TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

July 27, 2017
9:00 a.m.

BOARD MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESENDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director
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ON THE RECORD REPORTING
(512) 450-0342
authorizing the filing of one or more applications for reservation to the Texas Bond Review Board with respect to Qualified Mortgage Bonds and containing other provisions relating to the subject

g) Presentation, discussion, and possible action regarding Resolution No. 17-023 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject

h) Presentation, discussion, and possible action on Resolution No. 17-024 authorizing Publication of Public Notice for Mortgage Credit Certificate Program ("MCC") ("Program 88")

HOME AND HOMELESS PROGRAMS

i) Presentation, discussion, and possible action on State Fiscal Year 2018 Homeless Housing and Services Program awards

j) 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")

MULTIFAMILY FINANCE

k) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer

17414 Silver Gardens Apartments Dallas
17419 Sphinx at Sierra Vista Senior Fort Worth

RULES

l) Presentation, discussion, and possible action on an Order adopting the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an Order adopting new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing that these be published in the Texas Register

m) Presentation, discussion, and possible action on the proposed amendments to 10 TAC Chapter 24, Texas Bootstrap Loan
Program Rule, and directing their publication for public comment in the Texas Register.

n) Presentation, discussion, and possible action on an Order proposing the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an Order proposing new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing its publication for public comment in the Texas Register.

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

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities, (July)

b) Report on the Department’s 3rd Quarter Investment Report in accordance with the Public Funds Investment Act ("PIFA")

c) Report on the Department’s 3rd Quarter Investment Report relating to funds held under Bond Trust Indentures

d) Report on the Department’s Swap Portfolio and recent activities with respect thereto

e) Report on the reallocation of recaptured Program Year 2016 Emergency Solutions Grants Program funding

f) Executive Report of Multifamily Program Amendments, Extensions and Ownership Transfers

ACTION ITEMS

ITEM 3: REPORTS

ITEM 4: COMPLIANCE (PULLED)
Presentation, discussion and possible action under 10 TAC §1.304 related to an Appeal of an Executive Award Review Advisory Committee ("EARAC") recommendation under the Previous Participation Rule

17324 Orange Grove Seniors Apartments
Orange Grove
17338 Pecanwood I Apartments Whitehouse
17341 Pecanwood II Apartments Whitehouse
17342 Pecanwood III Apartments Whitehouse

ITEM 5: MULTIFAMILY FINANCE
a) Report on the 2018 Qualified Allocation Plan ("QAP") Project
b) Presentation, Discussion, and Possible Action regarding eligibility determination under 10 TAC §10.101(a)(2)(B), (F) and/or (K) for 2017 Housing Tax Credit ("HTC") Applications

17322 Provision at Wilcrest Houston
c) Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to appeals

17024 Dove Ranch McAllen (WITHDRAWN)
17221 Twin Oaks Mission (WITHDRAWN)
17251 Pine Terrace Apartments (WITHDRAWN)
Mount Pleasant
17255 Trinity Oaks Apartments (WITHDRAWN)
Sulphur Springs
17267 Industrial Lofts McAllen (WITHDRAWN)
17278 Westwind of Paris Paris (WITHDRAWN)
17290 Golden Trails West (WITHDRAWN)
17297 Kountze Pioneer Crossing
Kountze
17305 Payton Senior
Killeen
17327 Legacy Trails of Lindale
Lindale
17331 Westwind of Killeen
Killeen (WITHDRAWN)
17388 West Pecan Village McAllen
17390 Las Palomas McAllen

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d) Presentation, discussion, and possible action regarding Awards of Direct Loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications

e) Presentation, discussion, and possible action regarding Section 811 Project Rental Assistance participation with 9% Housing Tax Credit Applications as required by 10 TAC §10.204(16)

f) Presentation, discussion, and possible action regarding Awards from the 2017 State Housing Credit Ceiling and Approval of the Waiting List for the 2017 Housing Tax Credit Application Round

17004 Old Dowlen Cottages Beaumont
17007 Magnolia Station Winnie
17008 East Meadows Phase II San Antonio
17009 El Jardin Lofts Brownsville
17010 Baxter Lofts Harlingen
17012 Secretariat Apartments Arlington
17013 Rio Lofts San Antonio
17019 Wood Springs Estates of Lindale Lindale
17024 Dove Ranch McAllen
17028 The Vineyard on Lancaster Fort Worth
17036 Merritt McGowan Manor McKinney
17037 Pioneer Place Mansfield
17042 Huntington at Paseo de la Resaca Brownsville
17056 Mariposa Apartment Homes at Meagan Street Waxahachie
17058 Mariposa Apartment Homes at Circle Lane Royse City
17064 Chaparral Apartments Midland
17065 Lamar Place Rosenberg
17074 Palladium Celina Senior Living Celina
17080 Palladium Fort Worth Fort Worth
17081 Palladium Denton Denton
17090 Alameda Palms El Paso
17091 Plateau Ridge Apartments Cleburne
17093 Vinton Palms Vinton
17094 Catalon at Paseo de la Resaca Brownsville
17097 Holly Oak Seniors Houston
17103 Commerce Street Apartments Belton
17107 The Residence at Wolfforth Wolfforth
17113 Mueller Apartments Austin
17120 Vista Laredo Apartment Homes Brownsville
17133 The Pointe at Rowlett Rowlett
17134 Vista Park West Fort Worth
17138 Highpoint Seniors Housing II Dallas
17140 Plano Artist Lofts Plano
17146 Orchard Park Apartments Angleton
17148 Shady Shores Lake Dallas
17151 Albany Village Albany
17157 Castroville Village Castroville
17158 Electra Village Electra
17159 Pflugerville Meadows Pflugerville
17161 Round Rock Oak Grove Round Rock
17170 Star of Texas Seniors Montgomery
17176 Crystal Village Apartments Houston
17179 The Nightingale at Goodnight Ranch Austin
17181 Ridgestone Estates El Paso
17186 Oasis on Ella Houston
17188 EaDo Lofts Houston
17189 Villas at Sandstone El Paso
17195 Leander Place Leander
17199 Santa Fe Place Temple
17204 Vista Bella Lago Vista
17205 Travis Flats Austin
17208 Waverly Village New Waverly
17218 The Post Oak Edna
17221 Twin Oaks Mission
17225 Cascade Villas Wichita Falls
17229 Lumberton Village Lumberton
17230 The Oasis on McColl McAllen
17234 Residences at New Braunfels
New Braunfels
17235 Henrietta Pioneer Crossing Henrietta
17239 Abbington Ranch Boerne
17244 Kirby Commons San Angelo
17247 Western Springs Apartments Dripping Springs
17248 Stonebrook Senior Residences Houston
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17278 Westwind of Paris Paris
17281 The Residence at Arbor Grove Arlington
17283 Avanti Manor Harker Heights
17285 Oak Trails San Angelo
17287 Jackson Place Edinburg
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17290 Golden Trails West
17293 Reserve at Silver Creek Fort Worth
17295 Legacy Trails of Decatur Decatur
17297 Kountze Pioneer Crossing Kountze
17299 The Avanti Bayside Corpus Christi
17300 The Glades of Caldwell Apartments Caldwell
17305 Payton Senior Killeen
17307 Marabella Amarillo
17315 Provision at North Valentine Hurst
17316 Gala at Texas Parkway Missouri City
17317 Jubilee at Texas Parkway Missouri City
17322 Provision at Wilcrest Houston
17323 Skyway Gardens Alpine
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17338 Pecanwood I Apartments Whitehouse
17341 Pecanwood II Apartments Whitehouse
17342 Pecanwood III Apartments Whitehouse
17347 Alton Plaza Longview
17356 The Acacia San Antonio
17360 Paseo Plaza, Phase II Brownsville
17362 Pellicano Place El Paso
17363 Residences of Long Branch Rowlett
17367 Reserve at Sherman Denton
17372 Sunset Trails Bullard
17376 The Bristol San Antonio
17380 Ridgewood Senior Village Santa Fe
17383 McGregor Senior Apartments McGregor
17384 Alvarado Senior Apartments Alvarado
17388 West Pecan Village McAllen
17390 Las Palomas McAllen
17700 The Terraces at Arboretum Houston
17708 Cedar Ridge Apartments Dayton
17719 Pathways at Goodrich Place Austin
17720 Saltillo Apartments Austin
17736 Providence at Ted Trout Drive Hudson
17737 Campanile at Mission Bend Houston
17739 Monarch Estates Uvalde

ON THE RECORD REPORTING
(512) 450-0342
PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

OPEN SESSION

ADJOURN
MR. GOODWIN: I call to order the July 27 meeting of the Texas Department of Housing and Community Affairs, and we will begin with the roll call.

Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: And I'm here, and we have a quorum.

Tim will lead us in the pledge. Please rise.

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

MR. GOODWIN: There are a few people here today that I would like to recognize. One is the former executive director of TDHCA, Edwina Carrington. Edwina, would you wave?

The next is a former chairman of this Board, Mr. Don Bethel. Don.

And the next is State Representative James White.
We have the consent agenda and a request to pull item 1(m), so the consent agenda we will pull item 1(m), and we're not going to go in order today, because of some staff requirements, we're going to take this a little out of order today, but the first thing we'd like to do is approve the consent agenda with item 1(m) pulled. Do I hear a motion?

MS. THOMASON: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: It's been moved and seconded.

All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Any opposed?

(No response.)

MR. GOODWIN: So the consent agenda is approved.

We'll come back to 1(m) at a later time. We're going to jump into the appeals, and we're going to start with the eligibility issue, item 5(b).

MS. HOLLOWAY: Chairman Goodwin, members of the Board, my name is Marni Holloway, I am the director of the Multifamily Finance Division.

Item 5(b) is: Presentation, discussion and possible action regarding an eligibility determination.
under 10 TAC 10.101(a)(2)(B), (F) and/or (K). We are
discussion application number 17322, this is Provision at
Wilcrest.

The applicable rule relates to undesirable site
features. Development sites within the described distance
of any of the undesirable features identified may be
considered ineligible as determined by the Board, unless
the applicant provides sufficient mitigation. This
particular site is within 500 feet of a municipal solid
waste processing plant which also operates as a concrete
crushing plant.

At the July 13 meeting, the Board voted to
table this item and directed staff to work with the
applicant to attempt to resolve outstanding questions
regarding the Southern Crushed Concrete site across the
street. Since that time, staff has spoken with members of
the air permitting staff at the Texas Commission on
Environmental Quality, conducted further research
regarding the site and concrete crushing plants, conducted
a limited site inspection, and met with the applicant.
Staff's concerns regarding the eligibility of this site
have not been relieved.

According to a TCEQ regulated entity
information query, as reflected in your Board materials,
the plant is a registered municipal solid waste processing
facility and operates a concrete crushing plant under multiple air new sourced permits and a special conditions permit for the crusher itself. The applicant did not disclose the plant in their application. Staff was made aware of it through a third party request for administrative deficiency. The RFAD questioned whether the site was ineligible under Subsection (F) of the undesirable site rule. The request included a material safety data sheet for the facility, which is in your Board materials, which identifies hazards associated with crushed concrete, including skin, eye and respiratory irritation, along with multiple pictures.

When reviewing the site, staff found the municipal solid waste processing facility registration, along with evidence of the concrete crushing plant, and determined that the site fell under Subsection (B) of the undesirable site rule. During discussion at the last Board meeting, a question arose regarding Subsection (K) of the rules which includes sites with exposure to an environmental factor which may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

So starting from the top with (B), going alphabetically, that section states that sites are ineligible if they are located within 300 feet of a solid
waste or sanitary landfill. The applicant has taken the position that because the Wilcrest property is registered a municipal solid waste processing facility rather than a landfill, this subsection does not apply to the proposed development.

TCEQ definitions and rules are included in your Board materials. Staff finds that really the only difference between a processing facility and a landfill is the permanence of the storage of waste materials. In this instance, concrete from demolition is trucked to the site where it is processed and stored temporarily until it is transported to its new use. In contrast, if this were a landfill, the concrete would be delivered and presumably piled up or buried without any further action.

The value of recycling concrete is important to consumers so it doesn't wind up filling precious landfill sites. The process of recycling concrete is accomplished by a crushing plant. This is the taking big rocks and turning them into small rocks, described by the applicant at the last meeting.

Review of the environmental site assessment submitted with the application indicates that the applicant was aware of the presence of the municipal solid waste registration. Indeed, review of the aerial photographs included in the ESA indicates that the
Southern Crushed Concrete site has been under some kind of industrial use since 1966.

Moving on to (F), this is the question that was raised by the RFAD. This section states that sites are ineligible if they are located within 500 feet of heavy industrial (i.e., facilities that required extensive capital investment in land and machinery, are not easily relocated and produce high levels of external noise, such as manufacturing plants, fuel storage facilities, excluding gas stations, et cetera).

The Harris County Appraisal District records indicate that the property is more than 12 acres and carries a taxable value $4.5 million. While the concrete crusher is operating under a permit that would allow the machinery to be moved, TCEQ regulations that restrict new concrete crusher sites limits the utility of this type of permit and the likelihood that the plant will be moved frequently. It isn't possible for staff to estimate the value of the permits or the ability to operate at the present site, nor the value of the equipment itself.

If the crusher plant is located at the Wilcrest site and operating at maximum capacity under the permit for that crusher, staff estimates a maximum of 191 average size dump trucks would travel on Wilcrest to deliver concrete and haul away finished products from the site.
daily. The applicant performed noise monitoring over a three-day period in June. Because of the portable nature of the plant and what appears to be a variable operation, based on pictures, we cannot be sure that the plant was actually operating during this period.

So under (K), this section of the rules states that sites are ineligible if they include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

Southern Crushed Concrete pulled a permit for a portable concrete crusher that may be moved to multiple site including the Wilcrest property. A search of the TCEQ website for the 3901 Wilcrest address returns multiple permits for a location of the portable crusher at that location.

Concrete crusher plants are governed by the Texas Clean Air Act and their locations for new permits are limited by Texas Health and Safety Code Section 382.065 which includes: The Commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school or place of worship. The acceptable separation between a new concrete crushing plant and existing residential uses is set in statute in
order to protect the health, safety and welfare of Texas residents. TCEQ is not able to regulate the use of property around the plant subsequent to initial licensing.

TCEQ calculates the predicted emission rates for particulates for the plant itself and the stockpiles on site. Those calculations do not include emissions created by dump trucks bringing raw materials to the plant or those hauling the finished product away. They also do not include fugitive emissions from the materials in the trucks entering the site.

The City of Houston Code add childcare facilities, hospitals, nursing homes, public parks and other crushing sites to the limitations found in statute for separation. The Occupational Safety and Health Administration, OSHA, governs worker safety at the federal level for crushing machines. They require that a ventilated booth be provided to workers operating the machine in order to protect them from the potentially harmful components of concrete dust, such as crystalline silica which is a known carcinogen.

The establishment of an acceptable separation at initial licensing of concrete crushing plants by multiple governing bodies implies that future surrounding land uses within that separation will be aware of and will to accept the inherent risks of closer proximity.
Documented risks for worker safety on site cannot be reasonably prevented for tenants living across the street from the plant. Due to the limited amount of affordable housing to serve increasing demand, it's not reasonable to believe that future residents of Provision of Wilcrest would be able to make a clearheaded decision regarding the risks of living at such a close location.

By any or all of the undesirable site features set out in 10 TAC 10.101(a)(2)(B), (F) and (K), staff recommends this site be found ineligible. I'll be happy to take any questions.

MR. GOODWIN: Thank you, Marni.
Do I hear a motion to hear comments?
MR. BRADEN: So moved.
MR. GOODWIN: So moved. Second?
MS. RESÉNDIZ: Second.
MR. GOODWIN: All in favor say aye.
(A chorus of ayes.)
MR. GOODWIN: Okay. Now we'll hear comments. And those of you that want to speak know to sit up in the first row and sign in, please.
MS. ANDERSON: Good morning. My name is Sarah Anderson and I'm here representing the developer.
And if the information that had been presented to you were correct, I would agree that this development
should not be done, but I'm afraid to say that most of the
information that's been presented is either not correct,
vaguely inaccurate, or just not even relevant to this
site. What's ironic here is that we're dealing with what
is essentially a NIMBY issue related to this facility,
that rather than us talking about bringing crime and
ruining schools and bringing down property values, we have
fear of something that we don't know because none of us
are the experts, and at the end of the day, we believe
that only an expert in this particular facility should be
the people that should be opining on this. Rather than
doing Google searches on things that may or may not
tangentially, and certainly are rather inflammatory,
related to this.

The developer will give you information that we
have spoken to the person who does the permitting at TCEQ
who has confirmed yet again to us that there are no health
and safety issues with this development, and that the
information that staff continues to put forward regarding
the permit for this site is not relevant to this site and
could never -- the information that they're talking about
moving to the site could never happen.

But what we had hoped to be discussing today
was health and safety issues because that was where we
left off last time. We felt like we had gone through all
of the information and explained how this wasn't per the existing rules an issue. We thought that but obviously that's not the case, because as they've laid out, we're back where we started. So I will go back and readdress those issues and the developer and the attorney will cover some of the other issues as we go forward.

We did look at this site relative to the rules. We scrutinized the rules, and specifically with regard to heavy industrial. The TDHCA rule says that the facilities must have extensive capital investment in the land and machinery, anything that's there cannot be easily relocated, and it must not produce excess noise on the site. This recycling center has none of those. There are no permanent buildings, there is no major capital investment in the site, it cannot be relocated, and we have shown that there is no noise issue. We do not believe that heavy industrial is an issue.

Again, when we talked about whether or not this met the definition of located within 300 feet of a solid waste or sanitary landfill, this has always been interpreted as solid waste landfill or a sanitary landfill. This is neither. Now, staff wants to look at this because they think it's a solid waste processing plant, then that should be put in the QAP, but it currently is not. We again have confirmed with TCEQ this
is a recycling center. The permit is the same permit that
a Goodwill recycling center gets or that a nursery gets to
recycle Christmas trees.

We have tried to cover with staff the health
and safety issues. We have had an environmental expert
weigh in on this, who again has said there is no health
and safety issue on this site. The Houston code that has
been cited doesn't exist. That was overturned in 2014 by
the Texas Supreme Court. The city does not have any
permitting authority and has nothing out there, so that is
not relevant. An OSHA argument for somebody working in
the middle of something, again is not relevant to this
argument.

What we have is staff throwing every single
thing they can that they can find on Google rather than
just talking to TCEQ and getting the correct information.
Our understanding is that all discussions with TCEQ to
date have been about a permit that is for a site that is
in another part of Houston. It is not relevant to our
site. We have confirmation that it will never be relevant
to our site. So I feel like we need to get to what we're
really talking about here is health and safety issues.

We believe that we have confirmation that it's
not a problem, but we also want to get to the point where
we all agree that it's not, and we have put forward to
staff that this has happened before where there's been a question that a provisional award was given with a condition that a third party, who is a expert in this discussion, would answer the questions that you would have regarding health and safety. We believe TCEQ has already done that, but if we want a third party, then I think that rather than throwing out one of the only family deals in Houston, we believe the experts, not staff and not us, should be the people who bring that information to you.

Thank you.

MR. GOODWIN: Thank you.

MR. HARRIS: Good morning. My name is Jervon Harris. I'm with the developer. I would like to first reiterate some of the comments that Sarah made and then make some additional comments.

I'd like to confirm that we've done extensive due diligence, we've done what was required based on the rules set out in the QAP, and we've taken that a step further based on concerns that have been raised by staff and we've had environmental consultants, professionals and third parties that we've engaged, researched do additional research, opine and re-opine to the point where they've just indicated to us there's no more data that we can research. Everything that we've searched, everything that we've looked at, all of the databases that they've
reviewed indicate that there are no safety concerns at this site, and our environmental consultants have said that with clarity.

This argument has taken several iterations. Initially the discussion was about heavy industrial. It's been our interpretation that this site does not meet TDHCA's interpretation/definition of heavy industrial. Furthermore, with conversations with our environmental consultant, this type of permit covers industrial uses, light commercial uses on a broad scale, and this use is clearly on the most innocuous end of that scale. We specifically included statements in our application and the development owner's certification that said the applicant does not believe surrounding uses meet undesirable rules based on our research.

In response to the RFAD, we've provided supplemental documentation, we've provided a noise study, we supplemented that by putting a noise reading meter on the site. That indicated that there was no excessive noise. We've provided letters from our engineer indicating that there was not excessive noise, that the facility could be easily relocated, and again, supplemental letters from the ESA provider indicating that there were no health or safety hazards that would affect the development of the site.
Recently, we've contacted Don Leland at the air quality permitting division, and I've got email correspondence with Don that indicates that clearly, very emphatically that this site does not pose any health or safety issues. Furthermore, the 440 yard distance that came up at the last meeting that we've been discussing, it's been indicated to us that that came about not because of health and safety concerns but that was more of a NIMBYism issue and that it was put in place because a legislator did not want a facility in close proximity to his home.

