoomed out slightly further. And it shows the whole census tract.

Similar to the community input letters. We submitted what we thought was asked for, both in the application and manual workshops. Even though we weren't asked to submit more information, we submitted more on our own.

So everything is in there. And just to clarify, if you were to review, those points would be awarded. Not just based on my opinion; based on what was submitted on our own without request.

MR. GOODWIN: Okay.

MR. LITNER: Thank you.

MR. GOODWIN: Any other comments?

MR. LACEY: My name is Gary Lacey, and I am going to kind of give a different slant on this, from the other side. I represent one of the developers that are bunched, you know, up in Region 3.

The QAP states on the community support letters -- and this is just my opinion -- basically it is looking for two different things. It wants the letter from the nonprofit, and then it wants proof, evidence of
its tax-exempt status.

Now, that's a little bit different than just the letter from the IRS stating, you know, that you got this back in 2007. The status is active, inactive, those type of things.

So there is actually two material pieces to this. You are getting the letter. And then you are getting also the tax-exempt status. So that is two material pieces of information that are coming in.

What happened with this application is, they did not submit a material fact, which was the status of the tax-exempt entities. And then they wanted to try to add it at the end, which should not be allowed.

MR. GOODWIN: Thank you for the opinion.

MR. LACEY: Thank you.

MR. GOODWIN: Any other speakers?

(No response.)

MR. GOODWIN: Do I hear a motion on how the Board might proceed?

MS. BINGHAM ESCAREÑO: Mr. Chairman, I will move approval the appeal submitted for application 17363, Long Branch.

MR. GOODWIN: Do I hear a second?

MR. VASQUEZ: Second.

MR. GOODWIN: Second by Mr. Vasquez. Any other
discussion?

(No response.)

MR. GOODWIN:  All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN:  All opposed?

(No response.)

MR. GOODWIN:  Why don't you cool off just a moment. We are going to take a little short ten minute modern convenience break.

VOICE:  Thank you very much.

(Whereupon, a short recess was taken.)

MR. GOODWIN:  Marni, are you ready?

MS. HOLLOWAY:  Okay. All right. Our next appeal is application 17331. This is Westwind of Killeen. This application does not qualify for three points under 10 TAC 11.9(c)(5) of the 2017 QAP, which is related to educational quality.

Because the application did not include evidence of the Index 1 score for the educational service center. To qualify for two of the three points under educational quality, the application must include evidence that the development site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the educational service center or the state-wide
score.

So this was the change that we made last year to try to regionalize the educational scoring item and allowing the use of the educational service center scores. Scoring under this item requires documentation of the Index 1 score for the individual campuses of the schools, as well as the documentation of the Index 1 scores for the state or the ESC region.

The application did not include evidence of the Index 1 score for the region. The Texas Education Agency publishes all of the scores for the individual campuses and the regions.

The appeal mentions that staff has previously determined that Applicants are not required to provide the statewide score as staff has provided that score during the application workshop. It is 75. Everybody knows what it is.

Staff did not, however, provide the scores for each of the twelve educational service regions in the state. That documentation must come from the Applicant as was the determination that they will use that educational service center score rather than the statewide score to qualify.

The appeal asserts that neither the QAP nor the application requires the Applicant to include evidence of
the ESC score in the application. And takes the position that the Applicant should have been allowed to provide additional or clarifying evidence regarding this issue through administrative deficiency.

So this is very similar to the last one. Staff recommends that the Board deny the appeal.

MR. GOODWIN: Okay. Motion?

MS. BINGHAM ESCAREÑO: Do you want just a regular motion.

MR. GOODWIN: If you are ready. It is very similar to the last one.

MS. BINGHAM ESCAREÑO: I will move to approve the appeal request for 17331, Westwind at Killeen.

MR. GOODWIN: Hearing a motion. A second?

MR. BRADEN: Second.

MR. GOODWIN: A second by Mr. Braden. Now we can have discussion. Anybody want to speak to the motion?

MS. RICKENBACKER: My name is Donna Rickenbacker. Let me put this down here. My name is Donna Rickenbacker and I am the consultant to Salem Park Company, who is appealing the loss of educational quality points.

As Marni pointed out this year, in the application, they qualify for three points, based on the performance of the low goal public schools and whether the
Index 1 rating of such school, as determined by the Texas Education Agency meets or exceeds the lower of the educational service center region score, or the statewide score. Our claim Texas application qualified for all three points claimed, in part because the high school serving the project has a TEA Index 1 rating that is equal to the educational service center region score of 73.

Staff denied the points, stating that staff found no information in the application to support the points requested. We disagree obviously with this finding.

The Applicant did submit the supporting document stated as required in our rules, which includes the attendance zone maps for each of the local schools, that comes from the school district on the location of the project site within the attendance zone's boundaries. And the 2016 accountability summaries from a TEA website for each school, showing in part, the Index 1 score of the school for purposes of qualifying for the points.

There is nothing in the rules or the procedure manual that require the Applicant provide evidence of the educational service center or statewide scores. The rules do require that the Applicant evidence the TEA Index 1 rating of all grade levels serving the project site in order to receive the applicable points.
Staff also found that had we provided the educational service center score in the box provided, there may have been an opportunity to clarify and supplement the application through the administrative deficiency process. This too, is not correct. We feel we did provide the score of the educational service center in the box provided on the application form that is applicable to our specific site, and the schools that serve our site.

As illustrated in the poster board that I have got in front of you, and hopefully that was handed out to you all, is Tab 9 of the application form. The procedures manual, and the page of which I hope you all have been provided as well, walks the Applicant through the completion of this tab, and instructs the Applicant to identify each school serving the project site, and the TEA Index 1 rating of the school, in the column next to the school's Index 1 score.

There is a drop-down box where the Applicant is required to select one of two options that tells the Department whether or not the school score shown is the ESC score or the statewide score. As instructed in the procedures manual, again, made a part of your handout, we completed this box with respect to the high school. Because it is the only school serving the
project site that has a TEA Index 1 rating, that is equal
to the educational service center rating of 73. We
therefore selected ESC from the menu.

Staff is suggesting that we should have shown
the ESC score in the box next to the line that I have
highlighted in orange on the poster board illustration.
This section of the application form is not applicable to
our specific site.

Our site is in Killeen, Texas. And it is in
Killeen Independent School District. A school district
with attendance zone-based public schools.

The section of the form that is highlighted in
orange is specific to sites that are not located in
attendance zone-based school districts, and that do not
have, potentially, TEA ratings. So that is a completely
different section that an Applicant is required to
complete if their site fits that particular scenario.

So in summary, we did provide the ESC score.
We did provide it in the correct box. And I feel like
this is an appeal of form over substance.

And staff's interpretation after the
application was submitted, and counter to the procedures
manual, as to where they wanted to see, in our instance,
that 73 score in a box that is a half inch below the box
where we did put it. And we do believe it was put in the
box that was applicable to our site and our school district.

MR. GOODWIN: Okay. Any questions?

MR. RESÉNDIZ: Mr. Chairman, if I may?

MR. GOODWIN: Yes.

MR. RESÉNDIZ: This may be a bit elementary, but I get that pass, because I am new.

MS. HOLLOWAY: Yes, ma'am.

MS. RESÉNDIZ: So as far as the training that our developers participate in, how do you all feel, and it truly is a feelings-based question, how do you all feel that our staff is doing as far as providing the information that could help us avoid these missteps.

And it is not a knock on our staff at all, because I have been thoroughly impressed with what they are able to do with the money and the amount of resources. But I also feel that that is an opportunity to work with our developers in making sure that we are providing you all with that information. But along the same line, holding our developers accountable in making sure that we are armed and ready, because we are able to have that application in hand at a minimum, ahead of time, and then us navigating that process together.

MS. RICKENBACKER: So I am at the mic. So that is a loaded question. And I can answer it to the best of
my ability. First and foremost, staff does a great job. I sincerely mean that.

They have a very constrained amount of time to take rules that are signed into force by the Governor in December and create an application form that is appropriate and applicable to all these various scoring categories, all the threshold items. It is a lot of work. And they are short staffed, as you know.

The Governor is not allowing any additional staff to be provided to TDHCA. So but it is -- and it is very unfortunate. But I think ultimately, we ended up with an application form and a set of procedures that are contained within our manual.

A manual, that by the way, I believe was approved in November, Tim, December, which is before the rules were even approved. So there wasn't a lot of ability to kind of mesh the final rules with that manual that had been approved.

So I just think that there needs to be some, you know, more time spent on creating manuals that really do set forth the guidance that you need that isn't necessarily recognized in the QAP rules that control our program again. I think they do a great job.

I am just hoping that this next cycle, we can kind of take the time and create rules that apply to this
program for >18 early, so that we have got the opportunity
to create a set of manuals and workshop materials that
really do home in on exactly what that Applicant needs to
provide. And we create an application form that is -- you
know, hopefully, minimizes any potential kind of errors or
risk or discrepancies.

MR. GOODWIN: Any other questions?
(No response.)

MR. GOODWIN: Thank you.

MS. RICKENBACKER: Thank you.

MR. GOODWIN: Any one else want to speak to
this matter?
(No response.)

MR. GOODWIN: No. Okay. We have a motion --
oh, here.

MR. SHACKELFORD: [away from microphone]

MR. GOODWIN: I understand.

MR. SHACKELFORD: The good thing is less --

MR. GOODWIN: Good.

MR. SHACKELFORD: John Shackelford, with
Shackelford, Bowen, McKinley and Norton, and representing
the Applicant. As Ms. Rickenbacker has pointed out, we
think we have provided the information that was necessary
for staff to say we satisfied this point-scoring item.

And I guess, I was a little baffled when I got
the notification from staff that where it said that we didn't provide anything. And then we did the appeal letter, and the response back was that we didn't provide anything at all.

But as you can see from what is in your package and then what is on the application form that we have on the poster down here before you -- I mean, it is quite clear, we list on the three schools, the high school, the Met Standards, the score there is 73, and we say that is the ESC score.

So I was a little confused. Because usually, I mean, I don't always agree with staff, but I usually understand the basis from which they are coming from. But this one was a little unusual, because to say that we didn't provide anything, it looks like -- and then on the sheet there, you can see, it is a half inch above.

What I am interpreting it as, we didn't provide it in the specific box that they think we should have provided it in, but that is not to say we didn't provide it at all. We did. It is just not in this other box that we think is inapplicable, as Ms. Rickenbacker stated.

So again, I don't want to belabor the point. But I think this, again, shows where the administrative deficiency process would be available to an Applicant if you think -- the staff thinks that we should have provided
it in an additional box, in addition to the box that we
did provide that information, then that could have been
cured through the administrative deficiency process.

And it is not like adding any new information.

We would you just be giving you the information that we
have already provided, just in a different place. So with
that, respectfully request the Board to approve our
appeal.

MR. GOODWIN: Thank you. Any other comments?
(No response.)

MR. GOODWIN: Hearing none, and there be a
motion on the floor and a second. All in favor, say aye.
(A chorus of ayes.)

MR. GOODWIN: Opposed?
(No response.)

MR. GOODWIN: The appeal is granted. Marni?

MS. HOLLOWAY: Application 17275 is for Aria
Grand. The application does not qualification for two
tiebreaker selections under 10 TAC 11.9(c)(4). This is
the opportunity index, because the application did not
include evidence of an accessible route between the
development site and the selected features.

The Board item includes a subtitle within it
that implies this is tied to 11.9(a)(1) financial
feasibility. In fact, it is 11.7(3), tiebreaker factors.
It is important to note that this item does not in any way impact the competitive position of this application. They don't lose anything at all. They are still a quarter ahead, a full quart without tiebreakers of the application behind them. And we are not taking away points. This is just tiebreakers.

So each Applicant -- yes. For this particular tiebreaker, Applicants select items that are part of the opportunity index menu, that are above and beyond what they are able to use to get their maximum opportunity index score. So if they are already at seven, and they still have other high opportunity features, they can use those for a tiebreaker. All right.

The Applicant selected two items related to amenities that are on an accessible route. One of them is a development site located less than half a mile on an accessible route from a public park with an accessible playground, both of which meet 2010 ADA standards.

The area is, the development site is located less than half a mile on an accessible route from public transportation. The appeal asserts that evidence of the accessible route is not required by the QAP or application.

But of course, this goes back to the section that we discussed earlier, about it being the
responsibility of the Applicant to perform and independently verify any data that is provided in the application. It is staff's position that the assertion that the development site is located less than half a mile on an accessible route, requires supporting documentation.

And in fact, the application did include a statement from the local government regarding the accessibility of the playground, which indicates they are aware that evidence is required, rather than a statement that it is accessible. Staff is recommending that the Board deny the appeal.

MR. GOODWIN: Okay.

MR. VASQUEZ: Just a question, to clarify. So regarding what was put in the application, in reality, are these two areas accessible?

MS. HOLLOWAY: I can't tell you that.

MR. VASQUEZ: Okay. I will ask someone coming up. John.

MS. HOLLOWAY: Okay.

MR. GOODWIN: Do I hear a motion to hear further comment?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: A second?

MR. VASQUEZ: Second.

MR. GOODWIN: A second by Mr. Vasquez. All in
favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay. We will now hear further comment.

