

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

July 13, 2017
9:02 a.m.

BOARD MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

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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")	
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- ITEM 3: RULES 36
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 17390 Las Palomas McAllen
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d) Presentation, Discussion, and Possible
Action regarding amenities used for
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related to Opportunity Index for
Application #17327, Legacy Trails of
Lindale, Lindale

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P R O C E E D I N G S

1
2 MS. BINGHAM ESCAREÑO: Good morning. So y'all
3 know that J. Paul took the giant gavel with him. Right?
4 I don't feel like I'm really in a lot of power up here.

5 (General laughter.)

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

12 MR. BRADEN: Here.

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

15 MS. RESÉNDIZ: Present.

16 MS. BINGHAM ESCAREÑO: Ms. Thomason?

17 MS. THOMASON: Present.

18 MS. BINGHAM ESCAREÑO: And Mr. Vasquez is out
19 today also. We have four members present, which does
20 constitute a quorum, so we can do business today.

21 Would you lead us in the pledges?

22 ALL: I pledge allegiance to the flag of the
23 United States of America, and to the republic for which it
24 stands, one nation under God, indivisible with liberty and
25 justice for all.

1 Honor the Texas flag; I pledge allegiance to
2 thee, Texas, one state under God, one and indivisible.

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

5 MR. LYTTLE: No, ma'am.

6 MS. BINGHAM ESCAREÑO: Great. Good morning.

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

10 MS. BINGHAM ESCAREÑO: Good morning. Very
11 good.

12 MS. MOLINARI: Good morning. Jennifer
13 Molinari, HOME and Homeless Programs Director. I need to
14 read into the record a couple of changes. We need to pull
15 Item 1(c) from the Consent Agenda. And I also need to
16 make a couple of corrections into the record for Item
17 1(b).

18 So for Item 1(b), those are award
19 recommendations for home open cycle applications that the
20 Department has received. The changes I need to read into
21 the record is that there are actually two administrators
22 -- three administrators, not two administrators, that we
23 are recommending for award. And also, that the service
24 area for Application 2017-1006 should read Guadalupe and
25 Comal Counties. That's all I've got.

1 MR. IRVINE: So those items would remain on
2 Consent as corrected?

3 MS. MOLINARI: Yes.

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

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

8 MS. BINGHAM ESCAREÑO: Yes.

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

11 MS. BINGHAM ESCAREÑO: Areas served. Perfect.

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

14 MS. BINGHAM ESCAREÑO: Great.

15 MS. MOLINARI: -- with these funds.

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

18 MS. MOLINARI: Okay.

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

23 MR. BRADEN: So moved.

24 MS. BINGHAM ESCAREÑO: Mr. Braden moves.

25 MS. RESÉNDIZ: Second.

1 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

2 All those in favor, aye?

3 (A chorus of ayes.)

4 MS. BINGHAM ESCAREÑO: Opposed, same sign.

5 (No response.)

6 MS. BINGHAM ESCAREÑO: Motion carries.

7 I think what we're going to do is take a very
8 brief break for executive session. I'm thinking maybe 15
9 minutes, so maybe if we could reconvene at -- you think
10 9:20 is good? Just a quick 15 minutes for us to meet.

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

19 MR. IRVINE: Sorry.

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

22 MR. IRVINE: Yeah.

23 MS. BINGHAM ESCAREÑO: Okay. The Department --
24 the Governing Board of the Texas Department of Housing and
25 Community Affairs will go into closed session or executive

1 session at this time. We're going to show that is 9:05.

2 The Board may go into executive session
3 pursuant to Texas Government Code 551.074 for the purposes
4 of discussing personnel matters pursuant to Texas
5 Government Code 555.071 to seek and receive the legal
6 advice of its attorney, Item Number 3, pursuant to Texas
7 Government Code 551.072 to deliberate the possible
8 purchase, sale, exchange, release of real estate and/or
9 pursuant to Texas Government Code 2306.039(c) to discuss
10 issues related to fraud, waste or abuse with the
11 Department's internal auditor, fraud prevention, or
12 coordinator of ethics service.

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

17 Okay. We'll be back in 15 minutes.

18 (Whereupon, at 9:06 a.m., the meeting was
19 recessed, to reconvene this same day, Thursday, July 13,
20 2017, following conclusion of the executive session.)

21 MS. BINGHAM ESCAREÑO: My timing wasn't that
22 good. It's 9:34. The Board's now reconvened in open
23 session. During the Executive Session, the Board did not
24 adopt any policy, position, resolution, rule, regulation,
25 or take any formal action or vote on the item.

1 Okay. Let's return to the action item, Agenda
2 Item No. 2, Reports, Marni?

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

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

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

22 This report item includes all remaining
23 determinations that weren't addressed at the June 29th
24 meeting. The Department's Governing Board has final
25 decision-making authority on any of the issues reflected

1 here. And thus, these determinations are subject to
2 change. However, a requestor may not formally appeal a
3 staff determination if precluded by the appeal process
4 role.

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

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

12 MS. HOLLOWAY: Yes.

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

15 MS. HOLLOWAY: Right.

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

22 MS. HOLLOWAY: Okay.

23 MS. BINGHAM ESCAREÑO: Great.

24 MS. HOLLOWAY: All right. The first one is
25 Application Number 17007, Magnolia Station. This is in

1 Winnie. The requestor asked the Department to review
2 items selected for scoring under the opportunity index and
3 tiebreaker factors. Specifically, the requestor contends
4 that the safari park used for scoring as an outdoor
5 recreation facility is within the Winnie Stowell County
6 Park, which is counted as a public park. And because the
7 same feature may not be used twice, they are not eligible
8 for two points under the Opportunity Index.

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

17 The next one, 17281 The Residence at Arbor
18 Grove in Arlington, the requestor asked the Department to
19 review scoring related to concerted revitalization plans.

20 The requestor claims that the 2010 to 2015 consolidated
21 plan submitted in the application does not meet the
22 requirements for a concerted revitalization plan because
23 it covers the entire city of Arlington rather than a
24 specific area, and the consolidated plan had expired.

25 You may not be aware, the consolidated plan is

1 something that all participating jurisdictions submit to
2 HUD every five years that tells them how they are going to
3 use the funds that are provided to them under HOME and
4 CDBG and ESG and other funds sources over those next five
5 years.

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

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

22 The applicant provided supporting documentation
23 of all facilities claimed in the application. Staff
24 accepted the applicant's response to the administrative
25 deficiency, and no adjustment has been made to points.

1 The next one, 17305 Payton Senior in Killeen,
2 the request asked the Department to review scoring related
3 to the opportunity index. The requestor claims that the
4 site is not located less than half a mile on an accessible
5 route from public transportation because the public
6 transportation does not operate on weekends, that it was
7 not located less than half a mile on an accessible route
8 from an accessible playground, and that there is no
9 evidence that the Bacon Ranch Park meets 2010 ADA
10 standards or that it is open to the public.

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

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

24 The applicant has provided a letter from the
25 public transportation provider memorializing their request

1 that the development include improvements to the existing
2 bus stop subject to approval by TXDOT or a related permit.

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

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

17 Staff has determined that the accessible route
18 to public transportation has not been proven because it
19 relies on future actions on property the applicant does
20 not control, and there is no mention in the application of
21 creation of the route either in the site plan or in the
22 cost schedules. While the nonprofit owner of the park
23 claims it is open to the public, the Department has
24 consistently determined that privately held parks are not
25 considered public parks.

1 And finally, the Fort Hood November 5 Memorial
2 is not a museum because it does not have a primary purpose
3 of the acquisition conservation study exhibition and
4 educational interpretation of objects having a scientific,
5 historical, or artistic value. That's the requirement and
6 rule for a museum. Again, staff has issued a scoring
7 notice, and the applicant is able to appeal that notice.

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

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

22 The next one, 17322 Provision at Wilcrest in
23 Houston, this request asked the Department to review
24 representations made by the applicant in relation to site
25 requirements and restrictions. They claim the proposed

1 site is located within the 100-year floodplain and the
2 application materials do not include the appropriate
3 measures for development.

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

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

18 Because the applicant has already addressed the
19 floodplain issue with REA, staff considers the matter
20 closed along with the placement of the building more than
21 100 feet from high voltage lines. In the course of
22 researching the concrete crushing plant, it was discovered
23 that the Texas Commission on Environmental Quality
24 considers this company a municipal solid waste processing
25 plant, which is an undesirable site feature under our

1 rule.

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

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

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

22 A scoring notice regarding the museum and park
23 accessibility was issued prior to receipt of the RAF, and
24 the applicant has filed a separate appeal of that item.
25 The applicant claims that the portion of the property that

1 is not zoned for development is the same part that is in
2 the 100-year floodplain. And because it will not be
3 developed as part of this project, the zoning application
4 and other requirements do not apply.

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

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

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

20 The applicant claims that they have provided
21 sufficient evidence of mitigation for the proximity of the
22 site to railroad tracks. And, again, we'll take that up
23 as a separate item today. The claim that the Metro
24 McAllen ADA Paratransit Services serves the tenants better
25 than an accessible route to a park or public

1 transportation, and, therefore, the application should
2 receive those points.

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

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

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

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

23 They claim that the family medicine clinic does
24 not meet the requirements because it is a physician
25 specialty office rather than a full-service hospital,

1 community health center, or minor emergency center
2 described in the rule. I'm sorry. I'm getting -- did I
3 get the right one?

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

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

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

23 Number 17376 The Bristol in San Antonio, the
24 requestor asked the Department to review the application
25 for two points claimed under Opportunity Index. The

1 request did not include documentation beyond the letter
2 request and, therefore, does not meet the requirement that
3 the requestor must provide sufficient credible evidence
4 that, if confirmed, would substantiate the deficiency
5 request. No further action will be taken by the
6 Department as a result of this request.

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

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

25 They make a similar statement regarding the

1 accessible route to public transportation. They claim
2 that the museum is separate from the college and library.

3 The applicant has provided additional description of how
4 they extrapolated the property crime rate included in the
5 application and new information for that item.

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

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

19 Number 17390, Las Palomas in McAllen, the RAF
20 questioned four items claimed under the opportunity index.

21 The requestor claims that the playground is more than
22 half a mile from the proposed development and that the
23 route to the playground is not accessible, that the route
24 to public transportation is not accessible.

25 The requestor claims that the applicant has

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

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

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

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

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

23 Because the library is its own structure and
24 the playground is part of the park, staff has determined
25 that both may be used for points. The applicant will have

1 an opportunity to appeal the loss of points.

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

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

6 (No response.)

7 MS. BINGHAM ESCAREÑO: No. Not at this time.
8 Okay. Thanks, Marni.

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

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

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

22 On that road, which is Gilbeau Road to the
23 south, he has stated he will raise that road 200 feet.
24 Well, that's a public road, and he knows a lot of money
25 there, but there happens to be a bridge into that which

1 would also have to be raised. But more importantly,
2 there's houses next to this development right now who have
3 had to buy flood insurance because of excess runoff in the
4 area.

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

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

21 It's also important to understand that the
22 entire development is not only built on a 100-year
23 floodplain. The one area that is not on a 100-year
24 floodplain it's being built on is a 500-year floodplain.
25 That area when it floods our area, literally, if you were

1 living in that development, you would not be able to get
2 out of it until the flooding receded.

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

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

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

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

24 MR. HOWSON: We did a pretty strong report on
25 this, so if you have questions.

1 MS. BINGHAM ESCAREÑO: Thank you.

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

3 MR. HOWSON: Okay. Thank you very much.

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

6 MS. RESÉNDIZ: I have a quick question.

7 MR. HOWSON: Yes.

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

11 MR. HOWSON: No.

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

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

16 MS. RESÉNDIZ: Okay.

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

20 MS. RESÉNDIZ: Okay.

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

24 MS. RESÉNDIZ: Okay. I appreciate it. Thank
25 you.

1 MR. HOWSON: Okay. It's the first I've been
2 able to talk to you guys. Thank you.

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

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

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

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

25 Now, we have looked for information to see how

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

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

14 And with he facility being attached to the
15 school, not a stand-alone building, or a stand-alone
16 501(c)(3), we believe that it should be considered an
17 ancillary part of the Brook Hill School and an additional
18 use of that campus.

19 Now, the applicant also asked for O.L. Ferrell
20 Park. which is the only park in Bullard to be counted both
21 as a both a public park and an outdoor recreation
22 facility. This park is 9.6 acres, and there are two
23 different playgrounds on that park separated by a shared
24 parking lot. The playgrounds are 450 feet apart. One of
25 the playgrounds has a sign that calls it Bullard Kids

1 Park, and the other one is just a playground with swing
2 sets. They're only 450 feet apart. There's one parking
3 lot, one set of bathrooms, and one set of water fountains.

