BOARD MEMBERS:

LESLIE BINGHAM ESCAREÑO, Acting Chair
J.B. GOODWIN, Chair (absent)
PAUL BRADEN, Member
ASUSENA RESENDIZ, Member
SHARON THOMASON, Member
LEO VASQUEZ, Member (absent)

TIMOTHY K. IRVINE, Executive Director
AGENDA ITEM

CALL TO ORDER 5
ROLL CALL 5
CERTIFICATION OF QUORUM 5
Pledge of Allegiance; Texas Allegiance 5
CONSENT AGENDA 6

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:
HOME and Homeless Programs
a) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Single Family Development ("SFD") Open Cycle Notice of Funding Availability ("NOFA")
b) 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")
c) Presentation, discussion, and possible action on State Fiscal Year 2018 Homeless Housing and Services Program awards

ACTION ITEMS

ITEM 2: REPORTS
Report of Third Party Requests for Administrative Deficiency under 10 TAC §11.10 of the 2017 Qualified Allocation Plan received prior to the deadline:
17007 Magnolia Station Winnie
17281 The Residence at Arbor Grove Arlington
17288 Forest Trails Lindale
17305 Payton Senior Killeen
17322 Provision at Wilcrest Houston
17356 The Acacia San Antonio
17368 Cielo McAllen
17372 Sunset Trails Bullard
17376 The Bristol San Antonio
17388 West Pecan Village McAllen
17390 Las Palomas McAllen

ON THE RECORD REPORTING
(512) 450-0342
ITEM 3: RULES
Presentation, discussion, and possible action on Orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and Orders adopting new 10 TAC Chapter 23, Single Family HOME Program ("HOME Rule"), concerning HOME single family activities, and directing their publication in the Texas Register

ITEM 4: MULTIFAMILY FINANCE
a) Presentation, Discussion, and Possible Action regarding exemption under 10 TAC §10.101(a)(2) for 2017 Housing Tax Credit ("HTC") Applications:
17259 Mistletoe Station Fort Worth
17322 Provision at Wilcrest Houston
17368 Cielo McAllen
b) Presentation, discussion, and possible action regarding awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability
17501 Live Oak Trails Austin
17502 Freedom=s Path at Kerrville Kerrville
c) Presentation, discussion, and possible action on timely filed appeals under 10 TAC '10.901(13) of the Department=s Multifamily Program Rules relating to Fee Schedule, Appeals and other Provisions
17007 Magnolia Station Winnie
17028 Vineyard on Lancaster Fort Worth
17064 Chaparral Apartments Midland
17097 Holly Oak Seniors Houston
17170 Star of Texas Seniors Montgomery
17194 Oaks Apartments Quitman
17199 Santa Fe Place Temple
17203 Park Estates Apartments Quitman
17247 Western Springs Apartments Dripping Springs
17251 Pine Terrace Apartments Mount Pleasant
17267 Industrial Lofts McAllen
17283 Avanti Manor Harker Heights
17297 Kountze Pioneer Crossing Kountze
17305 Payton Senior Killeen
17322 Provision at Wilcrest Houston
17323 Skyway Gardens Alpine
17327 Legacy Trails of Lindale Lindale
17331 Westwind of Killeen Killeen
17356 The Acacia San Antonio
17376 The Bristol San Antonio
17388 West Pecan Village McAllen
17390 Las Palomas McAllen
17741 Gateway Residences Raymondville
d) Presentation, Discussion, and Possible Action regarding amenities used for scoring points under 10 TAC 11.9(c)(4) related to Opportunity Index for Application #17327, Legacy Trails of Lindale, Lindale

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

EXECUTIVE SESSION none

OPEN SESSION

ADJOURN

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MS. BINGHAM ESCAREÑO: Good morning. So y'all know that J. Paul took the giant gavel with him. Right? I don't feel like I'm really in a lot of power up here. (General laughter.)

MS. BINGHAM ESCAREÑO: Good morning. Welcome to what is feeling like the weekly meeting of the Texas Department of Housing and Community Affairs. Nice to see you guys again. We have a great agenda today. We're going to accomplish good things as always. First, let's take roll. Mr. Braden?

MR. BRADEN: Here.

MS. BINGHAM ESCAREÑO: Mr. Goodwin is out today. Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MS. BINGHAM ESCAREÑO: Ms. Thomason?

MS. THOMASON: Present.

MS. BINGHAM ESCAREÑO: And Mr. Vasquez is out today also. We have four members present, which does constitute a quorum, so we can do business today. Would you lead us in the pledges?

ALL: I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible with liberty and justice for all.
Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

MS. BINGHAM ESCAREÑO: Michael, is there anybody that we need to recognize here?

MR. LYTTLE: No, ma'am.

MS. BINGHAM ESCAREÑO: Great. Good morning.

MR. IRVINE: Madam Chair, I believe before you take up the consent agenda, Jennifer Molinari has two items she needs to provide.

MS. BINGHAM ESCAREÑO: Good morning. Very good.

MS. MOLINARI: Good morning. Jennifer Molinari, HOME and Homeless Programs Director. I need to read into the record a couple of changes. We need to pull Item 1(c) from the Consent Agenda. And I also need to make a couple of corrections into the record for Item 1(b).

So for Item 1(b), those are award recommendations for home open cycle applications that the Department has received. The changes I need to read into the record is that there are actually two administrators -- three administrators, not two administrators, that we are recommending for award. And also, that the service area for Application 2017-1006 should read Guadalupe and Comal Counties. That's all I've got.
MR. IRVINE: So those items would remain on Consent as corrected?

MS. MOLINARI: Yes.

MS. BINGHAM ESCAREÑO: And Jennifer, so Guadalupe and Comal Counties is the applicant or --

MS. MOLINARI: So the applicant is New Braunfels Community --

MS. BINGHAM ESCAREÑO: Yes.

MS. MOLINARI: -- Resources, and they would like to serve --

MS. BINGHAM ESCAREÑO: Areas served. Perfect.

MS. MOLINARI: -- more than just the City of New Braunfels --

MS. BINGHAM ESCAREÑO: Great.

MS. MOLINARI: -- with these funds.

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

MS. MOLINARI: Okay.

MS. BINGHAM ESCAREÑO: Do the board members have any questions about those corrections? If not, we'll entertain a motion to approve the consent agenda with the revisions recommended by staff.

MR. BRADEN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MS. RESÉNDIZ: Second.
MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

I think what we're going to do is take a very brief break for executive session. I'm thinking maybe 15 minutes, so maybe if we could reconvene at -- you think 9:20 is good? Just a quick 15 minutes for us to meet.

I'll read this into the record, and then we'll break: "I, Leslie Bingham Escareno, the Vice-Chairman and proceeding officer of this meeting of the Governing Board of the Texas Department of Housing and Community Affairs do hereby certify that this document accurately reflects all subjects considered in a closed session of the Governing Board of the Texas Department of Housing and Community Affairs on July 13th, 2017."

MR. IRVINE: Sorry.

MS. BINGHAM ESCAREÑO: Oh, sorry. That was the closing. This is the opening one, right?

MR. IRVINE: Yeah.

MS. BINGHAM ESCAREÑO: Okay. The Department -- the Governing Board of the Texas Department of Housing and Community Affairs will go into closed session or executive
session at this time. We're going to show that is 9:05.

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 555.071 to seek and receive the legal advice of its attorney, Item Number 3, pursuant to Texas Government Code 551.072 to deliberate the possible purchase, sale, exchange, release of real estate and/or pursuant to Texas Government Code 2306.039(c) to discuss issues related to fraud, waste or abuse with the Department's internal auditor, fraud prevention, or coordinator of ethics service.

This closed session will be held within the anteroom to this room of the John H. Reagan State Office Building Number 140. The date is July 13th, 2017. The time is 9:06.

Okay. We'll be back in 15 minutes.

(Whereupon, at 9:06 a.m., the meeting was recessed, to reconvene this same day, Thursday, July 13, 2017, following conclusion of the executive session.)

MS. BINGHAM ESCAREÑO: My timing wasn't that good. It's 9:34. The Board's now reconvened in open session. During the Executive Session, the Board did not adopt any policy, position, resolution, rule, regulation, or take any formal action or vote on the item.
Okay. Let's return to the action item, Agenda Item No. 2, Reports, Marni?

MS. HOLLOWAY: Good morning, Madam Vice-Chair and Members of the Board. I'm Marni Holloway. I am the Director of the Multifamily Finance Division.

Item 2 is a report of Third Party Requests for Administrative Deficiency under 10 TAC '11.10 of the 2017 QAP that were received prior to the deadline. You'll recall that last month we had a long report item about the RAFs. This is the rest of them that we hadn't been processed through before the last meeting.

So the Third-Party Request for Administrative Deficiency allows an unrelated person or entity to bring new material information about an application to staff's attention. Staff will consider whether an application should be the subject of an administrative deficiency based on the information submitted. Requesters must provide sufficient credible evidence to substantiate the deficiency request. The deadline for submission of RAFs was June 1st of 2017. We received over 40 of them on that day.

This report item includes all remaining determinations that weren't addressed at the June 29th meeting. The Department's Governing Board has final decision-making authority on any of the issues reflected
here. And thus, these determinations are subject to change. However, a requestor may not formally appeal a staff determination if precluded by the appeal process role.

Where staff is recommending that a request result in loss of points or other action, the applicants are notified and have an opportunity to appeal the staff determination. Staff is also provided notice of the results of the request to the requestor.

MS. BINGHAM ESCAREÑO: Hey, Marni, so this is a report item?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: We're going to roll through what's in our board book.

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: If there is anyone who wants to make public comment, I recommend we go ahead and roll through Marni's entire report. But for those that are interested in providing public comment, the first two rows are available for anybody that would choose to make public comment after we finish the report.

MS. HOLLOWAY: Okay.

MS. BINGHAM ESCAREÑO: Great.

MS. HOLLOWAY: All right. The first one is Application Number 17007, Magnolia Station. This is in
Winnie. The requestor asked the Department to review items selected for scoring under the opportunity index and tiebreaker factors. Specifically, the requestor contends that the safari park used for scoring as an outdoor recreation facility is within the Winnie Stowell County Park, which is counted as a public park. And because the same feature may not be used twice, they are not eligible for two points under the Opportunity Index.

Because the applicant selected a total of nine amenities, with three of them as tiebreaker factors, the requestor suggests that the application lose one point under the tiebreaker category. In order to expedite resolution of this question, rather than issuing an administrative deficiency, staff issued a scoring notice on June 27th, reflecting the loss of one tiebreaker point, and the applicant is able to appeal that notice.

The next one, The Residence at Arbor Grove in Arlington, the requestor asked the Department to review scoring related to concerted revitalization plans. The requestor claims that the 2010 to 2015 consolidated plan submitted in the application does not meet the requirements for a concerted revitalization plan because it covers the entire city of Arlington rather than a specific area, and the consolidated plan had expired.

You may not be aware, the consolidated plan is
something that all participating jurisdictions submit to HUD every five years that tells them how they are going to use the funds that are provided to them under HOME and CDBG and ESG and other funds sources over those next five years.

Staff found that the concerted revitalization rule contains no requirement regarding the timeliness of the plan so that a restriction cannot be opposed -- imposed at this time. Further, while the City of Arlington comprehensive plan or concept consolidated plan itself covers the entire city, it includes individual plans for different sectors of the city.

The next one, 17288 is Forest Trails of Lindale. The requestor asked the Department to review scoring related to opportunity index. The requestor claims that the applicant did not provide supporting evidence for five of the twelve items listed on the application. Because the application listed the amenities used to gain these points and the tie breakers, an administrative deficiency was issued regarding the questioned evidence.

The applicant provided supporting documentation of all facilities claimed in the application. Staff accepted the applicant's response to the administrative deficiency, and no adjustment has been made to points.
The next one, 17305 Payton Senior in Killeen, the request asked the Department to review scoring related to the opportunity index. The requestor claims that the site is not located less than half a mile on an accessible route from public transportation because the public transportation does not operate on weekends, that it was not located less than half a mile on an accessible route from an accessible playground, and that there is no evidence that the Bacon Ranch Park meets 2010 ADA standards or that it is open to the public.

The requestor claims that they are not eligible for points because the Fort Hood November 5th Memorial is not a museum. And the requestor expresses concerns regarding a high voltage transmission line that bisects the property.

A scoring notice was issued on May 31, 2017, for some of these items, and the applicant has provided responses. The scoring notice questioned the accessible route rather than the operating schedule of the public transportation. So there are two components to that scoring item. There's the route, and the -- excuse me -- that the public transportation operates all week. So we had questioned the route.

The applicant has provided a letter from the public transportation provider memorializing their request.
that the development include improvements to the existing
bus stop subject to approval by TXDOT or a related permit.

A letter from the nonprofit organization that owns the
parks includes a description of the nonprofit's board
action on February 23rd, 2017 to accept responsibility for
maintenance of the property and park equipment, and an
email from the city describing the park as a privately
owned park open to the public.

The applicant points to language in the QAP
which states the development site is located less than
half a mile on an accessible route from an accessible park
with an accessible playground, both of which meet 2010 ADA
standards" and claims that because the boundary of the
park is on an accessible route as described by their
third-party expert, an accessible route to the playground
is not required by the rule.

Staff has determined that the accessible route
to public transportation has not been proven because it
relies on future actions on property the applicant does
not control, and there is no mention in the application of
creation of the route either in the site plan or in the
cost schedules. While the nonprofit owner of the park
claims it is open to the public, the Department has
consistently determined that privately held parks are not
considered public parks.
And finally, the Fort Hood November 5 Memorial is not a museum because it does not have a primary purpose of the acquisition conservation study exhibition and educational interpretation of objects having a scientific, historical, or artistic value. That's the requirement and rule for a museum. Again, staff has issued a scoring notice, and the applicant is able to appeal that notice.

Two other requests submitted for this same application include documentation that the applicant purchased the property used for the accessible playground and transferred it to the current nonprofit owner, the playground property was not zoned as a park at the time of application and the requestor contends that it is not on an accessible route.

The requestor expresses concern that allowing the applicant to create a park solely for the purpose of scoring would allow other applicants to open businesses or create amenities solely to gain a competitive advantage and then close them after tax credits are awarded. These additional concerns have been raised with the applicant through separate communication.

The next one, 17322 Provision at Wilcrest in Houston, this request asked the Department to review representations made by the applicant in relation to site requirements and restrictions. They claim the proposed
site is located within the 100-year floodplain and the application materials do not include the appropriate measures for development.

The request also includes information that the Southern Crushed Concrete plant within 500 feet was not disclosed by the applicant. The RAF also questions measurements on the site plan that indicate buildings are within 100 feet from a high voltage transmission line.

The applicant claims that the Southern Concrete Crushing plant does not meet the definition of heavy industry rule. They have revised the site plan to indicate the appropriate flood zone as the result of a request for information from the real estate analysis division. And they claim that the buildings will be placed so that they meet the requirement and rule of being more than 100 feet from the high voltage transmission lines.

Because the applicant has already addressed the floodplain issue with REA, staff considers the matter closed along with the placement of the building more than 100 feet from high voltage lines. In the course of researching the concrete crushing plant, it was discovered that the Texas Commission on Environmental Quality considers this company a municipal solid waste processing plant, which is an undesirable site feature under our
rule.

Because the application did not disclose the presence of the solid waste facility, staff is requesting -- staff will request a determination from the Governing Board that the development site be found eligible. The applicant will have an opportunity to address the Board regarding this determination in a later item today.

Application 17356, this is The Acacia in San Antonio. Under Opportunity Index, the requestor claims the site is not eligible for points because neither the Nani Falcone Skate Park Mule and Benches or the Butterfly Sculpture meet the definition of museum.

They claim that the route to the park and playground is not accessible. They claim that compliance with requirements that any site requiring rezoning include the rezoning and indemnity letter in their application, and that the property cannot be constructed because a portion of it in the 100-year floodplain which is not allowed under City of San Antonio development restrictions.

A scoring notice regarding the museum and park accessibility was issued prior to receipt of the RAF, and the applicant has filed a separate appeal of that item. The applicant claims that the portion of the property that
is not zoned for development is the same part that is in the 100-year floodplain. And because it will not be developed as part of this project, the zoning application and other requirements do not apply.

The scoring question is being addressed through a separate appeal process, and the Department finds that no further action is needed regarding the zoning or floodplain questions.

Number 17368 Cielo in McAllen, under undesirable site features, the requestor claims that the site is located within 500 feet of an active railroad without a quiet zone or a local ordinance that would allow closer development as described in the rule. And that was disclosed in the application originally and is something that will be addressed later today.

The proposed site is not located less than half a mile on an accessible route from an accessible playground, and the site is not located less than half a mile on an accessible route from public transportation.

The applicant claims that they have provided sufficient evidence of mitigation for the proximity of the site to railroad tracks. And, again, we'll take that up as a separate item today. The claim that the Metro McAllen ADA Paratransit Services serves the tenants better than an accessible route to a park or public
transportation, and, therefore, the application should receive those points.

The applicant states that they are committed to working with the city to bring any deficiencies and accessible routes within the city's right-of-way into compliance with ADA standards.

Staff has determined that the information provided regarding the railroad does not provide sufficient support for the finding that the site should be determined eligible. The question of eligibility for this site is under a separate action item.

Transportation services described do not negate the requirement and rule that there be an accessible route between the site and the amenity in order to score points for those items. The applicant will be issued a scoring notice and have an opportunity to appeal.

Application Number 17372 Sunset Trails in Bullard, the applicant -- the RAF claims that the applicant did not provide supporting documentation for Anytime Fitness, the First Baptist Church of Bullard, the community library, or adults with an associates degree or higher at 27 percent.

They claim that the family medicine clinic does not meet the requirements because it is a physician specialty office rather than a full-service hospital,
community health center, or minor emergency center
described in the rule. I'm sorry. I'm getting -- did I
get the right one?

Okay. They claim that the same city facility
has both a public park and an outdoor recreation facility,
and that the museum listed as a private school and not a
separate nonprofit organization whose primary function is
acquisition conservation study, exhibition, all of those
things under our description of museums.

The applicant claims that the medical facility
is a family practice primary care clinic co-located with
an urgent care clinic. As such, it is not a physician
specialty office. They claim that the City of Bullard
considers the two facilities to be two separate parts, so
they should be allowed to be treated as such also.

They claim that while the American Freedom
Museum is on the campus of and is supported by a private
school, it is a stand-alone nonprofit permanent
institution open to the public. Staff has determined that
the applicant's response provides sufficient evidence to
support the points claimed, and no further action is
required.

Number 17376 The Bristol in San Antonio, the
requestor asked the Department to review the application
for two points claimed under Opportunity Index. The
request did not include documentation beyond the letter
request and, therefore, does not meet the requirement that
the requestor must provide sufficient credible evidence
that, if confirmed, would substantiate the deficiency
request. No further action will be taken by the
Department as a result of this request.

Number 17388 West Pecan Village -- we're almost
done. The requestor questioned seven items claimed under
the Opportunity Index as the playground is more than half
a mile from the proposed development and that the route is
not accessible, that the route to public transportation is
not accessible, that the applicant has used the same
facility for points as a public library, a community
college campus, and a museum. Finally, the requestor
claims that the applicant has not provided crime
information specific to the census tract but has used
city-wide crime information.

The applicant claims that because the park is
within half a mile, the length of the accessible route may
be longer. The applicant includes a letter from their
third-party registered accessibility specialist who has
determined that the route is accessible. They also claim
that because the park boundary is within the required
distance, the distance to the park entrance is immaterial.

They make a similar statement regarding the
accessible route to public transportation. They claim that the museum is separate from the college and library. The applicant has provided additional description of how they extrapolated the property crime rate included in the application and new information for that item.

Staff has determined that the applicant has not addressed the specific information included in the RAF regarding accessibility or the letter from the chief of police, which states the information used are a reflection of city-wide data rather than a census tract or block.

The response does not address specific evidence that the routes to the park or public transportation are not accessible. The information provided in the response supports the applicant's claim of points for the college and library, but the gallery appears to be part of the library and, therefore, ineligible for points as a separate amenity. The applicant will have an opportunity to appeal the loss of points.

Number 17390, Las Palomas in McAllen, the RAF questioned four items claimed under the opportunity index. The requestor claims that the playground is more than half a mile from the proposed development and that the route to the playground is not accessible, that the route to public transportation is not accessible.

The requestor claims that the applicant has
used the same facility for points as a public library and a playground and that the applicant has not provided crime information specific to the census tract but has used city-wide information.

The applicant claims that because the park is within half a mile of the proposed site, the length of the accessible route may be longer and that their application includes a letter from a third-party registered accessibility specialist who has determined that the route is accessible.

They also claim that because the park boundary is within the required distance, the distance to the park entrance is immaterial. They make a similar statement regarding the accessible route the public transportation.

The applicant has provided additional description of how they extrapolated the property crime rate included in the application and new information.

Staff has determined that the applicant has not addressed the specific information included in the RAF regarding accessibility or the letter from the chief of police which states the information used are a reflection of city-wide data rather than a census tract or block.

Because the library is its own structure and the playground is part of the park, staff has determined that both may be used for points. The applicant will have
an opportunity to appeal the loss of points.

That is the conclusion of the report item. I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: Does anybody have any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: No. Not at this time.

Okay. Thanks, Marni.

MR. IRVINE: Please be sure to sign in and identify yourself and on whose behalf you're speaking.

MS. HOWSON: I'm Mark Howson. Good to see you guys again. I'm speaking in reference to The Acacia, and Marni's report on not taking action due to the floodplains on that.

Without going into a great deal of detail because you have in public comments in your board book an extensive report that we've prepared for this and you also have the Bristol's report. One comment that is important to be made to you about flooding. Yes, the developer has said they will mitigate -- possibly mitigate the flooding that would affect the development, which is only possible.

On that road, which is Gilbeau Road to the south, he has stated he will raise that road 200 feet. Well, that's a public road, and he knows a lot of money there, but there happens to be a bridge into that which
would also have to be raised. But more importantly, there's houses next to this development right now who have had to buy flood insurance because of excess runoff in the area.