MR. SHACKELFORD: For the last time today, John Shackelford; Shackelford, Bowen, McKinley and Norton, and represent the Applicant in this appeal. And similarly to the two prior arguments; this one is a little bit different.

It is not a point-scoring item as Marni mentioned, but it does affect tiebreakers, which can be real important later on in the application process, as to who gets an award or not. Again, as I have stated earlier about the administrative deficiency process, I think that this application again falls into that category.

The Applicant did provide a map showing the location of the site, showing that it is within the half mile of the public park. And it was on a -- it has public transportation available to it within that half mile. So we feel like the map that was provided satisfies it.

But again, if staff thinks that it didn't, again, we think that that is what the administrative deficiency process is to be available for. And allow an applicant to be able to submit additional information as far as its accessibility.
The Applicant is not here, the Applicant had to leave. So I cannot answer your question specifically, but I believe that it is accessible.

And so we would respectfully request that you grant the appeal on the same basis as before. That we think the information that was provided is sufficient. But if there is a lack of information, that the information be just supplemental to what was already provided to give staff clarity that we do meet the tiebreaker criteria.

MR. GOODWIN: Any other questions?

MS. BINGHAM ESCAREÑO: Yes, sir. And did you say so also so the park -- do you have an idea -- is there, do you have an idea of what document you would have provided that would have met the requirement from the very beginning? What does that look like?

So you are saying your client presented a map that showed that there was a playground in close proximity, and that your client are within the little half mile. And that your client also submitted, or Marni said your client submitted a letter from the City or some municipality verifying that is bus -- that there is public transportation?

MR. SHACKELFORD: Yes. I am going to let Ms. Anderson address that question.
MS. BINGHAM ESCAREÑO: Okay. Great.

MS. ANDERSON: I'll respond to that. So Sarah Anderson, S. Anderson Consulting. The Applicant did have to leave, but I know enough about this that I believe that I can represent the issue.

The reason -- we don't know exactly what would meet this. And the reason is that, the QAP, the manual, and the application itself are silent on this issue. Everything to do with the tiebreakers, the majority of the items say, you should submit this.

The only thing that it says for these items is, submit a map showing where your park is, and where the bus stop is. Other parts -- and it is pretty specific throughout this section, when you are looking at the manual or the actual application checklist will say, for this item, submit this. For this item, submit this.

It is completely silent. And we struggled with it. We struggled with -- well, the only, you know, they are so specific about what they want for these items. This one, the only thing that is said, is that you want a map showing where it is.

And the only reason that we submitted the additional documentation regarding the playground is that it was specifically brought up at the application workshop. So frankly, that wouldn't have necessarily
occurred to us, had we not gotten direction at the application workshop.

And the issue -- I mean, I understand the struggle with this. All of the tiebreaker items and the high opportunity items, they were passed but we never really -- because of the way the presses worked, we never really had a discussion.

I think, internally, externally, about what staff would have considered to be sufficient documentation, and this is one of those things that you know, we are very very literal. And we look at what is written, and we responded exactly with what was requested in the rules, the manual and the actual application.

MR. GOODWIN: Okay.

MS. ANDERSON: And maybe staff can say what would we do. We have seen other applications who put in street view maps, and just show a line to it. I don't know if that meets it, either.

Because I don't think that has come before you. A third party engineer, maybe that would. But I would let staff say what would.

MS. BINGHAM ESCAREÑO: Thank you. Thank you very much. And my main question was just so that as we are looking at how we can further clarify it, it will be a good thing to put.
But so my understanding, Marni, it is like on the application, it is a checkbox, right? And so when you have your tiebreaker points, I am looking at it.

It has the list of all the different additional tiebreaker attributes. And then you just check the box saying yes, it has got some of these.

MS. HOLLOWAY: And provide evidence that --

MS. BINGHAM ESCAREÑO: And then in a tab back, you provide the evidence. Okay. I have got you. Do you have any idea like, what that looks like, to meet the say -- the half mile within a playground.

MS. HOLLOWAY: Had I received the question, I would have said a letter from the local official regarding the design of that public path --

MS. BINGHAM ESCAREÑO: I have got you.

MS. HOLLOWAY: -- or a report from a third party accessibility expert.

MS. BINGHAM ESCAREÑO: I have got you. Great.

MR. GOODWIN: Okay. Any other questions?

(No response.)

MR. GOODWIN: More comment?

(No response.)

MS. ANDERSON: Good afternoon. Terri Anderson, Anderson Development and Construction. I am not affiliated with the Applicant, nor am I affiliated with S.
Anderson Consulting. But I did want to speak on the issue as it relates to accessibility.

Typically, when we are doing the design on a property, we have to have an accessible route. And those types of things are actually determined by a surveyor and or landscape designer. And similar to the or to the extent, we already have a $50,000 to $100,000 burden to put an application together.

I don't believe it would even be a reasonable request if the Department were to truly anticipate that a borrower or a potential applicant would submit, I guess, a survey prepared by a third party that would extend across public roadways and all different walkways in other areas that are a half mile out. So I do believe if you take in good faith that you are accessing a public park, and that public park was probably designed in accordance with ADA accessibility and compliance, that should meet the criteria.

MR. GOODWIN: Thank you. Any questions?

(No response.)

MR. GOODWIN: Do I hear a motion on how the Board should proceed?

MS. BINGHAM ESCAREÑO: Mr. Chairman, I make a motion to approve the appeal for application 17275, Aria Grand.
MR. GOODWIN: Do I hear a second?

MR. ECCLES: Just a clarification on that motion. Is that to approve that they are -- that these are valid tiebreaker points, or to instruct staff to engage in the administrative deficiency process to seek clarification.

MS. BINGHAM ESCAREÑO: The latter. So would you like me to re-pose the motion. I will make a motion to instruct staff to work with Applicant 17275 to provide sufficient documentation to meet the criteria for tiebreakers, the two tiebreakers listed in the appeal.

MR. ECCLES: Does that sound like a sufficient instruction to staff? Okay.

MR. GOODWIN: Do I hear a second?

MR. BRADEN: Second.

MR. GOODWIN: Second by Mr. Braden. Any other questions or comments?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: The appeal is granted.

MS. HOLLOWAY: Okay. Our last appeal, 17724, for Liv Senior at Johnson Ranch. The application does not
qualify for points selected in three categories. Three points under 11.9(c)(6) related to underserved area, because the census tract includes areas that are not within the boundaries of an incorporated area. Three points under 11.9(b)(4), related to leveraging of private state and federal resources, because more than 50 percent of the developer fee is deferred. And four points under 11.9(d)(6), related to input from community organizations, because the development site is within the boundaries of the Johnson Ranch Master community association, and is therefore ineligible for points under this item.

In addition, staff determined that the application was not eligible to receive a tiebreaker selection. The Executive Director has granted the appeal as to the tiebreaker issue only. So for underserved area, this is that same three-point item that we have been discussing.

In this instance, the applicant disagrees that the QAP requires the entire census tract to be within the incorporated area and goes on to state that, because Johnson Ranch is in the city's extraterritorial jurisdiction, the City oversight of permitting means the development is governed by the City of Bulverde and should receive these points. Regarding leveraging of private, state and federal resources, the appeal does not directly
address why the application should be awarded points under this scoring item.

The appeal could have revised application documents, so all financial documents that were not requested by staff in our administrative deficiency. Input from community organizations -- in order to qualify here, the development site must not fall within the boundaries of any qualifying neighborhood association or neighborhood organizations.

The appeal asserts that Johnson Ranch Master Communities, Inc., as that association is named, is not a neighborhood association. Review of the articles of incorporation reported with the Texas Secretary of State shows that it is in fact, registered, and meets the Texas Government Code definition of a neighborhood organization.

Further, the organization was identified as such in the preapplication that was submitted to the Department. Staff recommends that the Board deny this appeal.

MR. GOODWIN: Do I hear a motion to hear further public comment?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. GANN: Second.

MR. GOODWIN: Made and seconded. All in favor,
say aye.

(A chorus of ayes.)

MR. GOODWIN: Now we will hear comment.

MR. POLLACK: Good afternoon. My name is Joel Pollack. I am with Two Ten Development Group, the developer of the senior community. We received a denial of our appeal and I come before you to ask for reconsideration.

Similar to the other appeals that you have granted points to, we fall under the same conditions that those Applicants fell under, and they were granted. So I am going to move on from that, because that is an issue that we have already discussed numerous times. And I am sure you don't want to go through that again.

With regards to what Marni had mentioned, Johnson Ranch Master-planned Community was formed by the developers for the developer specifically to enact and have rules with respect to architectural control, development in the ranch, and guidance for developers such as ourselves coming in. For example, there is a brand new school that was built in there.

There is a new fire station that we are going to be building our community behind. So they mandate that all approvals go through them. There isn't a homeowners association. There aren't homeowners on the Board.
It is made up of the developers themselves, the Hill family, and other participants from their organization. So with that said, I am asking for reconsideration regarding that.

Because we -- there is nowhere in the Code that states that Johnson Ranch Master-planned Community Association is registered with TDHCA or a registered neighborhood association. It was registered with the State of Texas, as it is a corporation. And as such, corporations have to be filed with the state.

With respect to 11.9 -- excuse me. With respect to the deferred developer fee being in excess of 50 percent, that is not allowed under the QAP, that was a math error on our part.

So because at the time, you know, equity letters, and investments and the syndicators, from what has happened over the last, you know, six months have been very fluid, it was simply a math error. Marni is correct. We submitted forms, maybe not at their request, to make that change, so we could fall, you know, within the 50 percent deferred developer fee rule.

Had we been given an administrative deficiency, as in the past, we could have fixed that. And that is what I am requesting, is that an administrative deficiency be given to us, so that we can then fix it under proper
rules. And then we would at that point, be allowed to receive those points back.

MR. GOODWIN: So I have got a question for you. Did you change your developer fee, or did you just make a math error?

MR. POLLACK: We made a math error.

MR. GOODWIN: With your development fee. So the development fee, under your administrative deficiency would be exactly what it was in the preapplication. You just divided by the wrong number?

MR. POLLACK: It was. Correct.

MR. GOODWIN: That is what you are stating.

MR. POLLACK: It is an addition error. It was $4,777, which is 00.5 percent of the entire developer fee.

MR. GOODWIN: And the same question I have for you is, a lot of these developments where the developer stays in control during the development process, but at the end that, the full intent, and frequently, in the documents, that it is going to be turned over to an homeowners association. Is there no such documentation under Johnson Ranch that is going to happen --

MR. POLLACK: As of today, Johnson Ranch is managed by Spectrum Management.

MR. GOODWIN: Yes. I am not talking about today. I am talking about -- is the intent to developer
control it until you get to a certain percentage of occupancy, homeowners, et cetera, and then it is to be turned over to the homeowners association?

MR. POLLACK: Yes. Typically, in master-planned communities such as Johnson Ranch, when an Association reaches, you know, anywhere between 75 and 80 percent sold, then they make an election to turn it over to an actual homeowners association, a property owners' association, or the definition of a neighborhood association.

MR. GOODWIN: So really, in my opinion that is a currently -- it is a homeowners association, but it is just completely controlled by the developer owner. And at some point, they will give that control up when it is within a reasonable period.

MR. POLLACK: Yes. But the rules states that today, it doesn't fall under the rules of the neighborhood association.

MR. GOODWIN: Okay.

MR. POLLACK: And therefore, I shouldn't have been -- I shouldn't have had those points taken away from me.

MR. GOODWIN: Okay. Other questions?

MR. ECCLES: A point of clarification on your appeal. Under the underserved area points, we have
heard -- the Board has heard a number of appeals where three points were applied for and requested.

But then on appeal, they say, in the alternative, we would take two points, which we showed qualification for. I don't see that in your appeal.

Is that something that you are requesting? Or are you just arguing that the Board change its interpretation of a census tract within the boundaries of an incorporated area to include, as you argue in your appeal, that those areas that lie outside of the incorporated but are within the ETJ of the corporate limits should be included in that?

MR. POLLACK: Well, based on testimony today, or comments today, I should be treated the same way as all the other applicants, and receive at a minimum, two points.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Are there other speakers who want to speak? Okay.

MR. KEENE: Good afternoon, Mr. Chairman, members of the Board. My name is Breck Keene and I am here to speak in favor of staff's recommendations to deny this appeal.

Specifically, I want to emphasize the statute,
that is Section 2306.6708, related to application changes or supplements. An Applicant cannot submit changes or provide additional information unless requested.

Staff did not request information in support of this application. It was provided as part of the appeal. So number one, it was not requested, but it was submitted. Which is not what the statute requires.

But secondly, not only is the information they provided that was changed, it was not simple math error. The number on the sources and uses page for deferred developer fee was changed. The deferred developer fee moved from 50.4 percent to 49.96 percent. The information was changed to meet that requirement.

Regarding community support, I fully support staff's analysis. It was identified as a neighborhood organization at the preapplication. And it is clearly identified in the maps that were provided in the application, that the sites falls within their boundaries.

Johnson Ranch is a neighborhood organization. And the letter that they provided does not meet the requirements of letters of support from the neighborhood organizations.

And the other four letters that were provided are inapplicable. So I speak and ask that you deny this appeal as requested by staff. Thank you.
MR. GOODWIN: Thank you. Any other comments?