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

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

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

24 This isn't a facility with playgrounds and
25 baseball fields and other uses. But these are two of the

1 same type of amenity being counted as two different
2 amenities, which under 11.9(c)(4)(B), "Each family or
3 amenity may be used only once for scoring purposes,
4 regardless of the number of categories it fits."

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

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

13 Thank you.

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

16 (No response.)

17 MS. BINGHAM ESCAREÑO: Good morning.

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

22 I appreciate the tenacity of this developer,
23 but they simply won't take no for an answer on this.
24 These issues have been brought up before staff already.
25 They've been asked and answered. The rules are very

1 clear. No new information past the June 1 date can be
2 brought forward related to these issues.

3 If they had wanted all of this information in
4 and had brought all this additional information that we've
5 never heard, they should have done it at that time. But
6 technically none of that should be relevant at this point.

7 There has to be a time at which people can trust that
8 your competitor stops going after your deal, and that was
9 June 1. All of these issues have been addressed.

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

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

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

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Thank you. Good
2 morning.

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

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

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

22 It's open Monday, Tuesday, Wednesday, and
23 Thursday for tours. It's also open full-fledged two days
24 a week, Wednesdays and Saturdays, from 10:00 a.m. to
25 3:00 p.m., a separate entrance. There's brochures that we

1 submitted for the park in our response.

2 As Sarah mentioned, these have been addressed.

3 We consider it closed; however, I'm here and happy to
4 answer and questions that you guys may have.

5 MS. BINGHAM ESCAREÑO: Thank you, Michael.

6 Any questions from the board members for Mr.
7 Fogel?

8 (No response.)

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

11 MR. FOGEL: Okay. Thank y'all.

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

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

21 MS. BINGHAM ESCAREÑO: Thank you very much.
22 Thanks. Any questions for Kelly?

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Great. Any other public
25 comment on Report Item Number 2?

1 (No response.)

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

4 We'll move on to Item Number 3, Rules.
5 Jennifer?

6 MS. MOLINARI: Good morning again.

7 MS. BINGHAM ESCAREÑO: Hi.

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

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

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

22 And we increased maximum amounts allowable for
23 construction hard costs and related soft costs, and then
24 we made some other minor and conforming changes throughout
25 the rule.

1 So we drafted these rules following a series of
2 roundtables earlier in the year. And following your
3 approval of those draft rules, we did put them out for
4 public comment. We received comments from 20 commenters,
5 and many of them were commenting on the same sections of
6 the rules. And they are included in your board materials
7 today.

8 So following those comments, we did make some
9 revisions, and we made some other non-substantive changes
10 to the rules as originally proposed on April 27th of 2017.

11 Those staff changes are indicated in track changes in
12 your board materials. And those changes include a change
13 to: Section 2325 (b)(2)(f), General Threshold and
14 Selection Criteria.

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

23 Another change was made to Section 2331(d)(3),
24 HOME Rehabilitation Assistance Program Requirements. We
25 had one commenter that recommended increasing hard costs

1 for rehabilitation activities from \$40,000 to \$100,000 for
2 the rehabilitation of homes and that are listed in or
3 eligible for listing in the National Register of Historic
4 Places.

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

10 Another change that was made was to Section
11 2331(f), Homeowner Rehabilitation Assistance Program
12 Requirements. We had ten commenters that recommended
13 increasing soft cost limits by \$3,000 for reconstruction
14 activities, and one commenter that stated that soft costs
15 should be increased for rehabilitation activities as
16 well -- I'm sorry -- \$3,000 for reconstruction, \$1,000 for
17 rehabilitation.

18 Staff agreed that these increases in the
19 limitations for soft costs is warranted due to the
20 increase in expenses for these types of services. And we
21 recommended that change to allow a \$1,000 increase for
22 reconstruction activities to a total of \$10,000 and a
23 \$2,000 increase for rehabilitation activities for a total
24 of \$7,000 in soft costs. And then we made some conforming
25 changes, again in subchapter (e), Contract for Deed

1 Conversion, to make requirements consistent across similar
2 activity types.

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

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

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

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

21 MS. MOLINARI: -- you know, provide that quote.

22 So those are the major changes and conforming
23 changes made to other subsections. And so anticipate that
24 if you approve the rules as -- with the recommended
25 changes presented today, they'll become effective at the

1 end of August 2017, and then we will be able to use those
2 new rules for our 2017 notice of funding availability and
3 future NOFAs.

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

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

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

10 MS. MOLINARI: This is an action item --

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

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

14 MS. BINGHAM ESCAREÑO: -- entertain a motion.

15 MS. RESÉNDIZ: So moved.

16 MS. BINGHAM ESCAREÑO: Ms. Reséndiz moves.

17 MS. THOMASON: Second.

18 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

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

21 (A chorus of ayes.)

22 MS. BINGHAM ESCAREÑO: Opposed, same sign.

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Motion carries. Thank
25 you, Jennifer.

1 All right. Let's keep rolling. We'll move to
2 Item 4, Multifamily Finance. 4(a), Marni.

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

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

12 MS. BINGHAM ESCAREÑO: Very good.

13 MS. HOLLOWAY: Okay.

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

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

25 The first development, Application Number 17259

1 Mistletoe Station, the proposed development site is within
2 Forth Worth's Near Southside development district. It is
3 in a 1st Quartile census tract with less than 1 percent
4 poverty rate.

5 The proposed development site is located within
6 500 feet of the railway for the railroad tracks. The plan
7 for the site indicates an easement for the tracks with a
8 ten-foot setback followed by a line of parking spaces, a
9 two-way driving lane, and another line of parking spaces.

10 Staff estimates that the closest units will be
11 approximately 120 feet from the tracks.

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

21 The applicant has provided letters from the
22 City of Fort Worth indicating that the property is
23 appropriately zoned, and the proposed development would be
24 an allowable use. In addition, they have provided the
25 Near Southside development standards and guidelines an

1 adopted supplement to the city zoning ordinance which is
2 silent on the issue of distance of development from the
3 nearby railroad.

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

11 I'd be happy to answer any questions.

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

16 MS. HOLLOWAY: I don't believe so.

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

19 MR. ECCLES: Just touching on the rule itself.

20 MS. HOLLOWAY: Uh-huh.

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

23 MS. HOLLOWAY: Yes, it did.

24 MR. ECCLES: And did it include evidence of
25 mitigation?

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

12 MR. ECCLES: Okay.

13 MS. BINGHAM ESCAREÑO: Very good. Thank you.
14 Do we have public comment on Mistletoe Station,
15 17259?

16 MR. SHACKELFORD: Good morning.

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

19 MR. BRADEN: So moved.

20 MS. BINGHAM ESCAREÑO: Okay. Mr. Braden moves.

21 MS. THOMASON: Second.

22 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

23 All those in favor, aye.

24 (A chorus of ayes.)

25 MS. BINGHAM ESCAREÑO: Opposing sign?

1 (No response.)

2 MS. BINGHAM ESCAREÑO: Thank you very much.

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

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

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

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

1 "Mistletoe Station is located adjacent to a railroad and
2 its associated easement and the city planning and zoning
3 codes and ordinances provide that a development located
4 adjacent to such an easement is permitted with zero feet
5 of required setback."

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

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

21 And the finally, we obtained the letter from
22 the city attorney's office from the City of Fort Worth,
23 and that's in part of your board package as well. And the
24 last sentence states: "Section 4.1305 of the zoning
25 ordinance which governs this particular district contains

1 no setback requirements from the railroad. Thus,
2 development adjacent to the railroad is permissible."

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

14 MS. BINGHAM ESCAREÑO: Okay.

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

16 MR. SHACKELFORD: Thank you.

17 MS. BINGHAM ESCAREÑO: Thank you, John.

18 Any questions for Mr. Shackelford?

19 (No response.)

20 MS. BINGHAM ESCAREÑO: Thank you.

21 MS. STEPHENS: Good morning.

22 MS. BINGHAM ESCAREÑO: Good morning.

23 MS. STEPHENS: I'm Lisa Stephens, the developer
24 for Mistletoe Station. And if I could, I'd like to
25 address first Mr. Eccles' question about whether or not

1 mitigation was provided within our application. There
2 were several levels of mitigation that we've provided
3 within the application as evidence of how we were
4 addressing this item.

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

16 So we did provide mitigation along those lines.

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

22 This area is redeveloping, and we have some
23 officials here from the city and the community that are
24 going to talk to you about that and how market rate
25 housing is popping up all over the place in similar

1 proximity to this same rail line. These are for sale and
2 high end rentals. There is no affordable housing going
3 in. This would be the only affordable development and so
4 addressing that fair housing concern of the city.

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

10 The only other items I'd like to point out is
11 that this 500 feet setback is a new rule as well as the
12 urban core being a targeted desire of TDHCA is a new rule.

13 Unfortunately, in the City of Fort Worth, those things
14 conflict. This is the highest scoring application in the
15 entire cycle.

16 It's the highest scoring application because it
17 meets all of the criteria that the staff was looking for.

18 It's urban core. It has great schools. It has very low
19 poverty. It has all the jobs. It has walkability. It
20 has all the amenities. It is the highest scoring
21 application, the best one that meets the criteria outlined
22 within the application.

23 However, in the City of Fort Worth, there are
24 193 railroad crossings. You cannot be in downtown Fort
25 Worth without running into the railroad. It's just not

1 possible. And so you've got both of these new features,
2 the 500 foot setback and the urban core that unfortunately
3 are conflicting a little bit in this situation. But we
4 would ask that you look at the mitigation. We would ask
5 that you look at your preference for an urban core
6 development, you look at the fact that it would be almost
7 impossible to find a zone multifamily vacant land site in
8 downtown Fort Worth that didn't have this same issue. And
9 we ask that you find the development eligible.

10 MS. BINGHAM ESCAREÑO: Thank you, Lisa.

11 MS. STEPHENS: Thank you.

12 MS. BINGHAM ESCAREÑO: Any questions for Lisa?

13 (No response.)

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

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

20 As you've already heard from previous speakers
21 with regards to the technical and legal issues regarding
22 this project, I won't go through those. However, I will
23 emphasize the following with regards to city policy: one,
24 that the zoning ordinance already allows for multifamily
25 in the area. There's been a prevalence of market rate

1 housing that has already taken place in this area, which
2 is known as the Medical District.

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

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

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

24 And it reads as follows: "We have a right to
25 express the City of Fort Worth's support for the appeal of

1 Mistletoe Station which was deemed ineligible originally
2 by the staff of the Texas Department of Housing and
3 Community Affairs due to undesirable site characteristics
4 under the 2017 uniform multifamily rules; specifically,
5 Mistletoe Station's located within 500 feet of a railroad.

6 Mistletoe Station is an important project for
7 the city. The city specifically and respectfully
8 requests that the Board of Directors approve the appeal
9 and determine that the applicant is eligible for the
10 allocation of 2017 9 percent housing tax credits for the
11 reasons outlined below.

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

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

25 As evidenced by the letters from city staff

1 dated February 10, 2017 and the city attorney's office
2 dated July 10, 2017, Mistletoe Station is permitted to be
3 located near the railroad and is not required to be set
4 back from the railroad or its easement.

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

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

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

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

1 Thank you.

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

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

9 MS. BINGHAM ESCAREÑO: Okay. Thank you.
10 Any questions for Aubrey?

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

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

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

20 MR. THAGARD: That is correct.

21 MR. BRADEN: Okay.

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

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

1 Thagard.

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

4 MR. THAGARD: A pleasure.

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

10 MR. THAGARD: Actual --

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

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

19 MS. RESÉNDIZ: Okay.

20 MR. THAGARD: -- specific zoning for that.

21 MS. RESÉNDIZ: Okay.

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

25 MS. RESÉNDIZ: Right.

1 MR. THAGARD: -- in that quarter area.

2 MS. RESÉNDIZ: Okay. Great. Thank you.

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

5 (No response.)

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

8 MR. THAGARD: Thank you.

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

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

21 "We are pleased to send this letter in support
22 of Mistletoe Station and their application for housing tax
23 credit funding. The project is located at the western
24 edge of our redevelopment district and in a area we have
25 targeted for this type of residential development.

1 "A vision plan prepared by NSI and other
2 partners proposed residential for this site as well as
3 other parcels located along the FWNW Railroad. Our
4 organization has worked for over two decades to spearhead
5 the Near Southside's revitalization. Our top goal from
6 the beginning has been to attract new residents and to
7 restore this formally vibrant neighborhood just south of
8 downtown.