The mitigation that he's proposing would only widen those houses that are affected by that both to the west and to the south, particularly to the south of that housing development. So the mitigation he's proposing actually makes the problem worse for the entire area. And we would like you to consider that.

And we have maps, diagrams of this kind of issue in public comment, but our public comment which was derived from a different viewpoint about the permitting, then the developer -- the developer went right after the permitting. The conclusion of the risk to the area is the same, and it is quite significant. We're looking at people who will not have to buy flood insurance or literally losing their houses because of this kind of situation because of the increased runoff this would create in the area.

It's also important to understand that the entire development is not only built on a 100-year floodplain. The one area that is not on a 100-year floodplain it's being built on is a 500-year floodplain. That area when it floods our area, literally, if you were
living in that development, you would not be able to get out of it until the flooding receded.

To the back of that development on the diagram I provided is a flood channel. That flood channel is literally full to the brim, and you can -- we have video on YouTube of what happens in a flash flood. And that occurs both to the north of that development and to the west of the development.

So we would like you -- although we understand Marni's position, we would like you to really consider the input that we're putting on it because we will be -- our city, we will fight the permitting process unless the city's willing to develop a small bridge just built a little bit to the east of that to stop flooding over Small Creek. It costs $1-1/2 million, and we have that in our bond. This bridge and this correction is going to be way over that, and the city doesn't have the funds for that. It's not in the budget. We have no idea when it would happen if it would ever happen.

Thank you for the time on this. I appreciate it, guys. It was good to see you guys again.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for that commenter?

MR. HOWSON: We did a pretty strong report on this, so if you have questions.
MS. BINGHAM ESCAREÑO: Thank you.

MS. RESÉNDIZ: Madam Chair, I just want to --

MR. HOWSON: Okay. Thank you very much.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz has a question.

MS. RESÉNDIZ: I have a quick question.

MR. HOWSON: Yes.

MS. RESÉNDIZ: Just knowing that San Antonio recently passed our largest bond package, please provide clarity for me. Was that project a part of that?

MR. HOWSON: No.

MS. RESÉNDIZ: Okay. I just wanted to make sure.

MR. HOWSON: No. That's the Clearwater project, and that's more towards inside the loop of 410.

MS. RESÉNDIZ: Okay.

MR. HOWSON: The only thing that -- in that bond, they're building a small bridge in OP Schnabel Park to help access through one route there --

MS. RESÉNDIZ: Okay.

MR. HOWSON: -- in the city park there. That's the only thing that's related to flooding that's occurred in our end of the district.

MS. RESÉNDIZ: Okay. I appreciate it. Thank you.
MR. HOWSON: Okay. It's the first I've been able to talk to you guys. Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Any other public comment?

MR. KROCHTENGEL: How y'all doing? My name is Zachary Krochtengel. I'm here representing Salem Clark, and we are proposing a development for Paris, Texas.

We are here to talk about 17372, which was a report item; it's a project in Bullard, Texas, and they're asking for two tiebreaker amenities. And I know this is a report item, but we are asking the Board to please have staff reevaluate those two decisions. And just based on some of the information that we're about to present, I think that it's a very reasonable request.

They asked for the American Freedom Museum to be counted as a museum, and I just want to remind you of what the requirements for a museum are. It's a "development site within four miles of a museum that is government-sponsored, nonprofit permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical or artistic value."

Now, we have looked for information to see how
this museum which is on the Brook Hill School campus.

It's actually connected to the Brook Hill School building itself. How they are an independent nonprofit, we've not been able to find an independent 501(c)(3) for this museum. And it is owned and operated by the Brook Hill School.

The Brook Hill School mission statement states that: "The Brook Hill Schools proves excellence in college preparatory education, affirms the gifts and challenges the potential of each student to honor God through Christ-like character." In no way do these two mission statements align with the statements in the QAP which give the requirements for a museum.

And with the facility being attached to the school, not a stand-alone building, or a stand-alone 501(c)(3), we believe that it should be considered an ancillary part of the Brook Hill School and an additional use of that campus.

Now, the applicant also asked for O.L. Ferrell Park, which is the only park in Bullard to be counted both as a both a public park and an outdoor recreation facility. This park is 9.6 acres, and there are two different playgrounds on that park separated by a shared parking lot. The playgrounds are 450 feet apart. One of the playgrounds has a sign that calls it Bullard Kids
Park, and the other one is just a playground with swing sets. They're only 450 feet apart. There's one parking lot, one set of bathrooms, and one set of water fountains.

Now, in the response to the RAF, the applicant submitted a letter signed by the city secretary stating that the city views these as two separate parks. However, when we went and did a little bit more research into the City Municipal Code, and I'm going to read directly from that Code.

The City Municipal Code says: "The portion of the O.L. Ferrell City Park known as Kids Park shall be open to the public between sunrise and sunset. No persons shall occupy, remain in use, or be present in that park of O.L. Ferrell City Park known as the City Kids Park after sunset or before sunrise."

Use of that part of O.L. Ferrell City Park, known as the Kids Park, there are three references stating that this is one park, and one portion of it is considered something else. However, in Smith County CAD, it's one tract of land. In Smith's parks locator, it's one park. And under the City Municipal Code, it is also considered one park. And these two playgrounds are very similar in that they're just playgrounds.

This isn't a facility with playgrounds and baseball fields and other uses. But these are two of the
same type of amenity being counted as two different amenities, which under 11.9(c)(4)(B), "Each family or amenity may be used only once for scoring purposes, regardless of the number of categories it fits."

We find that to be a stretch to say that a playground or two playgrounds fits two different categories when they're merely 450 feet apart and on the same tract of land.

I would also point to the decision in the RAF. The first RAF Decision 17007 Magnolia Station where the staff denied a request for two amenities on the same park because it was one tract of land and considered one park.

Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for Zachary?

(No response.)

MS. BINGHAM ESCAREÑO: Good morning.

MS. ANDERSON: Good morning. My name is Sarah Anderson, and I'm actually here to respond because I represent the developer for the Bullard property that they're talking about.

I appreciate the tenacity of this developer, but they simply won't take no for an answer on this. These issues have been brought up before staff already. They've been asked and answered. The rules are very
clear. No new information past the June 1 date can be brought forward related to these issues.

If they had wanted all of this information in and had brought all this additional information that we've never heard, they should have done it at that time. But technically none of that should be relevant at this point. There has to be a time at which people can trust that your competitor stops going after your deal, and that was June 1. All of these issues have been addressed.

The park issue -- and the developer knows more about this, but the parks are two different parks. They came in at different times; the city has confirmed they are two parks.

And with regard to the museum, we have -- again, it's asked and answered. Staff is very tough on these things, and we have met the level that needs to be met. So we can answer some more, but I just feel like we're never going to get to the end of this if we continue to let people, when they get the answer they don't want, continue to come forward to you bringing more information that may or may not be true. We simply just don't know. Thank you.

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

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

MR. FOGEL: Good morning. My name is Michael Fogel, and I'm with Four Corners Development, the developer of the project in question in Bullard.

Ms. Anderson covered it pretty well. The two issues are the park and the museum. The parks are open sunrise to sunset, full-fledged parks, separate parks. The city's answered this question. I don't think a caveat in the municipal code to streamline the administration of two separate parks in a single city by having a shared municipal code is a real tangible issue here.

The museum is a full-fledged -- it's called the American Freedom Museum. It does not have a religious -- it has no religious designation or goal as was mentioned about the school. It's a museum that displays artifacts related to American revolutionary wars, world wars, et cetera, some very cool World War II planes and things of that nature. So when you're not religious -- not that there's anything wrong with that -- but I think someone was trying to make a point to that nature.

It's open Monday, Tuesday, Wednesday, and Thursday for tours. It's also open full-fledged two days a week, Wednesdays and Saturdays, from 10:00 a.m. to 3:00 p.m., a separate entrance. There's brochures that we
submitted for the park in our response.

As Sarah mentioned, these have been addressed. We consider it closed; however, I'm here and happy to answer and questions that you guys may have.

MS. BINGHAM ESCAREÑO: Thank you, Michael. Any questions from the board members for Mr. Fogel?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much for your comment.

MR. FOGEL: Okay. Thank y'all.

MS. BINGHAM ESCAREÑO: Is there any other public comment on -- yes, sir?

MR. GARRETT: I'm Kelly Garrett, the developer of Salem Clark, the founder of Salem Clark. I'm the guy. But, well, I just wanted to address Sarah's issues about we should have let it rest on June the 1st. Staff gave this as a report item and then you were asked for public comment. And that's all we're doing is making public comment. Thank you very much.

MS. BINGHAM ESCAREÑO: Thank you very much.

Thanks. Any questions for Kelly?

(No response.)

MS. BINGHAM ESCAREÑO: Great. Any other public comment on Report Item Number 2?
(No response.)

MS. BINGHAM ESCAREÑO: Thank you, Marni. Thank you, staff.

We'll move on to Item Number 3, Rules.

Jennifer?

MS. MOLINARI: Good morning again.

MS. BINGHAM ESCAREÑO: Hi.

MS. MOLINARI: Madam Vice-Chair, Board members.

Jennifer Molinari with the HOME and Homeless Programs Division. So Item 3(a) is a request to repeal 10 Texas Administrative Code Chapter 23 for the Single Family HOME Program Rules and adopting new 10 TAC Chapter 23, Single Family HOME Rule in its place.

So on April 27th of 2017, we brought the draft rules out to you for approval to release for public comment. We included in those staff proposed changes some details on how we wanted single family HOME funds to be competitively allocated in future notices of funding availability. We revised problematic benchmarks to ensure activities could be completed timely to assist the state with meeting critical federal HOME program requirements.

And we increased maximum amounts allowable for construction hard costs and related soft costs, and then we made some other minor and conforming changes throughout the rule.
So we drafted these rules following a series of roundtables earlier in the year. And following your approval of those draft rules, we did put them out for public comment. We received comments from 20 commenters, and many of them were commenting on the same sections of the rules. And they are included in your board materials today.

So following those comments, we did make some revisions, and we made some other non-substantive changes to the rules as originally proposed on April 27th of 2017. Those staff changes are indicated in track changes in your board materials. And those changes include a change to: Section 2325 (b)(2)(f), General Threshold and Selection Criteria.

We had 17 commenters which recommended removing or replacing attendance at first Thursday income eligibility training as a scoring item as it creates a disadvantage for small and rural communities. In response, the staff proposed HUD online-sponsored training options as an addition to that selection criteria as it may provide a comparable benefit for scoring purposes on that item.

Another change was made to Section 2331(d)(3), HOME Rehabilitation Assistance Program Requirements. We had one commenter that recommended increasing hard costs
for rehabilitation activities from $40,000 to $100,000 for the rehabilitation of homes and that are listed in or eligible for listing in the National Register of Historic Places.

Staff agreed with that comment and made changes to align with the commenter's recommendation and also made conforming changes in subchapters (e), which is Contract for Deed Conversion and (g), which is our Single Family Development Activity.

Another change that was made was to Section 2331(f), Homeowner Rehabilitation Assistance Program Requirements. We had ten commenters that recommended increasing soft cost limits by $3,000 for reconstruction activities, and one commenter that stated that soft costs should be increased for rehabilitation activities as well -- I'm sorry -- $3,000 for reconstruction, $1,000 for rehabilitation.

Staff agreed that these increases in the limitations for soft costs is warranted due to the increase in expenses for these types of services. And we recommended that change to allow a $1,000 increase for reconstruction activities to a total of $10,000 and a $2,000 increase for rehabilitation activities for a total of $7,000 in soft costs. And then we made some conforming changes, again in subchapter (e), Contract for Deed
Conversion, to make requirements consistent across similar activity types.

The last major change that we made was to Section 2332(a)(10). That's our Homeowner Rehabilitation Assistance Administrative Requirements. We had one commenter that stated that it is not always possible to submit a quote for flood insurance with the submission of an activity before that activity is approved. We researched that issue, and we agree with them. And we made that conforming change in that section as well as in conforming changes to subchapter (d) Homeowner -- I'm sorry -- Homebuyer Assistance Activity and, again, subchapter (e) Contract for deed.

MS. BINGHAM ESCAREÑO: So what is that, Jennifer? Like we won't require a quote; is that the change we're making?

MS. MOLINARI: Not when the activity is submitted to us for approval, and that is because a lot of insurance companies will no longer --

MS. BINGHAM ESCAREÑO: Won't get it, okay.

MS. MOLINARI: -- you know, provide that quote. So those are the major changes and conforming changes made to other subsections. And so anticipate that if you approve the rules as -- with the recommended changes presented today, they'll become effective at the
end of August 2017, and then we will be able to use those
new rules for our 2017 notice of funding availability and
future NOFAs.

So with that, I'll be happy to answer any
questions that you have.

MS. BINGHAM ESCAREÑO: Does the Board have any
questions about the proposal and the changes?

Good work from the roundtable. So this is an
action item.

MS. MOLINARI: This is an action item --

MS. BINGHAM ESCAREÑO: Very good. So we'll --

MS. MOLINARI: -- because of the changes
following --

MS. BINGHAM ESCAREÑO: -- entertain a motion.

MS. RESÉNDIZ: So moved.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz moves.

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

Any further discussion on this item? All those in favor,
aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign.

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank
you, Jennifer.
All right. Let's keep rolling. We'll move to Item 4, Multifamily Finance. 4(a), Marni.

MS. HOLLOWAY: Good morning again. Item 4(a) is Presentation, Discussion, and Possible Action regarding exemption under 10 TAC '10.101(a)(2) for 2017 Competitive Housing Tax Credit Applications.

I'm going to propose reordering because both Mistletoe Station, Application 17259 and Cielo, Application 17368, have similar issues. So I'm proposing we take those two first, and then take 322, Provision at Wilcrest last.

MS. BINGHAM ESCAREÑO: Very good.

MS. HOLLOWAY: Okay.

This section of the Uniform Multifamily Rules relates to undesirable site features. Development sites within the applicable distance of any of the undesirable features may be considered ineligible as determined by the Board unless the applicant provides information regarding mitigation of the applicable undesirable site feature.

So these are Board determinations. These aren't appeal actions. These are identified undesirable site features that we are bringing to the Board for your determination as to whether the site is eligible for development.

The first development, Application Number 17259
Mistletoe Station, the proposed development site is within Forth Worth's Near Southside development district. It is in a 1st Quartile census tract with less than 1 percent poverty rate.

The proposed development site is located within 500 feet of the railway for the railroad tracks. The plan for the site indicates an easement for the tracks with a ten-foot setback followed by a line of parking spaces, a two-way driving lane, and another line of parking spaces. Staff estimates that the closest units will be approximately 120 feet from the tracks.

So, part of 10.101(a)(2) states that: "Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such similar distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the development site must be included in the application." That's one sentence. It probably needs some commas in there.

The applicant has provided letters from the City of Fort Worth indicating that the property is appropriately zoned, and the proposed development would be an allowable use. In addition, they have provided the Near Southside development standards and guidelines an
adopted supplement to the city zoning ordinance which is silent on the issue of distance of development from the nearby railroad.

That the ordinance and supplement are silent does not meet the requirement of the rule regarding the ordinance. Because the application did not include a local ordinance that imposes a smaller distance than 500 feet from the railroad to the development site, staff is recommending that the Board find the development site ineligible.

I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: Did I see were there elevations on this? Is everything on the same elevation? They're not -- the site isn't higher or lower than the railroad or the railroad --

MS. HOLLOWAY: I don't believe so.

MS. BINGHAM ESCAREÑO: Yeah, I don't think so either. Okay. Any staff have any questions for Marni?

MR. ECCLES: Just touching on the rule itself.

MS. HOLLOWAY: Uh-huh.

MR. ECCLES: Did the application disclose the proximity to the railroad tracks?

MS. HOLLOWAY: Yes, it did.

MR. ECCLES: And did it include evidence of mitigation?
MS. HOLLOWAY: It included the documentation from the City of Fort Worth about the allowability of the development, you know, within that proximity. I haven't -- frankly, I have not looked at the site plan myself. I don't know if there's mitigation listed there or shown there, but I would go back to describe that there's, you know, a setback and parking and driveway and then more parking and then buildings. So there is some distance between the railroad and the buildings. And I would assume that the applicant is better able to address that question than I am.

MR. ECCLES: Okay.

MS. BINGHAM ESCAREÑO: Very good. Thank you. Do we have public comment on Mistletoe Station, 17259?

MR. SHACKELFORD: Good morning.

MS. BINGHAM ESCAREÑO: Oh, I'm sorry. So I'll entertain a motion to hear public comment prior to action.

MR. BRADEN: So moved.


MS. BINGHAM ESCAREÑO: Ms. Thomason seconds. All those in favor, aye.

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposing sign?
(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.

MR. SHACKELFORD: Good morning again, Madam Chairman. Members of the Board, Mr. Irvine and Mr. Eccles. Obviously, I take a little bit different view of the interpretations of the rules than what staff has done.

As Marni framed the issue, the rule requires that there be a distance required if it's a smaller distance than the 500 feet rule that is at play here. And she said that the ordinance that is applicable is silent on the distance. Well, my position is if it's silent, then, in effect, that gives a distance. It's zero. It's a zero distance.

I don't think the statute, the ordinance has to give a specific distance where the city council has to by ordinance say a zero distance. The fact that it's silent by operation of law being it's a zero distance. And so I think that's really what we're looking at here. So that's the question for you to think about is if an ordinance is silent on a distance, does that not, in effect, constitute giving a distance of zero?

And in support of this position, I cite you to the resolution that was in your board packet where in the last recital, the city council when they voted on approving this application to go forward states:

ON THE RECORD REPORTING
(512) 450-0342
"Mistletoe Station is located adjacent to a railroad and its associated easement and the city planning and zoning codes and ordinances provide that a development located adjacent to such an easement is permitted with zero feet of required setback."

So I think that makes it pretty clear from the city's standpoint, there's a zero distance from the setback from the railroad. Then also in support, we provide this in your materials, the letter from the Planning and Development Department where the city states: "This letter is to confirm that pursuant to City of Fort Worth ordinances, that multifamily buildings and accessory uses are permitted with zero setback from the railroad right-of-way merely adjacent to the west of Mistletoe Heights addition."

The letter goes on to say: "Consistent with our obligation to HUD to affirmatively further fair housing, the city can't require setback from rail lines for workforce and affordable housing with market rate housing has been so successful in these areas."

And the finally, we obtained the letter from the city attorney's office from the City of Fort Worth, and that's in part of your board package as well. And the last sentence states: "Section 4.1305 of the zoning ordinance which governs this particular district contains
no setback requirements from the railroad. Thus, development adjacent to the railroad is permissible."

So, what we're being asked is to provide a distance when the ordinance that's already in place provides no distance. So, again, my interpretation is if it gives no distance, that means it's zero. If you're not prohibited, then it's permitted. And so I think by demonstrating this argument the way we have with the evidence, I think we've satisfied the requirement that we do satisfy the rule that Marni mentioned that if an ordinance provides for a smaller distance in proximity to the development of the undesirable site feature, then we satisfy the rule, so.

MS. BINGHAM ESCAREÑO: Okay.

MR. IRVINE: And that resolution's on page 999.

MR. SHACKELFORD: Thank you.

MS. BINGHAM ESCAREÑO: Thank you, John.

Any questions for Mr. Shackelford?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you.

MS. STEPHENS: Good morning.

MS. BINGHAM ESCAREÑO: Good morning.

MS. STEPHENS: I'm Lisa Stephens, the developer for Mistletoe Station. And if I could, I'd like to address first Mr. Eccles' question about whether or not
mitigation was provided within our application. There were several levels of mitigation that we've provided within the application as evidence of how we were addressing this item.

One, we did provide three different documents that asserted from the city that a setback of zero feet is the applicable setback. Two, we've provided confirmation that as developer, we will provide the appropriate sound attenuation in accordance with HUD guidelines. We also committed to providing a fence between the development and the railroad and to work with the city. They have a quiet zone application that has been pending for more than a year. This was submitted a year ago. It is in process. So we will work with the city to help implement that quiet zone as we go forward with this development.

So we did provide mitigation along those lines.

In addition, under this same ineligible side characteristics, another section, it talks about mitigation related to fair housing and how furthering fair housing of the city is something that this Board might look to as a possible mitigation concern.

This area is redeveloping, and we have some officials here from the city and the community that are going to talk to you about that and how market rate housing is popping up all over the place in similar
proximity to this same rail line. These are for sale and high end rentals. There is no affordable housing going in. This would be the only affordable development and so addressing that fair housing concern of the city.

And you heard in their letter it would be inappropriate for them to require a setback or to pass an ordinance specifically permitting a setback for a workforce housing community when they have not required that same setback for a market rate community.

The only other items I'd like to point out is that this 500 feet setback is a new rule as well as the urban core being a targeted desire of TDHCA is a new rule. Unfortunately, in the City of Fort Worth, those things conflict. This is the highest scoring application in the entire cycle.

It's the highest scoring application because it meets all of the criteria that the staff was looking for. It's urban core. It has great schools. It has very low poverty. It has all the jobs. It has walkability. It has all the amenities. It is the highest scoring application, the best one that meets the criteria outlined within the application.

However, in the City of Fort Worth, there are 193 railroad crossings. You cannot be in downtown Fort Worth without running into the railroad. It's just not
possible. And so you've got both of these new features, the 500 foot setback and the urban core that unfortunately are conflicting a little bit in this situation. But we would ask that you look at the mitigation. We would ask that you look at your preference for an urban core development, you look at the fact that it would be almost impossible to find a zone multifamily vacant land site in downtown Fort Worth that didn't have this same issue. And we ask that you find the development eligible.

MS. BINGHAM ESCAREÑO: Thank you, Lisa.

MS. STEPHENS: Thank you.

MS. BINGHAM ESCAREÑO: Any questions for Lisa?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you. Any other public comment on 17259 Mistletoe? Good morning.

MR. THAGARD: Good morning. Chair and members of the Board, my name is Aubney Thagard, and I am the Director of Neighborhood Services Department for the City of Fort Worth.