MR. MCMURRAY: My name is Brad McMurray. I don't want to complicate this issue by speaking. But before you close out in (3)(d), if I might speak before you close that item, on a related matter.

MS. BINGHAM ESCAREÑO: Hey, Marni. Can I ask you -- this isn't crystal ball kind of stuff. But just because I am not sure I completely understand these. But let's do the leveraging, the 11.9(e)(4).

MS. HOLLOWAY: Uh-huh.

MS. BINGHAM ESCAREÑO: The math error. If this was an administrative deficiency process, where you were interacting and trying to clarify, would what you have now have satisfied that? Do you think that that is in material compliance for --

MS. HOLLOWAY: I have not looked at it personally, so I can't speak to that specific situation. I can tell you that replacing the financial exhibits in the application, we generally consider that to be material.

Yes. If it is one number, you know, we can work it through with underwriting or that kind of thing. But if it something that is used for scoring, in particular, out of the financial exhibits, that is material.
MS. BINGHAM ESCAREÑO: Okay. And then with -- so the community support or the 11.9(d)(6). So what I think I am hearing, is that the master community, they didn't provide a letter of support from that entity.

That, even though on the preapp it was acknowledged as being an entity, when it came to meeting that scoring item, they did not provide --

MS. HOLLOWAY: They, in the preapplication, they identified the Johnson Ranch Master whatever in the world they are as the neighborhood organization. When we got to full application, they said no, this is just a community organization. It is not the neighborhood organization.

So you know, in the preapp, they are saying it is a neighborhood organization. In their appeal, they are saying it is not.

MS. BINGHAM ESCAREÑO: And in the old kind of way that we used to do administrative deficiencies, if you had an Applicant and you contacted them, and said, hey. It really, even on your preapp, it was termed as that.

If the Applicant had been willing to say, okay, because they are obviously very close relatives, if not one and the same. Right. Like the entity is in some way related to what they are doing.

It is a master-planned community. And they had
provided it. Would that have satisfied an administrative deficiency?

MS. HOLLOWAY: So here is the question in a situation like that. If we issue an administrative deficiency and by the end of the day, on day 5, we don't have the information that is responsive to that deficiency, then we start heading down that -- you lose points because you haven't responded to the administrative deficiency.

So in this particular situation, if this was the information that we received back, and it wasn't responsive, because it didn't answer the question, then we would have headed down that, you did not respond to the administrative deficiency path.

MS. BINGHAM ESCAREÑO: Yes.

MS. HOLLOWAY: Rather, we went down the scoring notice path.

MS. BINGHAM ESCAREÑO: Yes. Okay. And then basically, I think I understand Mr. Pollack's point on the first point. I am not sure I agree with any of them on this, just respectfully.

Like, the downgrading from the three to two on the underserved. What I hear you doing is fighting for the right that you don't think -- you think it should get three points regardless of whether or not it was all
contained --

MS. HOLLOWAY: That was what was stated in the appeal.

MS. BINGHAM ESCAREÑO: So and you can definitely talk. I am just going to. And then on the math error, that one, I am kind of up in the air on. And then the community one, my thought would have been to -- sure. Then we can do that, you know. But what I hear you arguing is that you don't think it is a neighborhood entity. And that you don't think you should have to provide the documentation. Not that they asked for it.

So those are the -- those are what I am trying to kind of tease through, that make it to me, a little different.

MS. HOLLOWAY: It is. This one is different from the ones that we have discussed previously.

MS. BINGHAM ESCAREÑO: Thank you, Marni.

MR. POLLACK: I just want to make --

MS. BINGHAM ESCAREÑO: Yes. Sure.

MR. POLLACK: I am Joel Pollack again. In our preapp, we didn't disclose or check off the box that it was a neighborhood association, because we knew it wasn't. And having points taken away from us on that basis doesn't -- you know, it is conflicted with what we
had provided the -- provided staff in our application. So on to your question, there was never any disclosure or -- disclosure is probably the wrong word.

But there wasn't any information per the preapplication that identified Johnson Ranch as being a neighborhood association. Because in our discussions with the developers, they -- and we got a letter specifically to that, that is in the application.

They specifically told us and stated, and we did our diligence, that it was not a neighborhood association controlled by the homeowners. And I think that is the real definition here, and the crux of this issue.

MR. GOODWIN: I am going to go back to a question I asked you, because maybe I didn't make myself clear, in light of what Mike said. On the preapplication, you stipulated a dollar amount for the development fee. And I am guessing there is a portion of that, that is deferred.

MR. POLLACK: That is on the full app, sir.

MR. GOODWIN: On the full app. I'm sorry. The full app. And my question was, had that number changed. And what I understood Mike to say was, yes. That number has changed.

Even though it was a small amount, but it has
changed. But what I understood you to say was that number
didn't change. You divided by the wrong number.

    MR. POLLACK: The number that was submitted in
the application was less than 1 percent off, of 0.57
percent off.

    MR. GOODWIN: That wasn't my question. My
question is, did it change?

    MR. POLLACK: When we responded to the notice
that was given to us by the Department --

    MR. GOODWIN: Right.

    MR. POLLACK: It changed.

    MR. GOODWIN: Okay.

    MR. POLLACK: Yes, sir.

    MR. GOODWIN: Thank you. Any other questions?

    (No response.)

    MR. GOODWIN: Do we have any comments?

    MR. GONZALES: Mr. Chairman, thank you. My
name is Jose Gonzales. And I would like to speak to
11.9(d)(6), because I think that there needs to be a
little bit of a clarification, that hasn't been brought
forth. And might not have been stated correctly by Mr.
Pollock.

    In the May 16 letter from Mr. Irvine, the
letter states that the Department has awarded the project
4 points under 11.9(d)(4)(C)(v). And to read the actual
verbiage, it says, the organization, meaning the property
owners association that was created by Johnson Ranch did
not meet the requirements of 11.9(d)(4), related to
quantifiable community participation, and was therefore
awarded four points under (C)(v) of that subsection.

(C)(v) states, it allows for four points for
areas with no neighborhood organization is in existence,
equating to neutrality or lack of objection, or where the
neighborhood organization did not meet the explicit
requirements of this section. The Department has granted
the points under a determination that there is no
neighborhood organization.

The QAP allows you to then move down to
11.9(d)(6), where you have several options to garner
support. I am a very bad public speaker. I apologize.
To show that the community is aware of your application,
and that they do indeed support you. And so under the
three subsections, A, B and/or C, the Applicant picked A,
and received the civics.

But then C clearly states that property owners
associations created for a master-planned community can
receive a letter of support from that entity created by
the master-planned community to show support for their
things. So it is -- the applicant checked (C)(v) in their
application. The Department acknowledged that they would
be given points under (C)(v) and subsequently, they are
entitled to move down to 11.9(d)(6).

I would request that you bifurcate, just as Mr. Irvine did, in the response to his letter of May 16th, where he granted the correction to the tiebreaker points, that you look at these different categories, and in your motion to deny or award points back, that you look at those facts. Thank you.

MR. GOODWIN: Good job. Questions?

MR. VASQUEZ: A question just to clarify. And to Mr. Gonzales. Actually, I might ask from the staff here.

And again, help the new Board members out here. Are developments allowed to be in an area subject to a homeowners association? Is that an exclusion, or is that --

MS. HOLLOWAY: No. Certainly, they are allowed to be, and if they are in a neighborhood organization or a homeowners association there are notification requirements. And there is a different path to gaining points for neighborhood, for community support. If you don't have a neighborhood organization from which to gain those support points, you can go to these other organizations and gain your support points from them.
MR. VASQUEZ: So it appears in this case that the existing neighborhood association, or the management group clearly supports the development.

MS. HOLLOWAY: Yes.

MR. VASQUEZ: Even though someday, it will be changed into a true homeowners association.

MS. HOLLOWAY: Into a homeowners association.

MR. VASQUEZ: Okay. So it is not excluded. It is not an exclusion. Okay.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Any other comments?

(No response.)

MR. GOODWIN: Do I hear a motion on how the Board would like to proceed?

(No response.)

MR. GOODWIN: Are you here to comment?

MR. PALMER: Yes. I just think that you need to differentiate this appeal from a lot of the previous appeals that we are talking about administrative deficiencies to shore up information.

Or that you show that you qualified for -- you know, you asked for three, and you only qualified for two. Which I think is the first part of their appeal. But the second two, you really get into, are people going to be
allowed to change their application after the filing to qualify for points, because they didn't qualify for them in the beginning.

MR. GOODWIN: Right.

MR. PALMER: To let, you know, which I don't know that we have ever done before. So it seems to me that we are going down a whole different road with those second two point items than we have done before.

MR. GOODWIN: I think that is why Marni identified that this one is different than the other applications we have heard this morning. Hearing no motion from the Board, I am going to try to craft one. And that would be that this application, I want to think out loud here, Marni -- would receive the administrative deficiency on the first item, but that we would deny the appeal on Items 2 and 3. I don't have those numbers, because I --

MS. HOLLOWAY: So an administrative deficiency on 11.9(c)(6) for the underserved area.

MR. GOODWIN: For the underserved area.

MS. HOLLOWAY: Is that it?

MR. GOODWIN: Yes. Yes.

MS. HOLLOWAY: And deny the appeal on 11.9(e)(4), which is the leveraging piece.

MR. GOODWIN: Correct.
MS. HOLLOWAY: And 11.9(d)(6), which is the input piece.

MR. GOODWIN: Correct. So if I hear such a motion?

MR. BRADEN: So moved.

MR. GOODWIN: Paul moved. Do I hear a second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Ms. Reséndiz seconds. Now, do we have any discussion? Questions?

MS. RESÉNDIZ: Before we second --

MR. GOODWIN: Discussion?

MR. VASQUEZ: And potentially asking for a friendly amendment, can we bifurcate these and break up the --

MR. GOODWIN: I don't see any problem with that. Would you? Is that okay with you, Mr. Braden?

Okay.

MR. BRADEN: Sure.

MR. GOODWIN: So let's take one alone. The first one, via a motion to allow administrative deficiency on 11.9(6). Would that be okay?

MS. BINGHAM ESCAREÑO: The underserved area.

MR. GOODWIN: The underserved area -- (c)(6)? Do we have that motion, Mr. Braden?

MR. BRADEN: So moved.
MR. GOODWIN: Seconded by Ms. Reséndiz?


What I was wanting, I would like to recuse myself from that.

MR. GOODWIN: You would like to recuse yourself from this. Okay. I think when you recuse yourself, you must leave the room. Go.

MS. RESÉNDIZ: I need more coffee.

MR. IRVINE: You are abstaining.

MR. GOODWIN: Yes. You are abstaining, after previous discussion. Right. So we need a second for that motion.

MR. VASQUEZ: Second.

MR. GOODWIN: Second. Okay. So we have a motion made and seconded. All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: Okay. So that one will be handled the way the others. Now, we need a motion on the other two items.

MS. BINGHAM: I move staff's recommendation to deny the appeals for leveraging, which is 11.9(e)(4), and then the community four-point item, 11.9(d)(6).

MR. GOODWIN: I'm sorry.
MR. VASQUEZ: I'm sorry. That wasn't separate with the last one.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: Very good. Okay. I will move staff's recommendation to deny the appeal on the leveraging item, which is 11.9(e)(4). I make that motion.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Abstain.

MR. GOODWIN: Okay. Abstain from that one as well. A second?

MR. VASQUEZ: I will second.

MR. GOODWIN: Okay. Mr. Vasquez seconded. Any other discussion?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: Okay. That was passed. Now we have the last one, which is 11.9(d)(6). Any one able to make that motion, or do you want to have some discussion about it? Let's have a motion first, and then we will have some more discussion about it.

MR. VASQUEZ: Well, I would actually move to approve the appeal on this last section, on 11.9(e)(6).
MR. GOODWIN: Okay. Do we have a second for that?

MS. BINGHAM ESCAREÑO: I will second.

MR. GOODWIN: Second by Ms. Bingham. Any discussion?

MR. BRADEN: And why would you push for it, though -- because you think they just didn't go through the right procedure?

MR. VASQUEZ: From what I heard, as long as it is not excluded, if there is not an exclusion for eventually becoming a neighborhood association.

MS. HOLLOWAY: Our rule does not address what would happen in the future with the organization.

MR. VASQUEZ: From the sounds that I am hearing from both staff side and the Applicant side, it sounds like it is a little hazy on this type of legal entity. But clearly, from what I have heard so far, the entity obviously supports building this development.

It is in their own property. They control the whole thing. So that to me, sounds like just de facto support from the community, from the community organization. And that is what I think it should be.

MR. GOODWIN: Point of clarification. Is your motion to grant the appeal, or to grant staff the authority to use administrative deficiency system if they...
need more proof for the appeal?

   MR. VASQUEZ: The appeal is for biting heads, Marni. So to give the staff more --

   MR. IRVINE: I would like direction to dig into this in more depth and formulate a revised scoring notice on that point.

   MR. GOODWIN: So you are in favor of the administrative deficiency use for staff?

   MR. VASQUEZ: Yes.

   MR. GOODWIN: Okay. All right. Sure. Okay. So as I understand the motion, it is that we are instructing staff for this issue, to use the administrative deficiency process if they need additional information for scoring for this.