9 "We couldn't be more pleased with the
10 district's success and the fact that we now have over
11 2,000 multifamily units currently under construction or in
12 the design phase. There is still a pressing need,
13 however, for these projects, because these projects
14 exclusively include luxury properties with high rents. To
15 provide a full spectrum of housing options for the
16 district's 35,000-plus workforce, we need Mistletoe
17 Station and other projects offering workforce units.

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

24 "These national multifamily groups clearly see
25 the proximity to the Near Southside employers and nearby

1 amenities as an asset as well as a long-term possibility
2 for the rail line to become the commuter corridor for the
3 Fort Worth Transportation Authority.

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

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

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

15 "Fort Worth Housing Solutions, FWHS, the
16 Housing Authority of the City of Fort Worth, supports the
17 9 percent low income housing tax credit application for
18 the above-referenced development. FWHS has a main goal to
19 provide and support the development and quality affordable
20 housing in the City of Fort Worth.

21 "The location of the proposed Mistletoe Station
22 development is within the city's Medical District, which
23 is the second largest employment center, 30,000-plus jobs,
24 with over half of these jobs having salaries at or below
25 60 percent AMI. Therefore, the proposed location of

1 Mistletoe Station would serve as a large unmet need for
2 affordable housing near employment opportunities.

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

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

16 Thank you.

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

19 (No response.)

20 MS. BINGHAM ESCAREÑO: Very good. Thank you.

21 And I don't think -- so just counsel, we don't
22 actually have to approve a waiver. Right? The Board has
23 the --

24 MR. ECCLES: Yeah.

25 MS. BINGHAM ESCAREÑO: -- ability to find the

1 site eligible or ineligible?

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

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

8 MS. BINGHAM ESCAREÑO: Understood.

9 MR. SHACKELFORD: Not going there.

10 MS. BINGHAM ESCAREÑO: It's okay. Yeah.
11 Understood.

12 MR. SHELBURNE: Good morning.

13 MS. BINGHAM ESCAREÑO: Good morning.

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

22 First of all, a little bit of stats on the
23 campus. It's a 474-bed, tertiary facility. We have about
24 46,000 emergency department visits a year. It's going to
25 be going up to approximately 65,000 with a new emergency

1 department we're currently expanding. We employ 1,300
2 medical staff, along with 2,400 employees -- full-time
3 employees.

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

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

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

22 Most people think hospital employees are all
23 physicians. Well, we have dietary, we have housekeeping,
24 we have patient transport. There is a tremendous amount
25 of support staff that work in that hospital that are that

1 workforce that are critical to the patient care within our
2 facilities.

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

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

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

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

17 (No response.)

18 MS. BINGHAM ESCAREÑO: Thank you very much.

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

25 That being said, this is a determination that

1 you all are making that also impacts the next one that's
2 coming in that deals with proximity to railroads, and
3 that's the reason why I'm up here.

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

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

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

23 Additionally, with respect to mitigation, it
24 does set out in this particular rule that unless the
25 applicant provides information regarding mitigation of the

1 undesirable site feature, that's all the undesirable site
2 features that are references to in this rule. And then
3 the next sentence, next two sentences references
4 rehabilitation and historic developments.

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

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

20 So, again, I hate to be the one up here
21 opposing this because it sounds like a great project in
22 the Fort Worth inner core, but, again, your determination
23 is going to impact some other railroad determinations
24 coming before you immediately after this one. Thank you
25 very much.

1 MS. BINGHAM ESCAREÑO: Thank you.

2 Any questions for Donna?

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Thank you. Any other
5 comments on 17259 Mistletoe?

6 (No response.)

7 MS. BINGHAM ESCAREÑO: All right. Does the
8 Board have any other questions of Marni at this point
9 because I think we'll go ahead and take these one by one?
10 Any questions for Marni?

11 MS. THOMASON: I do have one question. So what
12 we're discussing is the fact that in the application --

13 MS. HOLLOWAY: Uh-huh.

14 MS. THOMASON: -- there was not anything
15 provided?

16 MS. HOLLOWAY: There was.

17 MS. THOMASON: There was.

18 MS. HOLLOWAY: The applicant did disclose this
19 proximity and it provided -- excuse me -- letters from the
20 City of Fort Worth and the neighborhood plan and a good
21 deal of information regarding that proximity to the
22 railroad.

23 MS. BINGHAM ESCAREÑO: And then, Marni, could
24 you remind the Board too relative to mitigation, so if the
25 Board were to consider the site eligible, it would be on

1 the basis that the applicant had provided sufficient
2 information regarding mitigation? Was that also provided?

3 Like we heard it in here, but was that also provided?

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

6 MS. BINGHAM ESCAREÑO: Yeah.

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

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

19 MS. HOLLOWAY: I mentioned --

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

22 MR. IRVINE: It's in a letter.

23 MS. BINGHAM ESCAREÑO: Okay.

24 MS. HOLLOWAY: Yeah. And as I mentioned, this
25 is a 1st quartile census tract --

1 MS. BINGHAM ESCAREÑO: Okay. You did.

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

4 MS. BINGHAM ESCAREÑO: Okay.

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

8 MS. HOLLOWAY: Uh-huh.

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

12 MS. HOLLOWAY: Uh-huh.

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

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

24 MR. BRADEN: And I am not suggesting that it's
25 an ordinance, but I am suggesting that it's an

1 interpretation of the city of its ordinances, because
2 that's what it states.

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

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

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

12 MR. BRADEN: So I guess --

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

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

23 MS. HOLLOWAY: Well, earlier in this round, we
24 had another application come in with the same question
25 regarding proximity to railroads that the city had

1 actually passed an ordinance with a measurement in it, and
2 staff brought that forward as a recommend because that
3 ordinance was in place. And as Tim said, you know, if it
4 meets the letter of the rule, then we as staff can say
5 yes, here it is. If it doesn't meet the letter of the
6 rule, then we're in a much more difficult position.

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

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

13 MS. HOLLOWAY: Okay.

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

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

1 development site must be included in the application."

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

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

6 MR. ECCLES: Yes.

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

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

18 MS. BINGHAM ESCAREÑO: Right.

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

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

24 MS. HOLLOWAY: Yes. And as -- yes, I
25 described, you know, staff's recommendation as based

1 entirely on what is written in that rule.

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

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

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

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

23 Would any board member like to take a stab at a
24 motion on this item, action item? We're going to go ahead
25 and take them one by one.

1 MR. BRADEN: I would make a motion that the
2 Board not accept the staff recommendation.

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

6 MR. BRADEN: Go ahead, Beau.

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

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

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

18 MS. RESÉNDIZ: Second.

19 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.
20 Any further discussion on this item?

21 (No response.)

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

23 (A chorus of ayes.)

24 MS. BINGHAM ESCAREÑO: Opposed, same sign?

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Motion carries. Thank
2 you very much. Thank you, guys.

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

5 MS. HOLLOWAY: Yes.

6 MS. BINGHAM ESCAREÑO: -- next?

7 MS. HOLLOWAY: Cielo.

8 MS. BINGHAM ESCAREÑO: 17368 is Cielo McAllen.

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

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

20 An official from the City of McAllen states in
21 a letter that they are unaware of any McAllen ordinance
22 that prohibits the apartments being in that proximity.
23 That there is no ordinance preventing multifamily
24 development near railroad tracks does not the requirements
25 of the rule, which we've all heard a number of times now.

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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

1 with regard to whether there is sufficient mitigation
2 associated with the presence of this railroad.

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

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

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

19 (No response.)

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

22 MR. VERMA: Hi. My name is Manish Verma, and
23 I'm here today to talk about Cielo. So, yes, our
24 situation is similar to Mistletoe Station in that we do
25 have proximity to a railroad. Now, our site is

1 approximately 160 feet from the active railroad and
2 approximately 250 feet from our nearest building and over
3 500 feet from the entrance of our site, from our egresses
4 of our site.

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

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

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

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

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

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

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

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

23 MS. BINGHAM ESCAREÑO: Thank you, Mr. Verma.
24 Any questions from the Board?

25 MR. ECCLES: Madam Chair, may I?

1 MS. BINGHAM ESCAREÑO: Yes.

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

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

10 MR. ECCLES: Yes.

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

15 MR. ECCLES: Okay. To be clear, the city
16 attorney's letter states in the third paragraph, the
17 letter "does not constitute a legal opinion or
18 determination by the City of McAllen, nor should you or
19 any other person act in reliance of this letter regarding
20 the interpretation or applicability of all current
21 municipal ordinances, rules, policies, and regulations
22 related to the issue of any documentation or any ordinance
23 stating that multifamily apartments cannot be built within
24 500 feet of any railroad track."

25 Is that an accurate --

1 MR. VERMA: That is correct. Yeah, that's
2 right.

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

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

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

15 MR. ECCLES: Okay.

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

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

22 MR. ECCLES: Okay. Thank you.

23 MR. VERMA: Thank you.

24 MS. BINGHAM ESCAREÑO: I guess -- Marni, you
25 can come up. And I understand from the last one the

1 bright line, but I guess struggling with the documentation
2 that was provided regarding ordinance in the previous
3 application. You know, these letters look kind of
4 qualified, like they're qualifying this as not a legal
5 opinion or a determination by the city which I'm
6 struggling with a little bit, but.

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

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

13 MS. BINGHAM ESCAREÑO: Right.

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

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

21 MR. VERMA: It's an older property.

22 MS. BINGHAM ESCAREÑO: Okay.

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

25 MS. BINGHAM ESCAREÑO: Okay.

1 MR. VERMA: It's not 30 years ago or something
2 of that nature.

3 MS. BINGHAM ESCAREÑO: Okay.

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

8 MS. BINGHAM ESCAREÑO: Okay.

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

17 MS. BINGHAM ESCAREÑO: Good morning, Barry.

18 MR. PALMER: Hi. Barry Palmer with Coats Rose.
19 And I represent one of the competing applicants. And I'd
20 like to differentiate this from the Fort Worth situation.

21 I think, you know, there was testimony there that to go
22 into the urban core of Fort Worth it's hard to avoid a
23 railroad track.

24 Here, we're talking about the Valley, McAllen
25 and Brownsville. There are plenty of sites that are not

1 adjacent to railroad tracks. In fact, in this application
2 round, there are a couple of other applications in McAllen
3 not too far away from this site, maybe half a mile away
4 but not adjacent to the railroad track.

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

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

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

24 MS. BINGHAM ESCAREÑO: Thank you. Any
25 questions for Mr. Palmer?

1 (No response.)

2 MS. BINGHAM ESCAREÑO: Okay. Thank you.

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

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

15 MS. BINGHAM ESCAREÑO: Thank you, Barry.

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

21 With respect to railroads, everybody looked at
22 source sites that clearly met the intent objection and
23 what is stated in our rules, and that is proximity to
24 railroad tracks and being outside that 500-foot window.

25

1 And it is very different down in the Valley
2 than it is Fort Worth urban core. Clearly like in
3 downtown Houston, which I live in Houston, you've got
4 proximity to railroad tracks all throughout your downtown
5 urban cores. There's a real distinction there.

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

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

24 MS. BINGHAM ESCAREÑO: Thank you.

25 And just, Mr. Verma, just for reference, I'm

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

7 MS. VERMA: That's right.

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

11 MR. VERMA: Right.

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

21 MR. VERMA: Okay.

22 MS. BINGHAM ESCAREÑO: Thank you.

23 If there's no further questions from the Board
24 for Marni or commenters, I'll entertain a motion on this.

25 This is 17368 Cielo McAllen regarding eligibility or

1 ineligibility of the site due to undesirable aspects, this
2 being railroad proximity. Is there a motion?

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

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

8 MS. THOMASON: Second.

9 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.
10 Any further discussion?

11 (No response.)

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

13 (A chorus of ayes.)

14 MS. BINGHAM ESCAREÑO: Opposed, same sign?

15 (No response.)

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

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

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

21 MS. BINGHAM ESCAREÑO: I see people wiggling.

22 MS. HOLLOWAY: Our next application is Number
23 17322. This is Provision at Wilcrest in Houston. This
24 applicant -- so the last two that we discussed, the
25 applicant did disclose their application the undesirable

1 site feature.

2 This particular applicant did not disclose the
3 development site is located across the street from the
4 Southern Crushed Concrete facility in Houston. Staff was
5 made aware of the facility through a third-party request
6 for an administrative deficiency which questioned whether
7 the plant qualifies as heavy industry.