As you've already heard from previous speakers with regards to the technical and legal issues regarding this project, I won't go through those. However, I will emphasize the following with regards to city policy: one, that the zoning ordinance already allows for multifamily in the area. There's been a prevalence of market rate
housing that has already taken place in this area, which is known as the Medical District.

I would also further stipulate that there is no mechanism to create a special zoning ordinance to address this specific issue. Such, in the opinion of the City of Fort Worth, is not necessary. Our ordinances already sufficiently address the issues of setbacks, as evidenced through the letters that have been given by the city's planning development department and the city attorney's office.

Furthermore, I want to emphasize that the applicant has gained support of several organizations of standing within the City of Fort Worth; first, Fort Worth Housing Solutions, which serves as the city's housing authority; then other organizations such as Near Southside, Incorporated, which is a community development organization; as well as Baylor Scott & White Hospital.

Furthermore, the City of Fort Worth did pass a resolution of support for this application. And at the request of Mayor Betsy Price and District 9 Councilmember Ann Zadeh, whose district is where this project would be located, I've been asked to read the following statement into the record here.

And it reads as follows: "We have a right to express the City of Fort Worth's support for the appeal of
Mistletoe Station which was deemed ineligible originally by the staff of the Texas Department of Housing and Community Affairs due to undesirable site characteristics under the 2017 uniform multifamily rules; specifically, Mistletoe Station's located within 500 feet of a railroad. Mistletoe Station is an important project for the city. The city specifically and respectfully requests that the Board of Directors approve the appeal and determine that the applicant is eligible for the allocation of 2017 9 percent housing tax credits for the reasons outlined below.

Originally, the applicant was notified by TDHCA staff that the exemption request for the undesirable site characteristics under the rules would be recommended for approval by TDHCA staff. As we understand this case, when the TDHCA board -- when the book was published, the recommendation for denial was unbeknownst to the applicant and the item was pulled to provide the applicant adequate time to respond.

We have been informed that the rules state if there is a city ordinance that allowed for the site to located at a different distance than the TDHCA rules, then the city ordinance may be used as documentation for mitigation.

As evidenced by the letters from city staff
dated February 10, 2017 and the city attorney's office
dated July 10, 2017, Mistletoe Station is permitted to be
located near the railroad and is not required to be set
back from the railroad or its easement.

Additionally, this issue was addressed in the
city's resolution of support for the development. This
Mistletoe Station is located in a submarket known as Near
Southside Medical District. Recently this submarket has
benefitted from the development of a number of market-rate
units due to its proximity to downtown Fort Worth,
transit, and employment.

Mistletoe Station will provide affordable
housing because it is in a transit-oriented development
environment that will provide enhanced access to transit
with a new station when the TEXRail commuter train service
commences in late 2018 on the railroad line in question.

In closing, this development is vital to the
city's efforts to provide quality affordable housing to
deserving Fort Worth residents in the areas that have
access to desirable opportunities and deserves
consideration from TDHCA on these merits.

Please consider the support of the city's for
this applicant's appeal as you make your decision. Signed
sincerely, the Honorable Mayor Betsy Price and
Councilmember Ann Zedah."
Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Aubrey, what organization do you represent?

MR. THAGARD: I represent the City of Fort Worth Neighborhood Services Department. It's responsible for administering housing, community development, and social services related programs for the City of Fort Worth.

MS. BINGHAM ESCAREÑO: Okay. Thank you.

Any questions for Aubrey?

MR. BRADEN: I'm sorry. Are you a member of the city attorney's office in the City of Fort Worth?

MR. THAGARD: I am the Director of the Neighborhood Services Department for the City of Fort Worth. It represents housing, community development, as well as social services related programs for the City of Fort Worth itself.

MR. BRADEN: Okay. So you're not a city attorney for the City of Fort Worth?

MR. THAGARD: That is correct.

MR. BRADEN: Okay.

MS. RESÉNDIZ: Madam Chair, I do have a question. Would you repeat your name? I'm sorry for whatever reason.

MR. THAGARD: For the record, again, Aubrey
Thagard.

MS. RESÉNDIZ: Aubrey, thank you. My name is Asusena, so I understand.

MR. THAGARD: A pleasure.

MS. RESÉNDIZ: So a couple of questions, just understanding what I do know about Fort Worth, what is the zoning for Hunter Plaza? I was at the grand opening for that, and that's located in downtown Fort Worth right off of Main -- I believe Main and Second.

MR. THAGARD: Actual --

MS. RESÉNDIZ: So I understand the situation with the railroad component knowing that no matter what, you're going to hit a railroad in close proximity to most wherever likely you're going to end up building. But I'd honestly just like to know how the Hunter Plaza is zoned, if you happen to know?

MR. THAGARD: I cannot off the top of my head give you the zoning --

MS. RESÉNDIZ: Okay.

MR. THAGARD: -- specific zoning for that.

MS. RESÉNDIZ: Okay.

MR. THAGARD: But I would keep in mind that the Medical District near Southside area is approximately roughly two and a half, three miles south of downtown --

MS. RESÉNDIZ: Right.
MR. THAGARD: -- in that quarter area.

MS. RESÉNDIZ: Okay. Great. Thank you.

MS. BINGHAM ESCAREÑO: Any other questions for Mr. Thagard?

(No response.)

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

MR. THAGARD: Thank you.

MS. LASCH: Good morning, Board. My name is Megan Lasch. I represent the development as well. I worked very closely with Near Southside, Inc. and the neighborhood association before the application process, and both organizations indicated to me that when they were considering and working on the zoning for this specific site, it was heavily debated. And they looked very closely at the specific land use on what would allowed on this particular property before passing it.

Therefore, I want to read two letters into the record that were not included in your board book. The first one is from Near Southside, Inc.:

"We are pleased to send this letter in support of Mistletoe Station and their application for housing tax credit funding. The project is located at the western edge of our redevelopment district and in a area we have targeted for this type of residential development.
"A vision plan prepared by NSI and other partners proposed residential for this site as well as other parcels located along the FWNW Railroad. Our organization has worked for over two decades to spearhead the Near Southside's revitalization. Our top goal from the beginning has been to attract new residents and to restore this formally vibrant neighborhood just south of downtown.

"We couldn't be more pleased with the district's success and the fact that we now have over 2,000 multifamily units currently under construction or in the design phase. There is still a pressing need, however, for these projects, because these projects exclusively include luxury properties with high rents. To provide a full spectrum of housing options for the district's 35,000-plus workforce, we need Mistletoe Station and other projects offering workforce units.

"We were surprised and disappointed to hear that the proximity to the railroad could threaten the application's approval, surprised primarily because the market rate developers have been attempting to secure this property and other similar railroad-adjacent sites for high-end projects.

"These national multifamily groups clearly see the proximity to the Near Southside employers and nearby
amenities as an asset as well as a long-term possibility for the rail line to become the commuter corridor for the Fort Worth Transportation Authority.

"The zoning allows multifamily by right. And our redevelopment plan promotes residential on this property. Eliminating the potential for residential within close proximity to railroads would be a major impediment to the district's continued revitalization.

"We strongly support the reconsideration of Mistletoe Station's eligibility. The provision of workforce housing is essential to our district's continued success."

The next letter I'd like to quickly read into the record is from Fort Worth Housing Solutions:

"Fort Worth Housing Solutions, FWHS, the Housing Authority of the City of Fort Worth, supports the 9 percent low income housing tax credit application for the above-referenced development. FWHS has a main goal to provide and support the development and quality affordable housing in the City of Fort Worth.

"The location of the proposed Mistletoe Station development is within the city's Medical District, which is the second largest employment center, 30,000-plus jobs, with over half of these jobs having salaries at or below 60 percent AMI. Therefore, the proposed location of
Mistletoe Station would serve as a large unmet need for affordable housing near employment opportunities.

FWHS is aware that the site is near the western railroad. Because of the need for housing in this area, the City of Fort Worth has permitted construction of market-rate multifamily units close to the same exact railroad. Although this neighborhood is experiencing a redevelopment including several multifamily developments, very few are affordable housing, making Mistletoe Station even more important for the low-income residents and employees of the neighborhood.

"FWHS requests consideration of a waiver for the undesirable neighborhood characteristics for Mistletoe Station. Signed, Mary Margaret Lemons, interim president and general counsel."

Thank you.

MS. BINGHAM ESCAREÑO: Thank you, Megan. Any questions for Ms. Lasch?

(No response.)

MS. BINGHAM ESCAREÑO: Very good. Thank you. And I don't think -- so just counsel, we don't actually have to approve a waiver. Right? The Board has the --

MR. ECCLES: Yeah.

MS. BINGHAM ESCAREÑO: -- ability to find the
site eligible or ineligible?

MR. ECCLES: To be clear, a waiver is not being considered here. This is just an appeal of the applicability of 10.101(a)(2), Undesirable Site Features, to these facts.

MR. SHACKELFORD: John Shackelford. Exactly, Mr. Eccles. We are not seeking a waiver.

MS. BINGHAM ESCAREÑO: Understood.

MR. SHACKELFORD: Not going there.

MS. BINGHAM ESCAREÑO: It's okay. Yeah.

Understood.

MR. SHELBURNE: Good morning.

MS. BINGHAM ESCAREÑO: Good morning.

MR. SHELBURNE: My name is Charles Shelburne. I'm responsible for campus planning for Baylor Scott & White Health. And in your board package, you have a letter from Mike Sanborn, who is the president of Baylor Scott & White Fort Worth. And I'd like to read a few excerpts from that and highlight a few items for the importance of this project that's immediately adjacent to our campus.

First of all, a little bit of stats on the campus. It's a 474-bed, tertiary facility. We have about 46,000 emergency department visits a year. It's going to be going up to approximately 65,000 with a new emergency
department we're currently expanding. We employ 1,300 medical staff, along with 2,400 employees -- full-time employees.

And a few key points I want to make: We have had this property under contract multiple times for this express purpose of affordable housing. And unfortunately, in the past, these things have gone by the wayside and not been able to come to fruition. And I think the housing tax credit funding is going to be critical to push this one over the finish line.

I'll read a couple of the excerpts: "Needless to say" -- the third paragraph -- "we're very disappointed in the recent staff's recommendation that the development is ineligible for funding due to the proximity of the rail lines." I think that's been addressed.

"The City of Fort Worth zoning specifically allows this development. Furthermore, the development of affordable housing in the Fort Worth Medical District is critical to the ongoing growth of the area and supporting businesses. Many times hospitals in urban areas do not have nearby affordable housing for hospital employees."

Most people think hospital employees are all physicians. Well, we have dietary, we have housekeeping, we have patient transport. There is a tremendous amount of support staff that work in that hospital that are that
workforce that are critical to the patient care within our facilities.

In conclusion, Baylor fully supports the efforts of Mistletoe Station as they seek the TDHCA's support for this project. We ask that the Board overrule the staff recommendation of ineligibility and any avenue -- for us, any avenue that creates affordable housing in the heart of the Fort Worth Medical District is essential to the continued recruitment and growth of the district as a whole.

MS. BINGHAM ESCAREÑO: Thank you, Mr. Shelburne.

MR. SHELBURNE: Do you have any questions for me?

MS. BINGHAM ESCAREÑO: Does the Board have any questions for Mr. Shelburne?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.

MS. RICKENBACKER: Good morning. My name's Donna Rickenbacker, and I am a developer and a consultant of affordable housing. I have no developments. I don't consult anybody in Region 3. I have definitely no skin in this game, and quite frankly, everything that I'm hearing them say, I hope it moves forward.

That being said, this is a determination that
you all are making that also impacts the next one that's coming in that deals with proximity to railroads, and that's the reason why I'm up here.

And I also think that perhaps this should have come as a waiver instead of a determination because now it potentially impacts additional requests to you all, again, that's following this one.

First of all, I want to make sure you all understand the proximity of railroad has been in our rules for quite a number of years. It was 300 feet last year. The department increased that to 500 this year. They really look at it and are very sensitive to proximity to railroad tracks. So everybody goes out there sourcing its sites to find those that are clearly outside that distance.

With respect to the actual reading of the rule, it says: Development sites located within 500 feet of active railroad tracks measure from the closest railroad to the boundary of the property site unless the applicant provides evidence that the city commuter -- community, excuse me, has adopted a railroad quiet zone or the railroad in question is commuter or like rail."

Additionally, with respect to mitigation, it does set out in this particular rule that unless the applicant provides information regarding mitigation of the
undesirable site feature, that's all the undesirable site features that are references to in this rule. And then the next sentence, next two sentences references rehabilitation and historic developments.

To me, following that mitigation is really speaking to -- you know, if you've got an existing development there, you've got a historic building, you've got an existing development that needs to be rehabilitated or reconstructed, then show us how you're going to mitigate the noise and the safety factor from what you all are proposing to do. But that's my interpretation of it.

And also, with respect to, again, local ordinances, that references again to any of the undesirable features and talks about unless there's a smaller distance than the minimum distance noted above. So if there's not any ordinance that sets out a shorter distance, in this instance, a railroad track, then it seems to me you're not proving up anything in this rule that would allow it to move forward.

So, again, I hate to be the one up here opposing this because it sounds like a great project in the Fort Worth inner core, but, again, your determination is going to impact some other railroad determinations coming before you immediately after this one. Thank you very much.
MS. BINGHAM ESCAREÑO: Thank you. Any questions for Donna?
(No response.)
MS. BINGHAM ESCAREÑO: Thank you. Any other comments on 17259 Mistletoe?
(No response.)
MS. BINGHAM ESCAREÑO: All right. Does the Board have any other questions of Marni at this point because I think we'll go ahead and take these one by one? Any questions for Marni?

MS. THOMASON: I do have one question. So what we're discussing is the fact that in the application --
MS. HOLLOWAY: Uh-huh.
MS. THOMASON: -- there was not anything provided?
MS. HOLLOWAY: There was.
MS. THOMASON: There was.
MS. HOLLOWAY: The applicant did disclose this proximity and it provided -- excuse me -- letters from the City of Fort Worth and the neighborhood plan and a good deal of information regarding that proximity to the railroad.

MS. BINGHAM ESCAREÑO: And then, Marni, could you remind the Board too relative to mitigation, so if the Board were to consider the site eligible, it would be on
the basis that the applicant had provided sufficient
information regarding mitigation? Was that also provided?
Like we heard it in here, but was that also provided?

MS. HOLLOWAY: I think that there's a little
bit more here because, you know, there's --

MS. BINGHAM ESCAREÑO: Yeah.

MS. HOLLOWAY: -- you know, folks from the City
of Fort Worth and -- but the basic nugget of the
information, you know, as I had mentioned in my
presentation, there was a letter, the letter from the City
of Forth Worth, indicating that it was appropriately zoned
and the proposed development would be allowable and the
development standards and guidelines are silent on the
issue. So, yes, that information was in --

MS. BINGHAM ESCAREÑO: What about -- remind me
or you may have reminded me, where in our support
materials somebody references the poverty level and fair
housing? Was it the city of --

MS. HOLLOWAY: I mentioned --

MS. BINGHAM ESCAREÑO: But it was in somebody's
written --

MR. IRVINE: It's in a letter.

MS. BINGHAM ESCAREÑO: Okay.

MS. HOLLOWAY: Yeah. And as I mentioned, this
is a 1st quartile census tract --
MS. BINGHAM ESCAREÑO: Okay. You did.

MS. HOLLOWAY: -- with less than 1 percent poverty rate.

MS. BINGHAM ESCAREÑO: Okay.

MR. BRADEN: Madam Chair, I had a question. So, Marni, the resolution that's in our packet that's from the City of Forth Worth --

MS. HOLLOWAY: Uh-huh.

MR. BRADEN: -- you know, February 21, 2017, resolution, that was included as part of their application?

MS. HOLLOWAY: Uh-huh.

MR. BRADEN: And so as was pointed out in that resolution, the City of Fort Worth makes a statement that the city planning and zoning codes and ordinances, you know, provide a development located adjacent is permitted within zero feet of the required setback. So why wouldn't we not take that as an interpretation of a local ordinance by the city that passed the ordinance?

MS. HOLLOWAY: That's -- the issue is that staff can't take a resolution from city council and say this is an ordinance. And the rule is very specific about an ordinance.

MR. BRADEN: And I am not suggesting that it's an ordinance, but I am suggesting that it's an
interpretation of the city of its ordinances, because that's what it states.

MS. HOLLOWAY: I would defer to counsel on that question actually.

MR. IRVINE: I would say that staff operates within a bright line world, and the bright line is is there a specific ordinance that specifically addresses railroad separation. Staff could not identify that.

Therefore, our recommendation is based on an inability within the bright line construct of this rule to find that the site should be deemed eligible.

MR. BRADEN: So I guess --

MR. IRVINE: But that does not touch upon any treatment of the broader more subjective and discretionary aspects that the Board might consider with regard to such issues as either mitigation or as you're raising how a city construes its own ordinances.

MR. BRADEN: So, you know, I would construe this as the City of Fort Worth telling us that there's a local ordinance that allows this. And that is sufficient documentation or are they supposed to send you a copy of all the zoning ordinances?

MS. HOLLOWAY: Well, earlier in this round, we had another application come in with the same question regarding proximity to railroads that the city had
actually passed an ordinance with a measurement in it, and staff brought that forward as a recommend because that ordinance was in place. And as Tim said, you know, if it meets the letter of the rule, then we as staff can say yes, here it is. If it doesn't meet the letter of the rule, then we're in a much more difficult position.

And, again, this is -- these are always staff -- or not always staff -- these are always Board determinations. Staff does not make determinations regarding site eligibility under these questions.

MR. BRADEN: And I appreciate that, and I'm not asking you to make an interpretation --

MS. HOLLOWAY: Okay.

MR. BRADEN: -- if the ordinance doesn't say anything, what that legally means. But I mean the city is apparently taking position with that.

MR. ECCLES: And just to support staff's view and their actions, the rule actually reads: "Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distance noted below," -- that's where you get into the 500 feet -- "then the smaller distances may be used" -- and this is to this point -- "and documentation such as a copy of the local ordinance identifying such distances relative to the
development site must be included in the application."

So that is what staff is looking for is the copy of the actual ordinance.

MS. BINGHAM ESCAREÑO: It says "such as" though, right?

MR. ECCLES: Yes.

MS. BINGHAM ESCAREÑO: Yeah, "such as". And so this -- and I guess it's Board's discretion whether or not the document by the City of Fort Wort that says is located adjacent to a railroad, is associated easement, and the city planning and zoning codes and ordinance provide that a development located adjacent to such an easement if permitted with zero feet of required setback.

MR. ECCLES: And whether the Board considers that to be evidence of the city essentially that's tantamount to an ordinance or whether the Board considers that to be effective evidence of mitigation.

MS. BINGHAM ESCAREÑO: Right.

MR. ECCLES: Either way, it could be considered within the ambit of 10 TAC 10.101(a)(2).

MR. BRADEN: So you're -- the staff's basis for denying this is because it did not see sufficient evidence that there's a local ordinance to allow it?

MS. HOLLOWAY: Yes. And as -- yes, I described, you know, staff's recommendation as based
entirely on what is written in that rule.

MR. IRVINE: And it's a narrow common sense reading of the rule. We're looking for an ordinance that says railroads need to be at least X feet away from something. You know, I guess I would characterize this not as a question of discretion but more as a question of judgment and your judgment is the way that the City of Fort Worth has approached this matter within the provision that Ms. Bingham referenced about "such as". You know, is it appropriate documentation in that vein?

MS. BINGHAM ESCAREÑO: Some rules -- in my experience, some rules are very explicit about exactly what document has to be -- and then this one with the "such as" --

MS. HOLLOWAY: Well, and the "may be considered ineligible as determined by the Board unless the applicant provides information regarding the mitigation."

MS. BINGHAM ESCAREÑO: Right. I hear that, too. I hear the either/or, right? Either it's eligible because there is sufficient documentation, that there is an ordinance or it's eligible because the Board may find that there's sufficient information regarding mitigation.

Would any board member like to take a stab at a motion on this item, action item? We're going to go ahead and take them one by one.
MR. BRADEN: I would make a motion that the Board not accept the staff recommendation.

MS. BINGHAM ESCAREÑO: Okay. So Mr. Braden makes a recommendation not to -- makes a motion to not accept staff's recommendation.

MR. BRADEN: Go ahead, Beau.

MR. ECCLES: I was going to suggest that that be phrased perhaps in the affirmative. Are you moving that the site be found to be eligible?

MR. BRADEN: Okay. I'll restate my motion. I move that the site be found to be eligible on the basis that I think the resolution passed by the city council for the City of Fort Worth is indication that its local ordinances permit a zero setback as interpreted by the city.

MS. BINGHAM ESCAREÑO: Mr. Braden moves to find site eligible. Is there a second?

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

Any further discussion on this item?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)
MS. BINGHAM ESCAREÑO: Motion carries. Thank you very much. Thank you, guys.

All right. So we're going to -- Marni, you want to do 17368 --

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: -- next?

MS. HOLLOWAY: Cielo.

MS. BINGHAM ESCAREÑO: 17368 is Cielo McAllen.

MS. HOLLOWAY: This proposed development has the same issue, a proximity to railroads. Review of the development site indicates a mixed use area, including industrial and residential uses surrounding. The eastern property line is at the easement for the tracts, which curves around to a portion of the southern border of the site.

According to the site plan, the applicant plans to construct a fence separating the site from the railroad easement. And staff estimates that the closest units will be approximately 30 feet from the track.

An official from the City of McAllen states in a letter that they are unaware of any McAllen ordinance that prohibits the apartments being in that proximity. That there is no ordinance preventing multifamily development near railroad tracks does not the requirements of the rule, which we've all heard a number of times now.
The application did not include local ordinance that imposes a smaller distance than 500 feet from the railroad to the development site. Staff is recommending that the Board find the site ineligible. Questions?

MS. BINGHAM ESCAREÑO: Okay. Any questions for Marni?

MR. BRADEN: Through the Chair, unlike the Fort Worth example, is there any official action of the City of McAllen to indicate interpretation of its ordinances?

MS. HOLLOWAY: Not that I'm aware of other than a letter from the city, an official from the City of McAllen.

MR. BRADEN: And just for clarity, that is not from the governing body of the city. It's just a letter --

MS. HOLLOWAY: It's a letter from a staff member.