   But in general, we are in favor of their appeal to grant this. Because it appears that the neighborhood is in favor of it.

   MR. VASQUEZ: Correct.

   MR. GOODWIN: Okay. Is that a good summary for you?

   MR. IRVINE: Yes.

   MR. VASQUEZ: On summary. Yes.

   MR. GOODWIN: Any other discussion or questions?

   (No response.)
MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

MS. RESÉNDIZ: Abstain.

MR. GOODWIN: And one abstain. Okay. Are we done with that? Or have I left something off?

MS. BINGHAM ESCAREÑO: We are done with that one.

MR. GOODWIN: We are done with that one.

MS. BINGHAM ESCAREÑO: Would someone else talk?

MR. GOODWIN: Someone else wanted to speak about (3)(b) in general.

MS. HOLLOWAY: Actually, we needed to. Yes.

MR. GOODWIN: What?

MS. HOLLOWAY: We needed to talk just a little bit more about (3)(d).

MR. McMURRAY: Again, my name is Brad McMurray. I am with Prospera Housing community services, which is a 501(c)(3) housing provider and property management company.

Based on our desire to not take up the Board's time, and our understanding that the policy, the new policy was all points or no points, we requested earlier that 17253, Samuel Place Apartments that was part of the agenda and appropriately advertised, be withdrawn.
However, based on recent happenings, we would like to be considered, if that is within you all's agreement.

MR. GOODWIN: We actually are having a motion, I think, that kind of addresses what you have just requested.

MS. BINGHAM ESCAREÑO: May I ask Marni a question, Mr. Chair?

MR. GOODWIN: Sure.

MS. HOLLOWAY: So Marni, this speaker just mentioned that application 17253 was pulled just in light of believing that it was kind of the all or nothing deal.

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: Do the other two that were pulled, 17151 and 17134, are you aware that they may fall in that same category?

MS. HOLLOWAY: So 17151, the Executive Director actually granted that appeal after the agenda was posted.

MS. BINGHAM ESCAREÑO: Okay. I have got you.

MS. HOLLOWAY: On 134, I am not aware of the specific circumstances around that one, right at this point. It did not get into the book. So --

MS. BINGHAM ESCAREÑO: I have got you. Mr. Chair and Counsel, I was -- yes, sir?

MR. IRVINE: I would say that staff would certainly request the Board direct us to use the
administrative deficiency process to handle any of these matters in a consistent fashion.

MR. ECCLES: That are posted on the agenda.

MR. IRVINE: Yes. If they are posted on the agenda.

MR. GOODWIN: So 17253 and 17134 would fall in that.

MS. BINGHAM ESCAREÑO: Very good. I would like to --

MR. IRVINE: You can give us direction for matters beyond the agenda.

MS. BINGHAM ESCAREÑO: So I am dense. But are they on the agenda or not?

MR. GOODWIN: Yes. They are on the agenda.

MS. BINGHAM ESCAREÑO: Okay. Very good. Then I would like to make a motion to instruct staff to deal with Applicant 17134 and 17253 through the administrative deficiency process in a manner that is consistent with how the Board has dealt with those applications today.

MR. GOODWIN: Does that get what you wanted?

MR. MCMURRAY: Actually, if I am correct in my assumption, that -- again, Brad McMurray, that all the information is in the Board book, I am prepared to talk about it right now.

MR. GOODWIN: I think our staff is not
prepared, Brad.

MR. MCMURRAY: I apologize.

MR. GOODWIN: Okay. We have that motion. And do we have a second?

MR. VASQUEZ: Second.

MR. GOODWIN: Second by Mr. Vasquez. Any other discussion?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: The motion passes. Paul abstained. Okay. Marni, who is going to be --

MS. HOLLOWAY: Mr. Goodwin.

MR. GOODWIN: Well, I have to go back in 3(a) and 3(b). We have now covered, we have covered all 3(c) and 3(d). Right?

MS. HOLLOWAY: Andrew is going to give 3(a).

MR. GOODWIN: Is he also doing (b) and (c)?

MR. SINNOTT: I will do 3(a) and 3(b).

VOICE: And Sharon is doing 3(c).

MR. GOODWIN: Sharon is going to do 3(c).

Okay. The way Andy is going to present it is, you get to do the fun stuff that everybody is going to agree to.
MR. SINNOTT: Yes. Well, good afternoon. And welcome to our new Board members. And congratulations to Mr. Goodwin on becoming our Board Chair. My name is Andrew Sinnott. I am the Multifamily Loan Programs administrator.

Item 3(a) is presentation, discussion and possible action on amending the 2017-1 multifamily direct loan Notice of Funding Availability. In December of last year, the Board approved the 2017-1 NOFA, which was composed of HOME and TCAP repayment funds, totaling approximately $32.5 million.

Within the general set-aside, which is the set-aside that will be affected by today's action, approximately $15.3 million in HOME funds, and $8.5 million in TCAP repayment funds was made available. The ability to use HOME funds in participating jurisdictions, large cities and counties that receive their own allocation of HOME funds is limited by statute.

Therefore, for this NOFA, no HOME funds are anticipated to be able to be used in PJs, which leaves TCAP repayment funds as the only fund source that can be used for applications with development sites in places like Austin, Dallas, San Antonio, Houston, some of the larger cities in Texas.

Currently, within the general set-aside, there
are applications with development sites in participating jurisdictions requesting over $49 million in direct loan funds. So we have started off with $8.5 million available to those applications, and over $49 million was requested.

As a result of the severe oversubscription for TCAP repayment funds within the general set-aside, staff came back to the Board last month with the first amendment to the NOFA, and approximately $2.3 million in TCAP repayment funds under the general set-aside, which was anticipated to help fund one additional application with a development site in a PJ. So we slightly improved the situation to $10.8 million available for over $49 million requested.

Today, staff is recommending adding $7 million of program income, essentially loan repayments on loans that were originated over the past several years, received on NSP-1 funds. That is the Neighborhood Stabilization Program funds to the 2017 direct loan NOFA.

So this will further improve that set-aside within the general set-aside, making $17.8 million available for over $49 million requested. NSP-1 can be used in participating jurisdictions.

So it will help alleviate that severe oversubscription within the general set-aside, potentially resulting in staff being able to award three additional
applications. It is anticipated that using these funds as repayable loans for multifamily activities will result in more programming funds to be used for housing activities in the future.

And I just want to thank Homer Cabello and Brooke Boston for allowing these funds to be used for multifamily activities. They have kind of been overseeing the NSP program in the past couple of years. And they were kind enough to let us use these for multifamily activities.

With this additional $7 million in NSP-1 program income, the total amount available under the NOFA will be approximately $41.8 million. However, even with this additional funding, staff does not anticipate being able to satisfy any of the 2017 9 percent Housing Tax Credit direct loan requests that were received after several 4 percent Housing Tax Credit were layered, and 2016 9 percent Housing Tax Credit layer, direct loan requests.

Staff notified the 2017 9 percent Housing Tax Credit direct layer -- Housing Tax Credit layer direct loan applicants with development sites in PJs last month, that this was likely to be the case. And that they should endeavor to resolve the lack of direct loan funds issue no later than commitment and execution date in early
September.

Staff will continue to monitor the oversubscription issue within the general set-aside, but does not currently anticipate further amending this NOFA with additional funding. With that, staff recommends adding $7 million in NSP-1 program income funding to the 2017-1 NOFA, specifically under the general set-aside. If you have any questions?

MR. GOODWIN: A motion to approve?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Second?

MR. BRADEN: Second.

MR. GOODWIN: Second by Mr. Braden. Any questions?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay.

MR. SINNOTT: 3(b) is presentation, discussion and possible action on a determination notice for Housing Tax Credits with another issuer. And award of direct loan funds for application 17402, Harris Ridge Apartments, here in Austin.
So we are awarding 4 percent Housing Tax Credits and what is anticipated to be TCAP repayment funds from the 2017-1 NOFA under the general set-aside. Harris Ridge Apartments involves new construction of 324 units here in Austin, northeast Austin, and will serve the general population between 30 percent and 60 percent of the area median income. Staff recommends approval of 4 percent Housing Tax Credits in the amount of $1,344,750. And an award of direct loan funds in the form of TCAP repayment funds for $3 million with the closing condition as noted in the write-up. So with that, do you have any questions?

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Do I hear a motion for approval?

MS. BINGHAM ESCAREÑO: Move staff's recommendation.

MR. GOODWIN: A second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Second by Ms. Reséndiz. Any questions?

(No response.)

MR. GOODWIN: All those in favor?

(A chorus of ayes.)

MR. GOODWIN: Any opposed?
(No response.)

MR. GOODWIN: The motion passes.

MR. SINNOTT: Thank you.

MR. GOODWIN: We have Sharon up next. Item 3(c).

MS. GAMBLE: Hello, Board. I am Sharon Gamble. I am the administrator for the Competitive Housing Tax Credit program. And I have learned not to stand between people and food.

MS. BINGHAM ESCAREÑO: Do we look hungry?

MS. GAMBLE: I think we are getting a little hungry. So item 3(c) is a presentation by staff of issues regarding five applications that have to do with undesirable neighborhood characteristics.

And those are characteristics of neighborhoods that have been kind of described in the rules that sort of set some standards for what we are looking for in development sites. We have five applications that disclosed issues in their development, their neighborhood of development site having to do with poverty, having to do with schools, and having to do with crime.

And as part of the rule requirements, they are required to disclose those things to us. And staff is then required to review those, review pretty much everything having to do with the neighborhood.
And to determine if there is sufficient evidence of mitigation included in the application, to where we can make a determination that those issues in the neighborhood have a great chance of being mitigated in the future by the time the development comes online. And so with these three applications, we have two in San Antonio. One in Fort Worth. One in Houston. And one in Wichita Falls.

And in each instance, we have reviewed the information incoming. We have been able to come to a determination that the applications, each of them did include enough information for staff to determine that there was sufficient activity, sufficient funding, sufficient community involvement.

Different things, depending on each application, that let us come to a reasonable conclusion that there would be proper mitigation. If we want to discuss any of these individually, we can do that. It is up to you.

MR. GOODWIN: Sharon, I notice you left off the last one, Westwind at Lamesa.

MS. GAMBLE: Yes, sir. That one was pulled from the agenda.

MR. GOODWIN: Okay. So that is --

MS. GAMBLE: We got a little ahead of ourselves
on that one. We hadn't let the applicant know about it, so we pulled it off. So sorry about that.

MR. GOODWIN: Okay. So here the recommendation is that these meet the disclosure for undesirable neighborhood characteristics?

MS. GAMBLE: Yes, sir. Our recommendation is that the Board find the development sites eligible.

MR. GOODWIN: Find them as eligible. Okay.

MS. GAMBLE: Yes, sir.

MR. GOODWIN: I need a motion.

MS. BINGHAM ESCAREÑO: I will move.

MR. GOODWIN: So moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: Second by Mr. Braden. All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you, Sharon.

MS. GAMBLE: You are welcome, sir.

MR. GOODWIN: Okay. I think we move on to Item 3(e).

MR. IRVINE: She's back.

MR. GOODWIN: You are coming back? I thought we wore you out.
MS. HOLLOWAY: You gave everybody else the easy ones. Andrew has still got one more, but that is -- yes. Let him do the happy stuff.

Although this isn't all unhappy. Item 3(e) is presentation, discussion and possible action regarding awards of direct loan funds from the 2017-1 multifamily direct loan Notice of Funding Availability.

The first application we are going to discuss is 17503. This is Reserve at Dry Creek. The Applicant has requested $1.6 million in direct loan funds for Reserve at Dry Creek, which was awarded an allocation of 9 percent credits, and $1 million of HOME funds in July of 2016.

So this is a >16 deal that is coming back in. The multifamily rules require applications for developments previously awarded Department funds under any program to be found eligible by the Board. Staff has found that the Applicant adequately documented circumstances beyond their control, that could not have been prevented by timely start of construction.

In addition, the Applicant is requesting waiver of the required interest rate and amortization in the direct loan rule at 13.8(a) in order to maintain feasibility in accordance with the underwriting rules. So briefly, the building costs for this development have
increased approximately 18 percent; $1.5 million, while the equity pricing has decreased from 97 cents to 93.5 cents since the 2016 application was underwritten.

These changes prompted the Applicant to request $1.6 million in direct loan funds under the current NOFA, with requested terms of a zero percent interest rate, a 40-year amortization and an 18-year term while maintaining the 3 percent interest rate and 30-year amortization on last year's award. While staff has the ability to recommend an interest rate lower than the 3.25 that is currently in place, a waiver is required from the Board to allow an amortization period longer than 30 years.

The Applicant has made a good faith effort to make this transaction more feasible by reducing the developer fee approximately 8 percent. We had previously underwritten 1.8 million approximately down to 1.6 million. They are also reducing their loan requests from the original 1.6 million to 1.450; $1,450,000.

With these additional 2017 HOME funds there will be twelve more HOME units in the development: three of them at 50 percent, seven at 60 percent and two at 80 percent. And the total HOME units in the development to 30.

The Applicant's previous participation review is presented at EARAC. This is an extra large Category II
portfolio. EARAC has recommended approval without further comment.