Don Leland offered to speak with staff, offered to make those same statements to staff that he's made to us, but that offer to have a conference call was denied. That same distance that has been referenced, there is a country club, The Royal Oaks Subdivision that's well within 440 yards, there's another single family development within 440 yards, and there's a market rate apartment community within 440 yards. So we have single family homes that range from $700,000 up to multimillions and market rate apartments that are within that distance that are operating safely and no one has indicated otherwise that there are any safety issues for those residences or that there would be any safety issues for our residences.
And what we're asking is that we be given the opportunity to do research, to do additional study, if that means putting an air testing facility on our site to get the answers, allow us the time to get the answers, because right now we're getting new arguments, new allegations, things that we're having to respond to in short periods of time, and a lot of it seems to be based on the perception of the site because of how it looks physically. I would love to be across from Herman Park or another jewel of the Houston parks and rec system. This site, it is not the prettiest site, but the question is is it a health and safety concern, and we have found nothing and staff has presented nothing that evidences that this site creates a health and safety issue.

MR. GOODWIN: Thank you. Would you sign in, Mr. Harris?

MS. JACKSON: Good morning, Board members.

Toni Jackson from Jones Walker.

As has been stated by Ms. Anderson and Mr. Harris, we, when we were here two weeks ago before you, believe that we had provided you information as requested by the staff and you asked us while standing here at this podium to look at one other additional provision of the QAP, which we did do as was asked. That raised the issue about health and safety, and we reached out to the
Department, and unfortunately, was not able to get anything from them before last Thursday, but we got over here on last Friday and met with them.

During that meeting, we learned that they had actually been looking at permits that were not related to this site, and we were prepared to respond to everything, we did respond to everything that they put before us on Thursday, however, what they had been looking at was not a permit related to the site. Even still, we responded to everything that they provided us, and before the end of the day we got additional information from them asking additional questions.

What our concern is here is that we refuted over and over again the issues that have been raised not only by the RFAD but by the staff regarding the site. We have what we are supposed to do as it relates to the requirements based on the rules and the QAP. A developer has to be able to at some point know that they have responded, that they have followed the rules of this process and a decision gets made.

As has been stated, there have been issues that have been raised simply based on Googling, and although we all know that we can find a lot of information by Googling, that is not an authoritative, definitive response when we have already had third parties, an
environmental specialist as well as a noise specialist, provide us with information indicating that there are not health and safety issues related to this site.

We have to be able, as the development community, to know that when we have responded, when we have followed the rules and the guidelines set out in the QAP, that again at someplace this process ends. We cannot have or be able to provide you with good information when every time we provide, and more importantly, refute the information that has been raised by staff, staff comes back and gives us additional information, as was the case on Monday evening after our meeting on Friday.

We have indicated to the staff that this developer is a responsible developer. They have no intention of putting tenants in harm's way. Even though we have environmental studies and a noise study that indicates that there is not a problem with this site, we are willing and asking to have an award conditioned upon one additional study, as requested by staff, however, it is important that this Board knows that we have provided everything asked of us, and more importantly, refuted every issue that has been raised by staff.

Thank you.

MR. GOODWIN: Thank you.

Anyone else speaking on this issue?
MR. KILDAY: Chairman, Board, my name is Les Kilday. I'm with Kilday operating out of Houston. We have been tax credit developers in the Houston area for over 20 years and have been involved in Texas and the Houston area for 20-plus years on tax credit developments, and I rarely come and speak to this Board on any subject, but in this case, this site, for a site that's in a higher income census tract, this is one of the worst sites I have ever seen come before this Board.

Besides the solid waste designation for this rock crusher, the heavy industrial -- I was the one that submitted the original request for administrative deficiency on the heavy industrial designation. As mentioned, it's a three-prong for heavy industrial definition on the QAP. One is extensive capital investment in land and machinery. This land right now on the tax rolls is valued $4-1/2 million, and there is not only the rock crusher there, there is a large several hundred yard conveyor belt system on the site, and multiple other structures that have been on that site for 20-plus years since the permitting began.

The second prong is not easily relocated. Well, again, it's been there, actually the site started the rock crushing since 1966, but the permitting they've had 20-plus years. That site has been there forever, and
the 440 yard designation by TCEQ is not a NIMBYism designation. This designation has to do, and it says in their TCEQ rules for rock crushers specifically, this is not only a nuisance but it's environmental and safety concerns. So with that 440 yard designation, it becomes obviously even harder to relocate that site. And it produces high levels of external noise.

The applicant used the HUD model as their designation for whether something is unacceptable or not. The HUD model is 65 decibels. Their own study that was submitted shows a decibel level of 67.5, and we did an independent study, Phase Engineering out of Houston that specializes in environmental issues in Houston, they did a noise study, they put two different monitors at the site, the north end and the south end of the site, both of those -- and that's been submitted to the staff -- both of those show decibel levels over 80, so it's clearly a high level of external noise. So for those three definitions, it clearly is a heavy industrial site.

On top of the solid waste designation, on top of the non-disclosure of this site, on top of the heavy industrial, and on top of the 440 yard regulation that TCEQ has, this site is also entirely within the 100-year flood plain, the whole site is. And also, the main north-south corridor is Wilcrest, Wilcrest in that area is
totally in the 100-year flood plain. The major east-west
corridor just to the north, Westpark Drive, for 700 yards
to the west and the east is totally within the 100-year
flood plain. And on top of that, within 20 yards of this
site is a very large utility transfer structure that goes
up and down the west side of the property.

So this is clearly an issue, it's not a NIMBY
issue, it's an issue with health and safety, and I would
ask this Board to find this site ineligible.

I would say also the developer mentioned now a
couple of times that this is the only other family deal
and that if this deal becomes ineligible, the next deal
would be a seniors deal and that they were concerned about
senior deals in that Houston region. Well, I find that
somewhat disingenuous because this developer also has two
other deals on the list today to be given credits in the
Houston region, the same region, and both those deals are
senior deals.

Thank you.

MS. ANDERSON: I'd like an opportunity to
comment to that if I could. Sarah Anderson.

First of all, those are deals are not this
developer. There is a father-son, they're separate,
they're developed separately, so that is not correct.

The fact that this piece of land is worth a lot
of money is because it is in a high opportunity area, a
large tract in Houston, and on a highway corridor. There
has not been a huge investment put in this land, because
it's been the same thing for the last 40-50 years. The
value of the land isn't because of anything that anyone
has done to it, it's just a function of the market.

Again, we keep hearing this 440 permit issue.
It simply is not relevant to this site. There is a permit
that is held by the owner of the site, it was for another
site that everybody keeps saying, oh, but you can move
that permit. It has been confirmed with us from TCEQ, we
have the emails, we've tried to get this information to
staff, they don't want to talk to TCEQ, but they have made
it clear that that permit cannot be moved to this site.

MR. GOODWIN: Thank you.

MR. ECCLES: Are you saying that they're not
crushing concrete at this site?

MS. ANDERSON: I'm saying that the permit that
you are discussing that is a particular concrete crushing
permit cannot be moved to this site. It is for another
location. It is a portable permit but we have confirmed
with TCEQ that that particular permit can never be moved
to this particular site. So all discussion for this 440
and all of this concrete crushing for this site just isn't
relevant.
MS. JACKSON: Toni Jackson, Jones Walker.

To answer your question more specifically, Beau, it has been explained to us, as I indicated in front of this Board the last time, this is a recycling plant. They do not consider -- and again, as I said to you guys in the meeting on Friday, I don't know all of the specifics because that is not my expertise, but it has been explained to us that there is a distinction between a concrete crushing plant and a recycling plant, and this location is a recycling location, and so the process of what they do is different from the actual concrete crushing.

And if you go around the city of Houston and see the other Southern Crushed Concrete sites, just visually you can see that this is a site that is very different from their other sites. Again, I don't know the distinction because that is not my expertise, but we have been told and explained that this is a recycling plant and not a concrete crushing plant, so there is a distinction.

MR. ECCLES: But you don't know if they are crushing concrete on the Wilcrest site?

MS. JACKSON: When I have asked that question of Southern Crushed Concrete, that is the answer they have given, that it is a recycling plant, not a crushing plant. The crushing plant does something different, has more
mechanisms. I don't know the distinction other than that answer. But again, you guys keep asking us questions at the 25th hour. None of what you have raised asked us to explain the distinctions of the operations, you have asked us to let you know what type of permit they require and what comes with that and whether or not, more importantly, the site has any health and safety and air quality concerns. We have refuted that, that is what we have provided to you.

As it relates to, again, the specifics of how the plant works, that is not my job and if that is what the Department needs, that is what we have indicated we will provide you with a conditional award, but you guys can't have us respond to you based on what the QAP requires and then you want us to get into the specifics of the plant. If we have provided you the information that the plant does not create any health and safety concerns, that is what we are required to do and that's what we believe our third parties have provided to you.

MR. GOODWIN: Thank you.

Barry.

MR. PALMER: So just to be clear on what the procedure is here, are we going to allow people to get up and testify numerous times in response to the previous speaker's comments?
MR. GOODWIN: We'll run the meeting. Okay?

(General laughter.)

MR. PALMER: All right. So everything that we've seen --

MR. GOODWIN: Who do you represent in this, Barry?

MR. PALMER: I represent Mr. Kilday, who spoke earlier. Barry Palmer with Coats Rose.

All the evidence that we've seen is this Southern Crushed Concrete operates a concrete crushing facility on this site. Big trucks come onto the site, 18-wheelers -- the staff estimates that there's 191 a day, or potentially up to -- bringing large blocks of concrete onto the site. And you've seen the pictures in your Board report of the site, and there's crushed concrete in big piles on the site, so if they're not crushing concrete there, I guess there's some magic at work. But it's coming in in big blocks, it's ending up in a pile of dust.

A concrete crushing facility cannot get a permit unless it's not within 440 yards of residential, so if this housing were there now, they could not get a permit for this facility, so why would we put housing there when TCEQ has determined that that's the safe distance for a concrete crushing facility to operate by residential housing.
So for all of the reasons that staff has outlined, this is heavy industrial -- I don't know how it gets much heavier than this, this is an environmental hazard, it's a solid waste facility. I know that the applicant likes to call it a recycling facility, that's a nice euphemism, and I guess there's some truth to that because the purpose of this is to take big blocks of concrete and recycle it into reusable concrete. But this is not someplace that you go to drop off your cans and your newspapers, this is not someplace that you go like a Goodwill to drop off clothing, I mean, this is a whole different kind of recycling that is a heavy industrial use.

Thank you.

MR. GOODWIN: Thank you.

MR. GOODWIN: Does anybody have anything new they want to add to this? We don't want to rehash over and over and over the same points.

MR. IRVINE: I actually do. When we left the Board meeting before, I went and contacted the executive director of the Texas Commission on Environmental Quality, and he put me in touch with the director of the division that would provide permitting and also the division that provides legal advice to them. And what we learned was we identified the specific address and the specific site and
they said what is going on at that site, if operated in accordance with applicable TCEQ permits, they have a modeling process where they look at what's going on and how it impacts the area around it, and they have determined that under their modeling process there are no safety issues beyond the perimeter of the property. That assumes adherence to the permitting and it assumes the sufficiency of the modeling.

They do not address other ancillary issues such as particulates that might come off of ingress and egress truck activity or things of that sort. They did say that in their experience, typically plants like this do generate a fair amount of nuisance complaints but they did not have identified health and safety concerns per the modeling process. There is no active monitoring that is ongoing. They don't, for example, go in and put in air quality monitoring or anything like that around it, they just permit it and periodically renew the permit.

So assuming that it's operating in compliance with those things, that's the TCEQ advice that we received.

I would, however, point out that the full language of Subsection (K) begins with: Any other site deemed unacceptable, which would include without limitation these health and safety issues. So I look at
section (K) as the sort of common sense, catchall provision. You have developed an understanding of what's going on there, you have been told about the beneficial aspects, the development's location vis-à-vis other more attractive opportunity issues, but you've also then presented firsthand testimony about the site itself and the way that it's perceived. So I view Section (K) as finally really a common sense approach to this.

MR. GOODWIN: Marni, any other comments that you'd like to make?

MS. HOLLOWAY: A couple of things. The applicant has mentioned that we refused to have a conversation with TCEQ. That request came in at 9:45 yesterday morning and had to happen by 1:30, so we couldn't put it together, it wasn't going to happen. After our meeting on Friday when the applicant was discussing the concrete recycling question and the question about the location of the permit for the plant, I sent that question to Beryl Thatcher, who is the manager of the mechanical and coating section for the air permits division of TCEQ, this is the person who originally provided me with the permit.

Her response was: The air quality permit that was issued is for a portable concrete crusher, sometimes referred to as concrete recycling. What that means is the
company can move it to different locations. The company is authorized to operate at the Wilcrest location, although it may not currently be at the site. Hope that helps. Give me a call if you'd like to discuss further."

I provided that information back to the applicant, along with screen shots of information that I was finding on TCEQ's website regarding the multiple permits for the 3901 Wilcrest site.

MR. GOODWIN: Thank you, Marni.

Anything new to say?

MR. HARRIS: Tim, you said it yourself, and the feedback we got from TCEQ is exactly what you said: if the site is operating within the rules, there are no safety issues. That's it. You can't add all of this extra stuff and the what-ifs. That's the same thing we run into in our industry with the NIMBYism. You may not like how the site looks, you may not understand it, but you have not proved that it's a safety issue. And you've been told by TCEQ, we've been told by TCEQ and the experts that it's not a safety issue. Let's not go with a knee jerk reaction because you don't like how the site looks, you don't like how that facility looks.

MR. IRVINE: And I'd like to underscore that I'm not taking a position one way or the other, I'm simply saying that (K) is broader than simply safety issues.
MR. HARRIS: Thank you.

MR. GOODWIN: Thank you.

MS. ANDERSON: Sarah Anderson.

Just one last comment to Marni's comment. We did then follow up after that and we talked to the person who actually does the permitting, and he confirmed that while technically, theoretically this permit could go there, when he looked at it, he said it would not be allowed.

MR. GOODWIN: Thank you.

Okay. I don't think we have any further discussion. We'll entertain a motion. Currently we have staff recommendation that this site be found ineligible. Do I hear a motion?

MR. BRADEN: I make a motion to accept staff's recommendation on this site.

MR. GOODWIN: Mr. Braden has made a motion. Do I hear a second?

MS. THOMASON: Second.

MR. GOODWIN: Second by Ms. Thomason.

Any discussion, questions?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

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

MR. GOODWIN:  Staff recommendation is upheld.

We're going to move now to the next item which is 17297, Kountze Pioneer Crossing.

MS. HOLLOWAY:  This is item 5(c):

Presentation, discussion and possible action on timely filed appeals under 10 TAC 10.902 of the Department's Multifamily Program Rules.

Just so that everyone in the room is aware, there are a number of these appeals that have been pulled after the agenda was posted. 17024 Dove Ranch, 17221 Twin Oaks, 17251 Pine Terrace, 17255 Trinity Oaks, 17267 Industrial Lofts, 17278 Westwind of Paris, and 17290 Golden Trails have all been withdrawn.

MR. GOODWIN:  Are you ready?

MS. HOLLOWAY:  I'm ready.  Application 17297, this is Kountze Pioneer Village, staff determined that the applicant failed to meet the requirements of 10 TAC 10.204(10) related to site control at application and therefore terminated the application.  The applicant timely filed an appeal which the executive director has denied.

This part of 204 states that the required documentation application submission describes this section as the purpose of this section is to identify the
documentation that is required at the time of application submission. Item (10) related to site control outlines the requirements for each application submitted for the competitive application cycle at (A) says evidence that the development owner has site control must be submitted.

An RFAD requested that the Department review the application to determine whether it should be eligible under that section. An administrative deficiency was issued and the response raised additional questions that led to a second deficiency notice. The first response stated that the Kountze Economic Development Corporation conveyed the land to the City of Kountze in 2001. This land, the City of Kountze contracted to sell to our applicant. This turned out not to be accurate and a warranty deed dated May 24, 2017 was submitted which conveyed the missing parcels to the city. The title commitment that was submitted with the application indicated that the City of Kountze held title to one parcel and the Economic Development Corporation held title to two other parcels, all of which compose the development site.

In response to the second deficiency notice requesting the Economic Development Corporation articles of incorporation and resolutions from the EDC and the city approving the sale. The response states that the Economic
Development Corporation approved the May 24, 2017 transfer of the land and no resolution was necessary. The response did not address the request for a resolution from the city.

In response to the second deficiency notice, the applicant maintains that the deed is unnecessary as the city has control of the economic development corporation. Review of the submitted articles of incorporation for the Economic Development Corporation does not appear to support that conclusion. Staff determined that the City of Kountze did not have control of the entire development site at the time they executed the purchase agreement with the developer or as of the March 1, 2017 application submission deadline.

The appeal asserts that when the application was submitted the applicant believed that all of the property associated with the development site was under the control of the City of Kountze. Keep in mind that we had a title commitment in the application that revealed otherwise. Staff's determination that the city did not have proper control of the site is based on the fact that the conveyance of the land took place after the application acceptance period.

Staff recommends denial of the appeal of termination for application 17297 Kountze Pioneer.
MR. GOODWIN: Thank you.

We need a motion to hear comments.

MR. VASQUEZ: So moved.

MR. GOODWIN: So moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Representative White, I apologize that you've had to wait so long. It's now your turn.

MR. WHITE: Not a problem. We've been waiting a lot this special session.

(General laughter.)

MR. WHITE: Hey, look, thank you very much for having me. We do have a calendar this morning and I will use my old infantry officer briefing techniques, I'll be brief, be bold, and I'll be gone.

But let me tell you, I want to thank you for your work and your service to the State of Texas and to your entire agency. I can remember a couple of summers ago it was pretty hot in East Texas and I called your agency about some support for some seniors in my district, and they responded in a very, very effective way -- you know what I mean by effective.

But on the issue here of Kountze, look, Kountze Crossing.
is a great town, it's a great town in Hardin County, it's a great town in East Texas, they have great folks. Their economic development arm of their city is doing a great job in helping them, the city is just doing a great job in selling their city. They have a championship rodeo guy, Cody Teel, so if you vote against this, you vote against Cody Teel -- no, I'm just kidding.

(General laughter.)

MR. WHITE: They have a championship rodeo guy, Cody Teel that hails from Kountze.

So we're not here in an antagonistic way with your staff, we know they have to do a job, but I'm here just to try to lend some clarity and help out here. I think this is about the third year that Kountze has tried this scenario. I've gotten calls from a lot of stakeholders in that town, the school district, for instance, that is supportive of this, and usually people get a little antsy about these types of developments.

But here's the deal, because I talked with Kountze, the City of Kountze, I know what it means when I sit down in their city council chambers and I talk with I guess they call their economic department, whatever they call it. It is an arm of the city, it is funded by the city. Yes, they have people that work with that, it is funded by the city, so it is all one contained scenario.
So I would just ask you, as much as it is appropriate, to understand the resource capabilities of small East Texas towns. We don't tend to have teams of lawyers like other folks to sit around and do a whole lot of stuff, but I can rest assure you that when James White is talking to the City of Kountze, when he's talking to their Economic Development Corp, I'm talking to the City of Kountze. When the Economic Development Corp says they have a piece of land, I'm sitting down and I'm talking with the city manager and I'm talking with the mayor.

But with that said, I would just like to request of you to listen to the city manager, I know you will, and whatever consideration that you can give on this application or something in the near future, I just implore you just to do that.

And that's all I have to say, and again, thank you for your service, and I'm gone.

MR. GOODWIN: Thank you. Any questions for the representative?

(No response.)

MS. PALMER: Claire Palmer. I'm representing the developer.

First of all, I want you to notice that we have with us the city manager of the City of Kountze, Roderick Hutto, president of the Economic Development Corp, Barry
Mitchael, and their outside counsel is also here to answer any questions about the relationships between the City of Kountze and their Economic Development Corporation.

I want to start with the fact that initially when we went to the City of Kountze to talk about buying this land and doing this development, we wanted tract A, and they asked if we would go ahead and take tracts B and C and take the whole 9.56 area. We really only needed tract A for the development, and that's the tract that we did a lot of research on, but because the city wanted us to take all three tracts, we ended up signing a contract to do that and that's what the price was set on.

The contract was with the City of Kountze and the developer and the city passed a resolution authorizing the sale of that land in November of 2016. We ran the title work and the title work came back showing that the EDC owned tracts B and C. When we told the City of Kountze that, they said, That is impossible, we bought that land, we operate that land, there's something wrong with this title work. And that's where we stood. They were absolutely 100 percent good faith positive that they owned the entire tract, and that's what we all believed.