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

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

22 Interestingly, we found in our research TCEQ
23 will not provide a permit to a new concrete crusher unless
24 it is, among other things, no less than 440 yards away
25 from any residential, school, or place of worship. So if

1 the situation were reversed and they were trying to put in
2 a new concrete crushing plant, TCEQ would make them put it
3 400 yards away from any residential use.

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

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

9 (No response.)

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

13 MR. BRADEN: So moved.

14 MS. BINGHAM ESCAREÑO: Mr. Braden moves.

15 MS. THOMASON: Second.

16 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

17 All those in favor, aye?

18 (A chorus of ayes.)

19 MS. BINGHAM ESCAREÑO: Opposed, same aye?

20 (No response.)

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

22 MS. ANDERSON: Hello again. My name is Sarah
23 Anderson, and I'm here representing the developer.

24 There's a reason why we didn't disclose this, because
25 based on what this facility is, it is not required to be

1 disclosed in the rules. This is not a solid waste
2 processing plant. This is a recycling facility. There is
3 no language whatsoever, and there's a long history of
4 interpretation of the specific language that has said that
5 the recycling center's distinctly separate and not a part
6 of the undesirable site feature that's being listed.

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

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

20 This is not as staff would interpret and have
21 to add language. Their interpretation is that these are
22 two distinctly different types of facilities. One is a
23 solid waste processing plant, and that one would be a
24 sanitary landfill. If you just read the plain language of
25 this, their interpretation just doesn't make sense. Each

1 of these clauses would have to stand on their own. And
2 the way you would read it was that it would say, "A
3 development site located within 300 feet of a solid
4 waste," which doesn't mean anything, or "development sites
5 located within 300 feet of sanitary landfills," which
6 would imply that you would have to be next to more than
7 one landfill to be ineligible. Neither of these
8 interpretations make sense.

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

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

23 You go on later while the language in the QAP
24 wasn't fixed, you get into the application materials. And
25 by 2009 and 2010, the actual application materials that

1 you're checking this, again, clearly indicate that we're
2 talking about two different types of landfills, not a
3 solid waste processing plant which this isn't anyway.
4

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

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

21 And with that, I'll answer any questions.

22 MS. BINGHAM ESCAREÑO: Any questions for Sarah?

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Thank you.

25 MR. ECCLES: Actually, just real quick,

1 because I think at one point, staff had indicated that
2 this facility might be considered heavy industrial.

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

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

7 MS. ANDERSON: Uh-huh.

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

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

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

21 MS. ANDERSON: And the answer is no. And we've
22 had our environmental people look into this, and we've
23 spoken with the -- the due diligence has been done. And
24 no, it doesn't need either of those items. And we did a
25 lot of legwork before we moved forward with this site.

1 And I'll let the developer, again, answer any questions
2 about the ESA, what the ESA provider said and that TCEQ
3 has said about this.

4 MR. ECCLES: Okay.

5 MS. ANDERSON: Okay. Thank you.

6 MS. BINGHAM ESCAREÑO: Thank you. No pressure.

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

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

21 Pretty often their expertise and knowledge
22 extends beyond staff. You know, we also engaged Jones
23 Walker's legal counsel to help us with the finite
24 interpretation of the law again, of the rules again. A
25 long history of the various iterations of the QAP and how

1 things got from one place to the next.

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

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

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

25 Our environmental consultant has provided

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

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

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

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

24 MS. RESÉNDIZ: Madam Chair, I actually don't
25 even know that this question would be for --

1 MS. BINGHAM ESCAREÑO: For Mr. Harris.

2 MS. RESÉNDIZ: -- for Mr. Harris or for Beau.
3 But if the zoning component of this development is clear,
4 I guess I'm having a hard time understanding what that
5 zoning is. Is it zoned heavy industrial --

6 MR. HARRIS: Well, the --

7 MS. RESÉNDIZ: -- or is it zoned --

8 MR. ECCLES: It's not zoned.

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

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

1 MS. BINGHAM ESCAREÑO: Thank you.

2 MR. BRADEN: Madam Chair?

3 MS. BINGHAM ESCAREÑO: Yes.

4 MR. BRADEN: I had a question for Mr. Harris.
5 I'm sorry.

6 MR. HARRIS: I'm trying to get away, but --
7 (General laughter.)

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

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

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

23 MR. BRADEN: I think it did.

24 NR. ECCLES: That was fine.

25 MR. HARRIS: Okay.

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

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

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

25 The facility types that fall under the

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

12 Yes, Tim?

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

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

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

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

23 MR. IRVINE: Okay.

24 MS. JACKSON: We did not believe that we needed
25 to ask that question because, again, what was put before

1 us from the staff is that we should have looked for ways
2 to mitigate our the fact that we were going to be in close
3 proximity of this development, but more importantly, that
4 we did not check off or disclose that we were going to be
5 in close proximity to the recycling plant.

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

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

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

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

24 MR. BRADEN: And none of this additional
25 information was a part of your application because you all

1 never thought it was an issue?

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

7 MS. BINGHAM ESCAREÑO: Any other questions for
8 Toni?

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

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

21 But I guess my question for you is I completely
22 understand the applicant's standpoint, you know, their
23 position. Does the Board have some level of
24 responsibility if the Board in the process of chasing
25 something that might not be relevant comes across

1 something that could be relevant regarding ineligible
2 site, undesirable characteristic.

3 Does the Board have any obligation relative to
4 that in learning something that could be an undesirable
5 characteristic even though that's not -- that wasn't
6 material or in the administrative deficiency or in
7 anything that the applicant disclosed? Sorry.

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

12 MS. JACKSON: That's correct.

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

15 MS. JACKSON: And the staff did not come back
16 to us regarding that, but we have provided information as
17 you will see from Doucet & Associates that speaks to and
18 responds to that. And Doucet & Associates indicates that
19 based under the TDHCA definition, that this does not meet
20 that definition of heavy industrial. And I'll just go
21 ahead and read it. It says: "There is a concrete facility
22 near the development site; however, it does not meet the
23 TDHCA definition. A concrete recycling facility does not
24 require extensive capital investment in land and machinery
25 because there are no permanent buildings or fixtures on

1 the site.

2 Additionally, concrete facility may be easily
3 relocated or removed because there are no permanent
4 structures. Finally, while there is occasional truck
5 traffic, there is not high level of external noise
6 produced by the facility. Furthermore, a noise analysis
7 prepared by AEI in accordance with the HUD noise guideline
8 concluded that noise levels were within a normally
9 acceptable range."

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

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

20 MS. JACKSON: Doucet & Associates, yes.

21 MR. ECCLES: -- regarding their interpretation
22 of this Board's rule regarding heavy industrial and the
23 definition of heavy industrial, it is this Board's rule to
24 interpret whether Southern Crushed Concrete as it is
25 currently configured and operating requires expensive

1 capital investment of land and machinery and would be
2 easily relocated. And just looking at that site picture
3 that you've shown, this Board may come to a different
4 interpretation as to whether that site would qualify as
5 heavy industrial under its rule.

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

10 MS. JACKSON: Understood.

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

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

1 to be a quarter of a mile. I think that's an important
2 question.

3 MS. JACKSON: And that is a fair question. And
4 what I would, you know, say in that regard because we did,
5 again, prepare and provide you with what the consultants
6 came back with. As you know, Tim, we've got this on the
7 5th.

8 MR. IRVINE: I understand.

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

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

22 MR. IRVINE: Absolutely.

23 MS. JACKSON: -- effectively respond because we
24 were not prepared to do that because that was not what was
25 asked of us of staff. And we cannot be put in a position

1 of having bases changed right on the spot.

2 MR. IRVINE: I agree.

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

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

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

22 The problem is we're two weeks out, and whether
23 or not we can get that is suspect. And I would say, you
24 know, have a condition of carryover, which would be
25 November, there would be some sort of report, some sort of

1 study, or some sort of something that would give you the
2 comfort level that you would need.

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

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

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

16 MR. IRVINE: Yeah, I know.

17 MS. JACKSON: -- to work with staff.

18 MR. IRVINE: Sure.

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

23 MR. IRVINE: I understand.

24 MS. JACKSON: -- all of a sudden gears are
25 switched and then we have to kind of jump to respond to

1 something else. We want to give you all of the
2 information that you want, and that is why we were
3 desirous of trying to sit down and work with staff before
4 having to come before the Board and have to seem to be
5 jumping around like this.

6 MS. BINGHAM ESCAREÑO: Thanks, Toni.

7 MS. JACKSON: Thank you.

8 MS. BINGHAM ESCAREÑO: I mean I do -- and
9 clearly the Board is probably the complicating factor at
10 this point, right, because staff had a position and a
11 recommendation. You guys obviously, you know, have come
12 to speak your position, which is not the same as staff's.

13 And then I think we just in the process of trying to
14 learn this situation have, you know, stumbled across
15 something that's just giving us pause for concern about
16 other ineligible, you know, characteristics.

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

20 So the options I think would be clearly the
21 Board is being asked to find the site eligible or
22 ineligible if for any reason and under whichever of those
23 aspects the Board wants to specify it being eligible or
24 ineligible. The other option that's been mentioned would
25 be to table the item and instruct staff to meet with the

1 applicant and review the situation and determine if there
2 are other eligibility or ineligibility issues relative to
3 site characteristics.

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

6 MR. ECCLES: Sure.

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

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

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

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

25 MS. BINGHAM ESCAREÑO: Of the discussion so

1 far.

2 MR. ECCLES: Okay.

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

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

10 MS. RESÉNDIZ: Second.

11 MS. BINGHAM ESCAREÑO: Okay. Any other
12 discussion?

13 (No response.)

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

15 (A chorus of ayes.)

16 MS. BINGHAM ESCAREÑO: Opposed, same sign?

17 (No response.)

18 MS. BINGHAM ESCAREÑO: Motion carries.

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

22 (Whereupon, a brief recess was taken.)

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

1 for lunch, find a good place somewhere in the 12:45 zone.

2 And then lunch will be fairly short. We'll go into
3 executive session. Executive session will be fairly
4 short, and then we'll reconvene and try to knock out the
5 rest of it.

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

10 There are two items listed on your agenda,
11 17501 Live Oak Trails and 17502 Freedom=s Path at
12 Kerrville. The Freedom's Path item we are pulling from
13 the agenda for today's meeting at the applicant's request.

14 So we will be discussing Application 17501 Live Oak
15 Trails.

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

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

22 MS. HOLLOWAY: Are we on again?

23 MS. BINGHAM ESCAREÑO: The mikes. Okay.

24 MS. HOLLOWAY: Okay. All right. Peggy has the
25 magic touch.

1 MS. BINGHAM ESCAREÑO: Thank you.

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

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

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

14 For this applicant specifically, they have
15 provided evidence that building costs have increased
16 approximately \$3.1 million -- that's 76 percent -- since
17 the 2014 award. The applicant had submitted documentation
18 indicating they had anticipated a federal HOME loan bank
19 grant under the affordable housing program that never
20 materialized. The applicant stated that they had received
21 14 FHLB grants over the past 15 years but were unable to
22 secure the \$600,00 from FHLB in this instance due to an
23 oversight by FHLB.

24 In response to the increased cost and reduced
25 funding, the applicant has secured additional financing in

1 the form of grants, donations, and increased equity. They
2 have contained costs by not increasing the developer fee
3 based on their higher construction cost. Therefore, none
4 of the direct loan award funds will be used to fund an
5 increased developer fee.

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

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

17 Award of \$600,000 in direct loan funds was
18 recommended by the Executive Award and Review Advisory
19 Committee in order to replace the FHLB funds that were
20 contemplated but ultimately not awarded. Staff recommends
21 that the application be found eligible under 10 TAC
22 13.5(d)(2), which is the subsequent award section, that a
23 hard closing deadline of August 31st, 2017, and execution
24 of the Section 811, Owner Participation Agreement, be
25 foreclosing with an award of \$600,000 of supportive

1 housing soft repayment funds.

2 MS. BINGHAM ESCAREÑO: Excellent.

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

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

8 MR. BRADEN: I'd make a motion that an award of
9 \$600,000 in direct loan funds from the NOFA for Live Oak
10 Trails be approved in the form presented at this meeting.

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

14 MS. THOMASON: Second.

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

17 (A chorus of ayes.)

18 MS. BINGHAM ESCAREÑO: Opposed, same sign?

19 (No response.)

20 MS. BINGHAM ESCAREÑO: Motion carries. Thank
21 you. Great. We are going to start reviewing some of the
22 appeals. I think Michael has a letter to read into the
23 record as we begin. And then why don't we -- if you're --
24 I think, Marni, Magnolia and Vineyard are pulled, correct,
25 the first two?