MR. BRADEN: All right. Thank you.

MS. BINGHAM ESCAREÑO: Thank you, Marni. We'll hear public comment. Good morning, Cynthia.

MS. BAST: Good morning. Cynthia Bast of Locke Lord representing the developer for Cielo in McAllen. We sincerely appreciate the very thoughtful discussion of this rule and the judgment that the Board has to make here.
with regard to whether there is sufficient mitigation
associated with the presence of this railroad.

    McAllen is obviously a very different kind of
city than Fort Worth, and we believe that in this
circumstance there is sufficient mitigation as well. That
mitigation doesn't fit squarely within the rule as like in
the City of Fort Worth with regard to a quiet zone or a
commuter rail. And in this case, there is no local
ordinance with regard to distance from a railroad.

    Thus, somewhat like what Mr. Shackelford said,
in the absence of anything, that too is a statement by the
city that this is permitted. And so I will allow Mr.
Verma with the development company to talk to you about
the mitigation that was included in the application and
how he believes that this is an appropriate and eligible
site. Thank you.

    MS. BINGHAM ESCAREÑO: Thank you. Any
questions for Cynthia?

    (No response.)

    MS. BINGHAM ESCAREÑO: Okay. Good morning, Mr.
Verma.

    MR. VERMA: Hi. My name is Manish Verma, and
I'm here today to talk about Cielo. So, yes, our
situation is similar to Mistletoe Station in that we do
have proximity to a railroad. Now, our site is
approximately 160 feet from the active railroad and
approximately 250 feet from our nearest building and over
500 feet from the entrance of our site, from our egresses
of our site.

And as Cynthia had mentioned, you know, there
is no railroad quiet zone in McAllen, and there's also no
ordinance or regulation which prohibits housing or
multifamily housing from being built near or adjacent to a
railroad track.

And as included in our original application,
there's an example of another project, which is our
market-rate project across the street, which has a
railroad track running right behind it, in actual closer
proximity than ours.

And this is a common occurrence all throughout
McAllen. There's housing next to railroad tracks
throughout. And so there is no prohibition of housing or
multifamily housing from a railroad track. And so the
rule is different this year as it has been in years past
in that it is not a hard line rule. There is some
mitigation that can be provided.

I think it's important to note that this
railroad track operates once a day. So it is active, but
it's not running every hour. It's running once a day.
And it runs at a speed of only ten miles an hour, which is

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probably going to be slower than our residents would drive in the parking lot. So there are some things that should be considered here.

Finally, our architect has studied the development site and its proximity to the railroad and has indicated that our design -- that any impact of the railroad, it can be remediated through appropriate design and construction methodologies and will still compile all applicable state and federal requirements for safety purposes.

And when completed, the Cielo Apartments will include a fence to separate the portions of the development site from the tracks for security and to assist in reducing the noise levels caused by the railroad if there are any additional noise levels. The apartments will be designed to meet HUD guidelines in regards to sound attenuation and noise and safety.

So for these reasons above and what's been included in the applications and in our RAF response, we believe that would development site should be considered for approval under these rules. So thank you for your time, and I'm happy to answer any questions if you have.

MS. BINGHAM ESCAREÑO: Thank you, Mr. Verma.

Any questions from the Board?

MR. ECCLES: Madam Chair, may I?
MS. BINGHAM ESCAREÑO: Yes.

MR. ECCLES: Just a couple of quick questions, I'm looking at a letter from the City of McAllen dated February 27, 2017 from Gary Hendrickson, deputy city attorney. Is that the letter that the applicant is relying on as the -- for the statement that there were -- that there is no ordinance that regulates the distance of building a multifamily development from a railroad track?

MR. VERMA: So that's a question for me?

MR. ECCLES: Yes.

MR. VERMA: So we have two letters. There's one from Gary Hendrickson, the deputy city attorney. And then we also have a separate letter from Raj Sanchez who's a planner in regards to our zoning application.

MR. ECCLES: Okay. To be clear, the city attorney's letter states in the third paragraph, the letter "does not constitute a legal opinion or determination by the City of McAllen, nor should you or any other person act in reliance of this letter regarding the interpretation or applicability of all current municipal ordinances, rules, policies, and regulations related to the issue of any documentation or any ordinance stating that multifamily apartments cannot be built within 500 feet of any railroad track."

Is that an accurate --
MR. VERMA: That is correct. Yeah, that's right.

MR. ECCLES: Okay. What evidence of mitigation of the distance to a railroad track was included in the application?

MR. VERMA: We included our letter from the architect which discussed that the types of things that can be done from a design perspective to mitigate any noise and safety impact. And we also included the language about providing a fence along the property, which would be required anyway.

As far as the height and the quality of the fence, that would be determined based on our noise studies which would be done during our HUD financing stage.

MR. ECCLES: Okay.

MR. IRVINE: And on page 945, there's a letter from the architect expressing an opinion in that regard.

MR. VERMA: And then our subsequent RAF response, the architect expanded upon that when he spoke to some of the acoustical engineers and so forth, and that's been addressed in that letter as well.

MR. ECCLES: Okay. Thank you.

MR. VERMA: Thank you.

MS. BINGHAM ESCAREÑO: I guess -- Marni, you can come up. And I understand from the last one the
bright line, but I guess struggling with the documentation that was provided regarding ordinance in the previous application. You know, these letters look kind of qualified, like they're qualifying this as not a legal opinion or a determination by the city which I'm struggling with a little bit, but.

So I guess my question is staff was pretty clear that the documentation that they received did not -- was not substantial or didn't support your instruction through the rule regarding railroad.

MS. HOLLOWAY: Neither application included a copy of the ordinance.

MS. BINGHAM ESCAREÑO: Right.

MS. HOLLOWAY: So that's -- you know, we have to treat all of them equally. And so that's, yeah, exactly the situation.

MS. BINGHAM ESCAREÑO: Mr. Verma or I think Mr. Verma, do you know, the multifamily property that's already adjacent, it's not a new property; is it? It's an older property?

MR. VERMA: It's an older property.

MS. BINGHAM ESCAREÑO: Okay.

MR. VERMA: I don't know the exact age. My guess is it's probably 15 years. It's not --

MS. BINGHAM ESCAREÑO: Okay.
MR. VERMA: It's not 30 years ago or something of that nature.

MS. BINGHAM ESCAREÑO: Okay.

MR. VERMA: And while I'm up here, I just wanted to make clear that the things we're talking about as far as design and fencing and all that, we've included those costs or budgeted for them in our application.

MS. BINGHAM ESCAREÑO: Okay.

MR. VERMA: And the other note that I wanted to clarify is that it was mentioned that the railroad track is 30 feet from our site. It is not 30 feet. It is 160 feet from our nearest boundary, and the nearest building is 250 and then our egresses are even further away. So we've tried to design the site the best we can knowing -- because we know the track was there and that's why we disclosed it in the application.

MS. BINGHAM ESCAREÑO: Good morning, Barry.

MR. PALMER: Hi. Barry Palmer with Coats Rose. And I represent one of the competing applicants. And I'd like to differentiate this from the Fort Worth situation. I think, you know, there was testimony there that to go into the urban core of Fort Worth it's hard to avoid a railroad track.

Here, we're talking about the Valley, McAllen and Brownsville. There are plenty of sites that are not
adjacent to railroad tracks. In fact, in this application round, there are a couple of other applications in McAllen not too far away from this site, maybe half a mile away but not adjacent to the railroad track.

You know, here, the railroad track is going to be the backyard for this development. This is a family development. They'll probably have over 200 children, there'll be a railroad track going right through the backyard. It's both a noise and a safety issue that it would be that close.

On the other hand, there are other -- there's always -- in the 9 percent round, there's always another deal behind the one that you're considering. In this case, I represent a deal in Brownsville that is adjacent to a hike and bike trail that connected to Parkland that is adjacent to public tennis courts, that's walking distance to a public golf course. So, you know, why would we, you know, give an exception or bend the rule on putting a site next to a railroad track when we've got another application right behind it that's going to be next to a park?

So I would urge you to uphold staff's recommendation on this.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for Mr. Palmer?
(No response.)

MS. BINGHAM ESCAREÑO: Okay. Thank you.

MR. ECCLES: Actually if I could ask you to comment on the sufficiency or volume or your thoughts on the evidence of mitigation that was provided?

MR. PALMER: Well, I don't really see any evidence of mitigation. The fact that there is going to be a fence around the development, we have that on all of our developments. So it would really make this prohibition of an extra railroad track meaningless if all you had to do was build a fence. I think the Fort Worth situation was a lot different than this where there is so many railroad tracks in downtown Fort Worth that it's hard to get away from one, and that's not the case here.

MS. BINGHAM ESCAREÑO: Thank you, Barry.

MS. RICKENBACKER: Donna Rickenbacker again, and we do have competing applications in the Valley. The Valley is the most competitive region in the State of Texas. It has been for years and has very much so this year.

   With respect to railroads, everybody looked at source sites that clearly met the intent objection and what is stated in our rules, and that is proximity to railroad tracks and being outside that 500-foot window.
And it is very different down in the Valley than it is Fort Worth urban core. Clearly like in downtown Houston, which I live in Houston, you've got proximity to railroad tracks all throughout your downtown urban cores. There's a real distinction there.

I want to go back to what our rules said. They have said there's no railroad quiet zone or ordinance regarding proximity to railroad tracks. This, again, is not in the urban core area of the City of McAllen, and there are multiple applications that are within a quarter mile of this development site, good quality sites that are away from the railroad tracks that I hope, you know, move forward.

With respect to the existing development that they said has a multifamily development, I want y'all to understand that is on the opposite side of Bicentennial. That is a major north-south thoroughfare. If I could, you know, it's very similar to Interstate 45 in Houston. I mean it's a huge thoroughfare, and we're speaking to an apartment development on the other side of that major thoroughfare that they're saying is similar and adjacent to the railroad tracks. So I just hope you all will take all of this in consideration in your determination.

MS. BINGHAM ESCAREÑO: Thank you.

And just, Mr. Verma, just for reference, I'm
familiar with Bicentennial, and it's not 45. My question about the complex, the other complex was just when we were talking about Fort Worth, we were talking about urban core. We were talking about luxury apartments that are being built in proximity. And so my only question, I'm familiar with the area and I --

MS. VERMA: That's right.

MS. BINGHAM ESCAREÑO: -- felt like I knew what that apartment complex was. It is on the other side of the street. I don't know that that's extremely relevant.

MR. VERMA: Right.

MS. BINGHAM ESCAREÑO: But I just didn't know if there was new market -- you know, obviously fair housing is really important and I don't see that area historically as being something that I would have said was, you know, high opportunity. But I didn't know for sure when you were talking -- when the documents reference another multifamily whether or not it was a newer development so that was -- but I'm comfortable with -- I understand where it's located.

MR. VERMA: Okay.

MS. BINGHAM ESCAREÑO: Thank you.

If there's no further questions from the Board for Marni or commenters, I'll entertain a motion on this. This is 17368 Cielo McAllen regarding eligibility or
inelegibility of the site due to undesirable aspects, this being railroad proximity. Is there a motion?

MR. BRADEN: I'd make a motion that the Board accept the staff recommendation and find the site for Application 17368 ineligible.

MS. BINGHAM ESCAREÑO: Okay. Mr. Braden moves to find the site ineligible. Is there a second?

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Thank you. Thank you, guys.

Maybe we'll do this one and then take a quick break. Okay. Great.

MS. HOLLOWAY: So we can all go warm up.

MS. BINGHAM ESCAREÑO: I see people wiggling.

MS. HOLLOWAY: Our next application is Number 17322. This is Provision at Wilcrest in Houston. This applicant -- so the last two that we discussed, the applicant did disclose their application the undesirable
This particular applicant did not disclose the development site is located across the street from the Southern Crushed Concrete facility in Houston. Staff was made aware of the facility through a third-party request for an administrative deficiency which questioned whether the plant qualifies as heavy industry.

In the course of researching that RAF, staff found that the site is registered with TCEQ as a municipal solid waste processing facility. So the applicable part of the undesirable site feature rule says development sites located within 300 feet of a solid waste or sanitary landfill.

TCEQ defines the municipal solid waste facility as all contiguous land, structures, appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, one or more EG, one or more of them landfills, surface impoundments, or combinations of them.

Interestingly, we found in our research TCEQ will not provide a permit to a new concrete crusher unless it is, among other things, no less than 440 yards away from any residential, school, or place of worship. So if
the situation were reversed and they were trying to put in a new concrete crushing plant, TCEQ would make them put it 400 yards away from any residential use.

Staff is recommending that the Board find the development site ineligible due to proximity to a municipal solid waste processing facility.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: Great. Can I entertain a motion to hear public comment, if there is public comment prior to making a motion on this?

MR. BRADEN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same aye?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you. Hi, Sarah.

MS. ANDERSON: Hello again. My name is Sarah Anderson, and I'm here representing the developer. There's a reason why we didn't disclose this, because based on what this facility is, it is not required to be
disclosed in the rules. This is not a solid waste processing plant. This is a recycling facility. There is no language whatsoever, and there's a long history of interpretation of the specific language that has said that the recycling center's distinctly separate and not a part of the undesirable site feature that's being listed.

What we have is a difference of agreement not only of what this facility is, which I'm going to leave the attorneys to discuss and the developer, but we also have a disagreement of what this specific part of the QAP that's been references.

Granted, the language is poorly drafted, It's always been poorly drafted. This is a very old section. What we disagree on is the sentence that says the following "development sites located within 300 feet of a solid waste or sanitary landfills". This has always been interpreted and general basic grammar would dictate that this is identifying two different types of landfills. You're either a solid waste or a sanitary landfill.

This is not as staff would interpret and have to add language. Their interpretation is that these are two distinctly different types of facilities. One is a solid waste processing plant, and that one would be a sanitary landfill. If you just read the plain language of this, their interpretation just doesn't make sense. Each
of these clauses would have to stand on their own. And the way you would read it was that it would say, "A development site located within 300 feet of a solid waste," which doesn't mean anything, or "development sites located within 300 feet of sanitary landfills," which would imply that you would have to be next to more than one landfill to be ineligible. Neither of these interpretations make sense.

But more importantly than the general grammar and the fact that we did look and do our due diligence on this, there is 13 years of history about how this has been interpreted. This was brought in in 2004. The language has always been awkward, but it's always been interpreted to deal with landfills. What is next to us is, again, a recycling facility, not a landfill.

As proof in your packet, you'll see a long line of documentation that shows how it's been interpreted. You had in 2004 when the change was made compliance sent out a newsletter, and they specifically said that there's going to be a change to evaluation of site items and they listed this site feature as solid waste/sanitary landfills.

You go on later while the language in the QAP wasn't fixed, you get into the application materials. And by 2009 and 2010, the actual application materials that
you're checking this, again, clearly indicate that we're
talking about two different types of landfills, not a
solid waste processing plant which this isn't anyway.

Then you have emails going back to from 2012
and 2013 where we specifically asked questions about
recycling facilities and, again, received multiple
information from the department and determinations that
said no, recycling is not considered landfill. I've been
through eight administrators in the course of the last 14
years.

I've spoken with several of them, and nobody's
going to come up. They all work now in the industry, and
nobody wants to go on the line that -- they have said that
their interpretation's just as shown for the last 14 years
that this specific item is solely about landfills, not
about a solid waste processing plant or a sanitary
landfill. Frankly, there just isn't anything in the QAP
that talks about the sanitary or a solid waste processing
plant at all.

And with that, I'll answer any questions.

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

MS. BINGHAM ESCAREÑO: Thank you.

MR. ECCLES: Actually, just real quick,
because I think at one point, staff had indicated that
this facility might be considered heavy industrial.

    MS. ANDERSON: Correct. And it doesn't meet
that definition either.

    MR. ECCLES: Talking about it's been called
concrete crushing --

    MS. ANDERSON: Uh-huh.

    MR. ECCLES: -- and you're calling it a
recycling facility. What's going on there?

    MS. ANDERSON: Well, and I'll let the developer
because he knows more about it, but essentially, it has a
permit that is analogous to recycling and it doesn't
produce anything. It doesn't mix anything. And these are
actually all over Houston, and I'll let him explain
exactly what they do on site.

    MR. ECCLES: Well, and just to that point and
to give the heads up, is what's going on there something
that could create exposure to an environmental factor that
could adversely affect the health and safety of the
residents that could not be adequately medicated.

    MS. ANDERSON: And the answer is no. And we've
had our environmental people look into this, and we've
spoken with the -- the due diligence has been done. And
no, it doesn't need either of those items. And we did a
lot of legwork before we moved forward with this site.
And I'll let the developer, again, answer any questions about the ESA, what the ESA provider said and that TCEQ has said about this.

MR. ECCLES: Okay.

MS. ANDERSON: Okay. Thank you.

MS. BINGHAM ESCAREÑO: Thank you. No pressure.

MR. HARRIS: Whatsoever. My name is Jervon Harris. I represent the applicant and the developer. And just to talk about process and due diligence, you know, with each development, you know, we do site reconnaissance. We try to get a feel for the context of the site, the land uses that are adjacent.

You know, we've got our knee jerk reactions and our kind of emotional reactions to the sites and the adjacent uses, but in order to get past that knee jerk reaction, we hired experts. You know, we hired Sarah Anderson and her team to help us evaluate the QAP and the language and, you know, with their broad history of the different scoring items, the different ineligibility items, and the various derivations of that over the years.

Pretty often their expertise and knowledge extends beyond staff. You know, we also engaged Jones Walker's legal counsel to help us with the finite interpretation of the law again, of the rules again. A long history of the various iterations of the QAP and how
things got from one place to the next.

And then to dig deeper into the technical, you know, we've engaged an environmental consultant as well as a civil engineer. Our environmental consultant has evaluated this extensively. There's been numerous onsite reconnaissance. There has been reviews of databases. They have contacted and recontacted TCEQ.

This all ultimately resulted in a definitive letter from the environmental consultant where they state: "There appear to be no immediate health or safety hazards associated with the activities being performed at this facility that would affect the subject site." You know, in Houston -- you know, Houston is a city that's characterized by a lack of zoning and a broad range of commercial, light industrial and industrial uses that are often in close proximity to residential uses.

But it's a sliding scale. And on the sliding scale, this facility is closer to a commercial use than it is a heavy industrial use. They are performing a retail function. They are taking big rocks and turning them into smaller rocks and creating commodity and selling that. They're not a landfill. There are specifically excluded, disallowed from retaining materials on site as you would with a landfill.

Our environmental consultant has provided
several letters from TCEQ addressed to the facility which clearly state that they operate as a recycling facility only. And there are very strict limitations on their ability to retain any of those materials on site. The letter has essentially notified the operator that they have to utilize and create a material with essentially everything that comes on site. So they don't retain waste.

And then there's a charge in the materials from TCEQ where they clearly state: "Persons associated with the facility must ensure that the facility operates in a manner which does not cause a nuisance or endangerment of the public health, welfare, or environment."

So, you know, our due diligence has led us to the conclusion that this is a recycling facility. It is a more of a commercial use than a heavy industrial use. And if you look at a strict interpretation of a landfill versus a recycling facility as well as heavy industrial versus commercial, this site should not be considered ineligible and we request that you deem it eligible.

Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for John?

MS. RESÉNDIZ: Madam Chair, I actually don't even know that this question would be for --
MS. BINGHAM ESCAREÑO: For Mr. Harris.

MS. RESÉNDIZ: -- for Mr. Harris or for Beau.

But if the zoning component of this development is clear, I guess I'm having a hard time understanding what that zoning is. Is it zoned heavy industrial --

MR. HARRIS: Well, the --

MS. RESÉNDIZ: -- or is it zoned --

MR. ECCLES: It's not zoned.

MR. HARRIS: Well, the City of Houston doesn't have zoning, so that's how you end up with this odd mix of residential properties that are in close proximity to commercial and light industrial uses. It's just part and parcel of development and land use in the City of Houston. It's unavoidable and undeniable. And if we're going to do development in the City of Houston, it's a factor.

And in this case, we're actually not asking you to turn your head or hold your nose but look more closely at the fact that this is a recycling facility. It does not create any health or hazards. And it's an opportunity to provide another development for working families in the City of Houston. And if this application gets deemed ineligible, there is no other family deal to step up and take its place. And it'll be another award going to an elderly deal, and I'm concerned about the message that sends to the development.
MS. BINGHAM ESCAREÑO: Thank you.

MR. BRADEN: Madam Chair?

MS. BINGHAM ESCAREÑO: Yes.

MR. BRADEN: I had a question for Mr. Harris.

I'm sorry.

MR. HARRIS: I'm trying to get away, but --

(General laughter.)

MR. BRADEN: I appreciate what you said and the distinction you're making with respect to a recycling facility. But according to the materials we've been provided, the plant is a registered municipal solid waste processing plant under the TCEQ guidelines. Have you received any written correspondence from TCEQ changing that designation?

MR. HARRIS: Well, what we have is letters from TCEQ to the operator which clearly defined the use. And although the permit is a municipal solid waste permit, under that permit there's a whole litany of uses that are permitted under that permit.

The specific use that is allowed at this site is recycling only, and the letters from TCEQ clearly state that. Did that answer your question?

MR. BRADEN: I think it did.

NR. ECCLES: That was fine.

MR. HARRIS: Okay.
MS. JACKSON: Good morning. My name is Toni Jackson, and I'm with Jones Walker. Mr. Braden, I'm going to actually start off following up with your question. TCEQ, actually, their permitting all has the MSW designation. It's very similar to the fact that the railroad commission oversees oil and gas wells. But it does not mean that all of the permits that they provide actually are doing municipal solid waste types of functions.

Their permitting actually falls under two specific categories, and the first category is landfills, and those are Type 1 facilities, Type 4 facilities, arid exempt facilities, and monofill facilities. Those are the facilities that they consider landfills. And you will note in your information that we provided you today, we provided you with a list of the active landfills in the State of Texas since March 2017.

The second set of permits that they provide, they still have a MSW designation because, again, that is something the designation that they give to their permits, but they are specifically and explicitly considered processing facilities. And those are Type 5 facilities --which this location is qualified as a Type 5 facility -- and then Type 9 facilities.