And the first title commitment actually came back showing that they did, the second title commitment at application came back showing they didn't. We went to the
title company, and this was all the way into May at this point -- we went to the title company before the RFAD was filed and said, What is the deal here? The city is positive they own the land but you're showing that the EDC owns the land. We finally, finally run through the title and it does come back that the Economic Development Corporation owns tract B and C. That was the first time we knew that.

The fact of the matter is that the mayor appoints the EDC board, the EDC and the city operate together. The mayor can sign on behalf of the EDC, the mayor is the one who executed the contract between the buyer and the seller, the mayor could sign on behalf of the EDC. The fact that it doesn't say EDC at the top, in our opinion, is just because they truly believe they own the land. Last night, the city mayor, they've gone back through all their minutes forever and he found, in fact, the minutes from 2012, July 10, 2012, showing that the EDC was conveying this whole tract of land to the city. They did a warranty deed, he brought me the warranty deed, and the warranty deed they found out later was wrong. But the city has been operating this way, they operate trade days on the land, and they have had complete control over it.

So we feel like we operated in good faith and that we have done everything we could and should to try to
operate with the correct seller. We've corrected the error now and the EDC immediately conveyed the land, and it's all been a matter of really and truly good faith. And the fact is the people who filed the RFAD had this land under contract last year and this was never an issue, they just didn't get an award.

And finally, we're not trying to take someone else's award, we're trying to stay on the waiting list, we're trying to stay alive in this deal. We're second in this rural region as it stands right now, and all we want is a chance to stay alive in hopes that we can get an award for this city who's been trying for the last three years and is dying to get a tax credit development.

If you have any questions, we have the whole development team, the city officers and the city's attorney.

MR. GOODWIN: Are there any questions by any Board members?

(No response.)

MR. GOODWIN: I don't believe there are. Marni, would you like to add anything at the end?

MS. HOLLOWAY: Staff has nothing additional at this point.

MR. GOODWIN: Do I hear a motion?
MS. RESÉNDIZ: So moved.

MR. GOODWIN: And that is to uphold staff's recommendation that the appeal be denied?

Do I hear a second?

MR. VASQUEZ: Before we vote?

MR. GOODWIN: We'll get discussion before we vote, but we've got a motion to uphold staff's recommendation, we need a second.

(No response.)

MR. GOODWIN: Not hearing a second, it dies. Do I hear another motion?

MR. VASQUEZ: Could I make a motion to accept staff recommendation and give credit -- approve the request of the applicant?

MR. GOODWIN: Grant approval.

MR. VASQUEZ: Of the appeal.

MR. GOODWIN: Of the appeal. Do I hear a second to that motion?

MR. BRADEN: Second.

MR. GOODWIN: So we have a motion and a second. Now do we have any discussion or questions?

MS. MYRICK: Good morning. I'm Lara Myrick and I'm with Becker Consulting and I've been working with the City of Kountze as well.

I think the one thing I would like to
emphasize, as you are thinking about all that you've heard this morning, is that, yes, we have A, B and C, and yes, it did come back that B and C did belong to the EDC, but we are developing on tract A which from the beginning tract A has had the title commitment and everything come back that it is the City of Kountze. And even if we were to move forward and to move forward to underwriting, I have a feeling -- and I don't want to speak for Mr. Brent because I think that he's here -- but I think that when it comes time for underwriting they would have us re-plat that where it is only tract A that they would be looking at and that we would put under the LURA because we wouldn't need that extra land and we don't want to do amendments later.

So I think I would want to emphasize that tract A which we're developing has always been under the control of the City of Kountze.

Thank you very much.

MR. GOODWIN: Thank you.

Any other questions or discussion?

(No response.)

MR. GOODWIN: I hear a motion and a second.

All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed no.
MR. GOODWIN: Okay. Motion passes.

MS. HOLLOWAY: Next 17305. This application is for Payton Senior development.

Staff has determined that the application does not qualify for three tie breaker items requested under the Opportunity Index because the application did not include evidence that the development site is located less than half a mile on an accessible route from a public park with an accessible playground, evidence that the development site is located less than half a mile on an accessible route from public transportation, and evidence that the development site is within two miles of a museum.

A scoring notice was issued to the applicant identifying tie breakers that the applicant had elected but did not qualify to receive. The applicant filed an appeal which the executive director has denied.

So originally, staff issued an administrative deficiency notice to the applicant requesting evidence to support those tie breaker items. After reviewing the response, the Department determined that not only is the playground at Bacon Ranch Park not accessible as there is no path that leads to the playground, Bacon Ranch Park is not actually a public park but is, as an email from the City of Killeen states, a privately owned park open to the

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The accessible route to public transportation was not proven as the applicant cannot promise to complete a route on land they do not own or control.

Finally, the Fort Hood November 5 Memorial does not meet the standard of a museum because neither the City of Killeen nor Killeen Volunteers has a primary purpose of the acquisition, conservation, study, exhibition and educational interpretation of objects having scientific, historical or artistic value.

The applicant was issued a scoring notice on June 1 which withheld those three tie breakers. The applicant appealed the scoring determination on June 7, and on June 12 the executive director granted the appeal for two of the tie breakers, accepting the information provided by the applicant, and denied the appeal for the other one.

In the meantime, on June 1 of 2017, the Department received three RFADs on this application which included information that was not previously known by staff and was not addressed in the first administrative deficiency or the appeal. Once staff received the appeal response from the applicant, it was determined that the issues covered in the RFADs were not resolved and staff issued a notice of administrative deficiency based on that
new information.

The deficiency requested that the applicant provide evidence in the form of certification from the city that Bacon Ranch Park is a public park. In response, the applicant submitted an email from the Killeen city manager stating that: Per our previous conversation, Bacon Ranch Park is a privately owned park open to the public. The notice requested that the applicant explain how the route to the playground meets accessibility standards when there appears to be no accessible path leading to the playground. This question was asked again because of a photograph submitted with one of the RFADs showing no accessible path to that playground. That photograph was in contrast to the photograph included in the application which did not show the path at all.

The applicant claimed in their response that the language of the QAP does not require an accessible route to the playground itself, the QAP only states that the site is less than half a mile on an accessible route from a park with an accessible playground.

One of the RFADs pointed out that there was no indication in the site plan that there would be access to the park through a gate in the fence, however, a letter from an accessibility specialist stated that he had confirmed that the site fencing will include a pedestrian
gate to allow a sidewalk connection point. The response did not provide sufficient evidence to staff that the development site is less than half a mile on an accessible route from a public park with an accessible playground.

One of the RFADs included photographs showing that the existing bus stop consists of a pole in the ground next to a grassy drainage ditch with no concrete sidewalk. In their response, the applicant stated: The scoring appeal for this application provided a letter from a certified accessibility specialist, also attached here, that states he reviewed the location of the development site, the site plan and the route to the transit stop and he confirmed that the route from the site to the bus stop meets 2010 ADA accessibility standards. It appears that the accessibility specialist reviewed the plan to extend the sidewalk over the drainage well to the bus stop. That plan was included in the application. Again, this is not land that the applicant owns or controls. Staff determined that the accessible route to public transportation was not proven.

And then the applicant has asserted that there was no change in circumstances between the time of the first scoring notice and the RFAD determination. This is not correct because the RFAD brought new material information about the application to staff's attention.
(Phone ringing; general laughter.)

MR. GOODWIN: Can you hum a few bars of that for me?

MS. HOLLOWAY: There are a lot of things I can do but singing is not one of them.

Let me start over -- not all the way. The applicant's assertion that there was no change in circumstances between the time of the first scoring notice and the RFAD determination is not correct because the RFADs brought new material information about the application to staff's attention that had not been considered when the first scoring notice was issued.

Staff recommends denial of the scoring appeal for application 17305 Payton Senior.

MR. GOODWIN: Thank you, Marni.

Do I hear a motion to hear comments regarding staff's recommendation?

MR. VASQUEZ: So moved.

MR. GOODWIN: So moved. Second?

MS. THOMASON: Second.

MR. GOODWIN: Seconded. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: So now we're going to hear from those people in order.

MS. STEPHENS: I represent the developer.
MR. GOODWIN: And you're against staff's recommendation?

MS. STEPHENS: I would be against staff's recommendation.

MR. GOODWIN: Okay. That's what I kind of figured.

MS. STEPHENS: Good morning. I'm Lisa Stephens. I do represent the developer for Payton Senior. And I just want to first say this has been a long process and these tie breakers are new -- we've talked about that at a lot of the Board meetings -- and we all know next year what staff is looking for and how to interpret it and we have a much better idea going into next year where we're going to be with these tie breaker items. But as we go back and we rewind the clock a little bit and we look at where we were as an applicant in February, what we had to rely on was the written words that either were or were not in the QAP, and we had to make determinations on our sites, not based on all the consideration and discussion and decisions that have been made over the course of the last three months, but what was physically printed in the QAP.

So there are three items at question here: the park, the bus and the museum. Rather than having three individuals come up and speak on each of those one at a
time, I'm going to address all three of them. I am going to try to be very timely, but I do have two other folks who have donated a few minutes if necessary to cover the three items, hopefully concisely.

And I'm going to back just a few more meetings. Mr. Chairman, a couple of months ago you asked at a Board meeting after hearing some appeals, and it was in particular about a bus stop, and why an applicant would submit an application with a bus stop that didn't have Sunday service. And your question specifically was: If our rule requires seven day a week service, why would submit a bus stop that didn't have seven day a week service.

The issue is what are the words in the application -- in the QAP. The words in the QAP says you must have a bus stop with weekend service, it does not say you must have a bus stop with seven day a week service. Those are two different things. And so as you consider where we were as an applicant going into February, we have to read what is printed. What was printed was weekend service. So I just want to give you that as an example as I go through these three points to keep in mind that sometimes the intent or what we wanted might not have been clear in what was printed, and all we had to go on was what was actually printed.
Someone may say, well, there was an FAQ. FAQs are not rule, they are not QAP, and they have been overturned by the Board. So as an applicant, again, we are focused on what does the QAP specifically say and what does it not say. And with that, I'll address the three items.

The first item I'm going to address is actually the museum, and what the QAP says is that you must be within two miles of a government sponsored or nonprofit permanent institution open to the public, and it is not an ancillary part of an organization whose primary purpose is other than acquisition, conservation, study, exhibition and educational interpretation, including objects of scientific, historical or artistic value.

We have been told that our museum is not a museum because the City of Killeen does not meet this primary purpose, however, the QAP specifically says that the museum needs to be government or municipal sponsored. I know of no city that has a primary purpose that meets this definition in the QAP. So we have a city sponsored exhibit that provides information of historical and educational value that is permanent, that is open to the public, that is within two miles, and meets all of the criteria that were written in the QAP at the time the QAP was published. If I were to take my son there, he would
learn about the events that happened at Fort Hood. He can read the plaques, he can see the sculptures, he can see the artwork, he can learn something at that exhibit that is free and open to the public and meets all of the criteria.

There is a letter in our appeal in your Board book from the City of Killeen that confirms each one of these items and why we meet each of the items that were printed in the QAP.

The second item is the bus stop, and the application allowed for us to provide extensions and there was language about it being within the developer's control. We are talking about a right of way on a public road that already has an existing sidewalk and ten feet away across the drainage area there's a sign for the bus stop. So the sidewalk ends here, you've got a drainage area, and the bus stop sign is here. Our sidewalk does not connect to the sign. So we approached the transportation provider and said, Can we, do you want us to, would you want us to extend the sidewalk? Yes, absolutely, that would be great, we would love for you to do that. Requires a permit, not unlike any other permit we would have to pull for our development, but there is no physical, legal way for us to have control of a right of way, it's a right of way with a sidewalk already in it.
We provided information in our application, a plan from our engineer, a cost analysis, a letter from our accessibility consultant, not in our application, the accessibility came after your ruling that you'd like to see an accessibility consultant certification, but all the materials but for control were provided within our application. The issue about control is I can't control a right of way, I can't get an easement, I can't own it, I can't get a contract for it. I just need to extend a sidewalk that's already existing and I need to pull a permit to do that.

The last item is the park, and again, Marni read the language from the QAP earlier, but it says the site must be located within a certain distance on an accessible route to the park with an accessible playground. So accessible route to the park with an accessible playground. It does not say -- again, this is where words are important -- it does not say an accessible route to the park with an accessible route to the playground. So as the applicant, when you're reading this in February and you look at what words are there, what words are used and what words are not used, the interpretation that we had is that we needed an accessible route to the park. Check, done. We needed an accessible playground. Check, done.
We provided not just one but two letters from our accessibility consultant, including one that Marni didn't mention but we provided one we received the final staff scoring on this item that says under 2010, under Texas accessibility standards in 2010 ADA that a surface that is flat, compact and transversable, that you're able to go across it with a wheelchair, meets the guidelines for accessibility. There is not a requirement that you have an accessible route with any specific material. That letter is in your Board book. We had him actually go out and make a physical visit to the site to look at it to confirm that, yes, once again, we have an accessible route to the park and we have an accessible playground.

So I believe we have met the language as it was written in the QAP when we read it in February, understanding we did not have the benefit of all of the interpretations that have followed since that date. So with that, I would ask that you would grant all three of the tie breaker points.

MR. GOODWIN: Thank you for keeping it brief. Is there anyone in favor of staff's recommendation that wants to speak? Is there anyone that wants to add anything new to what was already spoken?

MALE SPEAKER: Sorry, I misunderstood what you said. I'm in favor of staff's recommendation.
MR. GOODWIN: You're in favor of staff's recommendation.

MR. GARRETT: Yes, sir. I'm Kelly Garrett, the other developer in Killeen that is recommended for award today.

Excuse me, the sinuses are bothering me. I'm from Northeast Texas and I come to Austin and I can hardly talk. But I'm going to be brief also and I'm going to give a little time.

First of all, the bus stop, we proposed another development in Killeen, we claimed the ADA amenity and transportation, that whole thing, and our denial of our bus stop was the accessible route to the public transportation remains unproven as the HOP Transportation Service does not provide on Sundays, therefore, it does not meet the requirement of Sundays being on weekends. So that's what we were denied our bus for, not the accessibility because we are accessible. And we had that in our RFAD on this deal, and an RFAD's purpose is to bring new information, that's the purpose of an RFAD, so that's what's done in it.

The right of way she's speaking of belongs to TxDOT, and they have no permit to build a bus stop and that's who that would go through, it would not go through the service provider of the bus line, it goes through
TxDOT, and that's a whole different process. So they have no accessible bus stop. If we were granted the bus service, then we would also get our bus service back, but yet they still don't have a bus stop, our site has a bus stop.

The other issue I would like to address is the memorial, and it's the Fort Hood Memorial, and I'm going to quote Mr. Irvine here in his denial of this. "The memorial is not an institution as a history museum would be. The City of Killeen did not build a museum to honor those affected by the disaster at Fort Hood, rather, the city built a memorial." And that's the name of it, it's the Fort Hood Memorial, it's not the Fort Hood Museum. I can quote the museum information out of the QAP, as Marni said, but she's already read it, and so did Ms. Stephens, she already read that to you, so I don't need to read it to you again.

MR. GOODWIN: Thank you.

MR. GARRETT: When you read that, it's not a museum. And as I say, the name of this is the Fort Hood Memorial, it's not the Fort Hood Museum. It doesn't change, it never will change. It is a great amenity but it is not a museum. And I'm going to yield the rest of my time to my cohort, Mr. Zach Krochtengel.

MR. KROCHTENGEL: Hello. My name is Zachary
Krochtengel and I'm a representative for the developer of Westwind at Killeen. Kelly already spoke to the museum and the bus stop, I would like to speak to the public park.

I'd first like to touch on the ADA accessibility of the playground. The applicant contends that the QAP does not require there to be an accessible path to the accessible playground, however, the applicant submitted a report from an accessibility specialist which states: Texas accessibility standards are used to comply with 2010 ADA in Texas and require an accessible route to a playing area. Even though the applicant misinterpreted the QAP requirements, the QAP requires ADA accessibility, and ADA requires the accessible path to the playground.

Their accessibility specialist also states: The ground service from the sidewalk to the playground is acceptable as an accessible path. However, in reading the definition of a stable surface, it is a firm surface, resists deformation by either indentation or particles moving on its surface. I fail to see how grass and dirt would resist deformation after rainfall or would remain safe for passage when wet.

We believe this park is not ADA accessible, but we also believe that the applicant materially and intentionally misrepresented their amenity as a public
park and did so in a manner that reflects poorly on the
development community and the way we treat the cities who
welcome us to provide affordable housing.

I'm going to go over some of the information
that was submitted in our RFAD on June 1. It has been
included in previous Board materials. Mr. Eccles has some
copies for Board members if that's acceptable to you, Mr.
Goodwin.

MR. GOODWIN: It is.

MR. KROCHTENGEL: At Killeen City Council
workshop on February 21, the city declined to hear --

MR. ECCLES: Let me just say that it was
represented that this material was included in a previous
Board book, two Board books ago, and I'll look over to
Marni and ask if that's her understanding as well after
reviewing this material.

MS. HOLLOWAY: This does appear to be the RFAD
that was originally submitted to us and it was included
with the RFAD report item.

MR. GOODWIN: Thank you.

We won't dock you on time for that.

MR. KROCHTENGEL: At a Killeen City Council
workshop on February 21, the city declined to hear the
applicant's proposed donation of the site where the
playground is now located. Six days later, the applicant
purchased the vacant land through Saigebrook Land Holdings, LLC, an entity owned by co-developer Lisa Stephens. The following day, the land was donated to Central Texas Youth Services, a nonprofit based in Belton, Texas. At some point in that time frame, a playground was built on the property, less than 48 hours before the application deadline.

We learned about this park when the applications were posed to the TDHCA site, and we contacted the City for Killeen with questions. The city was unaware that any playground equipment had been installed on the site, no permits had been pulled on the property and the city had never given permission for a private park to be placed on that location on a residential lot. Approximately three months after the application deadline, the city has still not approved the park.

I would like to read excerpts from an email from Mr. McElwain, the city planner, on March 26 -- no -- May 26. "Bacon Ranch Park is not a public park, i.e., it is not a City of Killeen park that is maintained by public funds and operated by city employees. The park is private and not allowed by right in the R-1 single family residential district. No permits were pulled for this property. Playground equipment does not require a permit,
however, a sign has been placed on the property which does require a permit. If the city council allows the park to remain on site, it will be necessary to have the sign properly permitted. All code enforcement action has been placed into a suspense category pending the outcome of the city council decision on June 13. If the applicant is unsuccessful they have been advised by staff the park will no longer be allowed to exist at this location. The City of Killeen has not given permission for a private park at this location. The property owner is petitioning the city council for approval of a conditional use permit to allow the private park to continue to operate on the property."

I've provided in the handout R-1 zoning permitted uses as well.

At the time of application, this park was not permitted use and it was an illegal structure. The reason we're so troubled by the lack of permitting and zoning is we feel it is a violation of the guidelines each developer agrees to follow throughout the application process. These guidelines are there to ensure the development community acts with a level of professionalism and helps keep the industry as a whole respectable.

The Multifamily Rules specifically point to developers making false or misleading representations to the Department with regard to an application as a
punishable offense. Ms. Lash and Ms. Stephens are both
successful and sophisticated developers, and I believe
that the submission of a playground as a public park that
any experienced developer knew or should have known was
not zoned for that use is a misrepresentation and a last
ditch attempt to manufacture an amenity in a haphazard
manner that does not portray affordable housing in a
positive light.

A further concern we have with classifying the
park as an amenity is that the nonprofit that received the
donation of the playground was told by the developer it
had to operate the park for at least one year minimum. If
the nonprofit chooses to use the land for other purposes
after that year is up, there's a strong a likelihood that
residents of the proposed development would never use the
park.

This following email exchange I'd like to read
to you is from the executive director and it's also
included in the RFAD from June 1. I wrote to the
executive director after a phone call I had with her
discussing the origins of the park. I wrote: "Thank you
for speaking with me about Bacon Ranch Park. I wanted to
confirm that the representatives of the developer told you
the only requirement was to keep the land operating as a
park for a minimum of one year." The executive director
of the charity responded: "You are very welcome. We are willing to openly communicate with anyone who has any questions regarding Bacon Ranch Park. When I inquired about the park remaining a park indefinitely or for a required length of time, I was informed that the minimum requirement would be for one year. After that, we could allow it to remain a park or choose to use it for other agency purposes."

This reeks of gamesmanship and we don't think it's appropriate to award a point for a park that was created out of thin air just before the application deadline that violated city zoning and permitting requirements and has no assurance of longevity.