So the staff recommendation for this item has multiple components. We are requesting that the site be found eligible under 10 TAC 1.35(d)(2) of the multifamily direct loan rule, as they have documented circumstances beyond their control that led to the present request.

We are recommending waiver of the amortization period required at 13.8(a) in order that the development maintain feasibility in accordance with the underwriting rules at 10.302. We are recommending a reduction in the funds, from the 1.6 million to 1.450 and a reduction to the developer fee, all of which is conditioned on satisfaction of all conditions of underwriting.

And staff is recommending the closing on the direct loan must occur no later than July 31, 2017. And that execution of the Section 811 owner participation agreement for Overlook at Plum Creek be a condition of closing.

MR. GOODWIN: Okay.
MS. HOLLOWAY: Okay.
MR. GOODWIN: Do we want to take all those together?
MS. HOLLOWAY: It is all one recommendation.
MR. GOODWIN: You want all one recommendation
with all those pieces.

MS. HOLLOWAY: They are one recommendation.

Understood, there are some moving parts and pieces. This is the first time, the first 2016 deal that we are bringing back in.

But it is -- I think it is important, because it starts to set the tone for other 2016 deals that are coming back. And I think it is also important to point out that while the Applicant has requested a lower interest rate and is seeking a waiver, they have also worked with us, and given up some pieces, too.

MR. GOODWIN: Okay.

MS. HOLLOWAY: So it is all of us working together.

MR. GOODWIN: Okay. Do I hear a motion for staff recommendation?

MR. GANN: I so move.

MR. GOODWIN: So moved by Mr. Gann. Second?

MS. BINGHAM ESCAREÑO: I will second.

MR. GOODWIN: Second by Ms. Bingham. Any discussion? Does anyone want to speak to it?

MS. SISAK: Very quickly. I am Jeanine Sisak, with DMA Development Company. I am here to answer any questions, but really, to thank staff for working with us through many, many different scenarios. But we finally
found one that everybody can live with. So thanks to staff.

MR. GOODWIN: Thank you for your comments. No other comments?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: It is approved.

MS. HOLLOWAY: Our next direct loan item is application 17504. This is Merritt Heritage. This is a request for $1 million in direct loan funds.

The Applicant is also requesting waiver of the amortization and repayment provisions at 10 TAC 13.8(a). A change in the terms of the previously awarded $2 million in HOME funds and a waiver of the HOME loan disbursement policy at 10 TAC 13.11(p).

This is a 2016 application that is coming back for additional funds. The Applicant has experienced an equity pricing decrease from $1 to 86-1/2 cents. And a building cost increase of approximately of $5.9 million. That is about 32 percent since the 2016 award was underwritten.

They have also increased developer fee
approximately 1.3 million. That is 32.4 percent. All of which has led them to request additional HOME funds under the 2017-1 NOFA, while also requesting a change in terms for the previously awarded HOME funds.

Specifically, the Applicant has requested that the terms of this 2016 $2 million award of HOME CHDO funds be modified. That award was made at 3 percent interest and 30-year amortization, which met underwriting requirements at the time of the award.

They are now requesting that the terms be modified to a zero interest 40-year term with all payments deferred until year 40. They are requesting the same terms for the present $1 million request. Staff is not aware of authority to waive the terms of the 2016-1 NOFAs. That NOFA is now closed.

The Real Estate Analysis Division was able to reach a feasibility conclusion without using the funds requested in the current application, and holding the 2016 HOME award to its original terms.

REA was able to accomplish this by -- was able to maintain the terms of the previously awarded 2 million by reducing the management fee from 5 percent to 3 percent, holding developer fee constant with what was previously approved in connection with the 2016 award.

Using the recently published 2017 revs, which
increased income and reducing an overstated cable
television expense, additionally, staff limited the amount
of first lien debt from what the Applicant has indicated.

As a result of making these adjustments, the
Applicant can move forward with the 2016 direct loan award
and continue to meet the feasibility requirements of 10
TAC Chapter 10 without any modifications.

The Applicant has also requested waiver of the
HOME loan disbursement requirement, so that the full
amount of HOME funds can be disbursed at loan closing. If
the Applicant receives all of the HOME fund at closing,
the Department will be at significant risk for completion
of all regulatory requirements, and therefore, at risk of
repayment to HUD.

EARAC has considered this application and
unanimously voted to recommend denial of the application
and to not make any changes to the previously awarded HOME
funds. Staff recommends that the requested $1 million in
additional direct loan funds from the 2017-1 NOFA for
Merritt Heritage be denied.

We further recommend that no modifications be
made to the terms of the 2016 HOME award, except for
extending the term to 40 years, to match the now FHA
senior debt, which is allowed under our rules. We are
also requesting that the, recommending that the request
for waiver of the HOME disbursement rule also be denied.

MR. GOODWIN: Okay. Easy for you to say.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Yes. I was going to say, I may need you to go back over that. Okay, so which part are you recommending denial?

MS. HOLLOWAY: We are recommending denial of the current application.

MS. BINGHAM ESCAREÑO: Of the $1 million?

MS. HOLLOWAY: We are recommending denial of the request to modify the previous award, and we are recommending denial of the request for waiver of the disbursement rules.

MS. BINGHAM ESCAREÑO: So what you are recommending is just changing the terms of the previous --

MS. HOLLOWAY: Of the previous award, which is allowed under our rules: If they have an FHA first lien debt, we can go to the 40 years to match the FHA rules.

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: You guys got so aggressive with the reworking it that you got all the way to the cable bill?

MS. HOLLOWAY: So there are questions about the underwriting. I'm going to make --

(General laughter.)
MS. BINGHAM ESCAREÑO: I don't have any more questions.

MR. GOODWIN: Do I have a motion?

MS. BINGHAM ESCAREÑO: I am going to go ahead and make a motion to approve staff's recommendation, knowing that there are people to speak.

MR. GOODWIN: Okay. Do I hear a second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. Discussion?

(No response.)

MR. GOODWIN: Comments?

MR. IRVINE: Could I make a comment before we hear from Colby?

MR. GOODWIN: Sure.

MR. IRVINE: You know, under HUD rules, we have to state in our plan how we are going to make our funds available. And we make our funds available in NOFAs.

And NOFAs have very specific terms. And while we do have latitude to make certain concessions and changes, we cannot go outside of the scope of what was permitted in a NOFA.

MS. BINGHAM ESCAREÑO: I have got you.

MR. DENISON: Hi. My name is Colby Denison and I am the Applicant. And welcome, new Board members. You
are getting quite an introduction today. I have been
doing this since 2003.

Gosh, this was a really interesting meeting,
because this was the first year in the history that I have
ever gotten an application terminated. And this year, I
got an application terminated for similar reasons that I
just heard you all overturn over and over again.

So I have noticed a really seismic shift in
kind of how this is -- how tax credit programs worked.
And I would say, I used to be scared during application
season, and now I am terrified. But anyway, it is a hard
program, very complicated.

But I wanted to say, I wanted to bridge that
conversation with this, in that, as soon as we heard that
Trump got elected, my good friend Dan calls me and says,
well, all that equity that we had promised you is gone,
and it has declined by 20 percent.

All of this -- I live in Austin, Texas. I
don't know if you all noticed any of the cranes. But at
the same time, Austin, Texas, is booming, and construction
costs are off, out of control. I have a ton of friends in
town, in development and construction.

I am finishing up a project that is $2 million
over budget because none of the subs would hold on to
their subcontracts. So there is inflation here like
crazy. And so in one fell swoop, I get crushed by a 20
percent decline in equity and on the other side, I have
got construction costs going up.

   And as my sisters like to say, I am not really
slow to action. So I immediately started trying to solve
the problem.

   Last year, I had a similar problem in Midland
with the 2015 allocation where oil prices collapsed and
HUD blacklisted Midland. And that was the only way I
could do the deals, is to get FHA financing. That
whole -- nothing happened.

   TDHCA, their staff didn't want me to redo the
deal and take away market rate units and do that. So we
went through a whole appeal process with you all and you
all granted me a reduction of units, to get rid of the
market rate units. So I kind of have a history of that.

   So in this, I was like, well, the only way I
could make this deal work with the facts that I have given
you all, is to have better HOME terms. And to go from 3
percent to zero percent. And 30 percent AM to 40 percent
AM.

   And just so you all know, I was in the business
honors program at the University of Texas. I tutored
calculus. I understand math and finance. I was an equity
research analyst. I know the numbers.
The other thing is, I turned my applications for this and the next item on March 6th. It has been almost three months. The first time I have really collaborated with Brent Stewart was last Friday. He sent me his number, saying this is what you do.

And so within ten minutes, I sent him a list of seven items to say these are all the things that could -- that I have worked on in the last three months. And I think this will all work. And you will get where you want to be. And I will get with what you want to be.

But he said he couldn't use the information because they didn't request it. And I would love to collaborate with staff on this, but I will say, you are going to hear from Dan Kearse that the recommendation that is coming before you all, the equity is not going to show up.

And the deal is almost completely permitted. We are submitting to HUD tomorrow. Equity is in place. The deal is in place. We need TDHCA to help out on the HOME funds. That is the only way to make this deal work.

And it is a phenomenal mixed use deal with 50 percent market rate units. It is a mixed income deal. It is in a booming economy with great things going on.

So anyway, I hope you all will understand that
I would love to work with you all and get this deal to where it will close and get placed in service by the placed in service dates. So thank you all so much.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: There is somebody else wants to speak to this? Okay.

MR. KEARSE: Hi. Good afternoon. I am Dan Kearse with RBC Capital Markets. We are a large national syndicator and very active here in Texas. So we are the investor here for this particular deal.

And so I felt it important for me to be here today. This is an important project. This is a great community. We want to see this built.

In the market, we have currently seen equity pricing dropping dramatically. Deals are falling apart, left right and center. And there is very limited resources that the state has to allocate to these deals.

And you know, I applaud staff, in doing everything they can to try and help deals. But honestly, there is not additional credits. There is not additional soft funds that we can give to these deals.

In this particular case, you do have that opportunity to make a change, and to help this deal along. We have raised the equity in a very difficult market.
And we feel so strongly about this deal and about Colby, that we are actually utilizing our own balance sheet to tie up about $5 million of our own money to bridge. Because this is FHA financing, it requires a lot of equity in up front, which investors hate. So we are having to do that for them. But we have got this deal ready to go. It is ready to go. And we can get this thing done.

And so we do need this waiver. That helps us finish the underwriting. It helps us make the deal pencil out. But with the waiver request, this deal works, and we can get it done. We have got the equity lined up and ready to go. Thank you.

MR. GOODWIN: Any other questions?

MS. BAST: Thank you. And now, Good afternoon. Cynthia Bast, representing the Applicant in this matter.

The bottom line here is that, this Applicant would like to get to yes, just like we did with Reserve at Dry Creek, the immediately preceding agenda item. That agenda item shows that modifications can be made as necessary to accommodate these unexpected events of changes in credit pricing and changes in the construction market.

Ms. Holloway has suggested that the Applicant
requested three things. One being an adjustment to the terms of the 2016 loan that was already awarded. To the award of the 2017 loan with some adjustments to those terms. And three, being a waiver of the rule regarding disbursement.

We can take the waiver of the rule regarding disbursement off the table. And since waivers have a higher standard of review, I believe that no waivers now are required for this particular item.

We also understand that the uniformity of rules place constraints on staff as to what they can and cannot recommend. And while I certainly hear what Mr. Irvine is saying with regard to a NOFA, I also look at Section 13.12 of your direct loan rules, adopted in January of 2017, that say, the Executive Director or authorized designee may approve amendments to loan terms.

And then it gives you a list. And on that list are changes to the loan amortization or interest rate. And so I believe this empowers the Executive Director to allow for changes both to the 2016 loan and for how the 2017 loan is both underwritten and recommended.

With regard to underwriting, we also have rules that constrain our staff. And in fact, Section 13.8(a) of the direct loan rule says that multifamily direct loans will be underwritten as fully repayable for one thing.
And then also, with certain interest rate and 30-year amortization.

So beyond that, it says if the Department determines that the development does not support this structure, the Department may recommend an alternative that makes the development feasible. So that is what we are seeking to do, is to work within your rules, and the discretion provided, to resolve a problem.

We think that is consistent with the opening statement in your underwriting rules, that say, due to the unique characteristics of each development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board. So taken all together, we believe that the rules do allow us to find a solution for a deal that may not fit squarely within the box.

And we request the Board to provide a determination that will allow us to get to yes with your staff. Thank you very much.

MR. ECCLES: A quick question. You cited TAC 13.12 that went into effect in January of this year.

MS. BAST: Yes, sir. Yes.

MR. ECCLES: That rule was not in effect at the time of the 2016 award. Correct?
MS. BAST: No. But it was in effect at the time that the Applicant requested the amendment. And so it says the Executive Director or authorized agents may approve amendments to loan terms prior to closing.

MR. ECCLES: And that is in effect here? That timing that is laid out in the rule?

MS. BAST: Well, we have not closed the 2016 loan.

MR. ECCLES: Okay.

MS. BAST: So yes. I believe it is, sir.

MR. ECCLES: Okay.

MS. BAST: Thank you.

MR. GOODWIN: Questions?

MR. ECCLES: Marni has a 15 degree head tilt.