1 MS. HOLLOWAY: Actually, there are a number of
2 them that have been pulled.

3 MS. BINGHAM ESCAREÑO: Okay.

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

6 MS. BINGHAM ESCAREÑO: Sure.

7 MS. HOLLOWAY: 17007 Magnolia Station; 17028
8 Vineyard on Lancaster; 17170 Star of Texas Seniors; 17199
9 Santa Fe Place Temple; 17247 Western Springs Apartments;
10 17251 Pine Terrace Apartments; 17267 Industrial Lofts will
11 be coming next month; 17283 Avanti Manor, 17297 Kountze
12 Pioneer Crossing also next month; 17305 Payton Senior will
13 be next month; 17322 Provision at Wilcrest; 17323 Skyway
14 Gardens; 17327 Legacy Trails of Lindale will be next
15 months; 17376 The Bristol San Antonio; 17388 West Pecan
16 Village will be next month; 17390 Las Palomas also will be
17 next month.

18 MS. BINGHAM ESCAREÑO: Great.

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

21 MS. HOLLOWAY: The next meeting.

22 MR. ECCLES: Yes.

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

25 MS. BINGHAM ESCAREÑO: Because they're

1 happening so frequently now.

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

4 MS. HOLLOWAY: Really?
5 General laughter.)

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

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

10 MR. IRVINE: I thought it was fun.

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

14 MR. LYTTLE: Yes, Ms. Chair.

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

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

24 According to the 2017 Qualified Allocation
25 Plan, during the pre-application phase, all developments

1 must notify neighborhood organizations on record with
2 various information including that the developer is
3 applying for housing tax credit through TDHCA and the site
4 to the Administrative Code.

5
6 Based on the feedback I have had with my
7 constituents in this district, this level of notification
8 was not provided. While Section 11.8(b)(2)(b) of the QAP
9 also provides for notification to the local, municipal,
10 and state elected officials, the people who are the most
11 directly impacted, the residents, should be afforded an
12 opportunity to engage much earlier in the process.

13 Unfortunately, that was not the case with the
14 above-referenced developments. In fact, community members
15 were not aware of the proposed projects until early April.

16 At that point, armed with very little information, area
17 residents had no other choice but to organize in
18 opposition to these developments. Since that time, area
19 neighborhood leaders have made multiple attempts to
20 provide information to TDHCA as to possible deficiencies
21 in the applications and to point toward and reach
22 development.

23 For example, it is my understanding that one of
24 the applicants has requested points for being within two
25 miles of a museum. Having represented our community for

1 over ten years as both the city councilman and now a state
2 representative, I can personally attest that this
3 assertion is patently false.

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

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

15 MS. BINGHAM ESCAREÑO: Great. Thank you.

16 Okay. Marni?

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

1 that scoring result.

2 So, the scoring item that we are discussing,
3 declared disaster area, ties directly back to statute at
4 2306.6710(b)(1)(h). And it reads: "An application may
5 receive 10 points if at the time of application submission
6 or at any time within the two-year period preceding the
7 date of submission the development site is located in an
8 area declared to be a disaster area under Texas Government
9 Code Section 418.014."

10 418.014 is a section of statute under which the
11 governor makes a declaration of a disaster in a county.
12 And that language is specifically from statute.

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

20 Also, in the QAP related to due diligence and
21 applicant responsibilities states in part: "Although the
22 department may compile data from outside sources in order
23 to assist applicants in the application process, it
24 remains the sole responsibility of the applicant to
25 determine independently the necessary due diligence to

1 research, confirm, and verify any data, opinions,
2 interpretations, or other information upon which an
3 applicant bases an application."

4 The appeal referred to the list posted for the
5 2016 program year. The list of eligible counties for 2017
6 was posted to the Department's website in mid-December of
7 2017 -- or of 2016, I'm sorry. The applicant did not
8 contact staff to ask why Midland County was not on the
9 list for the 2017 year when it had been on the list for
10 2016. And, in fact, 2016 was the last year that Midland
11 County was eligible for disaster points under a previous
12 declaration which is why it did not appear for the current
13 program year.

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

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

18 (No response.)

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

22 MS. RESÉNDIZ: So moved.

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

25 MS. THOMASON: Second.

1 MS. BINGHAM ESCAREÑO: Second. Very good.

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

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

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

25 So that's really what I wanted to talk to you

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

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

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

18 (No response.)

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

21 MS. BINGHAM ESCAREÑO: Very good.

22 MS. ANDERSON: Sarah Anderson.

23 MS. BINGHAM ESCAREÑO: Hi, Sarah.

24 MS. ANDERSON: And I first have to say I swear
25 I am never up this often. This is an anomaly, and you

1 will not see me for another year except for maybe the next
2 two weeks.

3 I'm here because we are the people that brought
4 this to the Department's attention. And we're here to
5 support staff's interpretation of this. This is an
6 incredibly complex program, and it's esoteric and
7 difficult. And there are times when there are multiple
8 interpretations. This simply isn't one of them.

9 This is a very cut-and-dry issue. The rule
10 says you have to look at the governor's disclosure of
11 their disaster declarations, and it has to be within two
12 years. There was an FAQ that addressed this that said
13 don't look at the 2016 list because it may not be correct.

14 Look at the 2017. Staff emailed out presumably to
15 everybody who attended the application workshops an email
16 that gave that list to everybody and, again, Midland was
17 not on that list.

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

23 I feel really bad for them. I know that I've
24 been on the other side where I've responded to a
25 deficiency. Staff mistakenly accepted my response. We

1 threw a party, and then realized staff was wrong and it
2 was taken back.

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

10 MS. BINGHAM ESCAREÑO: Very good.

11 MS. ANDERSON: Thank you.

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

14 (No response.)

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

17 MS. DULA: Tamea Dula with Coats Rose. I do
18 think that an issue has been raised that needs a response.

19 And if you look at page 88 in your supplemental board
20 book, you will see a document that's published by the
21 TDHCA. It says it's a 2016 declared disaster areas. That
22 listing in actuality is a listing of disasters that
23 occurred from 2014, '15, and '16. And it's a list of what
24 is appropriate to be cited with regard to the 2016 tax
25 credit application.

1 However, if you just look at page 88, it
2 doesn't say all of that. It is an extremely misleading
3 document. It says 2016 declared disaster areas. For
4 someone who is coming into this program and is not as
5 familiar as myself who's been doing this now for nearly 20
6 years, it's easy to look at that and see that the TDHCA
7 has approved certain counties as being appropriate
8 counties to claim the 10 points for disaster -- declared
9 disasters having occurred within the two years prior to
10 the application being filed. My client falls into that
11 category.

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

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

1 right.

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

4 MR. IRVINE: Sure.

5

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

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

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

19 (No response.)

20 MS. BINGHAM ESCAREÑO: Okay. Entertain a
21 motion.

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

25 MS. BINGHAM ESCAREÑO: Okay. A motion from Mr.

1 Braden to deny appeal. Is there a second?

2 MS. THOMASON: Second.

3 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.

4 All those in favor -- any further discussion?

5 (No response.)

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

7 (A chorus of ayes.)

8 MS. BINGHAM ESCAREÑO: Opposed, same sign?

9 (No response.)

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

12 MS. HOLLOWAY: Our next one is Application
13 17097. This is Holly Oak Seniors. A Third-Party Request
14 for Administrative Deficiency requested that staff review
15 the application to determine whether it qualified for 5
16 points under served area. We found that the census tract
17 that was dependent for that scoring item includes areas
18 that were outside of the incorporated boundaries of
19 Houston.

20 This scoring item under underserved area reads
21 as: "A census tract within the boundaries of an
22 incorporated area and all contiguous census tracts for
23 which neither the census tract in which the development is
24 located nor the contiguous census tracts have received an
25 award or HDC allocation within the past 15 years and

1 continues to appear on the Department's inventory. This
2 item will apply in cities with a population of 300,000 or
3 more and will not apply in the at-risk set-aside."

4 The applicant requested five points but was
5 awarded two points as the census tract that includes the
6 development site includes areas that are outside of the
7 municipal boundaries of the City of Houston. The appeal
8 questioned staff's reading of the rule that the census
9 tract must be entirely within the boundaries of the
10 municipality. The applicant asserts that the language of
11 the rule does not contain any indication that the census
12 tract must be entirely within the incorporated area of the
13 city.

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

21 I'd be happy to answer any questions.

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

24 (No response.)

25 MS. BINGHAM ESCAREÑO: Okay. Thank you, Marni.

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

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

18 The rule in and of itself doesn't contain any
19 indication that the census tract has to be entirely within
20 the incorporated area. And as she -- as Ms. Holloway
21 said, we would ask that the Board rule that the reasonable
22 interpretation is that the census tract in and of itself
23 be -- or the development site, I should say, wholly within
24 the incorporated area, as our site is, not necessarily the
25 boundaries of the census tract.

1 It's really, you know, from our perspective
2 impractical for us to guess at what staff's interpretation
3 of a rule is going to be when the FAQs that are
4 interpreting the rules are published, you know, subsequent
5 to the date with which the pre-applications are due.

6
7 As you all know, we spend months working on
8 identifying sites, working with our elected officials and
9 neighborhood organizations to put these deals together,
10 not to mention, you know, time and capital resources that
11 we spend to bring these deals to a full applications.
12 And, you know, for the interpretation of a rule published
13 in an informal setting such as an FAQ after the date of
14 the pre-application is due just puts us in a tough spot.

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

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

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

25 (No response.)

1 MS. BINGHAM ESCAREÑO: Okay. Thank you.

2 MR. KELLY: Uh-huh.

3 MS. BINGHAM ESCAREÑO: Anybody have any
4 questions for Marni relative to this appeal?

5 MR. BRADEN: I just have a question. Have we
6 dealt with this type of question in the past or something
7 similar?

8 MS. HOLLOWAY: We have also under underserved
9 area, there's a three-point scoring item and a two-point
10 scoring item. We discussed I think it was in May the
11 three-point scoring item, and I don't have the language
12 right in front of me, is the census tract within the
13 boundaries of an incorporated area has not received a deal
14 in the last 15 years or something like that. I don't
15 remember off the top of my head. And that's a three-
16 point. And then if it's just a census tract that hasn't
17 received an award, that's a two-point.

18 And that was something that I think we talked
19 about quite a bit at the May meeting when staff was
20 directed to under those appeals go back and issue
21 administrative deficiencies on those items.

22 MR. BRADEN: And is this interpretation you're
23 taking consistent with those facts?

24 MS. HOLLOWAY: Yes.

25 MS. BINGHAM ESCAREÑO: Any other questions for

1 Marni?

2 (No response.)

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

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

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

11 MS. RESÉNDIZ: Second.

12 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

13 All those in -- any further discussion?

14 (No response.)

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

16 (A chorus of ayes.)

17 MS. BINGHAM ESCAREÑO: Opposed, same sign?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: Motion carries.

20 MS. HOLLOWAY: Next, we have a group of three
21 applications. This is Number 17194 Oaks Apartments in
22 Quitman, 17203 Park Estates Apartments in Quitman, and
23 17741 Gateway Residences in Raymondville. This is
24 actually an appeal of an application termination.

25 So a notice of termination was provided to the

1 applicant for failure to meet the requirements of 10 TAC
2 204.16 related to the Section 811 project rental
3 assistance program.

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

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

22 On March 17th the applications were terminated
23 because they did not include information regarding Section
24 811. The applicant appealed the termination and the
25 Executive Director granted the appeal directing staff to

1 determine if Section 811 was not applicable as the
2 application suggested.

3 An administrative deficiency was issued on
4 April 12th, 2017 regarding this question. The response
5 included certification that neither the applicant or any
6 affiliate have an existing development located in an
7 eligible MSA that would meet the Section 811 criteria and
8 the proposed developments are not located in an eligible
9 MSA themselves. Therefore, this application is unable to
10 provide Section 811 units.

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

20 The response included a letter from the lender
21 from Cayetona Villas dated February 10th of 2017 stating
22 that the lender would not agree to further participation
23 in the Section 811 program. The 811 rule includes: "An
24 applicant may be exempt from having to provide 811 units
25 in an existing development if approval from either their

1 lender or investor cannot be obtained and documentation to
2 that effect is submitted in the application."

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

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

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

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

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

21 MR. BRADEN: So moved.

22 MS. BINGHAM ESCAREÑO: Mr. Braden moves.

23 MS. RESÉNDIZ: Second.

24 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

25 All those in favor, aye?

1 (A chorus of ayes.)

2 MS. BINGHAM ESCAREÑO: Opposed, same sign?

3 (No response.)