I would like to close by saying that I know that staff has a tremendous workload and responsibility. It is an ever growing job for them to review the applications and evaluate the legitimate application materials submitted to them. When this park was submitted by the applicant with photos to staff in the initial application, staff accepted this amenity because they cannot possibly investigate every claim made by every developer. However, I believe these actions are an abuse of the application process and should not be tolerated by staff or this Board. To allow them to go unchecked would send a signal to the rest of the development community.
that it is acceptable to submit materials that knowingly misrepresent facts because there are no consequences.

I ask the Board not only to support staff's recommendation to deny the three amenities but also to have staff evaluate the actions of the developer as it relates to misrepresentation and the suitability of their participation in this program through this cycle and going forward. Thank you.

MR. GOODWIN: Any questions?

MR. BRADEN: I'm going to note that there were a number of allegations made about applicant ineligibility. That is not what is before this Board. All that is before this Board is an appeal regarding Payton Senior, so that is all that is coming before the Board for determination.

MR. GOODWIN: Ms. Stephens.

MS. STEPHENS: If I may. I understand, Beau, your point that the items before the Board are the park, the bus stop and the museum. I would like just to address a few of the points that were made, if I may.

MR. GOODWIN: I think that's out of order. That's not up for debate in this discussion. So we're going to address the appeal. Any of the allegations that are made beyond the appeal are not going to be open for discussion.
MS. STEPHENS: Any questions for me regarding any of that?

MR. GOODWIN: That's what I just asked, does anybody have any questions, and no one asked any questions, so I don't think there are. Thank you.

MS. STEPHENS: Thank you.

MR. GOODWIN: Marni, anything that you'd like to add?

MS. HOLLOWAY: Staff has nothing further if there are no questions from the Board.

MR. GOODWIN: Okay. Do I hear a motion from the Board?

MR. BRADEN: I'll make a motion that the scoring appeal for application 17305 be denied.

MR. GOODWIN: I have a motion. Do I have a second?

MS. THOMASON: I'll second.

MR. GOODWIN: Motion and second. Any questions?

MR. VASQUEZ: Just to clarify.

MR. GOODWIN: This is to uphold staff's recommendation to deny the appeal.

All in favor say aye.

(A chorus of ayes.)

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

MR. GOODWIN: Motion passes.

MS. HOLLOWAY: Our next appeal is application number 17327, this is Legacy Trails of Lindale.

Staff determined that the application does not qualify for two tie breaker items under the Opportunity Index because the development spans two census tracts and one of the census tracts does not have a percentage of adults with an associate's degree that meets the threshold and the library is a private nonprofit facility.

A scoring notice was provided to the applicant who timely filed an appeal. Initially, the executive director denied the appeal regarding the associate's degree item, then later reversed his conclusion based upon receipt of further information that bears on the definition of development site. An RFAD requested that staff review the application to determine whether it qualified for that tie breaker on the associate's degree.

Staff had initially determined that the development site, including the easement required for access to the site, spans two census tracts and one of those census tracts does not have the percentage of adults with associate's degrees that meet the threshold for scoring. While reviewing another application with a proposed development site in Lindale, staff discovered
that according to their website, the Lillian Russell Memorial Library is privately operated by a nonprofit organization and is not a public library. A revised scoring notice was issued to the applicant, including those denied items, and the applicant again appealed staff's decision.

In their appeal the applicant submitted evidence that pursuant to a letter from the City of Lindale, portions of the library funding did come from the city so that met our requirements and that appeal was granted.

And according to the site design and feasibility report for this application, the census tract boundary runs along a straight line where the development site ends and the ingress/egress easement begins. The appeal asserts that the easement is not a part of the development site, and therefore, the development site is entirely within the census tract that qualifies for the tie breaker. It separates ownership of the development site from the easement that is required to access the development site and states that the applicant is being granted an easement by a third party across a section of land that is not part of the development site.

Staff initially determined that because the easement will be described in a LURA, it is part of the
development site. We have since learned that this
question had been previously addressed by the Department,
and while the easement may be identified in the LURA, the
easement itself is not subject to the restrictions in the
LURA that are applicable to the site. So our definition
of development site says: The area, or if a scattered
site, areas, on which the development is proposed and to
be encumbered by a LURA. So the easement would not be
actually encumbered by a LURA because of different
ownership. So although the easement may be described in
the LURA, the definition does not make the easement part
of the development site unless it is to be encumbered by
the LURA. Accordingly, the development site proposed is
entirely within the one census tract identified in the
application and pre-application.

A competitor has raised a question regarding
the census tract entered in the pre-application and the
full application contending that because the proposed
development site is part of a larger parcel, the pre-app
and full app should have included both census tracts, and
therefore, the application is ineligible to receive pre-
application points.

Staff has examined this question several times
and determined that the development site is located in the
census tract that is listed correctly in both the pre-
application and the full application, and consequently, no further action is required regarding this question.

Staff recommends granting the scoring appeal for application 17327, Legacy Trails of Lindale.

MR. GOODWIN: Thank you, Marni.

I need a motion to consider comments.

MR. IRVINE: Before you form that motion, I'd like to just point out that I've already made my determination, and when I screw up, I'm going to admit it and own it, and just wanted, because there's so much at stake, to be completely transparent and put this out for the public and let the Board look at it and come to the right decision.

MR. ECCLES: And when I screw up, I own up to it too because I gave them the advice about development site, and listing in the LURA is not the same as encumbered by the LURA, and so that's the reason for the bizarre posture of this before the Board right now.

MR. GOODWIN: Thank you.

Motion to consider comments?

MR. VASQUEZ: So moved.

MR. GOODWIN: So moved. Second?

MR. BRADEN: Second.

MR. GOODWIN: Second. All in favor say aye.

(A chorus of ayes.)
MR. GOODWIN: So we have a staff recommendation to grant the appeal. Do we have anyone that wants to speak in favor of that or against it? Okay. We'll start against and then we'll go to in favor.

MR. HORTON: Thank you. My name is Adam Horton and I'm with Four Corners Development. We are a developer that has applicants there in Rural Region 4, and today bringing an issue that we feel somewhat of a black and white issue, and the issue is whether their site as submitted with their application would qualify for the associate's degree point.

I brought an exhibit that was in the RFAD that should have been in the Board book last time that outlines their property, and this is taken from their real estate contract, their survey they got, and you can see their project site outlined in red, and then this is the census tract here in blue that goes through the project. And you've got one census tract here and one census tract here, this one qualifies for the associate's degree point and this one doesn't. And I think everybody agrees that that's a good set of facts, you have nineteen acres, census tract divides it, one part qualifies and one part doesn't.

The issue we have is if you look at their pre-application, if you look at their full application, if you
look at the title work submitted for their project, all
their site control indicates the full nineteen acres.
There is nothing in the application or the pre-application
that separates that purchase contract into five acres and
fourteen acres. So when you score a census tract in an
application, if it spans multiple census tracts, you have
to pick the lower scoring census tract, and so as a
result, we think this project did not qualify for the
associate's degree since they were in two census tracts.

We filed the RFAD, and as was mentioned, they
agreed with us initially, and then the developer appealed
and I think the developer in their appeal stated that they
intended to build their development on the west part in
the qualifying census tract and they were going to grant
themselves an easement over the census tract that doesn't
qualify. And I think we understand what they were trying
to do and I think that we can all probably agree had they
done that the proper way before application, that would
have been totally acceptable.

But the issue is they did not do that, there
was no mention at all in the application March 1 that they
had site control for anything less than nineteen acres.
There was no mention of any easement in their application
site control documents, and that's simply because if you
have site control for the entire nineteen acres, you can't
grant yourself an easement. And it was only six weeks
after, April 13 is when they purchased the five acres in
an entity, they purchased the fourteen in another entity,
and they granted an easement.

And so I appreciate the easement discussion
that we've had and I totally agree with the conclusion
that the easement is not subject to the LURA, and that's a
proper conclusion with that set of facts, but the issue is
that's not the set of facts that were submitted March 1
with the application. The facts with the application is
ey they had the full nineteen acres, they had those nineteen
acres at pre-application, and we relied on that
information when we went forward with our application.

So we would ask that you guys not allow that
tie breaker point since at March 1 at application date
they had nineteen acres and nothing until six weeks later
attempted to segregate that into five and fourteen and
grant easement.

MR. GOODWIN: Thank you. Did you sign in, sir?
Someone wanting to speak in favor of staff's
recommendation? Did you want to speak in favor of staff's
recommendation? Is there anyone to speak in favor of
staff's recommendation?

MS. BAST: Good morning. Cynthia Bast
representing the applicant here.

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This has been a challenging round for both the Department and the applicants when time deadlines collide with our human capacity, and that's why we are so grateful that we have Tim and Beau as leaders who will always endeavor to get it right and to make a correction when an error is known.

There is evidence in the application that, yes, there was a nineteen acre tract under control but the intended development site was that five acres wholly within the census tract that is qualified for the points. And of course, as has been said, this is a clear-cut definition. The development site definition refers to land that is encumbered by the LURA. When you have an access easement that is across another census tract, an access easement cannot and should not be encumbered by a LURA. It is an estate that is used for a specific purpose and a beneficiary of an easement cannot extend that use beyond what it has been granted for. So putting rent and income restrictions and all sorts of other restrictions on that land owned by a separate legal entity would not be appropriate.

There are a variety of examples where this has existed in past application rounds and has been meaningful where there has been an access easement that was in a different census tract, and it has affected things like
notification, nearness to ineligible site features, and also points. And so when this came up, that is what I pointed out to the executive team, that this had been considered in years past, that TDHCA staff and legal staff had given guidance on this and had said that is correct, an access easement is not encumbered by a LURA, should not encumbered by a LURA, and therefore, is not included as part of the development site.

So with the appeal now granted by the executive director, procedurally I'm not sure that there's anything even that this Board needs to do in that we don't appeal -- the applicant does not appeal the executive director's decision and a competitor cannot appeal another application. So I think we're in a place where this has been asked and answered, and I appreciate the time.

MR. GOODWIN: What's the answer to that?

MR. IRVINE: I think that the letter makes it clear that this is back before the Board so that if the Board deems it appropriate, you can take whatever action you deem is warranted by the facts. If you've got legal questions about that, then you can certainly consult with counsel.

The map that Mr. Horton provided, I would remind everyone when we bring materials for presentation there are rules that govern that. They need to be
provided to everybody so that everybody can see them and everybody has an opportunity to respond to them. And as I understood your map to be presented, that the site at application, not the easement but the actual development site which would be encumbered by the LURA, spanned the entirety of an area that crossed into both census tracts. Is that accurate?

MR. HORTON: (Speaking from audience.)
Correct.

MR. IRVINE: Would you respond to that?

MS. BAST: I don't have the page of the application in front of me, but the page of the application where it had acreage indicated five acres out of nineteen.

MR. GOODWIN: On page 367, we have a plat in the Board book that shows what I think is being referred to as five acres.

MR. IRVINE: It's the same as his map but it doesn't indicate that the other portion falling into the other census tract is part of the development site.

MR. PALMER: Barry Palmer. I represent the Four Corners Development, and we are in favor of overturning the staff recommendation at this point.

I know staff has looked at this and the first two times looked at it and found the tie breaker point
shouldn't be granted and has since changed their position. We think there's a couple of things. First, the pre-application was for nineteen points in two census tracts.

MR. GOODWIN: You said nineteen points, but you meant nineteen acres.

MR. PALMER: Right, in two census tracts, one of which qualified for the tie breaker, one of which didn't. In the pre-app they only listed one of those census tracts. The application also submits a contract for nineteen acres in just one census tract. You're not allowed to change census tracts from pre-app to application and still get the pre-application points. So our position is that although they only listed one census tract in the pre-app, the nineteen acres was in fact in two census tracts and they should have listed two census tracts, and then at application, if they're going to just one census tract for the five acres, then they should not get the pre-application points.

And also, in looking at the application, the contract in the application is for the full nineteen acres, so I take that to be that's what they're applying for, and it was only after the RFAD that they came back and clarified that they're only planning on developing on five out of that nineteen acres and that they're going to have an easement for access. They buy the whole nineteen

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acres, the five acres in the applicant, the rest in a related entity, and grant themselves easement, but that's really the same as being part of the site.

So either they shouldn't get the pre-app points because they went from two census tracts -- even though they only showed one, they actually went from two census tracts to one -- or they shouldn't get the tie breaker point because the application submitted was for nineteen acres which was in both census tracts. But I don't see how you get both the pre-application points and the tie breaker points.

MR. GOODWIN: Any questions?

MR. ECCLES: Just a quick clarifying point on the rules. Would you agree that the rules contemplate shrinking the site from pre-application to application so long as it is a part of the original development site listed in pre-app?

MR. PALMER: Absolutely. If they had done a pre-app for nineteen acres and then at application time they had gone in with an application for five acres and an easement, that would have been fine, except that they would have been going from two census tracts -- even though they only showed one, the nineteen acres was in two -- down to one census tract for the five acres, so they should lose the pre-app points because of that.
MR. ECCLES: One other clarifying point. Regardless of the verbiage that perhaps should or should not be in the rule, the rule specifies that the development site -- or the census tract number listed at pre-application be the same as the application itself, so it's just talking about the census tract that's listed at pre-application and application needing to be the same, and are they in this case?

MR. PALMER: Well, under that interpretation you can purposely only list one census tract because you get a point for that one. You know that you're in two census tracts but we're not going to list that one because it's not to our benefit and so we just list one even though we're in two, and then we get an extra point. I don't think that that's a good result.

MR. GOODWIN: Different being a good result. Is that what the rule states can be done?

MR. ECCLES: The rule states, 11.9(e)(4)(F): The development site at application is at least in part the development site at pre-application, and the census tract number listed at pre-application is the same at application.

MR. HORTON: Adam Horton again. I would just like to make one more point to kind of reiterate. I agree with what they've said about the easement and I agree with
the ruling in Tim's appeal, but the issue is none of those facts. Going to the five acres and having an easement, none of those facts were included in the application, that only happened six weeks after the application. And I appreciate the fact that their site design, their architect drawing that had the site plan referenced the five acres, but again, you had a contract for nineteen acres, you had title work for nineteen acres, you had no way to know that that seller would even sell you only the five acres out of nineteen and that's the issue.

So I think we all agree with all the facts. The question is what site control did they have at application, should that be the full nineteen or should that be the five.

MR. GOODWIN: Thank you.

Any other comments?

MS. BAST: Thank you, Mr. Goodwin.

I did find the page in the application. Just to clarify, at the time of pre-application, there were nineteen acres under control. It was intended that five of those acres be this development site and this census tract be the development site, and that the other fourteen acres be otherwise utilized and that there be an access easement. There is a page in the application that clarifies that.
The pre-application, you submit your site control, there's not a lot of detail there, but as Mr. Eccles said, you can reduce the site, the site was reduced. In the application it was very clear it was five acres out of nineteen. That's how the feasibility was run, that's how the site plan was shown with the access easement, it was always clear and I believe compliant with the rules.

Thank you.

MS. RICKENBACKER: Good morning. Donna Rickenbacker with Marque.

I just want to further clarify that at pre-application there was nineteen acres but at no time, from pre-app to full app, was the development site inside any other than the census tract that we recognized at pre-app and into full app. What happened between pre-app and full app and what is identified in our feasibility report, in our survey, and all that was submitted at the time of application that the change that was made was identifying where the access easement was going to be located across the balance of the nineteen acres that wasn't otherwise made part of the development site.

So please, I just want to make sure that everybody understands the development site itself had always been, from pre-app to full application, in one
census tract and contained within that five acres.

Thank you.

MR. GOODWIN: Thank you.

MR. GARRETT: My name is Chaz Garrett, and I'm with LKC Development, I'm the developer of this site.

I would like to point out in the application -- the challenger has said several times that it was never identified -- on page 94 of our application, which is site information part 3, it says site control, and it lists the nineteen acres, site plan 5.3. And it says: Please provide an explanation of any discrepancies in the site acreage below. We wrote: Development site is 5.33 acres out of a 19.215 acre tract. Our site plan also reflects that. And I just wanted to clarify that. They keep saying it was never stated in the application and it actually is right there on that page.

Thank you very much.

MR. GOODWIN: Thank you.

Any other comments?

MR. PALMER: Barry Palmer again. I guess this is a new one on me, this concept of having an application for nineteen acres but our development site being five acres. I mean, I've always thought that you applied for what your development site was, not that you submit an application showing nineteen acres but call your

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development site five. If the development site was five, they should have submitted a contract for five. Granted, you can change it from the pre-app from nineteen, but once you get to the application, you're supposed to be applying on your development site.

MR. GOODWIN: Thank you.

Any other comments?

MS. HOLIDAY: My name is Kim Holiday and I am also with the developer, Four Corners. And one additional piece of information that has not been mentioned was that the applicant, when they decided that they needed to go from nineteen acres to the five acres, did a resubmission, a density notification. So clearly that says to us, as a developer who makes a decision based on pre-application as to whether or not we want to move forward, that says that they clearly had an intent to use the nineteen acres and when they went to the five acres they even submitted a new notification for a density change going from a larger acreage to a smaller piece.

MR. GOODWIN: Thank you.

MR. GARRETT: Chaz Garrett, again. I don't know what information she's speaking of. We never requested any density change or anything like that. When I identified this site when we were looking for sites, I noted that the census tract bisected
that tract and it has been our intention since day one of
finding this site that we would put the development site
on one side and then allow the other part of the
development to be developed completely independent by a
completely different group of people.

Thank you very much.

MR. GOODWIN: Thank you.

Marni, did you have anything you wanted to add?

MS. HOLLOWAY: No.

MR. GOODWIN: No other comments. Do I hear a
motion?

MR. VASQUEZ: Mr. Chairman, I'd like to make a
motion to approve staff's recommendation.

MR. GOODWIN: Do I hear a second?

MS. THOMASON: Second.

MR. GOODWIN: I have a motion and a second.

Any discussion?

MR. ECCLES: Just as a clarification, is this a
motion to accept staff's most recent recommendation,
including the executive director's last letter on this
which would not reduce the two points?

MR. IRVINE: Blessing my resolution of this
matter as set forth in my letter.

MR. GOODWIN: Isn't that what you meant to say,
Leo?
MR. VASQUEZ: That's what I meant to say.

MS. THOMASON: I knew that.

(General laughter.)

MR. GOODWIN: Is that what you meant to second?

MS. THOMASON: Yes.

MR. GOODWIN: We have a motion and a second.

Any discussion on the clarified motion and second?

(No response.)

MR. GOODWIN: If not, all in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: Motion passes.

I'm going to take the privilege, Marni, of allowing us a ten-minute restroom break, and we will reconvene in ten minutes.

(Whereupon, at 10:55 a.m., a brief recess was taken.)

MR. GOODWIN: I call the meeting back to order, and we will move, Marni, to?

MS. HOLLOWAY: Continuing with the appeals, the applicant for application number 17331, Westwind of Killeen, wishes to withdraw their appeal.

MR. GOODWIN: Okay. So we're moving to 17388, West Pecan Village?
MS. HOLLOWAY: Yes, and 17390. These two applications were submitted by the same applicant and the appeals are on largely identical grounds. With counsel's agreement, I suggest that we consider them together.

For application 17388, West Pecan Village, staff has determined that the application does not qualify for four tie breaker selections under Opportunity Index, as the applicant did not provide sufficient evidence of an accessible route of less than half a mile to a public park, an accessible route of less than half a mile to public transportation, a crime rate that is specific to the census tract and meets the requirements, and a museum. A scoring notice was issued which the applicant appealed and the executive director denied the appeal.

An RFAD requested that staff review the application for the items mentioned above. The applicant was issued an administrative deficiency notice requesting they provide evidence to support their selections. In their response, as in the appeal, the applicant asserts that public transit must be less than half a mile as the crow flies from the site. The response states that every reference to the measurement of distance indicates measuring boundary to boundary unless otherwise noted. In this case the measurement is otherwise noted. The distance from transit must be less than one-half mile on
an accessible route. This is consistent with the Board's decision from the last meeting. The route to public transportation indicated in the application is approximately 1.8 miles long, more than three times the allowed distance.

This same argument is applied to the playground item where a measurement to the boundary of the park is just under one-half mile but the playground approximately a quarter mile further. The appeal to the executive director regarding this item includes an observation that staff was not questioning the length of the accessible route prior to June 1, and this is largely true. By necessity, our review process relies heavily on applicant representations and certifications. If an applicant tells us that the development site is located less than half a mile on an accessible route from public transportation, we will likely rely on their statement and the certification.

In fact, the owner certification in the applicant's application states in part that they expressly represent, warrant and certify that all information contained in this certification and in the application, including any and all supplements, additions, clarifications or other materials or information submitted to the Department, in connection therewith as required or deemed necessary by the materials governing the
Multifamily funding programs, are true and correct and the applicant has undergone sufficient investigation to affirm the validity of the statements made.

We rely on that certification as we are reviewing. We are not equipped to go through every single application and check every single item. We rely on the applicants, when they tell us something, we're likely going to believe it.