MS. HOLLOWAY: I don't have the rule right in front of me, but my guess would be that that flexibility to change loan terms is about workout. And it is not about awards.

And you know, we need to be able to get to work out on these federally funded deals. And I think that Brent can absolutely speak to the feasibility of this.

MR. GOODWIN: Brent, would you mind coming up and --

MR. STEWART: Brent Stewart, Real Estate Analysis. So this application came in with $2 million,
2016 loan. And the $1 million 2017 loan. Both without interest rate or repayment provisions.

When you drop the repayment provisions into the pro forma, the deal fell below the 115 DCR; infeasible under the REA rules. We then worked to try to get a solution which we then worked on the NOI of the property, including using the 2017 rents. Including using a 3 percent management fee in the pro forma, 2 percent, up to 2 percent could be subordinate to the debt.

We found out through discussions with Colby that there was an expense item, a $58,000 expense item in the operating statement related to cable expense. Normally, the way the cable works, is there is a revenue sharing with the cable company.

And so you would have, you would share income, of those other income. And then you would share the expense that you are paying down below. The other income wasn't there. Right. So we went ahead and took the expense out.

Once we did those things, with the debt service on the $2 million loan, we were able to get to that loan at a 115 coverage. We did not get -- you could not put, under the REA rules, you could not put any more debt on the property, with any kind of repayment term, without the DCR falling below 115. You know, costs went up.
Yes. Costs in Austin are up. We have had other deals in Austin that costs have been up. This one caught on a percentage basis, costs are up higher than what we have seen on some other deals.

We, in our analysis, are using the HUD costs. HUD or the lender, Dougherty, has had the HUD application put together. They have had a third party reviewer of the costs. That is the cost number we are using.

We had increased some of our market rent assumptions to match kind of the higher of the market, analysts or HUD. Our gross revenue, our gross potential rent is actually higher than the Applicant’s. I feel like we have worked this transaction pretty good, to get back to a loan that he had, that was approved.

The 115 DCR is not a rule waivable by the Executive Director. It would be under the REA rule. I guessing, waivable by the Board.

I don't know. I haven't ever had that situation before. You know, part of the DCR problem is, that the FHA loan is $8-1/2 million higher than the loan that we originally underwrote.

And we appreciate costs. We appreciate the equity markets. We appreciate all of that. We are at 115 coverage. And I feel like we worked in way to get back to the original loan.
MR. GOODWIN: Okay. So no future time of working this. You just don't see an avenue of how to work it out to do this in the future?

MR. STEWART: You know, the math is pretty easy.

MR. GOODWIN: Okay.

MR. STEWART: You know, the big issue would be those -- I sent results of our analysis on Friday afternoon. As Colby indicated, he quickly fired some comments back. That is when the cable issue came up.

The REA rules say that we use $20 a unit; that's what we have applied for years and years. It is a box -- part of a box that we drive deals through, to make sure that we are fair with everybody across the board. HUD has their box; Dan has his; everybody has got a box.

And they are not -- they don't always line up. We acknowledge that. But our box shows a $20 in other income. So the cable income didn't help. We had $20 a door.

So that was the only thing out of the -- there are a couple of other items. But this is the only thing of significance that if you count it as other income, might make a difference in that $1 million loan.

MR. GOODWIN: Other questions?

MR. VASQUEZ: Just to clarify something that
you said. The $8.5 million, interest senior debt, that was after the 2016 award was made?

MR. STEWART: That is right.

MR. VASQUEZ: So when the Board was making that decision for that award, the $8.5 million wasn't part of the deal.

MR. STEWART: That is correct.

MR. VASQUEZ: Okay.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: I think that Colby wants to talk again. Brent. Thank you, Brent.

MR. DENISON: Gosh, that sounds so bad.

MR. GOODWIN: It does.

MR. DENISON: This is really, really technical stuff on the QAP. But the QAP has a cost per square foot scoring mechanism, that we all as developers have to put in. And it is grossly off at application from reality.

And that is just what it costs to build in Austin, Texas, versus what cost of construction per square foot is in the QAP, are just not aligned. I think is a one size fit all thing. But the other thing I would like to say is, I would love to collaborate with staff.

I sent seven opportunities that have changed in three months for income and expenses, like the water,
sewer and trash number, that they are using to underwrite is grossly exaggerated and high. He is -- the underwriting staff is constrained by this $20 per unit cable income thing, which is about a $60,000 to $70,000 income change.

RBC and FHA, HUD, they have all approved this deal as being feasible. And Dan, tell me, if this doesn't go through, do you think the equity is going to be there to do the deal?

MR. KEARSE: Thank you. Quite honestly, as Brent said, you know, we all have our separate boxes. I mean, ultimately, at the end of the day, this is the last stop.

So if we don't have an investor that will agree to do it, the deal dies. And so based on the underwriting that we have with the additional loan amount and the terms that were asked for in the waiver, the deal works, and we can get it closed. If the waiver is denied, I mean, pretty much the deal dies.

And I wanted to say that, because rent increases have occurred, from 2016 to 2017. They have been the biggest that we have seen in a really long time. Revenues came up.

We had originally, when I turned it in three months ago, the deal looked like it would not work unless
we had no payment to HOME. Now, according to our new numbers, I think we could be in there, actually, I know we can be in under 115, in your box, and have the repayment terms at zero percent and 40 years, just like you all did on that prior deal.

I just, you know, I think the collaboration that we had with Brent happened like on Friday of last week. And it is just a very complicated 40 million-some-odd dollar project.

MR. GOODWIN: So it is another 30 days to collaborate, kill the deal or --

MR. KEARSE: No, sir.

MR. GOODWIN: Do you see any benefit of another 30 days to collaborate, Brent? At this point?

MR. STEWART: The issue with this deal is DCR. There is no way that income can move. We have got maximum tax credit rents and we are using high market rents that we under our rule can get to.

MR. GOODWIN: Yes. In our box, the rules for that can't change.

MR. STEWART: It could be waived. You can't waive the tax credit rents, but you can waive other income, I guess. You can do some of those things. We wholeheartedly disagree with some of the expense things that Colby is talking about.
We have got a database of properties that report what expenses are. We go in and look at specific properties in that database. We don't use a big swath. We did take a look at some of Colby's other transactions.

And while the numbers are smaller, they are smaller projects. So the per unit numbers are not too far off. We do underwrite to a $600 a unit maintenance and repair number. His number was around $300. So there are some issues between there.

The second loan based on that and a wide -- first off, let's be real clear on what we approved on the other deal. One, we didn't approve any changes to the 2016 loan, except for the term. We didn't change the amortization. We didn't change the interest rates. The recommendation on Colby's deal does the same thing. It extends that term to 40 years. Secondly, the secondary loan on that transaction was underwritten within a 115. We did reduce the loan because of that.

But we used a 35-year amortization. We used some of the waiver ability that we had on that secondary loan. We don't have it on the first lien, and there is no second -- the 2016 award.

And because there is no room for any 2017 award, there was no need to modify the -- to make it
happen, there would need to be a waiver or something as it relates to the $20 per unit in other income, to get income up so the DCR would come up to support additional debt. It is pretty simple math.

MR. GOODWIN: Other questions?

MR. ECCLES: But under our adopted underwriting rules, it doesn't get there with this deal?

MR. STEWART: That is correct.

MR. GOODWIN: So another 30 days just kicks it down the road. We are back to having the same discussion we just as well had today. In your opinion?

MR. STEWART: Other than the income side, I don't know where we would go.

MR. GOODWIN: Right. Okay.

MR. VASQUEZ: Another question. If we had another $1 million in actual equity, rather than our loans, make the deal work? Rather than us give free money with no repayment for 40 years?

MR. STEWART: Yeah. I mean, any time there is a better rate. This is not a sources-and-uses problem. This is not GAAP; it's not that there is not an ability to have -- you have got debt.

You have got our debt. You have got the equity. And you have got the deferred developer fee. And those are the sources of funds. And our analysis shows
that if you do all of that, without that $1 million loan, it works.

I can appreciate what Dan is saying. That he has got a box. His own balance sheet or a fund, or something that the deal is going into. And clearly, any time you have got more subordinate debt on a transaction, you know, the better it is for equity in the senior debt.

MR. GOODWIN: Okay. Any other questions?

MS. BAST: Thank you for your time. Cynthia Bast. I think what we are going to hear is what is the will of this Board as to helping the 2016 transactions that find themselves in a ditch because of this change in economics.

And as Brent said, there may be some waivers that may be required. There may be some hard decisions that are a little bit out of the box, that may be required.

I would like to point out that because this Applicant is using FHA financing, HUD requires that the loan be repaid below the line from available cash flow. From 75 percent of available cash flow. So that loan, according to HUD, is only repaid to the extent there is cash flow to repay it.

But yet, under 13.8(a), it is being
underwritten to a 115 debt service coverage, as if it is fully repayable, not subject to cash flow. That is the rule.

But as I quoted in my prior remarks, the rule also says that if the development does not support this structure, the Department may recommend an alternative that makes the development feasible. So I think that is the question.

Is on this kind of loan that is set to be repayable out of cash flow? Anyway. Are we going to get tripped up with underwriting rules that say you have to be repaid above the line at a 115 debt service coverage.

It seems to me that if you could show that there is sufficient cash flow produced to repay this loan from 75 percent of cash flow, below the line, there may be a different consideration.

MR. VASQUEZ: And excuse me. Did I just hear you say that don't worry about this, we are not going to pay the FHA back, anyway.

MS. BAST: No. That is not what I said. I said --

MR. VASQUEZ: Basically, because --

MS. BAST: FHA is a first lien loan that is being repaid.

MR. VASQUEZ: Yes. But if there is not enough
money to pay it back, oh, it is not going to be paid back, don't count that against us.

MS. BAST: No. That is not what I am saying. What I am saying is --

MR. VASQUEZ: It actually is.

MS. BAST: What I am saying is that a debt service coverage requires that all of your debt be repaid at a greater than breakeven. And what I am saying is, that if we can show we have sufficient cash flow to support this loan, then should that be a consideration for this Board. That is the question I presented.

MR. GOODWIN: Any other questions? (No response.)

MR. GOODWIN: Do you have another statement you want to make?

MR. DENISON: Just one thing about time. I mean, I did submit within ten minutes of receiving Brent's email. I sent seven items, that I said, these have changed on the income and expense side. And they are really considerable changes.

And his response was, we can't consider these things, because we didn't request them. And I am like, they are in three months of time had passed. We have locked in construction financing.

We have locked into everything. All the
expenses. They have been underwritten by HUD. They have been underwritten by RBC. And I don't think you all have underwritten those numbers.

And I would love for 30 days to be able to say, look at RBC's numbers. Look at Dougherty and HUD's numbers, and at least get the exact right numbers. And I think it will be above the 115 that you all have.

It is just that a lot of things have changed. And the only time I have had to collaborate was Friday and Monday, I believe.

MR. STEWART: As it relates to that comment about sending information on Friday, the Board posting was last Thursday. We have been working on this transaction for a bit.

There were phone conversations prior to last week, talking about this transaction. We had an underwriting report to get published, in part, to get them to be able to get to this Board and make the case to you guys.

Otherwise, the underwriting report would not have been published. There would have been nothing in front of you today in terms of the underwriting report. And it would have been punted for 30 days.

The second thing is, as it relates to the 115 coverage, 75 percent cash flow, how we underwrite these
loans. We very much underwrite these loans as if we were underwriting a fully repayable loan.

Why? If it messes up and something happens, we owe the money back to HUD. This is not simply oh my goodness, we are just going to grant some of it. Right. We owe the money back to HUD, and so we do underwrite it at the 115.

As it relates to the 75 percent cash flow, that is a relatively new thing that we have experienced, because we had a deal cut with HUD, that that was not the case. It is a bad deal for us. It is a problem for us, that we haven't figured out a way around.

We absolutely underwrite them at a 115. If this, if these funds were a grant, it would come out of basis. That wouldn't hurt him, because he has got so much extra cost, that his basis is there.

But at the same time, you know, that -- granting the money gets him away from the 115 coverage. But yes, we underwrite loans to a 115 and not -- that is important.

MR. GOODWIN: Okay. So we have a motion I think, in front of us, that is to take staff's recommendation and deny --

MS. HOLLOWAY: The staff recommendation is to deny.
MR. GOODWIN: Is to deny. Any other discussion?

MS. RESÉNDIZ: What type of impact would this have on jobs in total? You all have secured projects right now. You mentioned that you have -- your developer is ready to build.

MR. DENISON: Yes. I mean, these deals are like, permitted.

MS. RESÉNDIZ: Okay.

MR. DENISON: I mean, this deal is like permitted and ready to go. And architects and engineers need to get paid.

MS. RESÉNDIZ: So it is on hold?

MR. DENISON: Well, it is proceeding forward. It is all proceeding. We just need the financing. I mean, it is about a $1 million of predevelopment funding that we have already put into the deal.

It is in Austin, Texas. It is the safe -- and by the way, I have 100 percent full senior deal in Georgetown. My whole portfolio has thousands of people on the waiting list. I can't see the risk associated with this.

MS. RESÉNDIZ: So just for my clarification, have you participated, or has your company participated in a loan of this magnitude?
MR. DENISON: Yes.