The facility types that fall under the
processing facilities, one of those which is the permit that Southern Crushed actually has is a 5RR, and that is only for recycling and recovery. And so that is -- those are specific to processing facility and those are also the types of permits that commercial entities that do like computer recycling and other types of heavy equipment recycling, they get. So it's simply a designation, but it does not mean that they are receiving municipal solid waste. And municipal solid waste, as it is defined by them as well as even the EPA, does not meeting the definition of this recycling plant.

Yes, Tim?

MR. IRVINE: There was mention of the TCEQ requirement of a quarter mile separation. If sequentially this were reversed and the development were already in existence, would TCEQ permit this facility as it is presently operated at that site?

MS. JACKSON: You're indicating that they won't under their --

MR. IRVINE: I'm not. I'm asking.

MS. JACKSON: Well, and we did not ask TCEQ that question.

MR. IRVINE: Okay.

MS. JACKSON: We did not believe that we needed to ask that question because, again, what was put before
us from the staff is that we should have looked for ways
to mitigate our the fact that we were going to be in close
proximity of this development, but more importantly, that
we did not check off or disclose that we were going to be
in close proximity to the recycling plant.

Again, as Ms. Anderson has indicated, we did
not believe that this fell under the criteria that is
stated in that particular -- in undesirable site feature.

And so, therefore, we are simply trying to show which we
were trying to work with staff and show that this facility
is a recycling plant and, therefore, it does not even fall
under our requirement to have disclosed or should even
consider us as ineligible because it does not meet the
criteria as set forth by you.

We have shown also that there have been
developments in the past that are near computer recycling.

Goodwill has a 5RR designation. There are developments
near Goodwills. So this is, again, a recycling
designation. Municipal solid waste is very clear. It
means something that it is that waste from residential
that is hazardous and that has been set forth, set out,
and so are just trying to point out that this does not
meet that guidelines set out by both TCEQ and the EPA.

MR. BRADEN: And none of this additional
information was a part of your application because you all
never thought it was an issue?

MS. JACKSON: That is correct. And even when it was brought forth to the staff, again, our competitors indicated that it was heavy industrial. They did not even see that it was -- that this was an issue. So this was not raised.

MS. BINGHAM ESCAREÑO: Any other questions for Toni?

I have a question for Beau, just quickly. Regarding the -- so we have a request for administrative deficiency that comes up that asks the question about heavy industrial. It does not look like that's the issue, but in the process of staff researching that, they come across this, you know, solid waste, and so we get into all the semantics.

Then in the process of that though, we're looking at the Concrete Crushing thing and I'm googling real quick here which is very dangerous for me. But I mean it looks like TCEQ had some concerns. It's like an air quality deal, I mean, is what it looks like.

But I guess my question for you is I completely understand the applicant's standpoint, you know, their position. Does the Board have some level of responsibility if the Board in the process of chasing something that might not be relevant comes across
something that could be relevant regarding ineligible
site, undesirable characteristic. Does the Board have any obligation relative to
that in learning something that could be an undesirable
characteristic even though that's not -- that wasn't
material or in the administrative deficiency or in
anything that the applicant disclosed? Sorry.

MR. ECCLES: Well, I'm not going to go in depth
and give a legal opinion on this, but the process as it
was established here, notice was given regarding the heavy
industrial I think through an RAF notice.

MS. JACKSON: That's correct.

MR. ECCLES: And maybe on I want to say early
July --

MS. JACKSON: And the staff did not come back
to us regarding that, but we have provided information as
you will see from Doucet & Associates that speaks to and
responds to that. And Doucet & Associates indicates that
based under the TDHCA definition, that this does not meet
that definition of heavy industrial. And I'll just go
ahead and read it. It says: "There is a concrete facility
near the development site; however, it does not meet the
TDHCA definition. A concrete recycling facility does not
require extensive capital investment in land and machinery
because there are no permanent buildings or fixtures on
Additionally, concrete facility may be easily relocated or removed because there are no permanent structures. Finally, while there is occasional truck traffic, there is not high level of external noise produced by the facility. Furthermore, a noise analysis prepared by AEI in accordance with the HUD noise guideline concluded that noise levels were within a normally acceptable range."

Additionally, we have the other environmental information from AEI, which has been provided to you. And I know for purposes of full disclosure at my former law firm, we represented Southern Crushed Concrete, and I did an extensive amount of lobbying work for them. And I know that they annually do environmental work to assure that they have not created any hazardous conditions for the surrounding neighborhood.

MR. ECCLES: And with respect to the letter that was provided by Doucet & Associates --


MR. ECCLES: -- regarding their interpretation of this Board's rule regarding heavy industrial and the definition of heavy industrial, it is this Board's rule to interpret whether Southern Crushed Concrete as it is currently configured and operating requires expensive
capital investment of land and machinery and would be
easily relocated. And just looking at that site picture
that you've shown, this Board may come to a different
interpretation as to whether that site would qualify as
heavy industrial under its rule.

MR. IRVINE: I would respectfully offer that
looking for narrow applications within our rule structure
is not necessarily the most effective way to get to the
real issue.

MS. JACKSON: Understood.

MR. IRVINE: I think we're past issues of
disclosure. To me, it really kind of falls back on
subsection (k) under our rule, which is basically any
other site deemed unacceptable which would include without
limitation those with exposure to environmental factor
that may adversely affect the health safety of the
residents and which cannot be adequately mitigated.

And my concern, the reason I asked the earlier
question about the reciprocal timing issue is TCEQ is the
state's designated expert on these kinds of issues. And
it seems to me from what I've heard that they have a
separation requirement from housing for certain types of
facilities. And I really think it's important to note is
this the type of facility that if TCEQ were looking at the
acceptable distance from housing, they would say it needs
to be a quarter of a mile. I think that's an important question.

MS. JACKSON: And that is a fair question. And what I would, you know, say in that regard because we did, again, prepare and provide you with what the consultants came back with. As you know, Tim, we've got this on the 5th.

MR. IRVINE: I understand.

MS. JACKSON: And we did not -- you know, we could not get the environmental consultant here today because of the short notice. Additionally, because what we got from the staff did not ask for us to respond under (k), we are responding under the provision that you asked us to respond to. And so that's what we came today prepared to do.

We would, you know, again, ask based on our response and what was asked of us that we be deemed eligible. However, if you are asking for or now saying that we need to be responding under a different provision, we would have to ask that you provide us the opportunity to --

MR. IRVINE: Absolutely.

MS. JACKSON: -- effectively respond because we were not prepared to do that because that was not what was asked of us of staff. And we cannot be put in a position
of having bases changed right on the spot.

MR. IRVINE: I agree.

MS. BINGHAM ESCAREÑO: Do we have any time to
-- I mean is there any opportunity the Board has to
provide any time to respond?

MR. ECCLES: If the Board decided that it would
like to table this site eligibility determination to allow
staff to under 10.101(a)(2) to provide and identify what
it believes would constitute an undesirable site feature
not listed or in subparagraph (k), which is what Tim was
suggesting, then they would have the opportunity to
respond in kind to then allow the Board to make this
determination of site eligibility.

MS. ANDERSON: Again, Sarah Anderson. I think
another alternative would be that none of us are experts
on this, and I think we have to be able to defer to
experts. And one suggestion would be to if we're
concerned about something because we just don't know the
answer, it could be a condition of award that we at some
point come forward with something that would lend you
enough to comfort for us to go forward.

The problem is we're two weeks out, and whether
or not we can get that is suspect. And I would say, you
know, have a condition of carryover, which would be
November, there would be some sort of report, some sort of
study, or some sort of something that would give you the comfort level that you would need.

That would prevent us from putting a huge capital investment forward without knowing the answer and wouldn't put us in this thing of staff with, you know, at least ten more appeals coming forward next week or in two weeks and everything else. I don't think doing anything that fast is going to get us the answers that we all should get.

MR. IRVINE: You could certainly take a belt and suspenders approach and table the matter with direction to the applicant to work with staff to address the specific issue that I raised earlier.

MS. JACKSON: And as you know, we have been, you know, more than willing to do that and --

MR. IRVINE: Yeah, I know.

MS. JACKSON: -- to work with staff.

MR. IRVINE: Sure.

MS. JACKSON: We just, you know -- but I do want to at least on the record say, you know, we as a development community can't be put in a situation where we're responding to one thing and then --

MR. IRVINE: I understand.

MS. JACKSON: -- all of a sudden gears are switched and then we have to kind of jump to respond to
something else. We want to give you all of the information that you want, and that is why we were desirous of trying to sit down and work with staff before having to come before the Board and have to seem to be jumping around like this.

MS. BINGHAM ESCAREÑO: Thanks, Toni.

MS. JACKSON: Thank you.

MS. BINGHAM ESCAREÑO: I mean I do -- and clearly the Board is probably the complicating factor at this point, right, because staff had a position and a recommendation. You guys obviously, you know, have come to speak your position, which is not the same as staff's. And then I think we just in the process of trying to learn this situation have, you know, stumbled across something that's just giving us pause for concern about other ineligible, you know, characteristics.

But let me see if the Board has any other questions and then see if any Board member would be prepared or willing to make a motion.

So the options I think would be clearly the Board is being asked to find the site eligible or ineligible if for any reason and under whichever of those aspects the Board wants to specify it being eligible or ineligible. The other option that's been mentioned would be to table the item and instruct staff to meet with the
applicant and review the situation and determine if there are other eligibility or ineligibility issues relative to site characteristics.

So, and can I make that a little longer and say if the --

MR. ECCLES: Sure.

MS. BINGHAM ESCAREÑO: -- if the staff and the applicant believe that there might be an ineligible characteristic, then we'd move into the mitigation part also, right? So either the item comes back up as asking the Board again to decide eligibility or ineligibility. Staff has a position on that. Maybe it's the same as the applicants the next time around. If it weren't, then -- and if it were and it was that site is eligible, just find it eligible and the Board takes action.

If you mutually agree there might be an ineligibility characteristics, then can you muster a mitigation plan or, Sarah, that might be when something kicks in that says conditional because stuff has to move, right?

I know I just threw a bunch of options out there. Counsel, is there --

MR. ECCLES: None of that was a suggestion for a motion. That's just kind of synopsis of where we are.

MS. BINGHAM ESCAREÑO: Of the discussion so
far.

MR. ECCLES: Okay.

MR. BRADEN: I'd make a motion that we table the item until the next board meeting and ask that they work with staff in light of what you just discussed.

MS. BINGHAM ESCAREÑO: Okay. So there's a motion from Mr. Braden to table the item with the instruction for staff to work with the applicant on the issue. Is there a second?

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Okay. Any other discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

Thanks. Can we take a break maybe until -- do we want to break until noon, come back at noon or -- okay. Very good. We'll break and return at noon. Thank you.

(Whereupon, a brief recess was taken.)

MS. BINGHAM ESCAREÑO: Marni, we're going to go to Item 4(b). And then just for housekeeping, just for those whose stomachs are growling, we're thinking break

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for lunch, find a good place somewhere in the 12:45 zone.
And then lunch will be fairly short. We'll go into executive session. Executive session will be fairly short, and then we'll reconvene and try to knock out the rest of it.

MS. HOLLOWAY: Okay. All right. Item 4(b) is Presentation, discussion, and possible action regarding an award of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability.

There are two items listed on your agenda, 17501 Live Oak Trails and 17502 Freedom's Path at Kerrville. The Freedom's Path item we are pulling from the agenda for today's meeting at the applicant's request. So we will be discussing Application 17501 Live Oak Trails.

The applicant requested $760,000 in direct loan funds. This is to support a 2014 9 percent award for new construction of 58 supportive housing units in southwest Austin.

MS. BINGHAM ESCAREÑO: You know what, Marni? I don't think we're on again.

MS. HOLLOWAY: Are we on again?

MS. BINGHAM ESCAREÑO: The mikes. Okay.

MS. HOLLOWAY: Okay. All right. Peggy has the magic touch.
MS. BINGHAM ESCAREÑO: Thank you.

MS. HOLLOWAY: All right. Would you like me to start over?

MS. BINGHAM ESCAREÑO: I think we're good.

MS. HOLLOWAY: Okay. The Multifamily Direct Loan Rule requires applications for developments that have previously been awarded departments funds under any program to be found eligible by the Board on the basis of the applicant has provided evidence of circumstances beyond their control which could not have been prevented by timely start of construction as a criteria for the Board to consider them eligible to receive award for -- receive an award when they have received funds previously.

For this applicant specifically, they have provided evidence that building costs have increased approximately $3.1 million -- that's 76 percent -- since the 2014 award. The applicant had submitted documentation indicating they had anticipated a federal HOME loan bank grant under the affordable housing program that never materialized. The applicant stated that they had received 14 FHLB grants over the past 15 years but were unable to secure the $600,00 from FHLB in this instance due to an oversight by FHLB.

In response to the increased cost and reduced funding, the applicant has secured additional financing in
the form of grants, donations, and increased equity. They have contained costs by not increasing the developer fee based on their higher construction cost. Therefore, none of the direct loan award funds will be used to fund an increased developer fee.

The direct loan funds are requested as a deferred forgivable loan with a 40-year term. With the addition of these funds, 10 of the 58 units will now be restricted to serve households earning 50 percent or less of the area median income.

As I said, the Multifamily Direct Loan Rule requires the Department’s Governing Board to establish a hard closing deadline at the time of award. Staff recommends that closing on the direct loan must occur no later than August 31, 2017 and that the section 811, Owner Participation Agreement, also be signed before closing.

Award of $600,000 in direct loan funds was recommended by the Executive Award and Review Advisory Committee in order to replace the FHLB funds that were contemplated but ultimately not awarded. Staff recommends that the application be found eligible under 10 TAC 13.5(d)(2), which is the subsequent award section, that a hard closing deadline of August 31st, 2017, and execution of the Section 811, Owner Participation Agreement, be foreclosing with an award of $600,000 of supportive
housing soft repayment funds.

   MS. BINGHAM ESCAREÑO: Excellent.

   MS. HOLLOWAY: I'd be happy to take any
questions.

   MS. BINGHAM ESCAREÑO: Anybody have any
questions? Marni, we may be able to entertain a motion
right now.

   MR. BRADEN: I'd make a motion that an award of
$600,000 in direct loan funds from the NOFA for Live Oak
Trails be approved in the form presented at this meeting.

   MS. BINGHAM ESCAREÑO: We have a motion to
approve staff's recommendations with the conditions also
recommended by staff. Is there a second?

   MS. THOMASON: Second.

   MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

All those in favor, aye?

   (A chorus of ayes.)

   MS. BINGHAM ESCAREÑO: Opposed, same sign?

   (No response.)

   MS. BINGHAM ESCAREÑO: Motion carries. Thank
you. Great. We are going to start reviewing some of the
appeals. I think Michael has a letter to read into the
record as we begin. And then why don't we -- if you're --
I think, Marni, Magnolia and Vineyard are pulled, correct,
the first two?
MS. HOLLOWAY: Actually, there are a number of them that have been pulled.

MS. BINGHAM ESCAREÑO: Okay.

MS. HOLLOWAY: Would you like me just to run through the list?

MS. BINGHAM ESCAREÑO: Sure.

MS. HOLLOWAY: 17007 Magnolia Station; 17028 Vineyard on Lancaster; 17170 Star of Texas Seniors; 17199 Santa Fe Place Temple; 17247 Western Springs Apartments; 17251 Pine Terrace Apartments; 17267 Industrial Lofts will be coming next month; 17283 Avanti Manor, 17297 Kountze Pioneer Crossing also next month; 17305 Payton Senior will be next month; 17322 Provision at Wilcrest; 17323 Skyway Gardens; 17327 Legacy Trails of Lindale will be next months; 17376 The Bristol San Antonio; 17388 West Pecan Village will be next month; 17390 Las Palomas also will be next month.

MS. BINGHAM ESCAREÑO: Great.

MR. ECCLES: And, Marni, when you say next month --

MS. HOLLOWAY: The next meeting.

MR. ECCLES: Yes.

MS. HOLLOWAY: I was really hoping to have a month in between.

MS. BINGHAM ESCAREÑO: Because they're
happening so frequently now.

MR. ECCLES: I could just feel a little bit of panic going on.

MS. HOLLOWAY: Really?

General laughter.)

MR. ECCLES: We'll handle your appeals after the awards.

MS. HOLLOWAY: Sorry. My deepest apologies for causing general counsel panic.

MR. IRVINE: I thought it was fun.

MS. BINGHAM ESCAREÑO: Michael, do you have a letter to read into the record that's relevant to any of those that's remained on the agenda?

MR. LYTTLE: Yes, Ms. Chair.

MS. BINGHAM ESCAREÑO: Okay. We're ready.

MR. LYTTLE: This is a letter addressed to the Board from State Representative Justin Rodriguez, House District 125. It reads as follows: "I write today to express my concerns over the notification process to adjacent neighborhood associations and residential communities when proposed affordable housing developments apply for 9 percent housing tax credits through the Texas Department of Housing and Community Affairs.

According to the 2017 Qualified Allocation Plan, during the pre-application phase, all developments
must notify neighborhood organizations on record with various information including that the developer is applying for housing tax credit through TDHCA and the site to the Administrative Code.

Based on the feedback I have had with my constituents in this district, this level of notification was not provided. While Section 11.8(b)(2)(b) of the QAP also provides for notification to the local, municipal, and state elected officials, the people who are the most directly impacted, the residents, should be afforded an opportunity to engage much earlier in the process.

Unfortunately, that was not the case with the above-referenced developments. In fact, community members were not aware of the proposed projects until early April. At that point, armed with very little information, area residents had no other choice but to organize in opposition to these developments. Since that time, area neighborhood leaders have made multiple attempts to provide information to TDHCA as to possible deficiencies in the applications and to point toward and reach development.

For example, it is my understanding that one of the applicants has requested points for being within two miles of a museum. Having represented our community for
over ten years as both the city councilman and now a state
representative, I can personally attest that this
assertion is patently false.

   In my view, the application process should
provide for the greatest amount of transparency and
community input on the front end. It puts everyone
involved, my office included, in a compromising and
tenuous position having to scramble for information on the
back end.

   For the reasons, I respectfully request that
you consider even at this late hour all of the concerns my
constituents have offered in both their oral and written
testimony. Thank you for your time and your service to
our great state. Sincerely, Justin Rodriguez."

   MS. BINGHAM ESCAREÑO: Great. Thank you.

   Okay. Marni?

   MS. HOLLOWAY: So our first one is 17064
   Chaparral Apartments. As the result of a Third-Party
   Request for Administrative Deficiency, staff reviewed the
   application to determine whether it qualified for 10
   points under 10 TAC 11.9(d)(3) related to declared
   disaster area. Staff determined that the application did
   not qualify for the 10 points and is therefore not
   eligible for 6 points under 10 TAC 11.9(e)(3) related to
   pre-application participation. The applicant is appealing
that scoring result.

So, the scoring item that we are discussing, declared disaster area, ties directly back to statute at 2306.6710(b)(1)(h). And it reads: "An application may receive 10 points if at the time of application submission or at any time within the two-year period preceding the date of submission the development site is located in an area declared to be a disaster area under Texas Government Code Section 418.014."

418.014 is a section of statute under which the governor makes a declaration of a disaster in a county. And that language is specifically from statute.

The appeal asserts that the applicant was misled as Midland County was included on the list of eligible counties from 2016. They say, in part, the applicant did not research the disaster declarations under Texas Government Code 418.014 directly, that instead researched the listing of disaster areas that have been accepted by TDHCA within the last two years.

Also, in the QAP related to due diligence and applicant responsibilities states in part: "Although the department may compile data from outside sources in order to assist applicants in the application process, it remains the sole responsibility of the applicant to determine independently the necessary due diligence to
research, confirm, and verify any data, opinions, interpretations, or other information upon which an applicant bases an application."

The appeal referred to the list posted for the 2016 program year. The list of eligible counties for 2017 was posted to the Department's website in mid-December of 2017 -- or of 2016, I'm sorry. The applicant did not contact staff to ask why Midland County was not on the list for the 2017 year when it had been on the list for 2016. And, in fact, 2016 was the last year that Midland County was eligible for disaster points under a previous declaration which is why it did not appear for the current program year.

Staff is recommending that the Board deny the appeal. I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: Any questions of Marni right now?

(No response.)

MS. BINGHAM ESCAREÑO: I'll entertain a motion to hear public comment prior to making a motion on this item. Is there a motion to do so?

MS. RESÉNDIZ: So moved.

MS. BINGHAM ESCAREÑO: Motion to hear public comment. Is there a second?

MS. THOMASON: Second.

MR. WEATHERLY: Hi. Good afternoon. My name is Joe Weatherly. I'm vice-president for the Michaels Development Company. Speaking on this matter today, I wanted to touch on a few things that Ms. Holloway alluded to here with regard to the disaster area points.

There's a couple of issues here. Really one is the interpretation of what the rules suggest going back two years which is what we did. But I think the bigger point here is during the application process when we have had our back and forth questions and answers from staff on this issue, on various issues, this issue did come up. Staff did ask this question on May 17th through the process.

They asked this exact question actually. And we responded within 24 hours with our response, what we did, what Ms. Holloway talked about. And we did not hear another word from them. There was no follow-up. There were no further questions. They -- and from where we stood, they accepted our answer. And then on June 1st, we got a scoring sheet from staff that upheld those points, so that led us to believe we're okay here. They asked a question. We answered the question. They accepted our answer.

So that's really what I wanted to talk to you
about today is really it's two issues. It's the rule itself and then there's also the fact that staff took their time. They asked the question, actually asked us a lot of questions with a lot of answers for them. There was a good back and forth. It's all documented there in your package. But when it comes down to it, they accepted our answer.

And that's really what I'm here today to talk about is the fact that the staff who have a very difficult job of going through all these applications and getting into the details and the minute detail of every application that comes through here, they seemingly accepted our response. And it wasn't until a third party intervened that they had took issue with our response. So that's really what I'm here today to talk about.

MS. BINGHAM ESCAREÑO: Thank you. Thanks very much. Any questions from the Board?

(No response.)