4 MS. BINGHAM ESCAREÑO: Thank you.

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

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

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

21 On May 11, 2017, we did receive the email
22 requesting from staff further clarification, as well as
23 wanting to know how we could expand 811 units from 10 to
24 12 units for our LaVernia project. It was our opinion
25 this was an issue that had to be answered by the

1 investment syndicator, which was Raymond James. We
2 immediately contacted Raymond James.

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

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

18 We received -- regarding that May 11th, 2017
19 deficiency notice, we submitted -- had a request from
20 staff if we would be able to submit our answers by the May
21 18th board meeting, which we did at that time.

22 We basically are just asking for a re-
23 evaluation of this termination. At this time we wish to
24 withdraw the Oaks Apartments 17194, but would ask the
25 Board for consideration for 17741, the Raymondville

1 project, Gateway, and 17203 Park Estate Apartments. Thank
2 you very much.

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

5 (No response.)

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

8 MR. TEMPLE: Sure.

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

12 MR. TEMPLE: Correct.

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

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

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

18 MR. TEMPLE: We had at the time with the
19 deficiency notice is when we requested. We approached
20 Raymond James basically that staff was requesting that we
21 increase the 811 units from 10 to 12. And it was at that
22 time Raymond James advised us that discussion had
23 already -- they had already had that discussion with
24 staff, and it was at that time we were provided the
25 letter.

1 MR. ECCLES: But you do acknowledge that under
2 our rules such a letter would need to be submitted with
3 the application?

4 MR. TEMPLE: Right.

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

6 MR. TEMPLE: Thank you.

7 MS. BINGHAM ESCAREÑO: Any further information,
8 Marni?

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

15 MS. BINGHAM ESCAREÑO: Very good.

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

20 MS. BINGHAM ESCAREÑO: If there are no further
21 question, we'll entertain a motion. It sounds like the
22 applicant's removing 17194, but we'll take action on
23 17203, 17741. We'll entertain a motion on applicant's
24 request for appeal and staff's recommendation.

25 MR. BRADEN: I'll make a motion, but I don't

1 want to be a hog and take up all the motions today.

2 MS. BINGHAM ESCAREÑO: Motion hog.

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

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

10 MS. THOMASON: Second.

11 MS. BINGHAM ESCAREÑO: Ms. Thomason's seconds.
12 Any further discussion on this item?

13 (No response.)

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

15 (A chorus of ayes.)

16 MS. BINGHAM ESCAREÑO: Opposed, same sign?

17 (No response.)

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

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

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

25 MS. HOLLOWAY: Okay.

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

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

6 MS. HOLLOWAY: Okay.

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

11 The Governing Board of the Texas Department of
12 Housing and Community Affairs will go into closed or
13 executive session at this time. The Board may go into
14 executive session pursuant to Texas Government Code
15 551.074 for the purposes of discussing personnel matters
16 pursuant, 551.071 to seek or receive legal advice of its
17 attorney, 551.072 to deliberate the possible purchase,
18 sale, exchange, release of real estate, or 2306.039 (c) to
19 discuss issues related to fraud, waste or abuse with the
20 Department's internal auditor, fraud prevention
21 coordinator, or ethics advisor.

22 Closed session will be held in the Andy Room of
23 this room in the John H. Reagan Building, Room Number 140.
24 The date is July 13, 2017. The time is officially 12:45.
25 We'll see you in 30 minutes.

1 (Whereupon, at 12:45 p.m., the meeting was
2 recessed, to reconvene this same day, Thursday, July 13,
3 2017, following conclusion of the executive session.)

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

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

12 MS. HOLLOWAY: Yes.

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

15 MS. HOLLOWAY: Yes.

16 MS. BINGHAM ESCAREÑO: Okay.

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

24 MS. BINGHAM ESCAREÑO: Which applicant?

25 MS. HOLLOWAY: 17331 Westwind of Killeen.

1 MS. BINGHAM ESCAREÑO: Is requesting to
2 postpone until the next meeting?

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

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

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

13 MR. IRVINE: Your prerogative.

14 MS. BINGHAM ESCAREÑO: Okay.

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

17 MS. BINGHAM ESCAREÑO: It really is.

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

20 MS. BINGHAM ESCAREÑO: We'll postpone that.

21 MS. HOLLOWAY: Okay.

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

25 MS. HOLLOWAY: Okay.

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

3 VOICE: He went to the restroom.

4 MS. HOLLOWAY: I'm sorry?

5 VOICE: He went to the restroom.

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

8 MS. BINGHAM ESCAREÑO: Very good.

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

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

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

22 A scoring notice was issued to the applicant,
23 and the applicant appealed staff's decision on July 5th,
24 2017. The Executive Director found the appeal
25 established that there is an accessible route to the

1 development to public transportation and that the
2 accessible route to the park described in the appeal
3 results in a route from the development site to the park
4 that is more than half a mile long.

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

12 So staff recommends denial of the appeal.

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

16 MS. THOMASON: So moved.

17 MS. BINGHAM ESCAREÑO: Ms. Thomason moves.

18 MS. RESÉNDIZ: Second.

19 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

20 All those in favor, aye?

21 (A chorus of ayes.)

22 MS. BINGHAM ESCAREÑO: Opposed, same sign?

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Motion carries. We'll
25 hear public comment.

1 MR. ECCLES: And just before that starts, I'm
2 going to presume from that last comment that staff is also
3 recommending that the Chair acknowledge and accept these
4 materials as supplementing --

5 MS. HOLLOWAY: Yes.

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

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

10 MR. ECCLES: Okay.

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

14 MS. HOLLOWAY: Right.

15 MS. BINGHAM ESCAREÑO: Okay.

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

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

25 If you would have any specific questions, I'd

1 be happy to answer them for you.

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

7 MR. MEYER: Okay.

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

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

11 MS. BINGHAM ESCAREÑO: Keep going.

12 MR. ECCLES: It also says Exhibit A.

13 MR. MEYER: I have it. Thank you.

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

15 VOICE: There's more than one exhibit.

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

17 MS. HOLLOWAY: There's more than one Exhibit A.

18 There's one in black and white.

19 MR. ECCLES: The second Exhibit A.

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

21 Gotcha.

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

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

24 MR. ECCLES: Okay. Very good.

25 MR. MEYER: Thank you.

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

6 MR. MEYER: No, it is not.

7 MR. ECCLES: Okay. So --

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

10 MR. ECCLES: Okay.

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

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

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

1 MR. ECCLES: Okay.

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

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

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

8 MS. BINGHAM ESCAREÑO: Gotcha.

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

11 MS. BINGHAM ESCAREÑO: You can tell us.

12 MR. MEYER: What they are?

13 MS. BINGHAM ESCAREÑO: Uh-huh.

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

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

25 MS. BINGHAM ESCAREÑO: Okay. Very good.

1 MR. ECCLES: I apologize. Typically the way
2 this works is the first comment up is the --

3 MS. BINGHAM ESCAREÑO: Support.

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

6

7 MR. MEYER: Atlantic-Pacific.

8 MR. ECCLES: Okay. Thank you.

9 MS. BINGHAM ESCAREÑO: Any questions for the
10 commenter?

11 (No response.)

12 MS. BINGHAM ESCAREÑO: Thank you very much.

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

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

21 Each one has nuances. And unlike the prior one
22 that we dealt with underserved areas, I'm not sure that
23 the resolution of one necessarily resolves the others. So
24 I just want to put that out there that I hope that each of
25 these will be looked at individually and carefully. And

1 that's because this rule has a lot going on in a very
2 simple provision with descriptive phrases. And, in fact,
3 there's so much going on in this rule that if you run it
4 through a computer application that does sentence
5 diagraming, you get ten different results.

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

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

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

24 In response to these comments, staff said as it
25 relates to measurement of distance, it is as the crow

1 flies from the closest point of the boundaries of the
2 amenity to the development site.

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

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

18 When TDHCA received these questions, they could
19 have easily responded to this FAQ saying the playground
20 has to be within one-half mile of the site and the entire
21 route must be accessible and the accessible route must be
22 no more than a half-mile long. They did not say they.
23 And, in fact, if you look at most of the applications at
24 least in the urban area, we believe that they did not
25 measure the distance of the accessible route. And I

1 believe that's in part because of the guidance that was
2 given.

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

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

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

24 The Executive Director granted the appeal as it
25 related to public transportation saying, "I find that the

1 appeal has established that there is an accessible route
2 from the development site to transportation" but denied
3 the appeal as it related to the park saying, "The route
4 described in the appeal results in a route from the
5 development site to the park that is more than a half-mile
6 and not eligible."

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

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

21 That route has been verified and confirmed as
22 accessible by an accessibility consultant. I understand
23 that a competitor has an accessibility consultant here
24 today that has a different opinion. But the fact is we
25 have resolved the questions. We have given evidence of

1 everything that's asked for in the application, and we
2 have complied with the rule.

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

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

16 We think we know what the language of the rule
17 says, and that is that in measuring the distance, the
18 distance applies to the distance between the development
19 site and the entrance to the park, not to the playground.

20 That's also been questioned and dealt with, but we
21 believe it is an as the crow flies as indicated back in
22 November when we were first bringing up questions about
23 this very issue.

24 So with that, we respectfully request that you
25 grant this appeal which would allow this applicant to have

1 credit for this particular item in the tiebreaker scoring
2 for its application. Thank you.

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

5 (No response.)

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

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

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

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

25 MR. ECCLES: That's the long route, though.

1 MS. BAST: So that's the number 2.

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

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

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

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

11 MS. BAST: I'm sorry.

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

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

17 (Pause.)

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

20 MS. BAST: There it is. There we go. Okay.
21 It is in the second paragraph. So the sidewalks and ramps
22 on the north side of Gilbeau Road, the east side of Mystic
23 Park, and the west side of Mystic Park from Bandera to
24 Nani Falcone Community Park from the proposed development
25 meet 2010 ADA as do the curb cuts/approaches located at

1 the southern drive to Fire Station 49. That's where
2 you're crossing the street, an adjacent entrance to Nani
3 Falcone Community Park. That's it.

4 MR. ECCLES: Okay. Thank you.

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

8 MS. HOLLOWAY: Yes, it is.

9 MS. BINGHAM ESCAREÑO: Okay.

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

13 MS. BINGHAM ESCAREÑO: Uh-huh.

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

16 MS. BINGHAM ESCAREÑO: Yeah.

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

18 MS. BINGHAM ESCAREÑO: Yeah. No, I get it.
19 You know what it's reminding me of accessibility, but when
20 we were rebuilding in Galveston after the hurricane, the
21 houses that we rebuilt, we put them on stilts, right?

22 MS. HOLLOWAY: Right.

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

25 MS. HOLLOWAY: Those ramps that went all the

1 way around.

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

5 MS. HOLLOWAY: Right.

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

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

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

24 MR. IRVINE: And that to us was the most
25 reasonable interpretation when you took into account the

1 purpose of the rule. If I'm a person with a wheelchair,
2 and I am seeking to get from my home to a park every day
3 taking my kid, is it reasonable to expect that I would go
4 farther than a half a mile?

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

7 MS. BINGHAM ESCAREÑO: Uh-huh. Gotcha.

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

10 MS. BINGHAM ESCAREÑO: Uh-huh.

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

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

17 MR. BRADEN: Dueling experts.

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

20 MR. VERMA: Hi. This is Manish Verma. So, you
21 know, I think the question is obviously what is the
22 interpretation of the rule. To answer your question, is
23 the accessible path from the fire station to the park
24 under a half mile, it is not. That path is in excess of
25 half a mile. It's .6 miles or whatever it is. We

1 provided two paths to fit within that half-mile radius
2 because that was our interpretation.

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

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

19 MR. BRADEN: Clarifying question.

20 MR. VERMA: Yeah.

21 MR. BRADEN: Did you say the shorter route was
22 .6?

23 MR. VERMA: Yes.

24 MR. BRADEN: Okay. So even the shorter route

25 --

1 MR. VERMA: It is in excess of a half mile.

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

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

4 MR. BRADEN: Okay.

5 MR. MEYER: Marni, can I say something?

6 MS. HOLLOWAY: Certainly.

7

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

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

12 MR. MEYER: Oh, I'm sorry.

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

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

17 MS. BINGHAM ESCAREÑO: No.

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

19 MR. ECCLES: If you could --

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

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

25 MS. BINGHAM ESCAREÑO: Great. Thank you.

1 MR. ECCLES: And you are representing?

2 MR. MEYERS: I am representing Atlantic-
3 Pacific.

4 MR. ECCLES: Very good.

5 MS. BINGHAM ESCAREÑO: Thank you.

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

13 The playground itself was built in 2008 or '09,
14 City of San Antonio. It was originally covered with
15 granulated rubber. The height of a playground to be
16 accessible for a child in a wheelchair to transfer out of
17 the wheelchair onto the landing of the structure has an
18 11- to 17-inch change of elevation for a child that they
19 can -- that's the range.