When more than 40 RFADs were received on June 1, many of them included evidence that routes were either not accessible or exceeded the half mile length. Those RFADs resulted in many of the appeals that we're dealing with today. So that's what happened at June 1.

Regarding property crime, the appeal of the initial scoring notice provided an explanation of the projected trend of the census tract included in the application which is based on an assumption that as crime decreases in the city of McAllen, it will decrease at the same rate in the subject census tract. The later appeal to the executive director includes entirely new data from that submitted in the application. As such, it does not provide clarification but is rather a change to the application, and thus, staff has not considered it.

And then regarding the museum, the Department has determined that it is a reasonable expectation that
since this is a college campus, amenities on campus would be close to each other or even linked in some way. However, review of the library web page yielded an FAQ with the following question and answer: When is the library art gallery open? The response was: The library art gallery is open whenever the library is open. It is clear from the letters included in the response that the gallery is an asset to the community, however, the fact that the art gallery can only be accessed if the library is open indicates that the gallery is an ancillary part of the library and not an independent institution.

Staff recommends denial of the scoring appeal for application 17388 West Pecan Village.

MR. GOODWIN: We need a motion to hear comments regarding this staff recommendation.

MR. VASQUEZ: So moved.

MR. GOODWIN: Moved. Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Moved and seconded. All in favor?

(A chorus of ayes.)

MR. GOODWIN: We will hear comments. And I would point out to try to keep those comments brief and let's not have people come up and say the same thing over and over and over again.
And before comments, Michael has a letter he wants to read from a state representative.

MR. LYTTLE: Thank you, Mr. Chairman. This is addressed to the Board. It reads:

"I would like to express my concern about the status of the application for West Pecan Village referenced for the above location proposed in McAllen, Texas. The McAllen Housing Authority application possesses exemplary merit and I'm a proud supporter of this development.

"West Pecan Village harbors exemplary schools in Sharyland ISD. It is within one mile of South Texas College library art gallery, which is a museum by definition and is not ancillary to the college's library. Its property crime rate is well below the 26 per 1,000, as evidenced by the McAllen Police Department statistics. McAllen's accessibility service is unmatched in the Valley, offering paratransit services and ADA accessible routes citywide.

"The 9 percent HTC program is of paramount importance to my district and constituents in the Rio Grande Valley to ensure that we have affordable housing options in the region.

"I kindly request that as you hear presentation for West Pecan Village that today you will take into
consideration the fact that it has been consistently at
the top of all new construction applications in Region 11
up until this appeal process. In my opinion, the high
opportunity areas of this site are unmatched in Region 11,
and to that end, this application is deserving of every
menu item they seek.

"If you have any questions regarding this
matter, please feel free to contact me at your
convenience.

"Respectfully, Representative R.D. Bobby
Guerra, House District 41."

MR. GOODWIN: Thank you.

MR. CRUZ: Good morning. I'm Ronnie Cruz, the
chairman of the Housing Authority of McAllen, and I'd like
to read two letters in reference to some of the appeals.

This is addressed to Mr. Tim Irvine, Executive
Director from Ms. Shirley Reed, she's the president of
South Texas College, where the museum is.

"Dear Mr. Irvine,

"On behalf of South Texas College, I would like
to take this opportunity to share with you the
distinguishing characteristics of South Texas College
Library Art Gallery. The art gallery serves many
functions and features of a museum, in particular with the
South Texas College Library Art Gallery. One, owns,
maintains and curates a permanent collection of artwork;
two, is open to the public; three, exhibits artistic works
from both student and professional, local, regional,
national and international artists on a rotating basis;
four, exhibits objects and photograph of historical and
cultural significance and interest; five, provides
educational artist's lectures and events; six, provides
art demonstrations; seven, maintains membership in the
American Alliance of Museums and the Texas Association of
Museums.

"Although there has been some confusion
surrounding this issue, please accept this letter as a
means of clarifying the characterizations and functions of
the South Texas College Library Art Gallery. If there any
questions, please contact me."

Signed: Ms. Shirley Reed, President, South
Texas College.

The second letter is addressing the
accessibility of West Pecan Village to the site from our
site, addressed to Mr. Goodwin:

"Please be advised that the route from the
proposed apartment route to the Summer Breeze Park has
been examined and the route of travel along the west side
or North Bentsen Road, meets 2010 ADA accessibility
standards. The playground inside the park is also ADA
accessible.

"If you have any questions, please contact me."

Signed: Ms. Michelle Leftwich, Assistant City Manager, City of McAllen.

Thank you.

MR. GOODWIN: Thank you.

MS. BAST: Good morning. Cynthia Bast, representing the applicant in support of granting the appeal.

I've said this at the podium before, one of the things that I have appreciated working with Tim over the years is that when things get really thorny, he reminds us all to kind of take a step back, look at the statute, look at the rules and use them as a roadmap for our analysis. And when I do that and I look at the rules that are in question with regard to this appeal, I can only conclude that they are vague and that the roadmap is fuzzy.

Texas law says that a rule is vague when persons of common intelligence must guess at what is required, and that is what you heard from me at the last Board meeting when we were talking about the accessible routes issue. When those rules were drafted and presented to the community, multiple people had questions about how this was supposed to be interpreted, including is it as the crow flies, is it measurement of the route. There was
a response about boundary to boundary, as the crow flies, and then the questions continued even once the rule was adopted, which resulted in an FAQ. So clearly there was something that was not well understood in the community if you are getting this many questions on this kind of issue.

And even two weeks ago at our meeting you heard one person testify that it was thought that the rule meant as the crow flies and another thought that the rule meant that to be accessible the route had to be half a mile. And these are people with more than common intelligence.

So when we have a rule that is vague, due process is at risk unless every participant is reviewed under the same level of scrutiny. I don't think anybody wants to be in this position. We got here because the competitors in Region 11 filed a series of RFADs against one another. I've heard multiple say they didn't want to file RFADs but as we got to June 1 and competitors couldn't figure out where they were vis-à-vis the other applications, they did that and started the process.

But what we have now is some applications in Region 11 have been elevated to a higher level of scrutiny under the RFADs, some have not, some that have not had that level of scrutiny have jumped over others that are being scrutinized, we have experts, hired consultants, all disputing one another, and it all goes back to the fact
that this rule was vague.

So I'm going to allow the development team to speak to each of the point items separately, with two requests. One is that we would like the Board to think about the fact that all of these applications in Region 11 that are relying on these items should really be reviewed under the same lens and we want to make sure that there's consistency. The other is as it relates to this specific appeal, we ask that you consider each item separately. You can choose to accept one or two or three or four, so we hope that you will do that because each point does matter and we hope that you'll consider them distinctly.

Thank you.

MR. PADILLA: Good morning. I'm the executive director of the McAllen Housing Authority, and boy, were we happy a little over a month ago when for three months in a row we were ranked at the top of the list and thoughts that we were going to get to the point of getting an award, one that McAllen hasn't seen in over eight years.

MR. IRVINE: Please state your name.

MR. PADILLA: Arnold Padilla. I apologize.

Executive director, McAllen Housing Authority.

As I said, we ranked for several months at the top, and I think when you're at the top, everybody aims at
you and it seems like everybody did aim at us. In that aiming, I know that Cynthia said experts and things, but we also felt that there's been a lot of non-expert presentations and I think that later on through our presentation you'll see where we have been able to get beyond some of these non-professional opinions that have been brought against us.

But I'm going to bring up the museum first because I thought that that was one that we felt very comfortably at the very beginning that we had provided sufficient information to staff to show that our museum which is on the second floor is independent of the library. And I think in your Board book you'll see on page 520, Exhibit C-2 you'll see some pictorials of the museum and you'll see how the museum has its own entrance, you do not go through the library, you do not have to go through the library. And not only that, we also have an issue where it displays in our community intellectually.

We provided three letters to attest to our original submission, one from the same individual was requested to provide a letter of explanation of what the museum was at the library. The dean of library presented a representation from a librarian's perspective of what he manages, and he says, well, the art gallery is within his management, but that does not mean that it is a part or an
ancillary part of the operations of the library. Obviously, the library functions independently, has its own criteria for checking out a book, you have to have a library card. The museum doesn't, the museum is open to the public, has free access to everyone, has multiple displays, has provided the museum artifacts at city functions, we have the Border Fest and the Palm Fest which are large functions in the spring in our community, located separately and available to the entire public.

I know staff referred to they went to the website and they saw that because the art gallery and the museum can only be visited when the library is open, that's because the art gallery is on the second floor and the library is on the first floor. In my view, one of the reasons you would associate that as far as the opening is because the library is open 83 hours a week. On Monday through Thursday is open 15 hours a day, frankly, probably more than any other museum that is inside of a fixture that would have access to the community. It has no relevance with the operations of the library, none whatsoever, it's just the idea that they mirrored the hours of availability simply because it's on the second floor. That's it, nothing having to do with the operations.

Our state rep, when we discussed this, said,
Look, I've been to many of the functions at the art
gallery, tons, because they have a lot of social affairs,
a lot of representation, artifacts. Many times late in
the even they have social events that are specific to the
museum alone, having absolutely nothing to do with the
library. So where the word ancillary came into play with
the library is beyond us because Kody, who presented the
letter when the challenge was made, never referenced
anything as far as it being in the operations of the
library. He wrote it as the dean of library saying we've
got a beautiful establishment, but that doesn't
necessarily mean that it's a library part, it is a
function in its own clearly.

We had to go back to the dean, and
unfortunately, she's hard to reach she's hard to reach
because, of course, deans or presidents are hard to reach
sometimes, but when she finally was able to talk to us and
sit down, she said, Where's the confusion? Clearly there
shouldn't be any. We have a museum that functions
independently of the library, you can come and visit it at
any time. And she provided you a letter which our chair
read to you a minute ago. I have copies; I know that when
something is read, it's hard to grasp. But she clearly
outlined bullet point for bullet point for bullet point
all of the activities that are available out of the museum
that are independent of the library, has no function.

When you go to the financial statements of the college, you see gifts and awards that are given directly to the gallery, not having to go through the library. So obviously the function and even the financial perspective is irrelevant of the library.

So with that, I'll hold on to some of my minutes because I'd love to come back on some of these other things that we have, but please take that into consideration. I think we've given you more than ample evidence that the art museum at our college is not a part of the library function, it runs independently and it has always run independently. And I'm here to answer any questions.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MR. BROWN: Good morning. My name is Jed Brown, I'm with the Brownstone Group, I'm part of the applicant team. I will be speaking to you this morning about West Pecan Village's route to the public park.

For this particular item, distance is not an issue. In the communications we've had with staff, specifically the RFAD deficiency response, staff acknowledged that it is within a half a mile. The issue
here has to do with accessibility. In that case, we have repeatedly and completely provided reports that show that the site is in fact accessible in compliance with 2010 standards. We've done it twice in written correspondence by way of a registered accessibility specialist, today you've gotten in your Board book a third letter from that registered accessibility specialist, and then a letter was read into the record from the City of McAllen's assistant city manager that in fact the route is compliant with ADA standards for accessibility from the site to the park to the playground.

It's important to point out that we believe we're the only application in Texas, and certainly within Region 11, that provided registered accessibility specialist letters with our full application on March 1. When the scoring notices came out, as was noted earlier, we had been awarded all menu items. During the Board meeting on May 25, the Board made a motion for this specific item to accept letters from qualified third party registered accessibility experts and from local officials. We have done both as of now, we've provided you both for West Pecan Village.

In responding to the RFAD challenge, we believe, based on the Board's motion, that we've met the test when we provided the letter. We thought it was a
formality of putting that letter back in and that would be
enough, so with that we didn't agree. In our appeal to
the executive director, we re-engaged the registered
accessibility specialist so that he could reaffirm the
route, went back and visited his notes, visited the route,
we were shocked when we didn't get the route approved
during that appeal. At that point we realized that what
staff was looking for was a more specific report, better
documentation as to the specific items that had been
asserted against the route from somebody during the RFAD
process. We thought that greater weight would be placed
from that of a registered accessibility specialist than a
competing applicant's allegations.

Today in our appeal to the Board, again, for
the third time we've provided you all with a letter from a
registered accessibility specialist stating that the route
is in fact ADA compliant, and as was read in, as I
mentioned earlier, a fourth letter. In our mind, if you
look at the routes, they are entirely ADA accessible and
this particular one is entirely ADA accessible and we've
met the test. We provided RAS letters and the letter from
a city official, so we ask that you accept this.

MR. GOODWIN: Thank you.

MR. SCHMIDTBERGER: Good morning. My name is

Russ Michael Schmidtberger, I'm an attorney and I
represent the applicant.

I just wanted to take a brief minute real quick and just discuss the property crime menu item, and this applies to West Pecan Village, it also applies to Las Palomas so you can kind of hear it together, it's going to be exactly pretty much the same thing. But let me just say this clearly for the record, these two applications, they've had property crime rates below 26 per 1,000 for this entire tax credit cycle. They were below 26 before March 1 and they're below 26 as of today. Also, staff confirmed that we received these points and awarded them to us because we proved it to them in our full application. So just take note of that.

Now, here's the other important note that I want you to emphasize today. The property crime menu item -- and this kind of dovetails from what Cynthia was saying earlier -- it's another case of staff stating they don't know what kind of evidence they want to see at full application but then after they start receiving applications and RFADs and evidence, their position begins to take shape as to what they would have liked that to be. So if you notice in the FAQ on page 632 -- or I'm sorry -- in the Board book the FAQ states on page 632: When staff was asked are you going to specify the data to use for local data, staff answered we will not specify
which local data to use, though the subject data should mirror as much as possible that of Neighborhood Scout. So they've given us guidance. It's confusing, but nonetheless, it's guidance to the rule. In fact, staff never said specifically that they wanted to see property crime specific to a census tract or specific to anything, all they said was they wanted it to mirror Neighborhood Scout, and that's exactly what we ended up doing.

So now, we've heard this confusion theme before, it's the same song, different verse, back in the May Board meeting when applicants all came to the podium regarding their confusion around what evidence staff was looking for on proving their ADA routes. If you recall that meeting, the Board unanimously agreed that all developers in the state could supplement their evidence after March 1 because staff had not clarified what they were looking for to prove up the menu item. So precedent was set in a lot of ways. So they were all given an opportunity to supplement their evidence after March 1, and we're simply requesting the same fairness and equity be applied to us today if that's what's required.

So not like all of them, we provided evidence at full application. In fact, a little different than them, we provided a ton of evidence, plenty to prove up
our property crime scores, and to reiterate, we provided enough clear and convincing evidence that, again, staff, they awarded us the points in the review process. For four months we got them.

Now, we provided property crime data specific to our census tract which is on page 634, this is for the full application, we provided population data specific to our census tract, that's on page 640, and we used local data sources which is on page 636, and most importantly -- and this is probably the key -- we followed exactly what staff said to do when we mirrored Neighborhood Scout with all our local data and it resulted in the most reasonable and logical reflection of Neighborhood Scout in all of Region 11.

So if you don't mind, just for one second -- this data is complicated -- just for one second if you don't mind turning to page 633, you'll see this chart. The chart is very indicative of what's going on in Region 11. So first, West Pecan Village and Las Palomas are at the top of this chart. The reason they're at the top of this chart is because they have the best Neighborhood Scout scores in all of Region 11 as it pertains to new construction. So what we did was we literally took the Neighborhood Scout score and we used it to come up with our local data score, and the differential on that was
literally within about three points.

So what you're seeing from full application to now and what we gave you at full application was indicative of what we have now by only about three points. And what you're seeing at the bottom of that list, which is interesting, the unreasonable mirroring of Neighborhood Scout that a lot of the applicants in Region 11 have done -- which they're going to get up here and talk -- you can see some of the swings. Like look at Edinburg and McAllen, they're swinging at 46 points, they came in at 60.8 at Neighborhood Scout and now they're coming in at 11.34 with their local data. The other one is 48.69 and now they're claiming 1.24, that's a swing of 47.45. Now, I don't know how that happens unless the National Guard shows up.

But to be honest with you, if a reasonable mirroring is what we're trying to do, Las Palomas and West Pecan Village have been the most consistent and the most accurate to date, and we supplied extra data after March 1 in the RFAD process, and again, what I'm saying is that I hope that we can actually have done that.

So if I can just wrap up real quick, all this stuff proves is that we've indicated that we've been well below 26 and we've proved that staff's initial review of our application was indeed correct when they awarded us
the points. It also proves that we submitted evidence on March 1 without much guidance from staff, and like all other developers and applicants that were granted the opportunity to provide staff with more evidence when they weren't given proper guidance, we should be allowed the opportunity to supplement too after March 1, in the event that we would need to.

So I kindly ask the Board, again, to award these menu items points for property crime to both applications at this time, follows staff's guidance that we've followed the rules and we've been consistently providing that are scores are below 26 in some of the best and honest reflections of Neighborhood Scout and property crime in all of Region 11. Thank you very much.

MR. GOODWIN: Thank you.

Is there anybody here that wants to speak in favor of staff's recommendation?

MR. MEDRANO: Andres Medrano, with Gardere Wynne Sewell. I'm here on behalf of M Group, a competitor. And I'd like to talk to you first about what's not vague and not subjective, which is distance and the ADA requirements. These are very specific and these are measurable, and we believe the RFAD process demonstrated that the paths at issue in this application to the playground and the public transportation stop meet
neither the distance nor the ADA accessibility.

The playground is accessible from the site by a sidewalk coming from the north to the south. There were three entrances to this playground and when we were measuring it, the closest entrance was .54 miles from the development site. That is essentially a driveway into the parking lot and it failed to meet the ADA requirements. The slopes were too great and it did not have handrails. The applicant had not specified which entrance they were using.

Now in their appeal to the Board they specify, well, we're not using that entrance, we're using entrance two which is farther down south on the sidewalk. And there's two problems with that: first of all, it's farther; second of all, you can't even get to that entrance without crossing the slope at the first entrance which is not ADA compliant. And there's no evidence whatsoever was offered as to how our analysis of the first entrance was incorrect. So you have to cross the impermissible ramp to get to the second ramp.

And second, even if the slopes as they represent now at the second entrance are acceptable there is still no handrail and ADA 405.8 says any ramp must have a handrail. The only response is to say, well, we could build one later if we need one. That's not acceptable.
because it's not property they own. There's no handrail -- that entrance in and of itself is not ADA compatible and you can't even get to it without crossing the first entry to the park which is not ADA permissible slopes.

Second, the public transportation stop, the applicant does not contest that the path to the public transportation stop is well more than half a mile, in fact, it's 1.8 miles on the sidewalks to get from the site to the bus stop. Their only response is, well, you should use access to access to the public transportation should be included into that calculation, and the Board at the previous meeting declined to that, they didn't think that was correct.

Even if the route itself was to be considered at 1.8 miles, we pointed out a number of violations of that ADA that that path is not including the passing spaces, curbs, slopes, landings, et cetera, and no evidence has been put back from the applicant.

One of the applicant's speakers said that they had repeated provided reports to the Board. Really what they provided was a letter, a two-sentence letter saying that it complies. They have not provided any information specifically rebutting or addressing the ADA issues very specifically pointed out on these paths, and these are
subjective, these are measurements that were made and there's simply no response. They don't meet the distance on either the playground or the park.

Very briefly, on the crime rate what was failed to be mentioned by the applicant was the methodology that they used to get to the crime rate that they were relying on. They took the Neighborhood Scout number which was more than 26 per 1,000 and then reduced it by the overall crime reduction in the city of McAllen as a whole over a two-year period. That is not specific to the census tract. That is how they got to the number that they're relying on. The other data, the local data, which the other applications in the region provided, was available to them but they did not get it. They're trying to present that now which is brand new information we do not believe is permitted in the process.

And finally, I would say that we believe that staff's analysis is correct, that the gallery that is called the Library Gallery, it is only open when the library is open, it is managed by the library, it is an ancillary part of the library, and according to Section 11.9(c)(4)(B), the same amenity is not supposed to be allowed to score separate points. If this gallery is not ancillary to the library, it's difficult to see under what circumstances the two facilities would be ancillary.
Thank you.

MR. GOODWIN: Thank you.

Anybody else in favor of staff's recommendation?

MR. PALMER: Barry Palmer with Coats Rose, representing Steve Wallace, one of the competing developers in Region 11.

A couple of points I would like to make is there has been some talk about staff guidance being vague and in some cases maybe it was on this accessibility route with the whole route had to be half a mile or whatever, but that's not to say that the guidance is vague on everything, and I think that some people are taking some liberty with that and making it look like guidance has been vague in all areas. I don't think that's the case.