VOICE: I'm only here for legal questions or if something comes up that requires a response.

MS. BINGHAM ESCAREÑO: Very good.

MS. ANDERSON: Sarah Anderson.

MS. BINGHAM ESCAREÑO: Hi, Sarah.

MS. ANDERSON: And I first have to say I swear I am never up this often. This is an anomaly, and you
I'm here because we are the people that brought this to the Department's attention. And we're here to support staff's interpretation of this. This is an incredibly complex program, and it's esoteric and difficult. And there are times when there are multiple interpretations. This simply isn't one of them.

This is a very cut-and-dry issue. The rule says you have to look at the governor's disclosure of their disaster declarations, and it has to be within two years. There was an FAQ that addressed this that said don't look at the 2016 list because it may not be correct. Look at the 2017. Staff emailed out presumably to everybody who attended the application workshops an email that gave that list to everybody and, again, Midland was not on that list.

That same list for 2017 was posted with the application materials. And even if there was a mistake with that list, it would have still been our responsibility to go to the Governor's Office website and to double check that.

I feel really bad for them. I know that I've been on the other side where I've responded to a deficiency. Staff mistakenly accepted my response. We
threw a party, and then realized staff was wrong and it was taken back.

I do feel for them, but the case here is that in their own response, they just said they didn't do their research. They didn't look it up, and they missed it.
Sorry, but we have a client who started out in Midland and when that list came out, left Midland and went to San Angelo where we did get the points. And we just ask that you uphold staff's determinations on this.

MS. BINGHAM ESCAREÑO: Very good.

MS. ANDERSON: Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Any questions for Sarah?

(No response.)

MS. BINGHAM ESCAREÑO: Does the Board have any other questions of Marni? Tamea?

MS. DULA: Tamea Dula with Coats Rose. I do think that an issue has been raised that needs a response. And if you look at page 88 in your supplemental board book, you will see a document that's published by the TDHCA. It says it's a 2016 declared disaster areas. That listing in actuality is a listing of disasters that occurred from 2014, '15, and '16. And it's a list of what is appropriate to be cited with regard to the 2016 tax credit application.
However, if you just look at page 88, it doesn't say all of that. It is an extremely misleading document. It says 2016 declared disaster areas. For someone who is coming into this program and is not as familiar as myself who's been doing this now for nearly 20 years, it's easy to look at that and see that the TDHCA has approved certain counties as being appropriate counties to claim the 10 points for disaster -- declared disasters having occurred within the two years prior to the application being filed. My client falls into that category.

The TDHCA has no obligation to put out this document. But if they put out a document, then it should not be an ambiguous document that is misleading to someone who sees it and construes it as being a complete listing of what is appropriate for the year 2016, which is definitely within two years prior to March 1, 2017. And that's the gist of this appeal. Thank you.

MR. IRVINE: And I call your attention to 10 TAC Section 10.2(a) that specifically points out the due diligence requirements that are imposed on applicants, and it does point out that where we provide things in an attempt to be assistance, sometimes we fall short and it remains the applicant's and no one else's sole responsibility to get to the bottom of it and get it
right.

MS. DULA: I'm very aware of that. But I do think that the document itself requires correction.

MR. IRVINE: Sure.

MR. ECCLES: Well, and actually let me point out it does say 2016 declared disaster areas, but then it says Section 11.9(b)(3) of the 2016 QAP.

MS. DULA: Yes. But as I said, 2016 is within the two-year period before March 1, 2017. So I think it is definitely a document that was published on the TDHCA website and could be inappropriately construed as being a listing of disasters that occurred within two years prior to March 1 of 2017. And I'd just ask you to think about that when you make a determination here. Thank you.

Anything else?

MS. BINGHAM ESCAREÑO: Does the Board have any questions for Tamea?

(No response.)

MS. BINGHAM ESCAREÑO: Okay. Entertain a motion.

MR. BRADEN: I'll make a motion that the score and appeal for Application 17064 Chaparral Apartments be denied.

MS. BINGHAM ESCAREÑO: Okay. A motion from Mr.
Braden to deny appeal. Is there a second?

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

All those in favor -- any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries to deny the appeal.

MS. HOLLOWAY: Our next one is Application 17097. This is Holly Oak Seniors. A Third-Party Request for Administrative Deficiency requested that staff review the application to determine whether it qualified for 5 points under served area. We found that the census tract that was dependent for that scoring item includes areas that were outside of the incorporated boundaries of Houston.

This scoring item under underserved area reads as: "A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the development is located nor the contiguous census tracts have received an award or HDC allocation within the past 15 years and
continues to appear on the Department's inventory. This item will apply in cities with a population of 300,000 or more and will not apply in the at-risk set-aside."

The applicant requested five points but was awarded two points as the census tract that includes the development site includes areas that are outside of the municipal boundaries of the City of Houston. The appeal questioned staff's reading of the rule that the census tract must be entirely within the boundaries of the municipality. The applicant 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.

This same subsection of the QAP regarding underserved area includes language that addresses partial inclusion in Item A, which states: "The development site is located wholly or partially within the boundaries of a colonia." The language in E does not allow for partial inclusion. It clearly states within the boundaries of an incorporated area. Staff recommends denial of the appeal.

I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: Any questions for Marni at this time?

(No response.)

MS. BINGHAM ESCAREÑO: Okay. Thank you, Marni.
MR. KELLY: Good afternoon. My name is Nathan Kelly, and I'm speaking on behalf of Application 17097 Holly Oak Seniors. As Ms. Holloway pointed out, we've been deducted three out of the five points that we elected for being cited in an underserved area, and we respectfully request that the Board reserve -- reverse staff's decision.

Pursuant to the rule that Marni read out, we did elect those five points. Staff, as she noted, has taken the position that the census tract has to be wholly within the boundaries of the incorporated area. That guidance was first published in the FAQ that staff added to its website on or about January 13th of 2017. I would just like to point out for the Board's information that this is four days following the date with which we are required to submit pre-applications which was for this calendar year, January 9th.

The rule in and of itself doesn't contain any indication that the census tract has to be entirely within the incorporated area. And as she -- as Ms. Holloway said, we would ask that the Board rule that the reasonable interpretation is that the census tract in and of itself be -- or the development site, I should say, wholly within the incorporated area, as our site is, not necessarily the boundaries of the census tract.
It's really, you know, from our perspective impractical for us to guess at what staff's interpretation of a rule is going to be when the FAQs that are interpreting the rules are published, you know, subsequent to the date with which the pre-applications are due.

As you all know, we spend months working on identifying sites, working with our elected officials and neighborhood organizations to put these deals together, not to mention, you know, time and capital resources that we spend to bring these deals to a full applications. And, you know, for the interpretation of a rule published in an informal setting such as an FAQ after the date of the pre-application is due just puts us in a tough spot.

Again, if the staff's interpretations of the rules as published in the FAQ are going to be taken as more than guidance but as a final decision, then we would ask that those be provided as a supplement to the NOFAs or the rules of the QAP, if you will, rather than in such an informal setting as an FAQ.

I do appreciate the opportunity to speak before you today, and I'm happy to answer any questions.

MS. BINGHAM ESCAREÑO: Okay. Anybody have any questions for Mr. Kelly?

(No response.)
MS. BINGHAM ESCAREÑO: Okay. Thank you.
MR. KELLY: Uh-huh.
MS. BINGHAM ESCAREÑO: Anybody have any questions for Marni relative to this appeal?
MR. BRADEN: I just have a question. Have we dealt with this type of question in the past or something similar?
MS. HOLLOWAY: We have also under underserved area, there's a three-point scoring item and a two-point scoring item. We discussed I think it was in May the three-point scoring item, and I don't have the language right in front of me, is the census tract within the boundaries of an incorporated area has not received a deal in the last 15 years or something like that. I don't remember off the top of my head. And that's a three-point. And then if it's just a census tract that hasn't received an award, that's a two-point.
And that was something that I think we talked about quite a bit at the May meeting when staff was directed to under those appeals go back and issue administrative deficiencies on those items.
MR. BRADEN: And is this interpretation you're taking consistent with those facts?
MS. HOLLOWAY: Yes.
MS. BINGHAM ESCAREÑO: Any other questions for
Marni?

(No response.)

MS. BINGHAM ESCAREÑO: We'll entertain a motion on this action item.

MR. BRADEN: I'll make a motion that staff's recommendation be accepted, and the score and appeal for Application 17097 Holly Oak Seniors be denied.

MS. BINGHAM ESCAREÑO: Motion by Mr. Braden to accept the staff's recommendation for denial of the appeal. Is there a second?

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

All those in -- any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries.

MS. HOLLOWAY: Next, we have a group of three applications. This is Number 17194 Oaks Apartments in Quitman, 17203 Park Estates Apartments in Quitman, and 17741 Gateway Residences in Raymondville. This is actually an appeal of an application termination.

So a notice of termination was provided to the
applicant for failure to meet the requirements of 10 TAC 204.16 related to the Section 811 project rental assistance program.

In 10 TAC 204, Required Documentation for Application Submission, it says: "The purpose of this section is to identify the documentation that is required at the time of application submission unless specifically indicated or otherwise required by department rule. If any of the documentation indicated in this section is not resolved, clarified, or corrected to the satisfaction of the Department through either original application submission or the administrative deficiency process, the application will be terminated."

Item 16 of the subsection relates to the Section 811 program and outlines the requirements for each application submitted for the competitive application cycle. Applications must meet the requirements of subparagraphs (a) or (b) of the paragraph. And then applications that are unable to meet the requirements of those subparagraphs must certify to that effect in the application.

On March 17th the applications were terminated because they did not include information regarding Section 811. The applicant appealed the termination and the Executive Director granted the appeal directing staff to
determine if Section 811 was not applicable as the application suggested.

An administrative deficiency was issued on April 12th, 2017 regarding this question. The response included certification that neither the applicant nor any affiliate have an existing development located in an eligible MSA that would meet the Section 811 criteria and the proposed developments are not located in an eligible MSA themselves. Therefore, this application is unable to provide Section 811 units.

On May 11th of 2017, the applicant was issued a second administrative deficiency by Section 811 program staff seeking to clarify the issue. The applicant response included the following: "Applicant nor any affiliate understood that Project Number 15281 Cayetona Villas as participating in the Section 811 PRA program. We sincerely apologize for the oversight. We have corrected the corresponding application information and enclosed to reflect that pre-existing participation."

The response included a letter from the lender from Cayetona Villas dated February 10th of 2017 stating that the lender would not agree to further participation in the Section 811 program. The 811 rule includes: "An applicant may be exempt from having to provide 811 units in an existing development if approval from either their
lender or investor cannot be obtained and documentation to 
that effect is submitted in the application."

The application itself includes a prompt to 
attach a copy of a letter indicating that approval from 
either the lender or the investor cannot be obtained for 
the existing development.

After reviewing the response to the 
administrative deficiency issued on May 11th of 2017, 
staff has determined that the certification provided by 
the applicant and the letter from the lender were a change 
to the application and the applications failed to meet the 
threshold regarding this item.

Staff recommends denial of the appeal of the 
termination of 17194 Oaks Apartments, 17203 Park Estates, 
and 17741 Gateway Residences. I'd be happy to answer any 
questions.

MS. BINGHAM ESCAREÑO: Is there a comment on 
this side of me?

Accept a motion or entertain a motion to accept 
public comment prior to making a motion on this item?

MR. BRADEN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

All those in favor, aye?
(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you.

MR. TEMPLE: Thank you. Thank you, Board. I appreciate the opportunity to present our appeal. Our applications were submitted and not layered with direct loan funds. We interpreted our application forms accordingly.

Regarding our appeals, we really are looking at two parts to the matter. The first was we represented participation in the application. The second is if we would further participate on other properties in the nonprofit portfolio at the time of the application.

To the first, we confirmed both Willacy and Wood County were ineligible for the 811 program. And at the time it was our understanding that the initiative for that application was not applicable based upon proposed applications not being in an eligible county and based on the instructions related with direct loan funding.

On May 11, 2017, we did receive the email requesting from staff further clarification, as well as wanting to know how we could expand 811 units from 10 to 12 units for our LaVernia project. It was our opinion this was an issue that had to be answered by the
investment syndicator, which was Raymond James. We
immediately contacted Raymond James.

Mr. Gary Robinson with Raymond James indicated
that this had been addressed and resolved with staff and
provided us a letter dated February the 10, 2017.
Basically, the letter declined to increase the number of
units from 10 to 12. And based upon that Raymond James
underwriting, due diligence, everything was in place based
upon the 10-units 811 set-aside.

Mr. Robinson supplied us at that time a copy of
the letter that was dated February the 10th, 2017 that had
been previously forwarded to staff. Knowing that the
staff had this letter in possession, we still provided it
to answer the administrative deficiency notice. And
although staff had approached this previously with Raymond
James, this letter is basically being used as the basis of
our termination.

We received -- regarding that May 11th, 2017
deficiency notice, we submitted -- had a request from
staff if we would be able to submit our answers by the May
18th board meeting, which we did at that time.

We basically are just asking for a re-
evaluation of this termination. At this time we wish to
withdraw the Oaks Apartments 17194, but would ask the
Board for consideration for 17741, the Raymondville
project, Gateway, and 17203 Park Estate Apartments. Thank
you very much.

MS. BINGHAM ESCAREÑO: Thank you. Are there
any questions for the commenter?

(No response.)

MR. ECCLES: Actually just a quick sort of
timeline clarification question.

MR. TEMPLE: Sure.

MR. ECCLES: In response to a May 11th
deficiency notice, you produced a letter dated February of
2017 from Raymond James.

MR. TEMPLE: Correct.

MR. ECCLES: Why wasn't that February letter
included in your application?

MR. TEMPLE: It had never been provided to us.

MR. ECCLES: Had it been requested by the
applicant?

MR. TEMPLE: We had at the time with the
deficiency notice is when we requested. We approached
Raymond James basically that staff was requesting that we
increase the 811 units from 10 to 12. And it was at that
time Raymond James advised us that discussion had
already -- they had already had that discussion with
staff, and it was at that time we were provided the
letter.
MR. ECCLES: But you do acknowledge that under our rules such a letter would need to be submitted with the application?

MR. TEMPLE: Right.

MR. ECCLES: Okay. Thank you. That's all.

MR. TEMPLE: Thank you.

MS. BINGHAM ESCAREÑO: Any further information, Marni?

MS. HOLLOWAY: Staff has no record or recollection and everybody's shaking their heads back here of having received that letter previously from Raymond James. I would hope -- I would think that if it had been provided previously, that information should have come in with the appeal.

MS. BINGHAM ESCAREÑO: Very good.

MS. HOLLOWAY: You know, if we had gotten something back that said here's the letter that Raymond James gave you in February, then our response would have been very different.

MS. BINGHAM ESCAREÑO: If there are no further question, we'll entertain a motion. It sounds like the applicant's removing 17194, but we'll take action on 17203, 17741. We'll entertain a motion on applicant's request for appeal and staff's recommendation.

MR. BRADEN: I'll make a motion, but I don't
want to be a hog and take up all the motions today.

MS. BINGHAM ESCAREÑO: Motion hog.

MR. BRADEN: I'll make a motion to accept staff's recommendation and with respect to the -- and the appeal determination for Applications 17203 Park Estate Apartments and 14 741 Gateway Residence be denied.

MS. BINGHAM ESCAREÑO: Motion by Mr. Braden to deny the application for appeal supporting staff's recommendation. Is there a second?

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason's seconds.

Any further discussion on this item?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. All right. Are you hungry? Take a break?

MS. HOLLOWAY: Well, you know, we have two more appeals and then talking about the farmer's market, so I'll let you --

MS. BINGHAM ESCAREÑO: I think we'll -- we need to do executive session, so we're going to go --

MS. HOLLOWAY: Okay.
MS. BINGHAM ESCAREÑO: -- ahead and go into executive session. The time right now is 12:45. You think 1:15? Thirty minutes or you want to go 12:30 -- I mean 1:30?

MR. ECCLES: Let's try for 30 minutes.

MS. HOLLOWAY: Okay.

MS. BINGHAM ESCAREÑO: Very good. We'll all eat quickly. We'll be back here at 1:15. We are going to go into executive session, so I'm going to read my executive session real quickly.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or 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, 551.071 to seek or receive legal advice of its attorney, 551.072 to deliberate the possible purchase, sale, exchange, release of real estate, or 2306.039 (c) to discuss issues related to fraud, waste or abuse with the Department's internal auditor, fraud prevention coordinator, or ethics advisor.

Closed session will be held in the Andy Room of this room in the John H. Reagan Building, Room Number 140. The date is July 13, 2017. The time is officially 12:45. We'll see you in 30 minutes.
Whereupon, at 12:45 p.m., the meeting was recessed, to reconvene this same day, Thursday, July 13, 2017, following conclusion of the executive session.)

MS. BINGHAM ESCAREÑO: The Board has now reconvened in open session at 1:22 p.m. During the Executive Session, the Board did not adopt any policy position, resolution, rule, regulation, or take any formal action or vote on any item.

So I think we're ready to continue with appeals, 4(c). And, Marni, we have -- our best record is we have 17331, which is Westwind Killeen --

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: -- and 17356, Acacia remaining.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Okay.

MS. HOLLOWAY: So that Madam Vice-Chair and Board members, that you are aware, I've just received a request from this applicant to postpone this appeal to the end of the month because at that time the rest of the applications that have appeals in that region are going. I informed them that, of course, it would be, you know, at this point your choice whether or not we would do that.

MS. BINGHAM ESCAREÑO: Which applicant?

MS. HOLLOWAY: 17331 Westwind of Killeen.
MS. BINGHAM ESCAREÑO: Is requesting to postpone until the next meeting?

MS. HOLLOWAY: Is requesting to postpone until the next meeting. They are uncomfortable that the rest of the appeals for their region, for their subregion also have been postponed to that next meeting and they would like to go at the same time.

MS. BINGHAM ESCAREÑO: Are there any Board members that have any concerns about the request? Does it require a motion or is it okay to just --

MR. ECCLES: I think that's within your discretion.

MR. IRVINE: Your prerogative.

MS. BINGHAM ESCAREÑO: Okay.

MR. IRVINE: It's just going to make for a really long end-of-the-month meeting.

MS. BINGHAM ESCAREÑO: It really is.

MS. HOLLOWAY: It is. It's going to be a very long end-of-the-month meeting.

MS. BINGHAM ESCAREÑO: We'll postpone that.

MS. HOLLOWAY: Okay.

MS. BINGHAM ESCAREÑO: The quality of time to discuss is so much better at this one than the next one. Y'all just tell them that.

MS. HOLLOWAY: Okay.
MS. BINGHAM ESCAREÑO: Okay. So the last appeal is 17356. This is The Acacia. I'm sorry?

VOICE: He went to the restroom.

MS. HOLLOWAY: I'm sorry?

VOICE: He went to the restroom.

MS. HOLLOWAY: Okay. I just needed to know. I needed to make sure that the applicant's counsel was here.

MS. BINGHAM ESCAREÑO: Very good.

MS. HOLLOWAY: Yeah. Okay. 17356 The Acacia, as the result of a Third-Party Request for Administrative Deficiency, staff reviewed the application to determine whether it qualified for three tiebreakers.

Staff determined that while the application did include a map of the area, radius, and identified and identified the park/playground and public transportation stop, the application did not include complete evidence of an accessible route to a public park and evidence of an accessible route to public transportation.

Also, staff found that the street art displayed around the city does not meet the standard of a museum as defined in the subsection.

A scoring notice was issued to the applicant, and the applicant appealed staff's decision on July 5th, 2017. The Executive Director found the appeal established that there is an accessible route to the
development to public transportation and that the accessible route to the park described in the appeal results in a route from the development site to the park that is more than half a mile long.

The applicant has -- and correct me if I'm wrong -- the applicant has withdrawn the appeal on the museum. So at this point, we are discussing the length of the accessible route to the park. I would mention that there is a package of information that did not make it into the Board book that's been made available to everyone. Staff regrets that we missed that.

So staff recommends denial of the appeal.

MS. BINGHAM ESCAREÑO: Seeing that there's public comment on this, we'll entertain a motion to hear public comment before taking action on the item.

MS. THOMASON: So moved.

MS. BINGHAM ESCAREÑO: Ms. Thomason moves.

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. We'll hear public comment.
MR. ECCLES: And just before that starts, I'm going to presume from that last comment that staff is also recommending that the Chair acknowledge and accept these materials as supplementing --

MS. HOLLOWAY: Yes.

MR. ECCLES: -- the materials that were posted, if you so agree.

MS. BINGHAM ESCAREÑO: We -- I do. We do accept the packet.

MR. ECCLES: Okay.

MS. BINGHAM ESCAREÑO: So for clarification, we're only considering the appeal on the accessible route, just length?

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: Okay.

MR. MEYER: Hi. My name's Steve Meyer. I'm an accessibility consultant. I'm a playground safety consultant. I'm licensed by the State of Texas.

I did the original survey of the site where you were sent a letter that it was an accessible site in my original determination that it was not accessible. Also, it fails on the elements of being an accessible route. The playground fails as being non-accessible, and the route is greater than a half-mile from the site.

If you would have any specific questions, I'd
be happy to answer them for you.

MR. ECCLES: I'll ask one. Exhibit A to the appeal to the board materials, that's that packet that was delivered today and the Chair accepted, has a picture of a map and a route in red. That was kind of the long way -- one more -- Exhibit A.

MR. MEYER: Okay.

MS. HOLLOWAY: His is colored. Ours isn't colored.

MR. MEYER: Okay. I don't see that.

MS. BINGHAM ESCAREÑO: Keep going.

MR. ECCLES: It also says Exhibit A.

MR. MEYER: I have it. Thank you.

MS. BINGHAM ESCAREÑO: Exhibit A, we saw --

VOICE: There's more than one exhibit.

MR. ECCLES: Oh, there's more than one?

MS. HOLLOWAY: There's more than one Exhibit A. There's one in black and white.

MR. ECCLES: The second Exhibit A.

MS. BINGHAM ESCAREÑO: Okay. There you go. Gotcha.

MR. ECCLES: Okay. Are you there, sir?