20 This particular playground owned by the City of
21 San Antonio is built before the ADA standards were in
22 effect in 2010. They had gone back in and covered it with
23 what's called an engineered wood fiber. This is a sample
24 of the playground. This is a non-compliant product. This
25 is a sample of a compliant engineered wood fiber.

1 Consequently, because they went from a -- under the
2 standards you have to meet a wheelchair-forward approach
3 by so many pounds for a person in a wheelchair traveling
4 across either one of these, it has to meet the fall-height
5 requirements so a child doesn't end up with a concussion
6 or internal injuries.

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

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

18 MS. BINGHAM ESCAREÑO: Gotcha.

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

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

22 Does anybody have any questions for Mr. MEYER?

23 (No response.)

24 MS. BINGHAM ESCAREÑO: Thank you very much.

25

1 MR. VERMA: Hi. So I just wanted to -- I had
2 two points, if I could remember them both. One was the --
3 I just wanted to be clear that Mr. Meyer representing a
4 competing application and I know that's clear.

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

11 MS. BINGHAM ESCAREÑO: Thank you.

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

19 And I really agree with what Cynthia is saying.

20 I mean this rule says less than half a mile on an
21 accessible route from a public park with an accessible
22 playground. It doesn't say that the route itself has to
23 be half a mile. It says that the site has to be less than
24 half a mile from the park, and that that park contain a
25 playground. And I think that means playground equipment,

1 by the way. And that both the park and the playground
2 equipment be -- meet the 2010 ADA standards. I call it
3 route by the way. I think -- I've heard everybody say
4 route, and so I don't know if I'm saying it right or
5 wrong, but it's my Texas twang. Route is what I call it.

6 So I just want to make sure that these
7 interpretations, there's some consistency. I really think
8 that the rule speaks for itself in terms of what it says.

9 And that most of the applicants did what they could to
10 make sure they found sites where those sites themselves
11 were less than half a mile from that park on an accessible
12 route. Thank you.

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

23 Welcome to you new Board members. It must be
24 quite a task to receive a 3,000-page board book on your
25 second meeting. This is a complicated subject, and you

1 are never going to write perfect rules. I wrote the first
2 QAP. The rules are never going to be perfectly clear.
3 They are subject to interpretation, as we are seeing here.
4 You know, we have an English major be Chair today, so you
5 have a unique perspective.

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

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

21 I think the Executive Director already spoke to
22 the issue. If that park was right next door, but the
23 accessible route was 3-1/2 miles, that's not what you want
24 that person in that wheelchair to have to do is go 3-1/2
25 miles to get to that park. The reason that they're

1 including accessibility at all is because of the need to
2 service a disabled community. And you don't want them to
3 go a mile or 6/10 of a mile. You want them to go half a
4 mile. That's the way the rule was written. That's the
5 way I read the rule.

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

15 Thank you for the opportunity to speak to you
16 today.

17 MS. BINGHAM ESCAREÑO: Thank you.

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

23 I want to address specifically The Acacia's
24 claim for accessibility on this one topic only. I'm Mark
25 Howson. Thanks. You've seen well-documented evidence

1 from one expert, and you've seen not so well-documented
2 evidence from another expert. That expert is representing
3 The Acacia, and he simply takes an overheard image, draws
4 a line on it, and has never been on site.

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

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

21 You can only go that one.

22 If you go up to the park, you do not have an
23 ADA-accessible park route to go from the east side of
24 Mystic Park to the park. You can't get into it. You
25 can't get across. And if you go all the way up to Bandera

1 Road, there is not an ADA-accessible route to go from this
2 point, the south side, to the north side across the road.

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

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

18 So, when you look at the report done by this
19 individual who provided it, at best, I would say there's a
20 lack of due diligence. And you could insinuate even more
21 than that. As a matter of fact, there was another
22 development here in Killeen that was going to be
23 presenting to you shortly who has another complaint
24 against this same person. You will hear that complaint
25 next month about the accuracy of the reports.

1 What I would point out is this specialist is
2 giving you an opinion, that he did not do diligence on the
3 site, and that it's an opinion that's not qualified at
4 this point in time because he's provided you no evidence
5 of what he's saying is true. He's just saying, hey, I'm
6 an expert. I have my license. This is what it is, where
7 you have plenty of other evidence.

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

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

16 MS. BINGHAM ESCAREÑO: Thank you.

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

20 MR. ECCLES: Who are you representing?

21 MR. HOWSON: I'm Mark Howson. I represent
22 citizens in the area. We actually on this project right
23 here locally we have -- and it's in the Board's hand -- we
24 have a petition of over 3,000 residents who are opposed to
25 this project that come from the immediate area.

1 Now 3,000 signatures is a lot of signature sin
2 our area. A lot of signatures anywhere actually. And
3 that's the group I represent. It's just we live in the
4 local area. Actually I live right behind where this is
5 going in, and I didn't know about it until late April
6 because we were never told about it.

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

9 MS. THOMASON: I have a question for Marni.

10 MR. HOWSON: Yes?

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

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

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

15 MS. HOLLOWAY: Yes?

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

19 MS. HOLLOWAY: Yes.

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

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

1 exactly the same way --

2 MS. THOMASON: Okay.

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

8 MS. THOMASON: Okay. Thank you.

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

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

14 MS. HOLLOWAY: Less than half a mile.

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

16 MS. HOLLOWAY: On an accessible route.

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

20 MS. HOLLOWAY: Yes.

21 MS. BINGHAM ESCAREÑO: Thank you.

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

25 MS. RESÉNDIZ: Madam Chair, I'd like to make a

1 motion. Motion to accept staff's recommendation to deny
2 the applicant's appeal for qualification of the three
3 tiebreaker items requested under Section 11.9(c)(4).

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

6 MR. BRADEN: Second.

7 MS. THOMASON: Second.

8 MS. BINGHAM ESCAREÑO: Ms. Thomason seconds.
9 Any further discussion?

10 (No response.)

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

12 (A chorus of ayes.)

13 MS. BINGHAM ESCAREÑO: Opposed, same sign?

14 (No response.)

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

17 MS. HOLLOWAY: It is.

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

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

25 So at the last meeting we brought the report

1 regarding the RAF items. That report was made to the
2 board on June 29th of 2017, and it included information
3 regarding a request that had been submitted regarding the
4 farmer's market used for outdoor recreation points in
5 Application 17327 Legacy Trails of Lindale.

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

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

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

1 recreation facility.

2 I'd be happy to answer any questions.

3 MS. BINGHAM ESCAREÑO: Any questions for Marni?

4 (No response.)

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

8 MR. BRADEN: So moved.

9 MS. BINGHAM ESCAREÑO: Mr. Braden moves.

10 MS. RESÉNDIZ: Second.

11 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.

12 Any further discussion?

13 (No response.)

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

15 (A chorus of ayes.)

16 MS. BINGHAM ESCAREÑO: Opposed, same sign?

17 (No response.)

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

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

1 and the same response.

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

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

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

18 MS. BINGHAM ESCAREÑO: Thank you.

19 MS. RICKENBACKER: Hello. Donna Rickenbacker.

20 I'm the consultant to the applicant. We took Mr.
21 Vazquez's comment seriously and we went back to the City
22 of Lindale, told them about what the question was. And
23 they issued a follow-up letter that I'd like to read into
24 the record.

25 It's addressed to Marni Holloway, and it's:

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

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

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

24 These activities are in addition to our
25 traditional open-air market where vendors of all types

1 sell locally grown produce and baked goods. The City of
2 Lindale's proud of our farmer's market and the
3 recreational activities that we provide to our residents
4 and those from neighboring communities.

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

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

11 MS. BINGHAM ESCAREÑO: Any questions for Donna?

12 (No response.)

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

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

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

25 First and foremost, the language in the QAP states:

1 "Development site is within one mile of an outdoor
2 recreation facility," -- not event or not activity -- "of
3 an outdoor recreation facility available to the public."

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

11 Further, as I said earlier, it's a temporary
12 event and activity seasonal in nature occluding only in
13 the summer. So it's May through September I believe, May
14 20th through October 7th, which is 21 days a year, one day
15 a week in that short amount of time, a very small
16 percentage of time throughout the year that you can access
17 this event.

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

24 And the question in the published FAQ was:
25 "Please confirm if a fast food restaurant, such as

1 McDonald's, Chick-fila-A, et cetera, that has an indoor
2 playground qualify as an indoor recreation facility." And
3 the answer was the playground inside a fast food
4 restaurant would not be considered a indoor recreation
5 facility.

6 And there's a couple of points there, primarily
7 that this is a restaurant. It's not a playground, and
8 it's there to serve food. Further, if that's not going to
9 qualify, and, you know, that's open six, seven days a
10 week, six if it's Chick-fil-A, most of the day as an
11 actual facility to play in; whereas, this farmer's market
12 is incredibly temporary in nature, very seasonal.

13 And further, it just happens to be located in
14 this parking lot within a mile of the development.
15 However, on the farmer's market website, front and center,
16 and I have a screen shot if needed, the website says: "The
17 location is being discussed, so it may change." There's
18 nothing tying it to that location. And I just don't see
19 how if the intent is to have accessible outdoor recreation
20 facilities, that this would help accomplish that.

21 MS. BINGHAM ESCAREÑO: Thank you.

22 MR. FOGEL: Thank you for your time again and
23 I'm here for questions, as always.

24 MS. BINGHAM ESCAREÑO: Thank you. If there's
25 no further comment, we'll entertain a motion on --

1 MR. ECCLES: We have more coming.

2 MS. BINGHAM ESCAREÑO: Oh, more comment.

3 MR. GARRETT: My name is Chaz Garrett. I'm the
4 developer of this project. As Ms. Rickenbacker said, this
5 is a part of this community. They host it not only during
6 the months that my competitor listed, but they also do
7 activities as far as a fall harvest market where they
8 bring in a big pumpkin patch. They do large activities
9 with that. They do Christmas activities where they have
10 all kinds of Christmas things that go on. It's not just
11 that one period. That is the main period of the open air
12 market, but this thing continues throughout the year.

13 And as Mr. Krochtengel has said, it does meet
14 the rules set forth in the QAP and the multifamily rules.

15 Staff has made that decision three separate times, once
16 with their original review, once on the RAF, and then once
17 after -- once in the Board book.

18 And based on that and the fact that the city --
19 the land that's used is city-owned land. It's there, and
20 it doesn't move. It doesn't change. The city allows this
21 as part of their process and what they do for the public
22 to use this land, and it's just where they have it
23 established. It hasn't moved from that area in the last
24 six years that I know of that I've talked to the current
25 director about. It's been in the same spot. It's not

1 going anywhere. This is where they do it. This is the
2 land and the facility set-aside.

3 Staff after we supplied documentation, staff
4 determined that that was a facility and that the market
5 constitutes outdoor recreation. And for these reasons, we
6 ask that y'all approve their recommendation. Thank you.

7 MS. BINGHAM ESCAREÑO: Thank you. Any further
8 comment?

9 (No response.)

10 MS. BINGHAM ESCAREÑO: Any more comments from
11 staff or Board?

12 MR. KROCHTENGEL: Just one more clarification,
13 the website saying that the location may or may not move
14 was not available when the applicant went in, and it's
15 always about facts on the ground at the time of
16 application. So I just wanted to point out that that has
17 to be evaluated as time of application. And staff has
18 ruled on this three times. Thank you.

19 MS. BINGHAM ESCAREÑO: Thank you. Entertain a
20 motion on Lindale 17327. The one-point staff
21 recommendation is that it is eligible to receive a point
22 as outdoor recreation under 10 TAC 11.9(c)(4). Is there a
23 motion?

24 MR. BRADEN: I'd make a motion to accept
25 staff's recommendation that the farmer's market as

1 described in Application 17327 Legacy Trails of Lindale is
2 found to be eligible to receive one point.

3 MS. BINGHAM ESCAREÑO: Mr. Braden makes motion
4 to approve staff's recommendation. Is there a second?

5 MS. RESÉNDIZ: Second.

6 MS. BINGHAM ESCAREÑO: Ms. Reséndiz seconds.
7 Is there any further discussion?

8 (No response.)

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

10 (A chorus of ayes.)

11 MS. BINGHAM ESCAREÑO: Opposed, same sign?

12 (No response.)