On the area of crime, I thought that the guidance was pretty specific: you could use either local information or you could use Neighborhood Scout. The applicant decided to use Neighborhood Scout. You get a point if you've got a crime rate of less than 26. The Neighborhood Scout for 2014 showed a crime rate of 26.66 which would not qualify for a point. The applicant then extrapolated the reduction in crime citywide of 8 percent and 5 percent and assumed that that would apply to their census tract, and so with that procedure got under 26.
crimes. But staff, rightly so, determined that that's an incorrect calculation because the reduction in crime isn't necessarily going to be the same in every census tract so you can't use that method.

So when they lost the point on that, they came back late in the process with a whole different method which is to prove it up by local source information, which if they had done on March 1 would have worked, but you can't make that kind of a total change, and so staff rightly didn't consider that information, that's not an administrative deficiency to clarify the information you provided, it's changing the way that you're going to try to get the point. So I think staff has been correct in their interpretation of that.

Again, on the accessibility, in the RFAD very specific evidence was provided as to why the routes are not accessible, I mean, substantial specific evidence pointing out places that were not accessible, parts of the ADA that were not complied with. There was no response to any of that specific evidence other than a letter from an accessibility expert saying that the route is accessible.

So it's certainly reasonable for staff to take the preponderance of the evidence there in looking at two competing views, and one specific, one just makes a general conclusion.
MR. GOODWIN: Thank you.

Anybody else want to speak in favor of staff's recommendation with new substance?

MS. RICKENBACKER: I hope so. Donna Rickenbacker with Marque Consultants and I do work with another applicant that's behind this one, and I really wanted to focus primarily on the museum.

You all know the rule, you know what it requires, I'll just go right into it. The applicant is claiming that the South Texas College Library Art Gallery, located on campus library, is a museum. This art gallery is not a museum. As U.S. Supreme Court Justice Potter Stewart once famously said, You know it when you see it. Well, I've seen it. The art gallery is located in a room on the second floor of the campus library, a room that is specifically labeled Library Art Gallery. The library displays artwork along the staircase leading from the first floor main center of the library up to and along the walls of the second floor and into the art gallery space. The second floor of the library also has several tables and chairs where students study and collaborate on school related projects. I'm a big supporter of higher education and was quite excited to see all these students sitting in these chairs and working their intellectual magic.

We challenged the applicant, obviously, in
their claim that the art library is a museum and in
support of our position obtained a letter from Cody Gregg
that's been referenced to by the applicant. He's dean of
library and learning support services across all five
college campuses. In his letter Mr. Gregg states that
some of their campus libraries, including the Pecan
campus, include art galleries and that the art galleries
are an integral part of their library system and learning
experience at South Texas College, and I quote. He
concluded by saying that while they appreciate the
contribution that the library art galleries bring to the
school's academic environment, they do not consider them
museums.

In response to the challenge, the applicant
obtained a followup letter from Mr. Gregg. Mr. Gregg
again recognized that the art galleries are an integral
amenity to the learning experience at South Texas College
and its benefits to the students, the professors and the
community. But he did not refute his prior statement that
the art gallery is not a museum.

Finally, as recognized by the applicant and
their attorney, TDHCA staff stated in their response to
frequently asked questions that the museum has to be a
museum, and uses as an example that if a bakery has a room
where they display things, it does not make the bakery a
museum. There's no difference in this instance. The art
gallery displays things, important things that contribute
to the learning environment of South Texas College, but
that does not make the rooms where they display the
artwork a museum.

I respectfully request that you all accept
staff's recommendation. Thank you so much.

MR. GOODWIN: Thank you.

Any other comment in favor of staff's
recommendation? Any new comment -- new?

MR. PADILLA: Well, new in the essence of the
perspective of someone --

MR. GOODWIN: We'll hold you to three minutes.

MR. PADILLA: One says I've been to it and I
didn't see it reminds me of the old adage of you can't see
the forest because the trees are in the way. Sometimes
it's right before you and it is what it is. Museum is
defined in the dictionary as a building in which objects
of historical significance and artistic or cultural
interest are exhibited. Exactly the purpose of that art
gallery which is not just art itself. It clearly shows
you in the pictorials the types of items. The letters we
have provided clearly identify that it is not just for the
library's purpose, it is for the community's and public's
purpose in itself separate as an entity and has displayed
separately as an entity. We've provided all the
definitions thereof.

MR. GOODWIN: I think we heard that the first
time.

MR. PADILLA: The other thing -- well, we're
trying to reinforce the correct perspective is what we're
trying to do, enforce the correct perspective of what
we're talking about.

The other issue that we did not bring data on
the issue of ADA, please, if you're going to bring in
nonscientific data pictorials -- and I'll tell you, I was
a photographer for a local newspaper in my younger days,
and forced perception was one of the key issues that we
were always instructed to assure we didn't do. Don't take
the angle of the picture that distorts the picture's truth
If you look at the pictures -- and we provided you the
challenges that were there -- and you see someone sitting
on the floor giving you an angle of a measurement tape or
an angle or a ruler level and says it's this far off,
please, that's not scientific. And moreover, it's a
perception issue. If you stand at a certain angle you're
going to see an eight-inch separation, if you stand at a
different angle, you'll see a two-inch separation.

Obviously, we understand this process and we
understand the developers are challenging trying to earn
their credits, but don't discredit someone who submitted something that was accurate and truthful by trying to perceive it not to be, and that's the issue that we have here. We didn't bring pictures that showed you otherwise, one, because we thought those pictures were somewhat ridiculous, we gave you expert's opinions, we brought back letters from experts who were certified and trained by the State of Texas to analyze these items and assure that they are correct. Furthermore, we presented to you a letter from the City of McAllen where they themselves went out there and took a look at it and claimed as it is, ADA accessible and an ADA route.

Thank you.

MR. GOODWIN: Thank you.

Do you want to speak again, sir, something new?

MR. BROWN: If you look at page 582, this is when Arnold was talking about things being unscientific. It seems to me rather unreasonable that we have to respond to each claim of things of this nature. What we've provided is equal to what's been accepted in other locations, specifically with the gentleman that had the RFAD issued against his own accessibility. We've provided the identical letter as far as the one from the City of Brownsville, in this case from our City of McAllen. They're identical, and that was acceptable to staff, ours
should be acceptable to staff.

Thank you.

MR. GOODWIN: Thank you.

New? Really?

(General laughter.)

MR. SCHMIDT BERGER: It's new. I just want to take one issue real quick with what Barry said, and everybody seems to be quoting Supreme Court justices too. I studied with Chief Justice John Roberts and I remember what he said to me as a lawyer because he said, The law is never really what it says, you've got to look at the details. And to what Barry is saying is that underneath the law there's details. Local data sources, we weren't told at full app to basically take Neighborhood Scout or our local data source, what we were told is we were to either take Neighborhood Scout's score or take a local data source that mirrors Neighborhood Scout's, that's the deal and that's exactly what we did at full application.

Thank you.

MR. GOODWIN: Thank you.

Marni, anything you'd like to add? I'm assuming we're out of new comments.

MS. HOLLOWAY: So a couple of things. As described, the RFAD was very detailed. We received a number of RFADs that had this level of detail regarding
accessibility, and we as staff send that on and say, okay, what's your response to this, and just getting a letter back that's two sentences that basically mirrors the letter that was there before but doesn't address the questions, we're not able to make a judgment other than this is not responsive.

Also, regarding the crime rate issue, this is something that we've discussed a number of times in application workshops and in other places. What this item says in the Opportunity Index is: The development site is located in a census tract with a property crime rate of 26 per 1,000 persons or less, as defined by NeighborhoodScout.com or local data sources. We have always said in workshops, in questions, everywhere else, we treat this the same way we do our undesirable neighborhood characteristics. Neighborhood Scout is just a trigger; if your local data source shows something different, then give us that local data and that's what we'll work with.

In this particular instance there was data and then there was an extrapolation. What we need is data: show us this is the number for the census tract based on the police reports. That finally came at the third bite at the apple. So because that was a change from what was originally submitted in the application, staff has not
considered that.

MR. GOODWIN: Okay. Any other questions for Marni?

MR. ECCLES: I have a couple of questions just to clarify because we have two distance matters on this, distance to park, distance to public transportation. I believe the evidence submitted and the argument from the applicant is that the distance to public transportation, the actual route that is allegedly accessible would be well over a half mile but within a half mile as the crow flies.

MS. HOLLOWAY: Correct.

MR. ECCLES: But the distance on an accessible route to a public park with an accessible playground, how far is that distance on the allegedly accessible route?

MS. HOLLOWAY: On the allegedly accessible route there is mapping from an engineer that shows that that boundary to boundary measurement on the route that is allegedly accessible is a half mile or just under a half mile, and the playground is further then.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: So we have a recommendation from staff to the Board that we deny the appeal of the applicant. Do I hear a motion?
MR. VASQUEZ: Actually I do have a question first.

MR. GOODWIN: Okay.

MR. VASQUEZ: So these are four separate issues or can we take them as separate issues?

MR. ECCLES: You can mix and match.

MR. VASQUEZ: Because we have the distances, the transportation and the park.

MS. HOLLOWAY: Yes.

MR. VASQUEZ: The crime stats.

MS. HOLLOWAY: The crime rate and the museum.

MR. VASQUEZ: And then the museum/library issue.

MR. GOODWIN: Do you want to separate them or keep them together?

MR. VASQUEZ: It would be my inclination to separate them.

MR. GOODWIN: Everybody agree? We'll separate them and we'll start with the crime rate. Can we get a motion as it relates to that segment?

MS. HOLLOWAY: Staff's recommendation is to deny the appeal regarding the crime rate.

MS. THOMASON: I make a motion to uphold staff's recommendation related to the crime rate.

MR. GOODWIN: Okay. Have a motion to uphold
staff's recommendation on the crime rate. Do I have a second?

MR. BRADEN:  Second.

MR. GOODWIN:  And it's seconded. Any discussion?

(No response.)

MR. GOODWIN:  All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN:  All opposed?

(No response.)

MR. GOODWIN:  Okay. Next one is on the museum. Staff's recommendation?

MS. HOLLOWAY:  Staff's recommendation is to deny the appeal related to the museum.

MR. VASQUEZ:  Chairman, I'd like to make a motion to accept the appeal to get credit for that.

MR. GOODWIN:  The museum? Okay.

MR. BRADEN:  Second.

MR. GOODWIN:  Second. Any discussion about that?

(No response.)

MR. GOODWIN:  All in favor?

(A chorus of ayes.)

MR. GOODWIN:  All opposed?

(No response.)
MR. GOODWIN: It passes.

The next is on accessibility.

MR. ECCLES: There are two on that.

MS. HOLLOWAY: There are two on that. Staff recommends denial of the appeal related to the half mile on an accessible route to a public park with an accessible playground.

MR. BRADEN: I'd like to make a motion to accept staff's recommendation.

MR. GOODWIN: So we have a motion to accept staff's recommendation on the public park to deny the appeal. Is that right, Paul?

MR. BRADEN: Yes.

MR. GOODWIN: And do we have a second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Seconded. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: That passes.

MS. HOLLOWAY: The final tie breaker for this application, staff recommends denial of the appeal regarding the accessible route of less than half a mile to public transportation.

MR. GOODWIN: Do I have a motion on that?
MR. BRADEN: I'll also make a motion to accept staff's recommendation.

MR. GOODWIN: So we have a motion to accept staff's recommendation on that issue. A second?

MR. VASQUEZ: Second.

MR. GOODWIN: And a second. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: That passes.

We'll move to 17390.

MS. HOLLOWAY: Our final appeal today, application 17390 Las Palomas. A third party request for administrative deficiency requested that staff review the application to determine whether it's qualified for tie breakers related to an accessible route of less than half a mile to a public park, an accessible route of less than half a mile to public transportation, and a crime rate of less than 26 per 1,000 persons specific to the census tract.

Staff has determined that the application did not qualify for these items. The applicant was issued an administrative deficiency notice requesting that they
provide evidence to support the selections. In their response, as in the appeal, the applicant asserts that the public transit must be less than half a mile as the crow flies from the site. The response states that every reference to the measurement of distance indicates measuring boundary to boundary unless otherwise noted. In this case the measurement is otherwise noted. The distance from transit must be less than half a mile on an accessible route. The route to public transportation indicated in the application is approximately 1.73 miles long, a good deal longer than the allowed distance.

Regarding property crime, the appeal at the initial scoring notice provides an explanation of the projected trend for the census tract included in the application which is based on an assumption that as crime decreases in the city of McAllen, it will decrease at the same rate in the subject census tract. The later appeal to the executive director includes entirely new data from that submitted in the application. As such, it does not provide clarification but is rather a change to the application and thus has not been considered by staff.

Staff recommends denial of the scoring appeal for application 17390 Las Palomas.

MR. GOODWIN: Thank you.

Do I hear a motion to hear comments on this
recommendation.

MR. BRADEN: So moved.

MR. GOODWIN: So moved. Second?

MS. RESÉNDIZ: Second.

MR. GOODWIN: Moved and seconded. All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: First comment we'll have is Michael has a letter to read into the record.

MR. LYTTLE: A letter to the Board from State Representative Guerra reads as follows:

"I would like to express my concern about the status of the application for Las Palomas referenced for the above location proposed in McAllen, Texas. Initially I understand that TDHCA approved all thirteen opportunity index items for Las Palomas in its original review process. The McAllen Housing Authority application possesses exemplary merit and I continue to be a proud supporter of this development.

"The 9 percent HTC program is of paramount importance to my district and constituents in the Rio Grande Valley to ensure we have affordable housing options in the region. I kindly request that as you hear the presentation for Las Palomas today, you'll take into consideration the fact that they have consistently been at
the top of all new construction applications in Region 11 up until the appeal process.

"As you know, the interpretation of the QAP and rules has been a source of contention this year. In my opinion, the high opportunity areas of these sites are unmatched in Region 11, and to that end, this application is deserving of every menu item they seek.

"If you have questions regarding this matter, please feel free to contact me at your convenience.

"Respectfully, Representative R.D. Bobby Guerra, House District 41."

MR. GOODWIN: Thank you, Michael.

Comments?

MR. CRUZ: Ronnie Cruz, chairman of the Housing Authority, City of McAllen.

This is basically a mirror letter from the last one. This is the ADA accessibility to public transportation for the proposed Las Palomas Village, Application 17390.

"Dear Mr. Goodwin: Please be advised that the bus stop at 23rd street and attached sidewalks and ramps along 23rd provide an ADA accessible route to the proposed apartment project traveling south and then east on Flamingo Avenue.

"If you have any questions, please feel free to
call me."

Signed: Michelle Leftwich, Assistant City Manager, Cit of McAllen.

Thank you.

MR. GOODWIN: Thank you.

MR. BROWN: Jed Brown again, Brownstone, part of the applicant team.

Please, if you'd go to page 801, 802 and 803 of the Board book for this particular item. We only had one issue here as to ADA accessibility. The route is .22 mile so it's not even close to half a mile. The only issue was that there was an allegation that cars are parking over a sidewalk, therefore, there's not adequate access to the bus stop. What's interesting to note is that the cars that you see on 803 actually show up in RFAD challenges, in other RFAD challenges, not even against ours. You used the word yesterday, Tim, civility. It's a little bit disingenuous when someone challenging you is parking a car over a sidewalk to create an ADA violation, when in fact, that's a Texas Transportation Code violation. You cannot park on a sidewalk in Texas, it breaks the law.

So this one to me, we've submitted three RAS letters, we've got a letter from the City of McAllen saying that the route is compliant, and the only violation here is not an ADA violation, it's a Texas Transportation
Code violation. So we'd sure like to walk away with the
one on this one.

Mr. Vasquez, I watched what was going on with
the last one. If you look at the table on property crime,
we have the property crime, there's no doubt that we're
under 26 per 1,000 under any measure. We're locked down
on that when you look at Region 11, and to think that we
somehow aren't going to get it and others are when they
have a 40-point swing from what Neighborhood Scout shows,
something is not right. Our numbers are right on. So I
would hope that you would reconsider what I was watching
in the last particular situation. It looked like you were
going ready to make a motion for property crime and it
just didn't happen, and I think we've got it.

So in my opinion, we deserve two of the three
menu items with this application. I don't see how,
applying the rules, how we don't deserve it. Thank you
very much.

MR. GOODWIN: Thank you.

MR. VASQUEZ: Could I ask for a clarification
from someone? In this case, assuming it's an ADA
compliant route, what's the actual distance that we're
talking about? Is it within?

MS. HOLLOWAY: I believe.

MR. VASQUEZ: So this is different than the
last case where it was like 1.7 miles or something.

MS. HOLLOWAY: Right. So on both applications, the route to public transportation is much longer than the half mile.

MR. VASQUEZ: That's what I'm asking about. Not the crow flies, the actual route.

MS. HOLLOWAY: Not the crow flies, the actual route.

MR. VASQUEZ: That's what I'm asking for clarification on.

MR. BROWN: This one is .22, it's option 2, .22 miles. I don't know the exact page in the Board book, but this one is clearly less than half a mile.

MR. GOODWIN: Is that on page 695? It says option 1? That's the playground.

MR. ECCLES: Page 701.

MR. BROWN: For Las Palomas I don't think that we have page 701. It starts at page 768 and it goes through -- it may have been in the appeal to the executive director. I'll find that for you.

MR. GOODWIN: On 701 we show a map that shows .22 as the crow flies.

MR. BROWN: That's it -- well, no, no, not as the crow flies.

MR. GOODWIN: That's what I looks like to me.
MR. BROWN: But there's an actual route that shows it.

MR. VASQUEZ: Which isn't much longer.

MR. BROWN: And again, for the record, we're not after the park for this one, we're conceding the park based on the right of travel, it's not within half a mile, it's on the bus stop which was, I believe, .22 but it's nowhere close to half a mile.

MR. VASQUEZ: 700 supports that.

MS. HOLLOWAY: I accept that clarification and I understand that they are conceding on the one. We still have to address the appeal on the park -- on the transportation -- I'm sorry -- and on the crime rate.

MR. GOODWIN: So they're conceding that their appeal on the park is beyond accessibility.

MS. HOLLOWAY: Yes.

MR. GOODWIN: So it's strictly on crime rate.

MS. HOLLOWAY: On crime rate and the accessibility question.

MR. GOODWIN: Okay.

MR. SCHMIDTBERGER: Thank you again for your time. Again, Russ Schmidtberger. I'm an attorney for the applicant, I'm in-house counsel for them.

Mr. Vasquez, again, I noticed those eyes shifting and I've got to believe that somewhere on that
chart that I showed you Las Palomas is leading the pack on property crime. So I think we can get there, just like Jed said, it's obvious, but what I wanted to say too about that is that I think that's it's interesting that an applicant sitting behind me who actually repaired routes after June 1 -- and it's in the Board book, I think it's on page 570 -- it's really interesting that he was able to do a material deficiency long after March 1 and still get an award, whereas, I'm trying to get property crime in which is clear, convincing, and I can't even do that today at least on the last application.

But what I did want to say specifically, we haven't talked about this that much but there is a policy about paratransit in here, and as far as it's concerned, we started talking about public policy, Cynthia got up and talked about policy, and since we were talking about that, I think Tim said it really well the last Board meeting when he said that the purpose of the rule for accessibility, he said, If I'm a person with a wheelchair and I'm seeking to get from my home to a park every day, taking my kid, is it reasonable to expect that I would go further than half a mile? And the answer to that is no, it's not reasonable to expect that, it's certainly not reasonable to want that, and it's not even reasonable to build for that. So I guess what I'm saying is I couldn't
agree with that more. It's exactly the purpose of what
this menu item is actually created to achieve.

So my policy comment, just as an attorney and
just as an observer -- or rather, my rhetorical policy
comment for the Board is this: if one is in a wheelchair
or they're on crutches or they're utilizing a scooter and
they're seeking to get from their home to a park, to a
Walmart, to a library, to a museum, to their job, to their
college classes, to their parents' house, to their kid's
house, or even to a doctor, a restaurant or even to a
party, is it reasonable to expect that they would have to
go further than a half mile. I think the answer to that
question is yes, it would, and in some cases, as a
practical matter, they'd have to. So perhaps in most
cases they would be using a helpful form of transportation
that limits their distance of travel to those amenities.

While a paratransit service is not there to
take the place of accessible routes because it's indeed
accessible itself and it picks you up at the curb of the
development site and drops you off at the accessible
amenity itself, it's there to take the place of the
distance of all these routes and make the route on the
wheelchair only a couple of hundred feet as opposed to
less than half a mile.

So in short, I think this can apply to our menu
item in McAllen and at least it should be considered. McAllen is the only city in Region 11 that has weekend service. The applications that are actually getting an allocation in Edinburg and Brownsville, they don't have this paratransit services on the weekends. So McAllen has actually carved out, they're spending money as a city to get this transit system working and the paratransit system working. And I guess what I'm saying is that by granting this appeal, at least for Las Palomas -- it's our last shot -- granting this appeal either in full or in part, it's a vote for great public policy and also accessibility with the transit system.