MR. MEYER: I'm here. Yeah, I have it.

MR. ECCLES: Okay. Very good.

MR. MEYER: Thank you.
MR. ECCLES: There's what I'll call the long route and the short route. The long route goes all the way up to what looks like a major intersection, the loops back on the other side of the street back to the park. And is that route less than half a mile?

MR. MEYER: No, it is not.

MR. ECCLES: Okay. So --

MR. MEYER: Now I didn't prepare this document. This was the other accessibility consultant who --

MR. ECCLES: Okay.

MR. MEYER: -- provided this document. I went and did a second survey of the area as well.

MR. ECCLES: Okay. Where there is that shortcut right across the street from the park, has there been evidence that's been presented that shows that that is an accessible crossing into the park?

MR. MEYER: In my original report, I made comments that all of the curbs and the curb cuts are not accessible due to what they call the trough of the road. And then concrete curb cuts are higher than the pavement where some of them are one to two inches in height, and a person in a wheelchair would not be able to go across that. It's not a marked crossing, but under some of the TxDOT standards, if it meets the requirements, it can be assumed to be a crossing but it is not.
MR. ECCLES: Okay.

MR. MEYER: Did I confuse you on that? I'm sorry if I --

MR. ECCLES: No, I think that answered my question.

MR. MEYER: My comments were that this entire route was not accessible.

MS. BINGHAM ESCAREÑO: Gotcha.

MR. MEYER: There's four elements that comprise an accessible route.

MS. BINGHAM ESCAREÑO: You can tell us.

MR. MEYER: What they are?

MS. BINGHAM ESCAREÑO: Uh-huh.

MR. MEYER: Along an accessible route, to determine an accessible route, you have to physically look at it in person. You can't have any elevations greater than a quarter of an inch, in the direction of travel. It can follow the roadway in slope, but the cross slope of the direction of travel cannot exceed 2 percent. And then where you cross roadways, you have to have curb ramps. And then the servicing along the accessible route has to be smooth, stable, and slip-resistant.

And in my reports, I had shown where those accessible routes had failed.

MS. BINGHAM ESCAREÑO: Okay. Very good.
MR. ECCLES: I apologize. Typically the way this works is the first comment up is the --

MS. BINGHAM ESCAREÑO: Support.

MR. ECCLES: -- appellant. So on whose behalf are you testifying? Clearly it's not the applicant.

MR. MEYER: Atlantic-Pacific.

MR. ECCLES: Okay. Thank you.

MS. BINGHAM ESCAREÑO: Any questions for the commenter?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord representing the applicant. And, first of all, thank you, Ms. Bingham for the lunch break.

There are several applications that are going to have appeals relating to being within a half mile of an amenity on an accessible route. And it appears that this is going to be the first one, and all of the rest of them will be heard in two weeks.

Each one has nuances. And unlike the prior one that we dealt with underserved areas, I'm not sure that the resolution of one necessarily resolves the others. So I just want to put that out there that I hope that each of these will be looked at individually and carefully. And
that's because this rule has a lot going on in a very simple provision with descriptive phrases. And, in fact, there's so much going on in this rule that if you run it through a computer application that does sentence diagraming, you get ten different results.

The language says the development site is located less than half a mile -- there's one descriptive phrase -- on an acceptable route -- there's another descriptive phrase -- from a public park -- another phrase -- with an accessible playground. And there's been a lack of clarity with regard to this rule honestly since it's inception.

When the rule was first proposed back in November and out for public comment, there were comments that were given to TDHCA that included, "I assumed the playground's distance away measured as a crow flies from the nearest point of a proposed development site to the playground. I assumed there is no distance requirement for the accessible route as it may be longer than the half mile requirements given the winding of streets."

It was also said, "What is meant by accessible route in this context?" and "If you mean driveable rather than as the crow flies, please so clarify."

In response to these comments, staff said as it relates to measurement of distance, it is as the crow
flies from the closest point of the boundaries of the amenity to the development site.

So then we get to February, and we put out a frequently asked questions. Again, they are asked showing this lack of clarity, "Do the playground and public transit stop need to be within one-half mile of the site or must the accessible route be no more than one-half mile long?" The answer was the playground has to be within one-half mile of the site, and the entire route must be accessible.

So it's clear that the applicant community was looking for confirmation, for one thing, as to whether the accessible route needed to be a half mile long or less. And it was not clear whether the half-mile qualifier was to the distance of a park or the length of the accessible route or both. And, in fact, you heard Mr. Eccles asking specifically about the length of the accessible route.

When TDHCA received these questions, they could have easily responded to this FAQ saying the playground has to be within one-half mile of the site and the entire route must be accessible and the accessible route must be no more than a half-mile long. They did not say they. And, in fact, if you look at most of the applications at least in the urban area, we believe that they did not measure the distance of the accessible route. And I
believe that's in part because of the guidance that was given.

So where are we on this application? The applicant complied with what was requested on the application form that said provide a map showing the development site, scale showing radius, location of the amenities, and other evidence as applicable. So, and this in your book, this is on page 387 of your supplement. The applicant submitted a map showing the development site with a scale that showed a radius of a half-mile and a park and a playground as an amenity.

So the applicant received a scoring notice that said no evidence of an accessible route to a park was provided. No evidence of an accessible route to public transportation was provided. Note that there is no mention of distance in the scoring notice that was received.

So, the applicant submitted a letter from a third-party accessible consultant confirming that the routes to both the park and the public transportation were accessible. And this letter included the map that Mr. Eccles held up with the red routes all together, all lumped together highlighted.

The Executive Director granted the appeal as it related to public transportation saying, "I find that the
appeal has established that there is an accessible route from the development site to transportation" but denied the appeal as it related to the park saying, "The route described in the appeal results in a route from the development site to the park that is more than a half-mile and not eligible."

So not that this is the first time that there's been a discussion in our scoring of distance is in this denial. And so, we thought we understood the source of the confusion that there were these multiple routes shown on this map, and that truly if you took the half-mile radius and laid it over, that actually this one would jet out a little bit from that one-half mile radius. So we thought that was the problem.

And so that is what we addressed in this board appeal that you received today. And you will see that the very last page entitled "Second Route" has the blue route -- and it is hard to see on the color, but it is there -- the blue route that is clearly within this half-mile radius.

That route has been verified and confirmed as accessible by an accessibility consultant. I understand that a competitor has an accessibility consultant here today that has a different opinion. But the fact is we have resolved the questions. We have given evidence of
everything that's asked for in the application, and we have complied with the rule.

It is a confirmed accessible route confirmed by a third-party consultant. It is within the half-mile radius. The language of the rule does not require that the accessible route be a certain length. It simply doesn't.

And I think that there are other applicants who had the exact same understanding, but the fact is there seems to be sort of this shift in understanding from the staff now. And we're really not quite sure about this denial because we provided the accessibility evidence. It was good enough for the public transportation. There appears to now be an issue with distance that we did not realize was an issue when we received our scoring notice.

We think we know what the language of the rule says, and that is that in measuring the distance, the distance applies to the distance between the development site and the entrance to the park, not to the playground. That's also been questioned and dealt with, but we believe it is an as the crow flies as indicated back in November when we were first bringing up questions about this very issue.

So with that, we respectfully request that you grant this appeal which would allow this applicant to have
credit for this particular item in the tiebreaker scoring for its application. Thank you.

MS. BINGHAM ESCAREÑO: Do any of the Board members have any questions for Ms. Bast?

(No response.)

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

MR. ECCLES: Can I ask a question really quick? If you could point us in the record to the evidence of your accessibility person that shows that that blue route is accessible?

MS. BAST: Manish, you may want to help me make sure that I do this correctly. This would be the letter that was submitted in response to the RAF on June 5th. It is in the board appeal documentation, and it is Exhibit C. Let's see if I get this right.

It appears to be the second paragraph. The sidewalks and ramps along the north side of Gilbeau Road and the -- oops, no, I'm sorry -- it's the third paragraph: "There is nothing that precludes a person from continuing down Mystic Park to the north, crossing at Bandera Road, and returning south down Mystic Park to Nani Falcone Community Park, which could serve as an additional accessible route." An additional accessible route.

MR. ECCLES: That's the long route, though.
MS. BAST: So that's the number 2.

MR. ECCLES: I think actually that's the long route.

MS. BINGHAM ESCAREÑO: The one that wraps around, the one that goes --

MS. BAST: There is nothing that precludes a person crossing at Bandera Road. Isn't that the crossing at the fire station, Manish? Am I doing this wrong?

MS. BINGHAM ESCAREÑO: East side, it should be the third paragraph.

MS. BAST: I'm sorry.

MR. VERMA: Is that the question? I thought you were asking for the long route.

MS. BAST: Oh, I'm sorry. No, he's asking for the short route. I thought that was here in the second paragraph.

(Pause.)

MR. VERMA: "As do the curb cuts/approaches located at the southern drive to Fire Station" --

MS. BAST: There it is. There we go. Okay. It is in the second paragraph. So the sidewalks and ramps on the north side of Gilbeau Road, the east side of Mystic Park, and the west side of Mystic Park from Bandera to Nani Falcone Community Park from the proposed development meet 2010 ADA as do the curb cuts/approaches located at
the southern drive to Fire Station 49. That's where
you're crossing the street, an adjacent entrance to Nani
Falcone Community Park. That's it.

MR. ECCLES: Okay. Thank you.

MS. BINGHAM ESCAREÑO: Marni, I have a
question. Can you refresh the Board on is this language
new to this year?

MS. HOLLOWAY: Yes, it is.

MS. BINGHAM ESCAREÑO: Okay.

MS. HOLLOWAY: Yes. We had the suggestion for
the accessible route actually came out of our monthly
meetings last year.

MS. BINGHAM ESCAREÑO: Uh-huh.

MS. HOLLOWAY: And it was something that was
suggested.

MS. BINGHAM ESCAREÑO: Yeah.

MS. HOLLOWAY: It's proving to be difficult.

MS. BINGHAM ESCAREÑO: Yeah. No, I get it.

You know what it's reminding me of accessibility, but when
we were rebuilding in Galveston after the hurricane, the
houses that we rebuilt, we put them on stilts, right?

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: And they needed to be
accessible so the accessibility looked like this.

MS. HOLLOWAY: Those ramps that went all the
way around.

MS. BINGHAM ESCAREÑO: Yeah. So as the crow flies, it was a lot longer than it would normally take for somebody just to walk up steps to go to a door, right?

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: But the purpose was to have something accessible because I guess, you know, what we try not to do is try to guess what the rules mean. And I think Cynthia is pointing out that when we were trying to get guidance, like we typically do -- it appears in here most of the times when we talk about distance, we look at things that are radius-driven, right. We draw circles or, you know, lines and stuff.

So, I was just curious as to whether or not in those meetings or in the formulation of the rule if it really wasn't really explicit because I am an English teacher and hear the four components of that sentence and see where it could be up for interpretation, right, that most -- you know, it appears that it's about that the site be within a half a mile of a park or a playground or --

MS. HOLLOWAY: It says "located less than half a mile on an accessible route from a public park". So for us it's been less than half a mile on an accessible route.

MR. IRVINE: And that to us was the most reasonable interpretation when you took into account the
purpose of the rule. If I'm a person with a wheelchair, and I am seeking to get from my home to a park every day taking my kid, is it reasonable to expect that I would go farther than a half a mile?

MS. HOLLOWAY: Yeah. And some of the accessible routes are far in excess of half a mile.


MS. HOLLOWAY: Yeah. They go way up and around and back.

MS. BINGHAM ESCAREÑO: Uh-huh.

MR. BRADEN: But the shorter route is less than a half a mile, even if you just do the other route; is that correct?

MS. HOLLOWAY: In this instance, yeah, I believe that shorter route is less than half a mile, but we have conflicting --

MR. BRADEN: Dueling experts.

MS. HOLLOWAY: Right. And I'm not able to determine which.

MR. VERMA: Hi. This is Manish Verma. So, you know, I think the question is obviously what is the interpretation of the rule. To answer your question, is the accessible path from the fire station to the park under a half mile, it is not. That path is in excess of half a mile. It's .6 miles or whatever it is. We
provided two paths to fit within that half-mile radius because that was our interpretation.

And we're had our own consultant go out there, do the review of what's an accessible path or not. And Mr. Meyers giving his opinion as well. So it's two different opinions, and that's fine. But the point of I think the discussion is whether -- what is the implication of the rule. And, you know, I went back and reviewed every application that has been completed or been in underwriting at this point to-date. This issue has not come up. No one else has had to provide the length of those accessible routes.

And so I think it is -- I think the answer to this impacts a lot of things, not just our application, but applications that have already been reviewed unfortunately because that's how the rule has been interpreted I would say by most of the individuals, so. Thank you.

MR. BRADEN: Clarifying question.

MR. VERMA: Yeah.

MR. BRADEN: Did you say the shorter route was .6?

MR. VERMA: Yes.

MR. BRADEN: Okay. So even the shorter route --
MR. VERMA: It is in excess of a half mile.

MR. BRADEN: Is in excess of a half mile.

MR. VERMA: That's correct. Yes, sir.

MR. BRADEN: Okay.

MR. MEYER: Marni, can I say something?

MS. HOLLOWAY: Certainly.

MS. BINGHAM ESCAREÑO: And all you need to do is just reintroduce yourself.

MS. HOLLOWAY: If someone doesn't stand up, I'm going to, so you go right ahead.

MR. MEYER: Oh, I'm sorry.

MS. BINGHAM ESCAREÑO: Go ahead. You can come on up.

MR. MEYER: I'm sorry if I'm out of the quorum. I apologize.

MS. BINGHAM ESCAREÑO: No.

MR. MEYER: In the one letter, it said --

MR. ECCLES: If you could --

MS. BINGHAM ESCAREÑO: Just reintroduce yourself. Tell us who you are again.

MR. MEYER: Oh, I'm sorry. I'm Steve Meyer. I'm an accessibility consultant and a playground consultant.

MS. BINGHAM ESCAREÑO: Great. Thank you.
MR. ECCLES: And you are representing?

MR. MEYERS: I am representing Atlantic-Pacific.

MR. ECCLES: Very good.

MS. BINGHAM ESCAREÑO: Thank you.

MR. MEYERS: My second visit out there, I had taken an architect with me and he sealed the letter of my final draft as for evidence of this route being not accessible. It's no more than can you take an overhead picture of the Grand Canyon and you see all the lines and everything there and determine that that's the accessible route. And that's the premise.

The playground itself was built in 2008 or '09, City of San Antonio. It was originally covered with granulated rubber. The height of a playground to be accessible for a child in a wheelchair to transfer out of the wheelchair onto the landing of the structure has an 11- to 17-inch change of elevation for a child that they can -- that's the range.

This particular playground owned by the City of San Antonio is built before the ADA standards were in effect in 2010. They had gone back in and covered it with what's called an engineered wood fiber. This is a sample of the playground. This is a non-compliant product. This is a sample of a compliant engineered wood fiber.
Consequently, because they went from a -- under the standards you have to meet a wheelchair-forward approach by so many pounds for a person in a wheelchair traveling across either one of these, it has to meet the fall-height requirements so a child doesn't end up with a concussion or internal injuries.

Those are all the components of a playground being accessible. On the inspection, they had recovered the rubber surfacing and the rubber takes a smaller depth than this. This takes 12 inches of depth, whereas, rubber takes three to four. So consequently, the playground servicing now was above the requirements for a child to transfer onto the playground structure. So the playground in itself is not accessible.

And the City has no obligation to make it accessible because it was built before the ADA standards, and they're a Title 2 entity.

MS. BINGHAM ESCAREÑO: Gotcha.

MR. MEYER: So I'm sorry if I --

MS. BINGHAM ESCAREÑO: No, thank you very much for the clarification.

Does anybody have any questions for Mr. MEYER?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you very much.
MR. VERMA: Hi. So I just wanted to -- I had two points, if I could remember them both. One was the -- I just wanted to be clear that Mr. Meyer representing a competing application and I know that's clear.

And number two, in Mr. Meyer's report that was submitted in the RAF, the pictures that he's pointing out are not in the locations that he identified. So he is saying, for example, this approach is here and that is not where that picture is taken from. So, all of that needs to be I guess on the record and understood. Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

MS. RICKENBACKER: Good afternoon. Donna Rickenbacker, and I hope not to do this next cycle to come up here so many times. First of all, I don't have any, again, skin in the game here. I just want to make sure that, you know, the determinations, there's consistency in the determinations and that we can strictly comply with what the rule says.

And I really agree with what Cynthia is saying. I mean this rule says less than half a mile on an accessible route from a public park with an accessible playground. It doesn't say that the route itself has to be half a mile. It says that the site has to be less than half a mile from the park, and that that park contain a playground. And I think that means playground equipment,
by the way. And that both the park and the playground equipment be -- meet the 2010 ADA standards. I call it route by the way. I think -- I've heard everybody say route, and so I don't know if I'm saying it right or wrong, but it's my Texas twang. Route is what I call it.

So I just want to make sure that these interpretations, there's some consistency. I really think that the rule speaks for itself in terms of what it says. And that most of the applicants did what they could to make sure they found sites where those sites themselves were less than half a mile from that park on an accessible route. Thank you.

MR. FLORES: Good afternoon. My name is Henry Flores, and I am testifying regarding the rulemaking process. I represent one of the developers for the Bristol, a competing application. I've been in this business since 1995, so I have a long history in the affordable housing area. But before that, I was the first executive director of this agency. I was appointed by Ann Richards. And I ran in the Richards administrations, was duly a Democratic, reappointed in the Bush administration, so I ran for both governors.

Welcome to you new Board members. It must be quite a task to receive a 3,000-page board book on your second meeting. This is a complicated subject, and you
are never going to write perfect rules. I wrote the first QAP. The rules are never going to be perfectly clear. They are subject to interpretation, as we are seeing here. You know, we have an English major be Chair today, so you have a unique perspective.

But the reality of it is it doesn't say that it has to be -- there are no commas and and's in the sentence. It says that you had to be within a half a mile on an accessible route. That is one phrase. There may be two descriptive comments in there, but it's one phrase. If they wanted it to be a half a mile on -- within a half a mile and on an accessible route, there'd be no question about the interpretation.

You know, people are going to interpret this in their own best interest. That's just the nature of the beast. Staff has been consistent in the way they're interpreting this across the state. I've had transactions that did not score because of the way they're interpreting this rule. I'm not appealing those because I understand what they're doing, and I understand why they're doing it.

I think the Executive Director already spoke to the issue. If that park was right next door, but the accessible route was 3-1/2 miles, that's not what you want that person in that wheelchair to have to do is go 3-1/2 miles to get to that park. The reason that they're
including accessibility at all is because of the need to service a disabled community. And you don't want them to go a mile or 6/10 of a mile. You want them to go half a mile. That's the way the rule was written. That's the way I read the rule.

If you ask 10 people, you may get 10 different interpretations, but there is no commas or and's in that sentence. And so therefore, it should be read as one sentence. In that context, I'd like you to support your staff's recommendations. I think they've made the right decision. I think they've been consistent across the state. If you alter this one, then you open up pandora's box for people who have lost points in other situations and accept the status judgment on those scenarios.

Thank you for the opportunity to speak to you today.

MS. BINGHAM ESCAREÑO: Thank you.

MR. HOWSON: I guess I should sign in twice since I'm speaking twice, right. Thanks again for listening to us today, and thanks for putting up with us for the last three months. So it's good to see good faces again.

I want to address specifically The Acacia's claim for accessibility on this one topic only. I'm Mark Howson. Thanks. You've seen well-documented evidence
from one expert, and you've seen not so well-documented
evidence from another expert. That expert is representing
The Acacia, and he simply takes an overheard image, draws
a line on it, and has never been on site.

If you want me to sit here -- and I'm a former
special ed teacher. Having done that, I probably have a
bit of an above average understanding of ADA because I had
to move my kids around and was responsible for that. But
if you want to look at that red map that we've been
talking about which has got both routes on it, you'll
notice on Mystic Park as you go towards Gilbeau, which is
the southern road towards Mystic Park, that's got a heavy
degrade. You would have difficulty in a wheelchair
getting back up that. You could go down pretty fast, but
getting back up, it would be very difficult.

Then as you take -- you can cross the road on
Gilbeau to the east side of Mystic Park where the red line
goes, and that is an ADA-accessible crossing. The next
ADA-accessible crossing of the entire route to Bandera is
not even there. There is no crossing to get back across.
You can only go that one.

If you go up to the park, you do not have an
ADA-accessible park route to go from the east side of
Mystic Park to the park. You can't get into it. You
can't get across. And if you go all the way up to Bandera
Road, there is not an ADA-accessible route to go from this point, the south side, to the north side across the road.

Additionally, as you go down that longer route, there is on that north side of it, there's no sidewalk there, period. It's a field, no sidewalk at all. You know, there's simply no accessibility. So the long route is in no way accessible, nor is the short route. The short route is in excess of a half a mile.

Now, they talk about drawing different lines for the location, but the exit from the development is going to be on Gilbeau Road. So if you draw from the front where the proposed entries and exits are, you're at minimum a .6 or farther. You can't go on the pathway from the back side through the park because there is a flood field channel, about a 10-foot deep channel you can't cross to get into that park from The Acacia. It's locked off from that area.

So, when you look at the report done by this individual who provided it, at best, I would say there's a lack of due diligence. And you could insinuate even more than that. As a matter of fact, there was another development here in Killeen that was going to be presenting to you shortly who has another complaint against this same person. You will hear that complaint next month about the accuracy of the reports.
What I would point out is this specialist is giving you an opinion, that he did not do diligence on the site, and that it's an opinion that's not qualified at this point in time because he's provided you no evidence of what he's saying is true. He's just saying, hey, I'm an expert. I have my license. This is what it is, where you have plenty of other evidence.

Additionally, what I just told you is in the public comments of your Board book now because I went and drove that whole route and took pictures, gave a map of it. So my assessment is the same as what you've heard from earlier and not -- and completely inconsistent with what this is saying on all counts.

So we recommend that you go with staff compliance and support Bristol's argumentation on this.

MS. BINGHAM ESCAREÑO: Thank you.