MS. RESÉNDIZ: Okay.

MR. DENISON: Yes. We have. We have. Every single one. By the way, our company has a stellar compliance record with you all. We have never defaulted on a loan. We have had no problems, in fact.

Our portfolio in Austin and San Antonio has just performed beautifully. And as far as the expenses and income, I mean, our whole portfolio is here.

I mean, our -- the water and sewer numbers that I was mentioning, the comparable is about two miles away from this property, that we use the same water and sewer from the City of Georgetown. But yes, this is a big deal.

MR. GOODWIN: Colby, you keep saying this project is in Austin, but it is listed here as being in Georgetown.

MR. DENISON: Sorry, Austin MSA. Our whole portfolio is in the suburbs of the Austin --

MR. GOODWIN: So it's in Georgetown, Texas.

MR. DENISON: Yes, sir. Sorry.

MR. GOODWIN: Okay. Any other questions?

(No response.)

MR. GOODWIN: Okay. We have got a motion and staff's recommendation is to deny.

MS. HOLLOWAY: Yes.
MR. GOODWIN: Okay.

MS. HOLLOWAY: Absolutely.

MR. GOODWIN: No other questions?

(No response.)

MR. GOODWIN: No other comments?

(No response.)

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Those opposed?

(A chorus of ayes.)

MR. GOODWIN: I'm sorry. Those in favor, say aye.

MR. VASQUEZ: Just to clarify something.

MR. GOODWIN: This is not going to happen if you say aye.

MR. VASQUEZ: He's making the motion to deny.

MS. HOLLOWAY: Okay. And what that motion accomplishes is denying the present application for the 2017 dollars.

MR. VASQUEZ: For the extra million dollars.

MS. HOLLOWAY: For the extra million dollars.

And no changes to the 2016 award. So the 2016 award is still there. It is still available according to REA's analysis. They can still close and move forward with that transaction.
This is just about the 2017 award. We are also not approving waiver of the disbursement requirements, which Cynthia took off the table earlier.

MR. GOODWIN: Right.

MR. ECCLES: But it also increases the term, doesn't it?

MS. HOLLOWAY: To 40 years, which is allowed under our rules.

MR. GOODWIN: To the 40?

MR. ECCLES: Yes.

MR. GOODWIN: Yes. Okay. So once again, who is in favor of staff's recommendation by saying aye.

(A chorus of ayes.)

MR. GOODWIN: Those opposed?

(No response.)

MR. GOODWIN: Okay. Staff's recommendation is upheld.

MS. HOLLOWAY: Okay.

MR. GOODWIN: The next project, Marni?

MS. HOLLOWAY: Is 17505. Do you wish to move forward with this one today?

MR. DENISON: Can we push that to next month?

MS. HOLLOWAY: If you would like us to pull it from the agenda, we can do that.

MR. DENISON: Please.
MS. HOLLOWAY: Okay.

MR. GOODWIN: Okay. So let's move forward.

MR. DENISON: I believe you have the next --

MS. HOLLOWAY: I don't know. I can't tell you standing right here that we will be here for the June meetings, because we are right in the middle of 9 percent housing, but yes, I think we need to work through the rest of it with REA.

MR. GOODWIN: Okay.

MS. HOLLOWAY: All right.

MR. GOODWIN: Item 3(f) regarding waiver of the multifamily direct loan rule.

MS. HOLLOWAY: Andrew gets to talk to talk again.

MR. GOODWIN: Andrew has the easy one.

MR. SINNOTT: Good afternoon. Andrew Sinnott, Multifamily Loan Programs Administrator. Item 3(f) is presentation, discussion and possible action on a waiver of 10 TAC 13.11(b) of the 2017 multifamily direct loan rule. This item accompanies item 1(j) that was on the consent agenda earlier, which was the ownership transfer for Santa Rita Senior Village.

Santa Rita Senior Village received an award of 9 percent Housing Tax Credits and HOME funds in July of 2016. As you all know and as others have mentioned today,
over the past seven months or so, equity pricing has
deteriorated due to potential changes in the corporate tax
code.

As a result of this deterioration in equity
pricing, many syndicators have become more selective in
who they partner with, primarily relying on more
experienced well capitalized owners and developers.

To that end, the previous General Partner and
principals of Santa Rita Senior Village have exited the
transaction to make way for a new General Partner and
principals that are anticipated to be able to close the
transaction and complete the project. The new principals
have decided to forgo the HOME funds that were previously
awarded to this deal, making up that source of funds with
conventional debt, and reducing developer fee.

So as a result of the ownership transfer, the
HOME funds are being returned, while the 9 percent Housing
Tax Credits will remain in place. At this point, it is
worth considering the Board action that was taken in the
past few months to waive two things. Penalties associated
with 2016 9 percent awardees returning their credits.

And 2016 9 percent late and direct loan
awardees returning both their credits and direct loan
funds, if they can document a significant loss in equity
attributable to these lower syndication rates. The
deadline for folks to return the credits and direct loan funds while waiving the penalties is June 30, 2017.

The penalty under 10 TAC 13.11(b) states, if a direct loan award is returned after Board approval, or if the Applicant or affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC 11.9(f), or the Department may prohibit the Applicant and all affiliates from applying for multifamily direct loan funds for a period of two years, if they return their funds, or have failed to take necessary actions specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements.

So this scenario, an ownership transfer resulted in direct loan funds being returned. It was not necessarily contemplated by those previous Board actions, in that the Applicant has transferred ownership of the transaction to another entity that does not wish to retain the HOME funds that were previously awarded.

Another mitigating factor, should the Board choose to waive the penalty under 10 TAC 13.11(b) for this specific instance, is that staff has learned that the federal 2017 appropriations act appears to suspend two-year commitment deadline for a 2015 allocation of HOME
funds. Which would give staff additional flexibility to commit these returned funds.

So this deal was likely going to get 2015 or some earlier allocation year of HOME funds. But as a result of the 2017 Appropriations Act, we wouldn't have to hold by the two year commitment deadline associated with those funds. With that, staff recommends waiving the penalty under 10 TAC 13.11(b) for the Applicant and all affiliates of Santa Rita Senior Village.

MR. GOODWIN: Thank you, Andrew. Do I hear a motion?

MR. BRADEN: I move to approve staff's recommendation to waive the penalty under 10 TAC 13.11(b).

MR. GOODWIN: A second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: A second by Ms. Reséndiz. All those in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Okay.

MR. SINNOTT: Thank you.

MR. GOODWIN: 3(g).

MS. HOLLOWAY: I don't want to do that one.

MR. GOODWIN: I'm sorry about that. So we are at the point in the agenda, where we take comments from the public about --
MR. ECCLES: Actually, sir, if I could make a quick point of clarification. The waiver of 13.11(b) is for a specific project. It is not being generally waived.

MR. GOODWIN: Okay. Thank you for that clarification. Do we have any general comments that you would like to make? We can't have any discussion, but this could lead to items being put on the agenda for things in the future.

MS. RICKENBACKER: Hello. And I will go quickly. I know everybody is hungry. I just really want to say thank you to the Board members that have been participating in the program that are coming off.

The only one that is here, that I have already said this to, obviously is Mr. Gann. But Dr. Munoz is not here, and neither is Mr. Chisum. So I really hope you all will extend the same to both of them for all their hard work with this Agency, on behalf of the development community.

MR. GOODWIN: Thank you.

MS. RICKENBACKER: Thank you so much.

MR. GOODWIN: Thank you. Before we entertain -- are there any other public comments?

MR. IRVINE: You have got a bunch of people that just won the good citizenship endurance award.

VOICE: I think they are paying people.
MS. DAWSON: Good afternoon. My name is Chelsea Dawson from San Antonio, Texas. I am presenting today a petition of opposition for TDHCA application 17356, and 17376 out of San Antonio, Texas. Collecting this petition and giving voice to thousands of residents in northwest San Antonio has been a humbling and powerful experience.

This is a passionate community that wishes to be a full participant in any conversations about new projects that will impact local resources, properties, and the community as a whole. The overall lack of community planning is alarming. We have over 3,000 signatures we are presenting to you, to confirm that.

The City of San Antonio, specifically Councilman Cris Medina, was given opportunities to inform the community surrounding the projects known as the Acacia and the Bristol, but failed to do so. It was December 12 that developers Versa and ABC Development first requested applications through the City to apply for the TDHCA.

At that point, we then move to January, where Cris Medina met with two HOAs that are here today and failed to discuss anything about these projects with those HOAs, did not inform us that these were going on. We live in backing one of the properties, and we live less than a mile of the other property.
The city attorney of San Antonio also suggested to the developers that they needed to reach out to six different HOAs to discuss this, two of which are here today, and they did not reach out to any of those six neighborhoods. February comes along, and Cris Medina talks with the other councilmen about this. He also actually brings up in meeting minutes that the ability to communicate with neighbors, city council and developers needs to be improved. There needs to be changes made.

Instead of working on those changes, he and the other councilmen voted for the developers to move forward with their application process. So come April, residents of the surrounding area find out, doing our own research that these projects are moving through in our area.

The biggest concern, what I am taking signatures from all of our petition signees is that there issues with flooding. These are both on floodplains. School overcrowding and traffic issues.

Despite the fact that the city attorney advised them to reach to us, and the developers also seek points when they reach out to us, it still was not done. Even after we have been going through the petition process. The developers are aware of that.

We have been reaching out to the developers. They still have not come forward. They chose not to, and
the end result basically, residents, constituents, and taxpayers with no knowledge of the projects.

This has created doubt amongst residents in San Antonio, along with concern what could happen to the community if these projects are approved. Lack of community involvement and communication has generated the signatures I am holding.

And we as residents, constituents and taxpayers are disappointed in our local State Representatives and organizations. At this time, we are requesting that TDHCA deny these applications for the properties listed, as these developers and the City of San Antonio did not properly inform the residents.

MR. GOODWIN: Thank you.

MS. DAWSON: Thank you.

MR. GOODWIN: Other public comments?

MR. DECKER: Hello. My name is Bruce Decker. I live in San Antonio. I have been a resident there for about ten years. I am here to talk a little bit about the Bristol and the Acacia.

Hopefully, that is better. Now San Antonio is one of the most flash flood-prone areas in all of North America.

As a matter of fact, San Antonio and Bexar County has spent about $850 million on floodage and
drainage projects since 2007. Now, just in the past
election cycle, a couple of weeks ago, San Antonio has
approved another bond for another $138 million to address
flooding and drainage problems, and to get people out of
the floodplain.

Mr. Chairman, fellow Board members, San Antonio
is trying to get people out of the flood plain. Now, much
to my surprise, much to my neighbors' surprise, we find
out that two of the affordable housing projects proposed
for San Antonio are being proposed in 100-year
floodplains.

Now, what happens when something like the
Acacia is built in the 100-year floodplain? Well, the
buildings act as an obstruction to the flow, to the
natural flood flows. The waters hit the buildings, they
begin to rise. The upstream waters begin to rise as well.

So what is going to happen to the people that
live along the floodplain? Who is going to pay for their
property damage?

Who is going to pay for their flood insurance?

Not only does building a development in a floodplain
affect the people who live upstream, it affects the
downstream residents as well.

When you build the Acacia or the Bristol in a
floodplain, you get rid of all the natural grasses. You
cut down the trees and the wooded area. You destroy the water-carrying capability of the floodplain. This raises the downstream levels of the flood as well.

So now what are we doing to do about the people who live downstream of the Bristol? What are we doing to do about the people who live downstream of the Acacia?

What happens to the people who live across the street from the Acacia who, due to prior poor planning, already find themselves in the 100-year floodplain? How many more houses are we going to add to the 100-year floodplain by building projects such as the Acacia or the Bristol in the floodplain?

Now, not only does building in a floodplain affect the residents that live around the floodplain, it hurts the very people that we are putting in the affordable housing that we are trying to help. If you take a look at the Acacia, you are going to see that the 100-year floodplain surrounds it completely.

So not only is it being built in a 100-year floodplain, it is completely surrounded by it. It is almost like it is an island. The only road in and out of the Acacia is also in the 100-year floodplain.

So in the event of a flash flood, the only way to get out of the Acacia is for the people to traverse the very flood waters that they are trying to avoid. Now, I
find this to be a safety concern. And I think it also qualifies as a negative site attribute.

Having said that, given two choices, if you want to build a project in a floodplain or locate one out of a floodplain, shouldn't we always choose to build the one out of the floodplain? Mr. Chairman, fellow Board members, I ask you this.

Please deny awarding tax credits to the Acacia or to the Bristol, or any project being built in a floodplain in San Antonio. We in San Antonio are trying to get people out of the floodplain and keep them out of harm's way. Mr. Chairman.

MR. GOODWIN: Thank you.

MR. VASQUEZ: Can I ask him a silly question? Completely unrelated. So are you actually part of this group, or were you hired as a professional orator? One condition --

(Simultaneous discussion.)

MR. DECKER: If you look at the top of the Acacia --

MR. VASQUEZ: No. No.

(Simultaneous discussion.)

MR. GOODWIN: He is answering this question.

MR. VASQUEZ: That was a great presentation.