13 MS. BINGHAM ESCAREÑO: The motion carries.

14 Thank you guys very much.

15 Marni, anything else on your end?

16 MS. HOLLOWAY: Not on mine. I believe the
17 gentleman mentioned earlier there's some public comment
18 materials at the end of your Board book.

19 MS. BINGHAM ESCAREÑO: Yes.

20 MS. HOLLOWAY: And I believe there is some
21 folks here that would like to speak during that period.

22 MS. BINGHAM ESCAREÑO: Very good. So we are at
23 the point in our agenda where we have public comment on
24 matters other than which were posted as agenda items. I
25 guess this may have been -- I'm not sure what people want

1 to comment on if it was an agenda item, but we certainly
2 will entertain public comment.

3 MR. ECCLES: And, again, it's for public
4 comment. It's not to entertain questions. It's not to
5 argue against things that are not on the agenda. Indeed,
6 the purpose of it is to suggest matters for future agenda
7 items.

8 MS. BINGHAM ESCAREÑO: That makes sense.
9 Good afternoon.

10 MS. LANG: Leanna Lang, Northwood Neighborhood
11 Association in Austin. We submitted a QCP in opposition
12 to Elysium Grant Application 17272, which is currently
13 tied for third. Things can change, so we want our point
14 of view on record. The TDHCA accepted our QCP and scored
15 accordingly. Only after the applicant appealed on May 8th
16 did the TDHCA reverse its own decision to accept our QCP.

17 There is one place in the QAP where it states
18 how the QCP qualifies for review. That is in 11.9(d)(4),
19 which states three separate requirements, one, the
20 neighborhood organization must have been in existence
21 prior to January 9th, the pre-application final delivery
22 date. Two, its boundaries must contain the entire
23 development site. Three, the neighborhood organization
24 must be on record with the Secretary of State or county in
25 which the development site is located.

1 There is only one requirement in 11.9(d)(4)
2 that mentions a deadline via the "prior to" phrase. That
3 is the requirement of it being in existence. Our
4 association has been in existence and active for years.
5 The applicant has met with us several times and even
6 emailed us saying that they were in our boundaries.
7 Northwood met all requirements in 11.9(d)(4).

8 We took further steps to clarify the rules for
9 being on record before submitting our QCP with TDHCA
10 staff. Staff even checked with Legal for some answers.
11 We also followed all the rules and met all requirements in
12 the QCP packet.

13 The QCP aligns with the QAP. The QCP's
14 instructions say evidence of existence -- bylaws,
15 newsletters, et cetera -- is required if documentation
16 submitted for being on record with the state or county is
17 dated after January 9th.

18 If 11.9(d)(4) truly meant that you had to be on
19 record by January 9, then why would the QCP acknowledge
20 that you could even file after January 9. An actual
21 question on the QCP packet asks: "As of March 1, 2017,
22 this neighborhood organization is on record with -- select
23 one of the following -- county or Secretary of State."
24 Why is March 1 the date on the question if that's not the
25 deadline to be on record?

1 The QCP packet says annexations after March 1
2 may not be considered eligible boundaries. In other
3 words, boundaries can change and still be eligible up
4 until March 1.

5 One week after submitting our QCP, I received a
6 request for deficiency from the TDHCA regarding our
7 boundaries. I wrote back, stating that the map submitted
8 for our 2016 TDHCA registry was drawn by the city for out
9 neighborhood registry.

10 The boundary unintentionally omitted a very
11 tiny portion of the development site instead of correctly
12 following along the lot lines. Even the neighboring
13 property incorrectly had one of its structures bisected by
14 this incorrect boundary line, obviously not indicative of
15 a true boundary, which should have followed the lot line.

16 I corrected the boundary with the City before
17 March 1. I also included the correction with our
18 Secretary of State filing in February. In fact, I caught
19 other errors on the 2016 nowhere near the development
20 site, which I corrected.

21 After reviewing our answer to the request for
22 deficiency, the TDHCA determined that we qualified for
23 full review and took off the QCP points.

24 Thank you.

25 MS. BINGHAM ESCAREÑO: Thank you.

1 MS. BLUMBERG: I'm Donna Blumberg, also with
2 the Northwood Neighborhood Association on the same Elysium
3 Grand Application 17272.

4 TDHCA first granted the applicant's appeal
5 using the applicant's misinterpretation of 11.9(d)(4),
6 stating we had to be on record by January 9. We addressed
7 this with the TDHCA last week, as this is not correct.

8 11.9(d)(4) only has one requirement with a
9 deadline attached: being in existence. 11.9(d)(4)
10 distinguishes being in existence as being on record, so
11 they are two different requirements.

12 We're also being told that another reason we
13 don't qualify is because we were not on record at the
14 beginning of the pre-application acceptance period, which
15 is January 5. This doesn't make sense. This is the
16 notification requirement. Notification deadlines have
17 nothing to do with qualifying for review.

18 In fact, the QAP says applicants are required
19 to make additional notifications at full application
20 because boundaries for neighborhood organizations can
21 change between pre and full application.

22 We are also told our boundaries changed before
23 March 1, so we don't qualify. The applicants development
24 site boundaries themselves actually changed between pre
25 and full application. The current site was previously

1 arbitrarily divided into two sites, resulting in two pre-
2 applications. The site's boundaries can change between
3 pre-app and full app, and the QAP left room for the
4 neighborhood's boundaries to change up until March 1.

5 The QCP says boundaries cannot change after
6 March 1. We feel the interpretation and meaning of rules
7 keep shifting to not favor a rightful neighborhood
8 organization that expresses opposition.

9 We've been in existence for over 28 years, and
10 we were registered for the Secretary of State within the
11 required time frame. We did not form just to oppose this
12 application, and we have always been active. I personally
13 have been for over 25 years.

14 And we did not just add this property, as it
15 has always been in our boundaries. We just corrected
16 them.

17 In December 2015 Lindsey Wolfson from Pinnacle
18 Housing contacted us by email, stating they were planning
19 on purchasing the land to develop, and it was in our
20 boundaries.

21 Then in 2016 the develop send us informational
22 postcards and such. They had a meeting with the
23 neighborhood. They learned we were not in favor of their
24 plans. Suddenly we were not the neighborhood of record on
25 the application.

1 We have followed all of the guidelines, advice,
2 and recommendation of TDHCA's staff and legal department,
3 only to find out that apparently the rules have changed
4 after the fact.

5 We have now been told our boundaries do not
6 include the site, which is wrong. And we're also being
7 told we were not in existence, also. We've been around
8 for many years. So that's wrong, too.

9 Our plea to you is to make sense of this
10 nonsense that we have encountered. How can the developer
11 be able to get around so many things? How can we as a
12 neighborhood be able to abide by the rules when they keep
13 changing?

14 We feel strongly review of this procedure as
15 related to neighborhood participation should be a
16 priority. The spirit of the QCP was to allow this input
17 to be included in the scoring, regardless of if pro or
18 con.

19 They just don't seem to be in the spirit of the
20 QCP. Thank you.

21 MS. BINGHAM ESCAREÑO: Thank you.

22 MS. GRIJALVA: My name is Nancy Grijalva,
23 Northwood Neighborhood Association. In 1989, when our
24 articles were first filed with the Secretary of State, the
25 development site was in the Northwood subdivision. Our

1 city map registry has also always included the development
2 site.

3 There's a part of the subdivision; the street
4 is over here, and there's mini-warehouses, and it's kind
5 of in the middle of that area, so it couldn't be cut off.
6 We are on record with Travis County with a notarized
7 restrictive covenant filed and recorded with the County in
8 2006.

9 Another application, number 17140, had the QCP
10 accepted. They went on record February 7 with the
11 County.

12 Thank you.

13 MS. DEEDS: I'm Farida Deeds. I'm speaking to
14 Application 17272, Elysium Grand. Here are concerns from
15 neighbors and common citizens who are most closely related
16 to the site.

17 We understand the need for affordable housing,
18 but just as important is where that affordable housing
19 should be placed, and this site has several shortfalls.
20 Flooding has occurred on the sole street, our neighborhood
21 street, accessing the site. And there was a high-water
22 rescue in front of the site in October 2013.

23 The City of Austin's Watershed Department has
24 done a preliminary assessment of the site, and during the
25 zoning hearing, here is an excerpt from that transcript:

1 "The neighborhood does have their facts
2 correct. It does have floodplain on the property,
3 critical water quality zone that covers a significant
4 portion of the property. There are at least two critical
5 environmental features, or karst features, likely a third
6 one. Our geologist thinks it's likely another sinkhole.
7 The applicant does understand they will need to work
8 around all these three and maybe more once we dig into it
9 more."

10 Since only about half the property can be
11 developed, instead of only two- and three-story structures
12 it initially proposed, the applicant sought four- and
13 five-story residences. But is that safe with known
14 sinkholes on this land?

15 And even if the developer can overcome these
16 obstacles, is it worth the cost-benefit to pay for and
17 build on property not fully developable, to increase flood
18 risk at the site or downstream?

19 Are our tax dollars being spent wisely?
20 Because in addition to the 9 percent tax credits, the
21 applicant seeks \$3.7 million from the City. Will the
22 applicant come back to seek more funding later?

23 We met with the developer to mitigate our
24 concerns, but to no considerable avail. The neighborhood
25 residents voted to file the QCP in opposition and list

1 these concerns and more.

2 The QAP lists an undesirable feature for the
3 site being within 500 feet of an active railroad track, so
4 rezoning was pushed before the March 1 application filing
5 deadline, likely so that the applicant could sidestep the
6 rule by using a city zoning ordinance.

7 Specifying a distance of 400 feet, which
8 happens to be in the 100-year floodplain, this in an area
9 that is not confined to the city center or urban core.

10 Accessibility from the site to amenities is
11 limited by foot, and the City gave the site a low
12 walkability score, and residents will be car dependent.

13 Affordable housing options are limited for
14 perspective residents. And is it necessary to subject
15 them to such a site, with flooding, sinkholes, railroad
16 track, inaccessibility, lack of public transportation?
17 No, especially when there are other applicants that are
18 more beneficial to prospective residents and better sites
19 in this suburban area.

20 State representatives, community organizations,
21 and neighborhoods can have legitimate reasons to oppose an
22 application, and those voices need to be heard and taken
23 into consideration in the scoring process without the
24 negative connotation that just because an entity does not
25 support one project that it is against affordable housing

1 in general. We hope that another project at a more
2 suitable site will be selected for the award. Thank you.

3 MS. BINGHAM ESCAREÑO: Thank you.

4 MR. LANG: Madam Chair, members of the board,
5 my name is Tim Lang. I'm a tax credit developer, and I
6 want to make a brief comment regarding the opportunity
7 index tiebreaking points, the accessible route points.

8 Going forward, we've seen a lot of these RAFs
9 that have homed in on the accessible route, and then we've
10 seen how the development community, throughout this
11 challenge process, can really drill down and get to some
12 places in the makeup of these rules that probably wasn't
13 contemplated when staff was making these rules, to the
14 extent where we've seen levels on sidewalks and
15 accessibility experts hired and then rehired to dispute
16 another accessibility expert's analysis.

17 My point is more to moving forward. What we've
18 seen now is that we've seen a lot of these applications
19 lose some points. The result of that is that there are
20 some other applications that have now superseded them
21 within the standings and are now being underwritten.

22 These applications will not be open to the same
23 RAFs. I think there's some concern among the community --
24 the development community that that there's going to be
25 the same level of detail applied to those applications as

1 there were through the RAF process.

2 In other words, will they be looked at equally
3 and equitably and held to the same standards, basically?
4 That was, you know, just a concern. I think it's kind of
5 an unintended consequence of something that's becoming
6 more real now that these lower-scoring applications at the
7 beginning of the process are now being underwritten but
8 will not have that same level of focus from the
9 development community through this process.

10 Thank you.

11 MS. BINGHAM ESCAREÑO: Thank you.

12 Seeing no further public comment, any other
13 comment from staff?

14 (No response.)

15 MS. BINGHAM ESCAREÑO: Board?

16 (No response.)

17 MS. BINGHAM ESCAREÑO: Management?

18 (No response.)

19 MS. BINGHAM ESCAREÑO: Captain Tweety?

20 (General laughter.)

21 MS. BINGHAM ESCAREÑO: Good. Okay. So next
22 meeting is coming very quickly, July 27th. Thank you guys
23 very much. Have a good day.

24 (Whereupon, at 2:33 p.m., the meeting was
25 adjourned.)

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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.

(Transcriber) 7/23/2017
(Date)

On the Record Reporting
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