MR. HOWSON: Any questions? I'll stand here and not walk away so fast. I'm not used to you guys being able to talk to me.

MR. ECCLES: Who are you representing?

MR. HOWSON: I'm Mark Howson. I represent citizens in the area. We actually on this project right here locally we have -- and it's in the Board's hand -- we have a petition of over 3,000 residents who are opposed to this project that come from the immediate area.
Now 3,000 signatures is a lot of signature in our area. A lot of signatures anywhere actually. And that's the group I represent. It's just we live in the local area. Actually I live right behind where this is going in, and I didn't know about it until late April because we were never told about it.

MS. BINGHAM ESCAREÑO: Thanks very much. Any further questions from the Board or staff?

MS. THOMASON: I have a question for Marni.

MR. HOWSON: Yes?

MS. THOMASON: For Marni, I'm sorry.

MR. HOWSON: Okay. Then, again, I'll leave. Is that good? Thank you guys.

MS. THOMASON: So there was a comment that --

MS. HOLLOWAY: Yes?

MS. THOMASON: -- there have been other applications or other sites that have a distance further than a half mile?

MS. HOLLOWAY: Yes.

MS. THOMASON: Was that prior to introducing this definition?

MS. HOLLOWAY: So, this -- the half-mile -- less than half a mile on an accessible route is new for this year's rules. So we have as these questions have come up through the review process, we have applied that
exactly the same way --

MS. THOMASON: Okay.

MS. HOLLOWAY: -- every time -- you know, every time that it's appeared, which is why you've heard that there's going to be at the end of the month several actually that have this. And some are nuanced to this same question.

MS. THOMASON: Okay. Thank you.

MS. BINGHAM ESCAREÑO: Any questions? If not, we'll enter --

MR. ECCLES: Has staff's interpretation of this rule during this round then that it's as the rule states, "no less than half a mile" --

MS. HOLLOWAY: Less than half a mile.

MR. ECCLES: -- "on an accessible route".

MS. HOLLOWAY: On an accessible route.

MR. ECCLES: Has staff's interpretation been that the accessible route itself has to be less than half a mile?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Thank you.

If there's no further questions, we'll entertain a motion on this Acacia appeal for denial of the tiebreaker points.

MS. RESÉNDIZ: Madam Chair, I'd like to make a
motion. Motion to accept staff's recommendation to deny
the applicant's appeal for qualification of the three
tiebreaker items requested under Section 11.9(c)(4).

MS. BINGHAM ESCAREÑO: Very good. Ms. Reséndiz
moves staff's recommendation.

MR. BRADEN: Second.

MS. THOMASON: Second.

MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. Is that it for appeals?

MS. HOLLOWAY: It is.

MS. BINGHAM ESCAREÑO: Very good. So we'll
move on to Item 4(d).

MS. HOLLOWAY: Item 4(d) is Presentation,
Discussion, and Possible Action regard amenities used for
scoring points under 10 TAC 11.9(c)(4) related to
Opportunity Index. This is for Application 17327, Legacy Trails of Lindale.

So at the last meeting we brought the report
regarding the RAF items. That report was made to the board on June 29th of 2017, and it included information regarding a request that had been submitted regarding the farmer's market used for outdoor recreation points in Application 17327 Legacy Trails of Lindale.

In response to a Board request that staff bring back an action item regarding this amenity, staff has compiled and reviewed the information originally consulted for the RAF determination. The RAF contends that the farmer's market used as an outdoor recreation facility does not qualify because of its periodic nature and it does not have a permanent facility.

The applicant has submitted letters from the City of Lindale and the Lindale farmer's market regarding the market, including a description of the location -- excuse me -- as a closed-off street along with adjacent city-owned parking areas, and that it includes activities such as bounce houses, live music, arts and crafts. The market is open throughout the year, and they are currently scheduled to be open every Saturday from May 20th through October 7th.

There is nothing in the current rule that staff has identified that would preclude counting this as an outdoor recommendation. And staff recommends that the farmer's market be found eligible to be used as an outdoor
recreation facility.

I'd be happy to answer any questions.

MS. BINGHAM ESCAREÑO: Any questions for Marni?

(No response.)

MS. BINGHAM ESCAREÑO: So we have public comment. Is there a motion to entertain public comment before making a motion on this item?

MR. BRADEN: So moved.

MS. BINGHAM ESCAREÑO: Mr. Braden moves.

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

Any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: Motion carries. We'll entertain public comment.

MR. KROCHTENGEL: Hello. My name is Zachary Krochtengel. I represent LKC Development, the developer for Legacy Trails of Lindale. I think the key issue that we would like to point out is that regarding the Lindale Farmer's market for outdoor recreation, staff has reviewed this matter three times and come back with the same answer...
and the same response.

If outdoor recreation was something that the Board would like to see clarified in the future and to have more stringent requirements, that's something that we fully support. However, we feel it would be unjust at this time in this application process to add requirements at this late stage of the awards process.

We've been working on this application since October with the pre-application due on January 7th. We have spent a tremendous amount of time and resources trying to be affordable housing to Lindale. It is in the best interest of the developers and staff to remain and consistent and to apply the rules as written as well as the rules as signed by the Governor.

My colleagues will further describe why Lindale Farmer's Market meets all the requirements set forth in the QAP and the multifamily rules. Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

MS. RICKENBACKER: Hello. Donna Rickenbacker. I'm the consultant to the applicant. We took Mr. Vazquez's comment seriously and we went back to the City of Lindale, told them about what the question was. And they issued a follow-up letter that I'd like to read into the record.

It's addressed to Marni Holloway, and it's:
"Dear Ms. Holloway, SES Lindale 17LP is proposing a development Legacy Trails of Lindale, a 76-unit apartment community for seniors on a site in Lindale in Smith County, Texas. We provided a letter to you on June 7th that recognized our support for this housing and confirmed that the Lindale Farmer's Market is indeed considered by our community to be an outdoor recreation facility that's available to the public.

It has come to our attention that additional questions have been raised by your Board of Directors on the treatment of our farmer's market as an outdoor recreation facility. Lindale is a rural community in East Texas with a population of approximately 5,000. We pride ourselves on our local events and the outdoor recreation activities that we provide to our citizens, one of which is our farmer's market.

We commit time and resources to host this public event throughout the year. As indicated in our June letter, the city sets aside land and parking areas and hosts family recreational activities that include light music, arts and craft tutorial for children, holiday-themed parades, and other games that we continue to expand each month.

These activities are in addition to our traditional open-air market where vendors of all types
sell locally grown produce and baked goods. The City of Lindale's proud of our farmer's market and the recreational activities that we provide to our residents and those from neighboring communities.

We very much believe that it functions as an outdoor recreation facility in the City of Lindale, and hope that the Board will give it due consideration as such."

Obviously, we are hopeful that you all will accept staff's recommendation. Thank you.

MS. BINGHAM ESCAREÑO: Any questions for Donna?

(No response.)

MS. BINGHAM ESCAREÑO: Thank you. Any other comment?

MR. FOGEL: Hi, my name is Michael Fogel. I represent Four Corners Development. We have another development in Lindale, also in Boulder. I would like to note, although I do appreciate it, it was not us who brought this appeal forward before the Board. It was a Board member.

So the farmer's market, what we're looking at here is a farmer's market that's open 21 days a year. This is an event. It's not a facility, the difference being after the event is over, there's nothing left over.

First and foremost, the language in the QAP states:
"Development site is within one mile of an outdoor recreation facility," -- not event or not activity -- "of an outdoor recreation facility available to the public."

And in the RAF, staff made a comparison to a soccer field which is a good example of an outdoor recreation facility. However, with a soccer field, once the game's on Saturday morning or whenever are over, that field is open and available to the public for outdoor recreation activities at the facility regardless of if there's buildings in place or not.

Further, as I said earlier, it's a temporary event and activity seasonal in nature occluding only in the summer. So it's May through September I believe, May 20th through October 7th, which is 21 days a year, one day a week in that short amount of time, a very small percentage of time throughout the year that you can access this event.

And finally, the primary purpose of the farmer's market is the exchange of goods. You go there to buy and sell food items locally grown. And as an aside, there's some activities available to encourage people to come and buy stuff. And there's actually an FAQ kind of a similar question and scenario posed to this one.

And the question in the published FAQ was: "Please confirm if a fast food restaurant, such as
McDonald's, Chick-fila-A, et cetera, that has an indoor playground qualify as an indoor recreation facility." And the answer was the playground inside a fast food restaurant would not be considered a indoor recreation facility.

And there's a couple of points there, primarily that this is a restaurant. It's not a playground, and it's there to serve food. Further, if that's not going to qualify, and, you know, that's open six, seven days a week, six if it's Chick-fil-A, most of the day as an actual facility to play in; whereas, this farmer's market is incredibly temporary in nature, very seasonal.

And further, it just happens to be located in this parking lot within a mile of the development. However, on the farmer's market website, front and center, and I have a screen shot if needed, the website says: "The location is being discussed, so it may change." There's nothing tying it to that location. And I just don't see how if the intent is to have accessible outdoor recreation facilities, that this would help accomplish that.

MS. BINGHAM ESCAREÑO: Thank you.

MR. FOGEL: Thank you for your time again and I'm here for questions, as always.

MS. BINGHAM ESCAREÑO: Thank you. If there's no further comment, we'll entertain a motion on --
MR. ECCLES: We have more coming.

MS. BINGHAM ESCAREÑO: Oh, more comment.

MR. GARRETT: My name is Chaz Garrett. I'm the developer of this project. As Ms. Rickenbacker said, this is a part of this community. They host it not only during the months that my competitor listed, but they also do activities as far as a fall harvest market where they bring in a big pumpkin patch. They do large activities with that. They do Christmas activities where they have all kinds of Christmas things that go on. It's not just that one period. That is the main period of the open air market, but this thing continues throughout the year.

And as Mr. Krochtengel has said, it does meet the rules set forth in the QAP and the multifamily rules. Staff has made that decision three separate times, once with their original review, once on the RAF, and then once after -- once in the Board book.

And based on that and the fact that the city -- the land that's used is city-owned land. It's there, and it doesn't move. It doesn't change. The city allows this as part of their process and what they do for the public to use this land, and it's just where they have it established. It hasn't moved from that area in the last six years that I know of that I've talked to the current director about. It's been in the same spot. It's not
going anywhere. This is where they do it. This is the land and the facility set-aside.

Staff after we supplied documentation, staff determined that that was a facility and that the market constitutes outdoor recreation. And for these reasons, we ask that y'all approve their recommendation. Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Any further comment?

(No response.)

MS. BINGHAM ESCAREÑO: Any more comments from staff or Board?

MR. KROCHTENGEL: Just one more clarification, the website saying that the location may or may not move was not available when the applicant went in, and it's always about facts on the ground at the time of application. So I just wanted to point out that that has to be evaluated as time of application. And staff has ruled on this three times. Thank you.

MS. BINGHAM ESCAREÑO: Thank you. Entertain a motion on Lindale 17327. The one-point staff recommendation is that it is eligible to receive a point as outdoor recreation under 10 TAC 11.9(c)(4). Is there a motion?

MR. BRADEN: I'd make a motion to accept staff's recommendation that the farmer's market as
described in Application 17327 Legacy Trails of Lindale is found to be eligible to receive one point.

MS. BINGHAM ESCAREÑO: Mr. Braden makes motion to approve staff's recommendation. Is there a second?

MS. RESÉNDIZ: Second.

MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

Is there any further discussion?

(No response.)

MS. BINGHAM ESCAREÑO: All those in favor, aye?

(A chorus of ayes.)

MS. BINGHAM ESCAREÑO: Opposed, same sign?

(No response.)

MS. BINGHAM ESCAREÑO: The motion carries.

Thank you guys very much.

Marni, anything else on your end?

MS. HOLLOWAY: Not on mine. I believe the gentleman mentioned earlier there's some public comment materials at the end of your Board book.

MS. BINGHAM ESCAREÑO: Yes.

MS. HOLLOWAY: And I believe there is some folks here that would like to speak during that period.

MS. BINGHAM ESCAREÑO: Very good. So we are at the point in our agenda where we have public comment on matters other than which were posted as agenda items. I guess this may have been -- I'm not sure what people want
to comment on if it was an agenda item, but we certainly will entertain public comment.

    MR. ECCLES: And, again, it's for public comment. It's not to entertain questions. It's not to argue against things that are not on the agenda. Indeed, the purpose of it is to suggest matters for future agenda items.

    MS. BINGHAM ESCAREÑO: That makes sense.

    Good afternoon.

    MS. LANG: Leanna Lang, Northwood Neighborhood Association in Austin. We submitted a QCP in opposition to Elysium Grant Application 17272, which is currently tied for third. Things can change, so we want our point of view on record. The TDHCA accepted our QCP and scored accordingly. Only after the applicant appealed on May 8th did the TDHCA reverse its own decision to accept our QCP.

    There is one place in the QAP where it states how the QCP qualifies for review. That is in 11.9(d)(4), which states three separate requirements, one, the neighborhood organization must have been in existence prior to January 9th, the pre-application final delivery date. Two, its boundaries must contain the entire development site. Three, the neighborhood organization must be on record with the Secretary of State or county in which the development site is located.
There is only one requirement in 11.9(d)(4) that mentions a deadline via the "prior to" phrase. That is the requirement of it being in existence. Our association has been in existence and active for years. The applicant has met with us several times and even emailed us saying that they were in our boundaries. Northwood met all requirements in 11.9(d)(4).

We took further steps to clarify the rules for being on record before submitting our QCP with TDHCA staff. Staff even checked with Legal for some answers. We also followed all the rules and met all requirements in the QCP packet.

The QCP aligns with the QAP. The QCP's instructions say evidence of existence -- bylaws, newsletters, et cetera -- is required if documentation submitted for being on record with the state or county is dated after January 9th.

If 11.9(d)(4) truly meant that you had to be on record by January 9, then why would the QCP acknowledge that you could even file after January 9. An actual question on the QCP packet asks: "As of March 1, 2017, this neighborhood organization is on record with -- select one of the following -- county or Secretary of State."

Why is March 1 the date on the question if that's not the deadline to be on record?
The QCP packet says annexations after March 1 may not be considered eligible boundaries. In other words, boundaries can change and still be eligible up until March 1.

One week after submitting our QCP, I received a request for deficiency from the TDHCA regarding our boundaries. I wrote back, stating that the map submitted for our 2016 TDHCA registry was drawn by the city for our neighborhood registry.

The boundary unintentionally omitted a very tiny portion of the development site instead of correctly following along the lot lines. Even the neighboring property incorrectly had one of its structures bisected by this incorrect boundary line, obviously not indicative of a true boundary, which should have followed the lot line.

I corrected the boundary with the City before March 1. I also included the correction with our Secretary of State filing in February. In fact, I caught other errors on the 2016 nowhere near the development site, which I corrected.

After reviewing our answer to the request for deficiency, the TDHCA determined that we qualified for full review and took off the QCP points.

Thank you.

MS. BINGHAM ESCAREÑO: Thank you.
MS. BLUMBERG: I'm Donna Blumberg, also with the Northwood Neighborhood Association on the same Elysium Grand Application 17272.

TDHCA first granted the applicant's appeal using the applicant's misinterpretation of 11.9(d)(4), stating we had to be on record by January 9. We addressed this with the TDHCA last week, as this is not correct.

11.9(d)(4) only has one requirement with a deadline attached: being in existence. 11.9(d)(4) distinguishes being in existence as being on record, so they are two different requirements.

We're also being told that another reason we don't qualify is because we were not on record at the beginning of the pre-application acceptance period, which is January 5. This doesn't make sense. This is the notification requirement. Notification deadlines have nothing to do with qualifying for review.

In fact, the QAP says applicants are required to make additional notifications at full application because boundaries for neighborhood organizations can change between pre and full application.

We are also told our boundaries changed before March 1, so we don't qualify. The applicants development site boundaries themselves actually changed between pre and full application. The current site was previously
arbitrarily divided into two sites, resulting in two pre-applications. The site's boundaries can change between pre-app and full app, and the QAP left room for the neighborhood's boundaries to change up until March 1.

The QCP says boundaries cannot change after March 1. We feel the interpretation and meaning of rules keep shifting to not favor a rightful neighborhood organization that expresses opposition.

We've been in existence for over 28 years, and we were registered for the Secretary of State within the required time frame. We did not form just to oppose this application, and we have always been active. I personally have been for over 25 years.

And we did not just add this property, as it has always been in our boundaries. We just corrected them.

In December 2015 Lindsey Wolfson from Pinnacle Housing contacted us by email, stating they were planning on purchasing the land to develop, and it was in our boundaries.

Then in 2016 the developer send us informational postcards and such. They had a meeting with the neighborhood. They learned we were not in favor of their plans. Suddenly we were not the neighborhood of record on the application.
We have followed all of the guidelines, advice, and recommendation of TDHCA's staff and legal department, only to find out that apparently the rules have changed after the fact.

We have now been told our boundaries do not include the site, which is wrong. And we're also being told we were not in existence, also. We've been around for many years. So that's wrong, too.

Our plea to you is to make sense of this nonsense that we have encountered. How can the developer be able to get around so many things? How can we as a neighborhood be able to abide by the rules when they keep changing?

We feel strongly review of this procedure as related to neighborhood participation should be a priority. The spirit of the QCP was to allow this input to be included in the scoring, regardless of if pro or con.

They just don't seem to be in the spirit of the QCP. Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

MS. GRIJALVA: My name is Nancy Grijalva, Northwood Neighborhood Association. In 1989, when our articles were first filed with the Secretary of State, the development site was in the Northwood subdivision. Our
city map registry has also always included the development site.

There's a part of the subdivision; the street is over here, and there's mini-warehouses, and it's kind of in the middle of that area, so it couldn't be cut off. We are on record with Travis County with a notarized restrictive covenant filed and recorded with the County in 2006.

Another application, number 17140, had the QCP accepted. They went on record February 7 with the County.

Thank you.

MS. DEEDS: I'm Farida Deeds. I'm speaking to Application 17272, Elysium Grand. Here are concerns from neighbors and common citizens who are most closely related to the site.

We understand the need for affordable housing, but just as important is where that affordable housing should be placed, and this site has several shortfalls. Flooding has occurred on the sole street, our neighborhood street, accessing the site. And there was a high-water rescue in front of the site in October 2013.

The City of Austin's Watershed Department has done a preliminary assessment of the site, and during the zoning hearing, here is an excerpt from that transcript:
"The neighborhood does have their facts correct. It does have floodplain on the property, critical water quality zone that covers a significant portion of the property. There are at least two critical environmental features, or karst features, likely a third one. Our geologist thinks it's likely another sinkhole. The applicant does understand they will need to work around all these three and maybe more once we dig into it more."

Since only about half the property can be developed, instead of only two- and three-story structures it initially proposed, the applicant sought four- and five-story residences. But is that safe with known sinkholes on this land?

And even if the developer can overcome these obstacles, is it worth the cost-benefit to pay for and build on property not fully developable, to increase flood risk at the site or downstream?

Are our tax dollars being spent wisely? Because in addition to the 9 percent tax credits, the applicant seeks $3.7 million from the City. Will the applicant come back to seek more funding later?

We met with the developer to mitigate our concerns, but to no considerable avail. The neighborhood residents voted to file the QCP in opposition and list
these concerns and more.

The QAP lists an undesirable feature for the site being within 500 feet of an active railroad track, so rezoning was pushed before the March 1 application filing deadline, likely so that the applicant could sidestep the rule by using a city zoning ordinance.

Specifying a distance of 400 feet, which happens to be in the 100-year floodplain, this in an area that is not confined to the city center or urban core.

Accessibility from the site to amenities is limited by foot, and the City gave the site a low walkability score, and residents will be car dependent.

Affordable housing options are limited for perspective residents. And is it necessary to subject them to such a site, with flooding, sinkholes, railroad track, inaccessibility, lack of public transportation? No, especially when there are other applicants that are more beneficial to prospective residents and better sites in this suburban area.

State representatives, community organizations, and neighborhoods can have legitimate reasons to oppose an application, and those voices need to be heard and taken into consideration in the scoring process without the negative connotation that just because an entity does not support one project that it is against affordable housing
in general. We hope that another project at a more
suitable site will be selected for the award. Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

MR. LANG: Madam Chair, members of the board,
my name is Tim Lang. I'm a tax credit developer, and I
want to make a brief comment regarding the opportunity
index tiebreaking points, the accessible route points.

Going forward, we've seen a lot of these RAFs
that have homed in on the accessible route, and then we've
seen how the development community, throughout this
challenge process, can really drill down and get to some
places in the makeup of these rules that probably wasn't
contemplated when staff was making these rules, to the
extent where we've seen levels on sidewalks and
accessibility experts hired and then rehired to dispute
another accessibility expert's analysis.

My point is more to moving forward. What we've
seen now is that we've seen a lot of these applications
lose some points. The result of that is that there are
some other applications that have now superseded them
within the standings and are now being underwritten.

These applications will not be open to the same
RAFs. I think there's some concern among the community --
the development community that that there's going to be
the same level of detail applied to those applications as
there were through the RAF process.

   In other words, will they be looked at equally and equitably and held to the same standards, basically? That was, you know, just a concern. I think it's kind of an unintended consequence of something that's becoming more real now that these lower-scoring applications at the beginning of the process are now being underwritten but will not have that same level of focus from the development community through this process.

   Thank you.

MS. BINGHAM ESCAREÑO: Thank you.

Seeing no further public comment, any other comment from staff?

   (No response.)

MS. BINGHAM ESCAREÑO: Board?

   (No response.)

MS. BINGHAM ESCAREÑO: Management?

   (No response.)

MS. BINGHAM ESCAREÑO: Captain Tweety?

   (General laughter.)

MS. BINGHAM ESCAREÑO: Good. Okay. So next meeting is coming very quickly, July 27th. Thank you guys very much. Have a good day.

   (Whereupon, at 2:33 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: July 13, 2017

I do hereby certify that the foregoing pages, numbers 1 through 196, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

7/23/2017
(Transcriber) (Date)

On the Record Reporting
3636 Executive Cntr Dr., G22
Austin, Texas 78731