MR. DECKER: I actually live right behind the
Acacia project. So if you give points according to the rules, like locating properties throughout the 100-year floodplain those flood waters would naturally be deviated onto my property, onto my neighbor's property.

MR. GOODWIN: My apologies. But we are not allowed to engage in discussion at this segment. You have to get on the agenda. It has to be properly posted for us to have a discussion with you. So we listen, but we can't get into a discussion with you.

And I might also add, if all of you have the same thing to say, and it is opposed to these projects, that you can stand up and say, us too. And let us know who you are.

And we have some people here that are going to be read into the record. But we can't at this part, get into a discussion with you about these things.

MR. DECKER: Can you listen to us?

MR. GOODWIN: Yes. And we have listened to you.

MS. DAWSON: Just two quick questions; yes or no answers.

MR. GOODWIN: No. We can't. That is not allowed in this segment of the agenda. For us to have a discussion, items have to be posted with proper notice for us to get into a discussion about that.
Do you have some things you want to read into the record? Okay. We can't accept anything from you.
No. No material.

And if you collectively, if you are all part of a group, and you want to have one person speak for everybody, you can stand up and show us that you have got that support. We try to acknowledge it that way as well.

MS. ROBLEDO: Different perspectives on all of it. That is all.

MR. GOODWIN: Okay.

MS. ROBLEDO: My name is Michelle Robledo. I am the President of Braun Station East homeowners association. That is the property that directly abuts the Acacia.

And what I am going to address is that the City of San Antonio, they have adopted a structured plan for growth. San Antonio Tomorrow has adopted a nine point approach to the planning. And regarding these projects, I only want to address four.

One is economic centers. In order to place these projects into the -- they wanted to make sure that they were near business centers and economic centers. And these economic centers are nowhere near either of these two properties.
Environment sustainability, there is obviously non permeable ground cover that we really do need to, excuse me, address. The homes in and around and downstream of these sites, really for a greater chance of that. And this is something that they are wanting to avoid in the plan.

Transportation corridors. The transportation corridors are done to carry people in and around the communities. Those communities are not reached by those transportation corridors, at all.

And fourth and final, there is transitional housing. They are set up to have transitional housing that goes between single family dwellings, one and two story dwellings to multifamily multilevel dwellings, three and four dwellings.

They are supposed to be transitional housing such as duplexes, garden homes et cetera. This is not being met either. So in San Antonio’s long term plans, none of this fits. And that is why I oppose it.

MR. GOODWIN: Thank you. Any other public comment?

VOICE: I have some written statements here. Can I submit these for the record?

MR. GOODWIN: No.

VOICE: Do they have to be spoken?
MR. IRVINE: No.

MR. GOODWIN: You can submit it over here.

VOICE: Here?

MR. GOODWIN: Yes.

VOICE: Okay. So I will just put my name here. And then the next speaker will be Mark. That will save us some time. Thanks for hearing our comments.

MR. GOODWIN: Thank you.

MR. HOWSON: I am sure you are tired, too. I am Mark Howson. I live in San Antonio. I am speaking specifically about the Acacia project, case number 17356. Specifically, I have three concerns about this project. First off, I would ask you to request the staff to seriously look at the application and in particular look at the points being applied for the application.

In looking at the application we found that in their points for site characteristics they claim items such as a museum within four miles. There is no museum within four miles and it is not documented in the application.

A credit for ADA compliant playground within a half a mile, that has an ADA compliant route to it. And I personally looked over that route for us. It is not an ADA compliant route and the route is actually more than
half a mile.

And their claim that there is a health care facility within four miles. And the facility documented is actually nonexistent today. We also strongly want the staff to look at the organizations that are supporting this group.

We look at the applications and look at the QAP, the organizations that support this must be representing the whole community or a significant matter within the community such as police, fire, mass transit, flooding, those kinds of topics to qualify as an eligible unit to be representing of the community. And of course, that is required so that the commission knows that the community has been engaged.

Well, if you look at the organizations on this one, none of them meet that qualification. One organization, it sponsors an annual Hispanic basketball tournament in a gym that is almost ten miles away. That is the sum total of its normal activities.

Another organization provides educational services to immigrants who are working to become citizens. These are good organizations but that does not raise to the whole community.

Another organization specializes in helping veterans -- and I am a veteran myself -- who have special
needs. Again, it is a small segment; not the whole community.

And another organization supports, literally, their job is to support Latino interests. Again, all good organizations, yet they are very limited in their scope, and don't represent the whole community. So these do not raise to the level of the QAP.

The final concern that is really significant to us, and you have heard this over and over again, is that we were intentionally, actively not engaged in the process. My housing division happens to back up to the Acacia. Literally, you can look out the windows of our houses at where they are going to build it.

And we didn't know anything about it. We know our councilman knew about it. We have personally -- the first time we found out about it, is when we looked at the application on your site.

That is how we found out about it. And when you look at that situation, we, myself and another one of our citizens went to talk to the developer. We had that conversation.

The developer has never come to talk to us. We talked to their secretary and found out about the project that way. And so that is what we are stuck with. So we look at that.
The process of not having the community in the process is really one of the things that is serious and causes these kinds of projects to actually fail. And we will have another speaker in a moment who will talk about how a successful project can be done.

MR. GOODWIN: Thank you

MR. HOWSON: Thank you very much.

MS. MALDONADO: Thank you for the opportunity to speak. My name is Bianca Maldonado. And I am also a resident of District 7.

There are several of us that came up from San Antonio today. And just as you spoke earlier, if you all would stand, all of us that came today from San Antonio. So you can represent. We are all in one city council district.

We have a new councilwoman elect who is also here, present today. And I am here because I have seen the success of a tax credit property, Primrose at Monticello Park. That is the community where I am a neighborhood President.

And there are huge strides and improvements that can be made to allow affordable housing for the most vulnerable people, the seniors in our community, with the success of Primrose at Monticello Park that we have had. But that happened through significant amounts of
It is a dialogue. So your QAP process, and there are 25 points on the table, 25 points on the table between the State Representative and a letter from the City Council, saying that they have a resolution of support for these projects.

And these are highly competitive projects. And you have a community who is not engaged with conversations regarding the 100-year floodplain, and also transportation and traffic and congestion.

It raises the level of due diligence. And so when you are looking at awarding points in a highly competitive process, when you have people who are not participating in good faith in that process, then they should not be eligible for being awarded those projects.

Specifically, I am speaking about the Acacia, project 17356, the Bristol, 17376. These are the ones that are still in process. There were many more before this that have now fallen off the list.

So you can imagine being a part of a community to know that they have a target on them, because of the points that are awarded, because of the census tract area, the quality of their schools. And then how easily these letters fell from their elected representatives with no conversation.
There is a reason our current councilman lost his election. There is a reason there is a councilwoman-elect here to address you. So I will ask you, in the spirit of good faith development in working with communities this goes against everything that the TDHCA stands for in building a proper development that involves communication.

A lot of people say, well, I don't want that in my backyard. That is not the case here. This case is about life safety issues and transportation, and about a conversation to be had. So 25 points at the end of the day.

And you look at the numbers from the census that was just released. San Antonio, fastest growing city in population in the entire state, third in the nation.

This is a little bit away. And maybe this is an opportunity to correct the QAP process for 2018. But most importantly, thank you for your time today. Thank you for your service.

MR. GOODWIN: Thank you.

MS. SANDOVAL: My name is Ana Sandoval, and I am speaking on Applicant 1736 know as the Bristol and number 17356 known as the Acacia. And I must congratulate you for your endurance through this meeting, as well as my team who came up today.
So I'm Councilwoman-elect Ana Sandoval for the San Antonio City Council District 7, where these developments are proposed. I will be taking my oath of office next week. You all are invited to come, May 31st.

Also present today, I would like to recognize that there are staff in the offices of State Senator Jose Menendez, State Representative Justin Rodriguez and State Representative Vela all from the San Antonio area. As Bianca just mentioned, our is a very quickly growing city, and we face many challenges because of that, including a strong need for affordable housing options.

That is your work in helping us address this challenge. It is greatly needed and it is greatly appreciated. We also appreciate that you support and you encourage local engagement on affordable housing developments.

Per the TDHCA document titled, "Housing Options for Texas Communities, A Guide for Local Engagement on Affordable Housing," local government resolutions of support are a significant scoring item in awarding these tax credits; 25 points in total. And these letters are intended to encourage local governments like ours to engage with the developers as well as constituents to ensure what is called a meaningful opportunity for input.
and dialogue.

In the case of the Bristol and the Acacia, there were no meaningful opportunities or any opportunities for input and dialogue by constituents before these letters were submitted with their application.

This lack of dialogue has left our community with the unanswered questions which our professional orator brought forward, along with everybody else. With the many unanswered questions and concerns that you have heard today.

Once I am on Council it will be my job to ensure that there are meaningful opportunities for input and dialogue with constituents prior to awarding any resolutions of support in my Council district. Thus, I am here to express my lack of support for these two projects, due to the absence of public engagement as well as the other concerns brought forth by the previous speakers.

It is our understanding that the current QAP does allow a city to retract its letter of support from the application process, once it has been submitted. We understand that. However, once I am in office, I do plan to pursue a resolution that will rescind the City support for these projects on the basis of lack of public engagement.
Thank you very much for your time and attention. And you are dismissed for lunch, I think.

MR. GOODWIN: Well, thank you very much. And thank you to all of you who drove up here from San Antonio.

Unfortunately, as I said in this part of our agenda, we are restricted from participating in discussion with you. So we can only listen. We have some things we need to read into the record?

MS. HENDERSON: Peggy Henderson, TDHCA, registering public opinion against projects 17356 and 17376. Would you like for me to read these individual names, or would we just include these also in with the others?

MR. GOODWIN: I think we can just include them into the record if you would. Yes, please. It is good things we do here, as a former Chairman of ours used to say, and there is a gentleman that has been here for every meeting that I have ever participated in, who, this is his last meeting. And we would like to acknowledge him and recognize him for the service that he has given to this Agency and to the State of Texas. And bid him farewell, but never say goodbye. Tom.

MR. GANZ: Yes.

MR. GOODWIN: Thank you for all that you have
done.

MR. GANZ: Thank you.

MR. GOODWIN: We appreciate you. We love you.

We are going to miss you. And we have a little --

(Applause.)

MR. IRVINE: Also, this certifies that the State of Texas House of Representatives herewith present to Tom H. Ganz by the Texas Department of Housing and Community Affairs this flag that was flown over the Capitol of the Sovereign State of Texas on May 12, 2017, in appreciation of eight years of service to TDHCA's Governing Board.

MR. GANZ: Thank you, Tim.

MR. IRVINE: And it has been more than just a service. It has been just an immense comfort to know that when we were faced with the threat of not having a quorum, Tom said, I am doing whatever I have to do to rearrange my schedule. I am driving down.

He probably put on 50,000 miles. You have been all over all the details, but you have also been a real source of strength and fortitude. And you know, a ruler without sharp edges is just a guideline. You said it, and you have lived it. So we thank you so much.

MR. GANZ: Tim, it has been great to work under you. And miss all the fellows here, and the ladies.
Especially you out there who contribute so much time and hard work to make our job a lot easier.

And you can tell just by this meeting today, it gets pretty tough sometimes. I thank all of you all out there. The TDHCA group, I love you all.

(Applause.)

MR. LYTTLE: I actually have 16 letters I have to read into the record.

(Simultaneous discussion.)

MR. IRVINE: Do it outside.

MR. LYTTLE: Just kidding. One resolution.

One final resolution.

"Whereas, Tom Ganz, appointed on March 13, 2009 has been an invaluable contributor to the Governing Board of the Texas Department of Housing and Community Affairs. Whereas; Tom has logged roughly 50,000 miles, obviously more, based on what he just said, during driving to Department, Board and Committee meetings."

"Whereas, Tom has repeatedly brought to bear a steady and unwavering devotion to the principal that any rule without sharp edges is just a guideline. Whereas; Tom has often summoned lessons learned as a real estate professional and endowed the Board with the benefit of those lessons."

"Whereas, Tom, especially during appeals heard
by the Board has repeatedly spoken up for the interests of the low income persons, 'down the line,' whom we are here to serve. Whereas; Tom has repeatedly advocated for the importance of moving forward as quickly as possible and during the timely use of precious resources for the benefit of Texans.

"And whereas, as a realtor, Tom has been an especially strong advocate for the benefits of the Department's first time home buyer programs, and has delighted in making motions to facilitate those programs, and recognizing the accomplishments of the participating lenders as well as the Texans served.

"Now therefore, it is the recommendation of the staff of the Department and Tom's fellow Board members that he be recognized by acclaim and deeply thanked for his invaluable contributions, his commitment of time and energy, his wisdom and insight in questioning and deliberating in his selfless dedication to Texans."

(Applause.)

MR. GOODWIN: I will entertain a motion by Mr. Ganz that we adjourn.

MR. GANZ: You have got it.

MR. GOODWIN: Adjourned.

(Whereupon, at 2:48 p.m., the meeting was concluded.)
CERTIFICATE

MEETING OF:     TDHCA Board
LOCATION:      Austin, Texas
DATE:      May 25, 2017

I do hereby certify that the foregoing pages, numbers 1 through 235, 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.

6/2/2017
(Transcriber) (Date)

On the Record Reporting
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