Thank you.

MR. GOODWIN: Thank you.

MR. PALMER: Barry Palmer with Coats Rose.

One thing that is really important in this process to the development community is that we have consistency in the application of rules and the QAP, and that we apply the rules the same way to all applicants. If you have a mater that's ambiguous, like whether the accessible route had to be less than half a mile, once you make a decision that, yes, the accessible route has to be less than half a mile, then that's fine and we apply it to everybody the same way.

Here the crime situation is exactly the same as
the last application. They turned in data at the application from Neighborhood Scout and then extrapolated in a way that the staff and the city's police department said was not appropriate. Same thing here, same as the last one, so it would make no sense, it seems to me, to decide one one way and decide one the other way just because it's their last application.

Same thing with the accessible route to the transportation. They provided a letter of accessibility, the RFAD provided specific evidence that it was not accessible, and staff came to the conclusion in viewing the specific evidence versus a letter with no backup that it was not accessible.

So as you determined on the last application, I would request that you back staff's recommendation on these two remaining points.

MR. GOODWIN: Thank you.

MR. PADILLA: One last effort. A couple of things were said in this last presentation about police chief letter. We provided you a police chief letter, it's in your packet today, where the chief says, I looked at your data now and I agree with it as it was submitted. And I'll tell you when I went to talk to him about the letter that was submitted, a developer went to him, asked him to sign a document, and he signed it and he said, I
made a mistake of signing the document. And if you look at the document that he submitted in the RFAD, his first words is: I reviewed your data. He clearly indicated to me: I've never seen your data.

And there lays the problem with these types of challenges when you have developers pushing people to sign documents that in some cases they may not even understand. So I'll leave that from that perspective, because he gave me one now where he has actually looked at our data, reviewed it and found it to be accurate from the submission of the initial data subsequently to our items to refute the challenges.

Going back to this issue of perception, pictures, Jed just brought it to your attention. You see the type of manipulation that occurs when people are trying to beat themselves out, and it should be a common sense perspective. You see something like that, obviously, first, we have no control of who parks over a sidewalk but the police department does, and if someone was in a wheelchair and got to that location where that gray car was parked purposely, all they had to do is call 9-1-1, someone will come over and someone will be ticketed and that vehicle will be probably towed away.

But it goes to show you some of the ridiculous affairs that have occurred to get to this point, and all
we ask is take a common sense approach of the right things of what has occurred to us today, where are we, the facts that we've provided you clear, clear data from day through today, that our applications have fulfilled the requirements of the QAP, and that's all we can ask for.

MR. GOODWIN: Thank you.

MR. MEDRANO: Andres Medrano again for M Group.

I'm a little bit confused because I heard one of the applicant's representatives state that they were dropping the playground appeal and another assert it, so I'm going to briefly address it.

MR. GOODWIN: I think they've dropped the playground appeal. Have you not? Okay. So please don't address it.

(General laughter.)

MR. MEDRANO: I will move on. It was unclear.

MR. GOODWIN: Now it's clear.

MR. MEDRANO: On the public transportation stop, the only distance provided is as the crow flies distance by the applicant which is .22 miles. The actual route has not been measured, but we're not contesting the distance, what we're contesting is accessibility. And the evidence that we put forward in the RFAD is that the sidewalk that leads directly to the bus directly abuts a private parking lot where the parking strips are directly
adjacent to the sidewalk. The sidewalk is only 48 inches; when cars park in the parking lot, they overhang two feet which makes it less than 36 inches which is not ADA compliant. And as the applicant's representative just said, they have no control over who parks there, it's a parking lot in use.

And this is demonstrated it is not cars that were being parked by the challenger, there were four cars that were overhanging the sidewalk by two feet. And in fact, in the supplemental pictures the applicant provided to the Board for their Board appeal, they still show a truck overhanging the sidewalk with no relationship whatsoever to any challenger. The fact is if that sidewalk was to be ADA compliant and abut the private parking lot that directly has the parking stop in the sidewalk, it would need to be six feet wide so that the two-feet car hangover would leave the 48 inches or at least 36 inches to be ADA accessible. And we would urge that no such evidence has been presented to the Board to contradict the RFAD that they do not meet ADA accessibility on that route to a bus stop.

On the crime data, just very briefly, it's exactly the same argument that was in the previous application.

Thank you.
MR. GOODWIN: Thank you.

Anything new? I'll be interested to hear that.

MS. BIRCH: Good afternoon. Sally Birch with Structure Development.

I just wanted to point out that there are six applications in McAllen and most of them are all within where you could throw a baseball. They're all gathered in the same corner and we did not meet -- I represent a competitor, we didn't have a Neighborhood Scout score nor were we able to get data from the police department, and so we didn't take that point or try to take it. And we would just ask that you're consistent, and the process is complicated and we rely on the rules that you have Neighborhood Scout or a local data source, and if you would just stay within those guidelines that staff presents, we would appreciate it.

MR. GOODWIN: Thank you.

MR. BROWN: this is new, I promise. The attorney represented that cars parked -- if the sidewalk is in the right of way, you can't park over it, if it's in private property, you can. Once that sidewalk is entirely in the city's right of way, you can't park over it.

MR. GOODWIN: Thank you.

MR. BROWN: Thank you. Yes, sir.

MR. GOODWIN: Any other comments?
Marni, do you want to wrap up?

MS. HOLLOWAY: There's nothing left to say.

Staff recommends denial of the appeal for both items, the accessible route and the crime.

MR. BRADEN: Mr. Chairman, I have a question.

MR. GOODWIN: Yes.

MR. BRADEN: So for clarity, the reason the crime rate has more to do with the fact that they didn't present data correctly.

MS. HOLLOWAY: They started with data and then extrapolated because the number was like .6 over what they needed to score, and so they applied a citywide decrease in crime rate to that higher number to say, well, in this census tract it's going to be lower. The information that was provided at that third bite, the appeal to the executive director, if that had been in the application right at the start, it would have been fine, but that's not what was in the application. So because that was a change to the information that was provided, staff has determined that that is not responsive to the administrative deficiency.

MR. BRADEN: And that was my understanding and why I voted for it the first time.

MS. THOMASON: Mine as well.

MR. GOODWIN: Do we want to separate these two
items?

MR. VASQUEZ: I'd like to separate them. And for clarity, we don't have to vote on the park.

MR. GOODWIN: Right.

So we'll take a motion on staff's recommendation for accessibility first.

MS. HOLLOWAY: Staff recommends denial of the appeal regarding the accessibility item to public transportation.

MR. GOODWIN: To public transportation. Do I hear a motion?

MR. VASQUEZ: Mr. Chairman, I would make a motion to reject staff's denial based on access to transportation and to grant credit for that one item on transportation access.

MR. GOODWIN: Do I have a second?

MS. THOMASON: Second.

MR. GOODWIN: Second. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: The next was on crime.

MS. HOLLOWAY: Crime. Staff recommends denial
of the appeal on the tie breaker based on the crime rate.

MR. GOODWIN: Do I hear a motion?

MR. BRADEN: Mr. Chairman, I'd make a motion to accept staff's recommendation.

MR. GOODWIN: And second?

MS. THOMASON: Second.

MR. GOODWIN: Been made and seconded. Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MS. HOLLOWAY: That's all of our appeals.

MR. ECCLES: And this also is acknowledging that on 17390 that the distance of an accessible route to a public park has been conceded by the applicant.

MS. HOLLOWAY: Has been conceded by the applicant.

MR. GOODWIN: Marni, with these changes are you going to need the time to recalculate?

MS. HOLLOWAY: Actually, we don't.

MR. GOODWIN: So all of our appeals are now over?

MS. HOLLOWAY: Yes, they are.
MR. GOODWIN: We are going to take this opportunity to move into executive session. I've got to read this before we move into executive session, and we will be gone for approximately 45 minutes, so we will reconvene back here at -- let's say an hour, so we'll be back here at 1:30.

MR. ECCLES: Hold on, guys.

MR. GOODWIN: Hold on just a moment. The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorney, pursuant to Texas Government Code 551.072 to deliberate the possible purchase, sale, exchange or lease of real estate. The closed session will be held in a room on the first floor of the Stephen F. Austin Building across the street. The date is July 27, 2017, and the time is 12:35 p.m.

(Whereupon, at 12:35 p.m., the meeting was recessed, to reconvene this same day, Thursday, July 27, 2017, following conclusion of the executive session.)

MR. GOODWIN: The Board is now reconvened in open session at 1:40 p.m. During the executive session of the Board, the Board did not adopt any policy, position, resolution, rule, regulation or take any formal action or
vote on any item, except in executive session the Board received advice from counsel. The only action taken was to provide staff parameters for negotiating the sale of real estate.

Marni, I think we're back to item 5(a), but before we do that, we had one consent item on the agenda that was pulled 1(m), and I understand the person that wanted it pulled who was going to make comment about 1(m) has left. Homero, are you going to make comment about it? No? Okay.

So I need a motion from a Board member to approve item 1(m) on the consent agenda.

I'm sorry. Peggy has something.

MS. HENDERSON: Peggy Henderson, TDHCA, representing public opinion for Amy Ledbetter Parham on item 1(m) supporting staff recommendation. She represents Habitat for Humanity of Texas.

MR. GOODWIN: So I need a motion to approve item 1(m).

MR. VASQUEZ: So moved.

MR. GOODWIN: So moved. Second?

MS. THOMASON: Second.

MR. GOODWIN: It's moved and seconded. Any discussion?

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

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: The proposal passes.

Now, Marni, I think we're ready for you on item 5(a). Keep your comments brief.

MR. VASQUEZ: Don't repeat yourself.

(General laughter.)

MS. HOLLOWAY: Item 5(a) is a report on the 2018 Qualified Allocation Plan project. The topic of our June 28 meeting was 11.9(e) of the QAP. This is the section that includes all of the financial feasibility scoring items.

Brent started the discussion by describing the requirements of IRS Section 42 and our rules meet those requirements by making the cost of development a competitive scoring item. For the 2017 Housing Tax Credit cycle, the Department raised the cost per square foot scoring threshold for both building and hard costs by 4 percent. This was the first increase in quite some time.

Staff reviewed a large sample of competitive applications for the current round and determined that 85 percent of applications cost per square foot were under those rule-based point qualifying thresholds. 15 percent of
applications whose cost per square foot exceeded the
limitations chose to voluntarily limit their eligible
basis so that they could still secure points. That
limitation of eligible basis is something that was new for
2017.

Brent also explained in detail how REA staff
evaluate and confirm the costs submitted in applications.
The group discussed credit per unit measures along with
the impact of soft costs. Readiness to proceed as part of
financial feasibility was discussed and stakeholders
continue to be wary of such a measurement. Other
suggestions included a penalty for significant cost
changes between application and cost certification that
might indicate the application amounts were not accurate.
In that same vein, the idea of voluntary limitation or
freezing of the developer fee was also discussed.

We did not have meetings before of either of
the July Board meetings, and this fall we'll begin the
process of mapping out topics to be taken up next year.

On a related note, the QAP project resident
survey is now launched, with focus group schedules and the
survey itself going out. Staff is hopeful that this
winter, as we are starting to discuss the 2019 QAP,
results from tax credit residents can inform us.

MR. GOODWIN: And this is a report?
MS. HOLLOWAY: This is a report.

MR. GOODWIN: We will receive your report. I don't think that takes a motion or action. Any questions from Board members? Any comments from others?

(No response.)

MR. GOODWIN: Thank you, Marni.

So we're moving to 5(d). Andrew.

MR. SINNOTT: Good afternoon, Chairman Goodwin, members of the Board. My name is Andrew Sinnott, Multifamily Direct Loan administrator.

Item 5(d) is: Presentation, discussion and possible action regarding awards of direct loan funds from the 2017-1 Multifamily Direct Loan Notice of Funding Availability to 9 percent housing tax credit layered applications.

The Department received twenty 2017 9 percent layered applications, two in the CHDO set-aside and 18 in the general set-aside. Of those twenty, three were terminated and one application was withdrawn. Of the sixteen remaining, ten have development sites in participating jurisdictions, meaning that they can only access TCAP repayment funds or NSP-1 program income funds, the bulk of which is anticipated to be awarded to 4 percent layered applications that were received before the 2017 9 percent applications. As a result, and because of
Board action taken at the April Board meeting, these applicants have been able to delete their direct loan requests and replace those anticipated fund with deferred fee and additional debt.

So that leaves six. Of the six, five are being recommended for awards of HOME funds today and one will remain on the waiting list which could potentially be awarded HOME funds at a later date. The five applications being recommended for awards, totaling $5,530,000 in HOME funds are:

- 17107 The Residences at Wolfforth, new construction development in Wolfforth, serving elderly limitation population, that will be $500,000 at 3.25 percent interest rate, 30-year am, subordinate to FHA insured debt.
- 17372 Sunset Trails which is a new construction development in Bullard, serving elderly limitation population, that's $740,000 at 3.25 percent interest rate, 30-year am, subordinate to FHA insured debt.
- 17208 Waverly Village, an acquisition rehab in New Waverly, serving a general population, that will be $300,000 at 3.25 percent interest rate, 30-year am, subordinate to conventional debt.
- 17204 Vista Bella, new construction in Lago Vista, serving a general population, that's $1.935 million
at 3.25 percent interest rate, 30-year am, subordinate to conventional debt.

And 17290 Golden Trails, new construction development in West, Texas, serving general population, $2,055,000 at 2 percent interest rate, 30-year am, and that's first lien debt.

The direct loan requests for 17107, 17372 and 17208 were not adjusted by Real Estate Analysis staff, while the direct loan requests for 17204 and 17290 were cut by $350,000 and $145,000 respectively in order to maintain financial feasibility. Application 17290 additionally had its interest rate increased from its requested zero percent to 2 percent by REA staff. The 2 percent interest rate, while less than the recommended 3.25 percent interest rate in 10 TAC 13.8(a) is allowable if the Department determines that the development does not support the 3.25 percent interest rate, which is the case in this instance.

It's worth noting that application 17107, while being new construction, involves the acquisition of land that has several occupied mobile homes on it. The applicant and staff have discussed the applicability of the Uniform Relocation Act in 104(d) and the applicant has committed to fulfilling its obligations under those requirements. The award for this application is
conditioned on the applicant demonstrating full compliance with these requirements no later than the commitment notice execution date in early September. I just want to make clear that having to comply with these requirements will continue after September and through construction completion, but there's currently some missing documentation that we need in order to confirm that compliance with the Uniform Relocation Act in 104(d) is being met, so it's that missing documentation that we'll need in early September.

I also wanted to note that the HOME loans for application 17107 and 17372, as a result of being subordinate to FHA insured debt, will be structured as surplus cash flow loans in accordance with 10 TAC 13.8(c)(2).

Should the five recommended awards be approved today, approximately $34 million will remain available under the NOFA, with approximately $7.7 million available under the supportive housing soft repayment set-aside, $23.1 million available under the general set-aside, and $4.7 million available under the CHDO set-aside.

With that, staff recommends awards of HOME funds totaling $5,530,000 for applications 17107, 17372, 17208, 17204 and 17290.

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

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

MR. BRADEN: So moved.

MR. GOODWIN: Motion. And a second?

MR. VASQUEZ: Second.

MR. GOODWIN: We have a motion and a second.

Any discussion or questions?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Motion passes. Thank you, Andrew.

MS. HOLLOWAY: Item 5(e) is: Presentation, discussion and possible action regarding Section 811 Project Rental Assistance participation with 9 percent Housing Tax Credit applications, as required by 10 TAC 10.204(16). This section of the rule requires that all Competitive Housing Tax Credit applicants participate in the program and that applicants with existing developments that meet Section 811 criteria provide units to meet the threshold. Applicants without existing developments must provide units in the development under application if it
meets Section 811 criteria.

The Section 811 PRA program provides project-based rental assistance to multifamily properties to serve extremely low income persons with disabilities linked with long-term services. In 2015 and 2016, 811 participation was a scoring item. In order to increase the number of available units in the program, participation was moved to threshold for 2017, requiring applicants to first utilize any existing properties that meet the 811 criteria.

Where more than one applicant has pledged the same existing property and that existing property does not have enough units available to meet Section 811 requirements, staff will continue to work with the applicants to identify potential options. If there is a question regarding control of an existing development that the applicant has or has not pledged, staff continues to working to resolve those issues. For applications with unresolved issues, the award of 9 percent tax credits is conditioned on the application meeting threshold Section 811 requirements at commitment.

Staff recommends approval of the list and waiting list of 2017 Competitive Housing Tax Credit applications that will provide Section 811 Project Rental Assistance units, as published in your Board materials. Staff further recommends approval of the Section 811 list...
be conditioned on satisfaction of all conditions of
underwriting and of the 811 PRA Program, completion of all
reviews required to assure compliance with the applicable
rules and requirements, and award of Competitive Housing
Tax Credits.

MR. GOODWIN: Thank you, Marni.

Any questions?

(No response.)

MR. GOODWIN: Do I hear a motion?

MS. RESÉNDIZ: So moved.

MR. GOODWIN: It has been moved. Do I hear a
second?

MR. BRADEN: Second.

MR. GOODWIN: Been moved and seconded. All in
favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: Thank you, Marni.

Sharon.

MS. HOLLOWAY: I just need to say something
just for a second. So yesterday at TAAHP, Beau and I were
sitting there up on the dais with Tim, and Tim pointed out
that all of that stuff flows through us. I wanted to
point out that just as all the 4 percent an bond stuff
flows through Teresa and all the direct loan flows through Andrew, everything 9 percent flows through Shay at the speed of light. And once again, we've done it, and I'm so proud.

MR. GOODWIN: Thank you.

(Applause.)

MS. GAMBLE: I am not an emotional person, I'm not.

Good afternoon, Board, Mr. Chairman, Tim, Beau, everybody. My name is Sharon Gamble, and I am the administrator for the Competitive Housing Tax Credit Program.

Item 5(f) is: Presentation, discussion and possible action regarding awards from the 2017 State Competitive Housing Credit ceiling and approval of the waiting list for the 2017 Competitive Housing Tax Credit application round.

Back on January 29, 2017, we received 380 eligible pre-applications, on March 1 we received 138 full applications requesting more than $137 million in credits, and there are currently 117 applications eligible for consideration that are collectively requesting credits totaling more than $120 million. Our credit ceiling for 2017 is just over $67 million.

I'll now explain the awards process. This is
going to seem longwinded, but trust me, it's as brief as I could make it.

I'll start with the regional allocations.

Regional allocations are developed with a formula described in Texas government Code, Section 2306.1115 and are published prior to the start of an application cycle.

The cycle scoring is finalized through application review and applications are sorted based on regional allocations, set-aside requirements and scores. To make the award recommendations, staff relies on the allocation methodology as set out in 10 TAC Section 11.6 of the 2017 Qualified Allocation Plan.

We first ensure that we have enough applications from qualified nonprofit organizations so that at least 10 percent of the allocations can be made to nonprofit applicants. We don't usually have a problem with that and we didn't this year. We start with the at-risk set-aside, ensuring that at least 5 percent of the allocations are rural USDA. We then recommend more applications until the allocations for the at-risk set-aside meets the 15 percent of the credits.

Next, the high scoring applications within each of the 26 sub-regions are selected as long as there are sufficient funds within the sub-regions to fully award the applications. There are statutory limits to these,
though. In regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for eligible projects unless there are no other qualified applications in the sub-region. Urban Regions 3, 6, 7 and 9 are affected by this requirement.

In regions containing a county with a population that exceeds 1.7 million, the Board shall allocate credits to the highest scoring development, if any, that's part of a concerted revitalization plan that meets the requirements of the QAP, and is located in an urban sub-region that is within the boundaries of a municipality with a population that exceeds 500,000. Urban Regions 3, 6 and 9 are affected by this requirement.

If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per applicant, the Department will not recommend such an allocation. This year one application, 17334 Medano Heights in the at-risk set-aside is not recommended for this reason.

Once there are not enough funds left in the sub-regions to fully fund the next application, the remaining funds from the sub-regions are pooled into what we call the collapse where all remaining funds are pooled into what we call the collapse. We have a rural collapse.
and a statewide collapse. We do the rural collapse first. We find the most underserved rural sub-region as compared to the sub-region's allocations to award the next application in line in that sub-region. This rural redistribution will continue through the rural sub-regions until at least 20 percent of the fund available to the state are allocated to applications in rural areas.

The statewide collapse takes all remaining credits and, like the rural collapse, goes through the urban sub-regions based on the most underserved. When there are not enough credits left to award the next application, the allocation ends. If the Department secures enough credits from credit returns or the national pool to award the next application, those awards will be made from the waiting list with any determined conditions applied.

The applications being recommended for award are in Report 1, the list that says Recommended Awards Log. These are all the recommended applications from the at-risk, USDA and nonprofit set-asides and rural and urban regional allocations. This report includes two applications that are still being reviewed by Multifamily Program staff, 17207 and 17360 in Region 11 Urban, and our recommendation for those applications are conditioned upon completion of that review and any subsequent real estate
analysis issues with these.

And here I have a correction to the awarded list. In Region 11 Urban, we have one application 17010 Baxter Lofts that has a not recommended status and it's still subject to appeal. Because it's still subject to appeal, we have to reserve their credit request in case they win their appeal. In my calculations in creating this list, I did not consider setting aside those funds, $335,545 is the number actually, so when we reserve those funds, there is not enough left in the sub-region to award application 17360 Paseo Plaza, Phase II, and so that application at this time will be removed from the recommended awards list, it will remain on the waiting list. 17010, the one that's coming up for appeal, if that doesn't work, then likely Paseo Plaza will move back onto the list, but that one change for right now.

MR. GOODWIN: I think there's a question, Sharon.

MR. VASQUEZ: The Paseo Plaza still is eligible for the collapse funds.

MS. GAMBLE: It's still on the waiting list so it's still eligible for award. Correct.

MR. VASQUEZ: So regardless of Baxter Lofts, they still might get an allocation.

MS. GAMBLE: They might. Correct. But not
today with these awards, that would happen after the
completion of any appeal that that applicant has.

Regarding staff review of the two applications
that are indicated as under review on the log, I can
assure you that those applications will be reviewed in
line with the direction that we've received from this
Board. They won't be given any gimmes, they'll have to
prove the same items that all the other applications that
have come before you are asked to prove. If those
applications are found to be deficient in any way, the
applicant will have the ability to provide clarification
or further information and will have the right to appeal
staff's decision.

The posted list includes 45 applications still
being underwritten, so since the list was published, that
number has been cut to 29. None of those that have been
completed since the publishing of the list will impact the
issuance of awards as indicated and mentioned with regard
to prioritization of applications or any set-aside or
collapse. All final underwriting decisions are also
subject to appeal. These issues will be resolved at or by
the next Board meeting.

Staff has applied the decisions made regarding
the appeals heard in item 5(c) and has determined that the
one change that I mentioned to the award list, the only
change and that is that 17010, we're reserving $335,545 for the outcome of their appeal, which means that 17360 Paseo Plaza, Phase II is removed from the award list and is included on the waiting list.

All eligible applications are reflected in Report 2. These are all the active applications from the at-risk, USDA and nonprofit set-asides and the rural and urban regional allocations. This is a complete list of all applications recommended for an award and the waiting list of all active applications not recommended for an award today. Those recommended for awards are reflected in the recommendation column of this list.

Staff has applied the decisions made regarding the appeals heard in item 5(c) and has amended the posted award and waiting list the following ways: in Region 6 Urban, 17322 Provision at Wilcrest will be removed from the waiting list, and in Region 11 Urban, 17360 Paseo Plaza, Phase II being recommended next.

Report 3 is the summary of the award results which includes the funding amounts for the rural and urban regional allocations and for the at-risk, USDA and nonprofit set-asides. It also shows the rural and statewide collapse, as well as the amount of funds that remain after all awards are made.

Report 4 is a summary of conditions recommended
by EARAC to be placed on awards as a result of previous participation reviews. Not all applications have conditions, this report includes most of the applications that do. There was an EARAC decision on conditions for applications 17324 Orange Grove Seniors, 17338 Pecanwood -- and I'm from Alabama so I say pe-can wood -- 17341 Pecanwood II, and 17342 Pecanwood III. So those were not published in your report and I will read the conditions into the record so that we have a record of those conditions.

The Executive Award Review Advisory Committee, EARAC, met on July 24, 2017 to review compliance issues associated with applications 17324 Orange Grove Seniors, 17338 Pecanwood I, 17341 Pecanwood II, and 17342 Pecanwood III. Previous participation review identified the applications of Category 4 and the applicant was given an opportunity to provide additional information and/or propose terms and conditions to correct the situation. EARAC has reviewed the responses submitted and has approved compliance with the following conditions.

As a condition to its 2016 tax credit award, Mack RE, a developer, has entered into a contract with a third party consultant to review all corrective action materials prepared by Mack RE prior to distribution to the Texas Department of Housing and Community Affairs. A copy
of the contract has been provided to TDHCA. Mack RE will
keep such contract in place until it determines that the
service is no longer needed and TDHCA's executive director
consents to the termination.

In addition, Mack RE agrees to the following:
will obtain TDHCA's consent for any change in the
consultant, upon review of any corrective action material
to be submitted to TDHCA, the consultant will sign such
material to confirm that he reviewed and approved those
conditions. The signature will be included with the
submission. Mac RE will restructure its property
management staff by July 24, 2017. The following
conditions will comprise the key personnel for the
compliance team: compliance supervisor to be responsible
for compliance matters, physical inspections and files;
assistant compliance supervisor to be responsible
primarily for file issues and support services; director
of tenant certification operations supervisor to oversee
on-site managers. The current compliance supervisor and
assistant compliance supervisor will be replaced by other
Mack RE employees by July 24, 2017.

Messrs. Calhoun and Rabalais, the developers,
will meet monthly with the consultant and key compliance
personnel to discuss compliance matters and ensure all
matters are receiving appropriate and timely attention.
Messrs. Calhoun and Rabalais, along with the consultant, will review all corrective actions before submitting to TDHCA. The compliance supervisor will be responsible for tracking all response dates and ensuring timely response.

By July 25, 2017, Mack RE will establish a new computerized location for all compliance matters to ensure uniform access to information. Mack RE will install and utilize a physical calendar in plain view of all personnel as a backup for tracking compliance matters.

Mack RE will update its forms and systems before December 31, 2017 as follows: Mr. Calhoun will interact with TDHCA personnel to update Mack RE's tenant selection plan to ensure compliance with TDHCA rules are completed. Mr. Calhoun will cause the tenant selection to be implemented with all properties. Mr. Calhoun with work with key compliance personnel to update Mack RE's tenant rights and resources guide and cause the revised guide to be implemented at all properties. The compliance supervisor and assistant compliance supervisor will update the affirmative fair housing marketing plan for review and approval by Mr. Calhoun and the consultant. Mr. Calhoun will work with the consultant and key compliance personnel to update the pre-audit checklist and employ and implement it at all properties.

Mack RE will ensure ongoing compliance through
the following: require the consultant and each of the two
compliance personnel to attend TDHCA compliance training
annually, require the consultant and the compliance
supervisor to monitor TDHCA Board books and Listserv
regularly to be informed of any changes in TDHCA
compliance rules and procedures, require supervisors to
work with the key compliance personnel to properly
implement any changes in the TDHCA compliance rules and
procedures, require a representative of Mack RE to attend
TDHCA workshops and roundtables that relate to compliance
matters as appropriate, and promptly address any failure
of key compliance personnel to adhere Mack RE's policies
and procedures for compliance.

Report 5 includes real Estate Analysis Division
application summaries that were available when the Board
book was posted. Subsequent filings have been posted to
the Department's website. These are a handy two-pager that
give the gist of the full underwriting report.

Report 6 includes information regarding public
input received for each active application. Where
possible, all the comment received for an application is
included. In some instances, representations of past
comments have been provided along with a number of
individual comments.

This is a ton of information, I need not tell
you.

Our dedicated review staff has worked tirelessly to complete the reviews and to gather information so that we could put it in a nifty format to present to you today. My fab five, Ben Sheppard, Elizabeth Henderson, Liz Cline-Rew, Nicole Fisher, and Shannon Roth, are still the hardest working, most dedicated people I know. Jason Burr does an awesome job of keeping our data straight and otherwise making us look good. And our new addition, Patrick Russell, is our millennial who is so motivated and competent that he is ruining the that bad rap that millennials are supposed to have.

Our Direct Loan staff, Andrew Sinnott, Cris Simpkins and Marie Esparza have been there to assist us in every way and I truly appreciate their support. Our manager, Teresa Morales, is not to be messed with. And Marni Holloway walks on water, as far as I'm concerned. And Tom Gouris is still a vegetarian, and that's all I can say about Tom this year.

(General laughter.)

MS. GAMBLE: And this is not just a Multifamily undertaking. We literally could not do any of this without staff services, financial services and information services. It's a coordination with the Compliance
Division, the Real Estate Analysis Division, and of courses, the Policy and Public Affairs Division, so ably led by Michael "Captain Tweety" Lyttle -- there he is. He yelled at me last year because I didn't mention him.

MR. LYTTLE: Way to go, Sharon.

(General laughter.)

MS. GAMBLE: Their help was indispensable, and they helped us even as they had the added tasks associated with the session.

I can't leave out our legal team, of course, led by our General Counsel Beau Eccles, ably assisted by Megan Sylvester. I said it last year and I'll say it again: if you can't get Beau to see it, then it's just not there and you need to dig deeper.

And last, but certainly not least, our Executive Director Tim Irvine and this Board, thank you for guiding us, thank you for helping us figure things out, thank you for holding everyone accountable.

I am proud today to say that with this action we're going to put over 4,800 more affordable units of housing on the ground for working Texans.

(Applause.)

MS. GAMBLE: And to put that in terms that Beau can smile at, that's 4,800 pretty little chickens.

With that, staff recommends approval of the
recommended awards and the waiting list, as amended, for the 2017 Competitive Housing Tax Credit application round.

MR. GOODWIN: Could you repeat that one more time?

MS. GAMBLE: Do I need those conditions again?

(General laughter.)

MR. GOODWIN: Any questions? If not, I'll entertain a motion.

MR. BRADEN: I make a motion to accept staff's recommendation.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Made and seconded. Do we have any discussion?

MR. PALMER: Barry Palmer with Coats Rose. I'm representing the Housing Authority of the City of El Paso, and we have just a small request which is to include Medano Heights on the waiting list. The Housing Authority of El Paso has two projects that are being awarded today that total $3 million, so they understand that they can't get another award, but at the same time, there is some uncertainty on these projects, we haven't received our underwriting report yet, we've got more due diligence to do as we move towards development and so if something were to happen where we were to lose the credits on one of the
first two, we would like to still be on the waiting list so that our third deal would get funded. It wouldn't affect anybody negatively because we would only get that deal funded if one of our other two deals couldn't go forward.

MR. GOODWIN: Sharon, do you want to address that?

MS. GAMBLE: I'm going to, I guess, engage in some conversation with the general counsel here. Again, Sharon Gamble, administrator for the Tax Credit Program.

MR. ECCLES: Hang on, we have to wait for the funk to subside. Okay, please continue.

(General laughter.)

MS. GAMBLE: So we talked about this a little bit and the application that Barry is talking about was not withdrawn or terminated and so it cannot be awarded today because it would put them over the $3 million mark, but it was not terminated and it was not withdrawn. And I believe that since that is the case, it can still be included on the waiting list.

MR. ECCLES: Well, I'm reading from the book of law, Texas Government Code 2306.6711(b) which states that in any event we may not allocate to the applicant housing tax credits in an amount greater than $3 million in a single application round. So as long as it's not
allocated, it can be on the waiting list, but obviously, if we get down to the waiting list and there it is smiling up at us, we can't allocate it unless other credits would be, I guess, returned.

MS. GAMBLE: That's my understanding.

MR. GOODWIN: I see all of El Paso nodding that's okay.

MS. GAMBLE: And so staff would offer to amend the 2017 award and waiting list to include application 1734 Medano Heights.

MR. ECCLES: With that understanding that no more than $3 million can be allocated.

MS. GAMBLE: Correct.

MR. GOODWIN: Accept that amendment?

MR. BRADEN: I'll accept that modification.

MR. GOODWIN: And I don't remember who seconded.

MR. VASQUEZ: I did.

MR. GOODWIN: Thank you.

Other comments?

MS. LATSHA: Good afternoon. I'm going to just quickly read an email that I wrote.

MR. GOODWIN: Who are you? Some of us know who you are but not everybody.

MS. LATSHA: I'm sorry. Jean Latsha with
Pedcor Investments.

I attended a city council meeting last week in Rowlett and I heard some statements that caused me some concern, and I believe it's important to bring them to your attention. The statements were made by the applicant for Pointe at Rowlett, a currently active 9 percent tax credit application.

The application indicates that the development --

MR. GOODWIN: Excuse me. Is it on the list as having been approved or to be approved?

MS. LATSHA: I guess being approved. That's correct.

The application indicates that the development will serve the general population, but the applicant has clearly indicated to the public and elected officials the intent to at a minimum market exclusively to a senior population. While I was not privy to prior meetings, the applicant had with the city council or neighborhood groups, some the comments made at that meeting also implied that he has given the impression that this development will actually exclusively serve a senior population. There is video of the meeting and several places where these comments were made.

I guess the most frustrating thing about this
is that the developer instead of facing resistance that we all face all the time in dealing with elected officials and neighborhood groups, instead of facing that opposition with sound arguments, faced it with misrepresentation, and this is the kind of behavior that, quite frankly, makes neighborhood groups and elected officials and the public in general mistrust the development community, mistrust TDHCA, mistrust the program.

In a more practical sense, I think that staff should be directed to take another look at this application and the eligibility of the applicant with respect to those actions. There are plenty of places it the rules that would support the ineligibility of the applicant because of what he did. There's specific language in notifications about misrepresenting this very thing, target population, and although that's with respect to just public notifications, anybody can write a letter that meets the rule but if they then meet with neighborhoods and city council members and misrepresent what they put in that formal letter, what good is that. There are also other places in the rules that would support being able to terminate this application.

And so that is my request, that staff take another look. Thank you.

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

MR. VASQUEZ: Not necessarily for Jean, just on the process. If after today that we approve something and later something shows up that they violated a rule, they can still be dropped.

MS. GAMBLE: I wanted to clarify that that application is on the waiting list, it's not on the recommended awards list, it's on the waiting list. Absolutely if we find any application that you award today or that's on the waiting list can still be terminated, dropped, however you want to say it. That's what the Board decides.

MR. GOODWIN: What is the normal procedure, Sharon, for when something like this comes up that you're been notified? What do we normally do internally when we hear that?

MR. IRVINE: This isn't normal. I would suggest that if the Board wishes to give staff direction to examine this and report back at the next Board meeting, we could certainly do that.

MR. ECCLES: But I'll add that an allegation made at the award meeting just basic concepts of due process, we can't remove rights without an opportunity to respond to that or damage a property interest that is not in here. So the most that could be done is to instruct
staff to take a look at it in a way that comports with our rules and statutory authorization.

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

MR. GOODWIN: We have a motion and a second, motion that's been amended and seconded. Hearing no other questions, I'll call for a vote. All those in favor say aye.

(A chorus of ayes.)

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

MR. GOODWIN: Thank you, Sharon. Thanks to all of you for the great job that you do.

(Applause.)

MR. GOODWIN: We now move to item number 3, Monica, finally.

MR. IRVINE: Everybody, this really is worth waiting for.

MR. GOODWIN: You thought you were going to be early.

(General laughter.)

MR. GOODWIN: Be as quiet as you can, please, as you depart.

MS. GALUSKI: Good afternoon. I'm Monica Galuski, the director of Bond Finance.
The good news is I'm not here to appeal anything, I'm not here to talk about any issues other than to give you a report regarding the successful closing of the Department's 2017 Series A, B and C bonds. The bonds priced June 7, we executed the bond purchase agreement on June 8, and the issue closed June 22. I'm going to try to keep this brief because I know you have had a long day, so I'll just go real quickly through this.

The Series A and the Series C bonds were what we call new money bonds. They were backed by mortgage-backed securities that were created with newly originated mortgage loans through the Department's to be announced, or TBA program. While the TBA program typically delivers the mortgage-backed securities to a third party or to third party investors, in this case the mortgage-backed securities were delivered to the trust estates to serve as collateral for the bonds. Both issues were sold as monthly pay pass-through bonds with a fixed monthly interest rate and monthly redemptions equal to the principal repayments and prepayments on the underlying mortgage loans. The Series A bonds were tax-exempt and the Series C bonds were taxable. So those were both new money bonds, newly originated mortgage loans, pass-through bond structure.

Then we also included $29,610,000 of 2017
Series B refunding bonds which was an economic refunding of the Department's 2007 Series B bond issue. Rates on the Series 2007 B bonds were 4.70 to 5.30, the refunding bonds, 2017 B, the coupon was 2.75 percent. It generated a net present value economic benefit of over $4 million. What I wanted to bring to you today is that there were a couple of firsts here to sort of point out. We have two different active bond indentures, one is called the Single Family indenture, one is called the Residential Mortgage Revenue Bond indenture, or more commonly known as RMRB. We recently amended the indenture for the Single Family indenture through the issuance of a 62nd supplemental Single Family Mortgage Revenue Bond trust indenture that was dated October 1 of 2016. The amendment moved issue-related specifics, such as interest payment frequency, maturity dates, redemption dates, notice requirements, and the indenture amendment moved that all out of our big master indenture and moved it so that it would only be contained in the supplemental indenture for each new series of bonds. So each new series of bonds would have latitude to be structured differently, and that would all be disclosed at the time of the bond issuance. What this really did for us was we've sold past-through bonds before, and recently we sold some in
2015 and 2016, we did a couple of bond issues that were pass-through bonds. Well, TDHCA's bonds, until this issue, were not true pass-throughs in the market. We had a semiannual pay requirement that made them sort of -- we called them modified pass-throughs, the market just called them odd, and we took a little bit of a pricing hit for that. So I'm happy to say this was the first issue where we were able to use the indenture amendments that were rather painful to achieve, to our benefit. So that's one first.

And the other first was it was our first taxable new money bond series, so the Series C bonds, we originate basically everything through our TBA program now, and when we're doing a bond issue, we're pulling mortgage loan activity, we're just reaching into that pipeline and pulling those out and bonding them. Well, the loans that we're originating, about 60 percent of them are tax-exempt eligible, meaning they can be -- let me rephrase that -- 60 percent are eligible for inclusion in the tax-exempt bond issue, the other 40 percent, for the most part, are not eligible because the borrower received a mortgage credit certificate, so they've already received an IRS approved benefit and the IRS precludes us from putting that in a tax-exempt bond issue. So in the past we've just sort of allowed those all to go through the TBA.
program, and be sold out into the market. This time we successfully did a little over $42 million in tax-exempt new money bonds, so that was another first for us.

I was going to go through and talk about the legal team, which bond counsel was Bracewell, disclosure counsel was McCall, Parkhurst, our financial advisors and underwriters, and what a good job they did, but they're all gone.

(General laughter.)

MS. GALUSKI: So I'm going to just close with saying we included in attachment 3 to your item a pricing book that as put together by the senior manager, Ramirez. It has a lot of detailed pricing information for you to go through at your leisure, and probably not today, and if you want in the future more information, less information, different information, please let us know. We're trying to include a little bit more information so that we're being responsive to keeping you fully informed and keeping it really transparent.

Does anyone have any questions?

MR. GOODWIN: Any questions?

MR. IRVINE: Since you did put aside a few minutes to brag on people and they aren't here to be bragged upon, Monica really does run probably one of the most sophisticated bond shops in the state, and she does
it with incredible attention to detail, an eye for opportunity, and frankly, really good stewardship. She's sensitive to risk management and she knows how to use her professionals to their best advantage. We do have a great team, Lori and Robin and the folks that ran book on this one did a spectacular job. Our bond counsel is always terrific. But Monica is the heart and soul of this activity, and we thank you.

MS. GALUSKI: Thank you, Tim.

MR. GOODWIN: Thank you, Monica.

(Applause.)

MR. GOODWIN: That's a report item, so we've received your report.

I think we've come to the end of the agenda and we're now at that point where we accept public comment for those items that are not on the agenda.

Tim, you have something you want to bring up?

MR. IRVINE: It's not an agenda item, it's just a parting comment. I'm glad that the immediate past president of TAAHP is here to hear this and Cynthia is here to pass this on to the development community.

One of the great duties I get to do is sign time sheets, and boy, have I been signing off on a lot of hours. The people in this room have really, frankly, for the better part of half a year given their life to the
affordable housing process, and we owe them a lot. So thank you.

MR. GOODWIN: Thanks to all of you.

(Applause.)

MR. GOODWIN: Hearing no other comment, I'll entertain a motion to adjourn.

MR. VASQUEZ: So moved.

MR. BRADEN: Second.

MR. GOODWIN: So moved and seconded. All in favor, aye.

(A chorus of ayes.)

MR. GOODWIN: We're adjourned. See you in September.

(Whereupon, at 2:30 p.m., the meeting was adjourned.)
CERTIFICATE

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

I do hereby certify that the foregoing pages, numbers 1 through 184, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

7/31/2017
(Transcriber) (Date)

On the Record Reporting
3636 Executive Cntr Dr., G22
Austin, Texas 78731

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(512) 450-0342