TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

QUALIFIED ALLOCATION PLAN
AND
MULTIFAMILY RULES
COMMITTEE

Capitol Extension
Room E1.014
1100 Congress Avenue
Austin, Texas

April 25, 2018
4:12 p.m.

COMMITTEE MEMBERS:

LEO VASQUEZ, III, Chair
LESLIE BINGHAM ESCAREÑO, Member
PAUL A. BRADEN, Member
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PROCEEDINGS

MR. VASQUEZ: Let's call the meeting to order here. Sorry for the late start, and Ms. Bingham is on her way, she'll be here any minute.

The Qualified Allocation Plan and Multifamily Rules Committee of the Texas Department of Housing and Community Affairs is hereby opened, it is 4:12.

Roll call. Paul Braden?

MR. BRADEN: Here.

MR. VASQUEZ: Leo Vasquez, here. And currently absent is Ms. Bingham Escareño. So we do have a quorum, we can get started.

We will have public comment, but as typical with our meetings, we'll solicit public comment at the end of the meeting and we'll also provide for public comment at the end of each agenda item for presentations on that particular topic that we've discussed.

And the first item on the agenda is presentation and discussion of the Resident Survey. Marni Holloway will present, but I believe we have an introductory remark.

MR. ECCLES: Good afternoon.

Just a couple of prefatory remarks just about what's going on here.

SPEAKER FROM AUDIENCE: Who are you, for the
record?

(General talking and laughter.)

MR. ECCLES: Beau Eccles, general counsel, TDHCA.

For these proceedings, when we're discussing this Board's rules with the committee, there are two different areas that may be covered. The first is interpreted guidance of what the current rule means and/or guidance as to changes to the rule that the committee would like to see presented when the new rules are proposed to the Board. So those are two separate things; it's important to keep these functions separate.

The Board engages in its statutory policymaking function through rulemaking and only a plain reading of the statute and current rules should be used as the basis for interpretation of its rules. Tweaks to the rules or exceptions or different standards of general applicability may be suggested as things that the committee would like to see in the proposed version of the rule for next year, but we can only, as a department, enforce the rule in statute we currently have.

Lastly, an interpretive guidance provided by this committee does not alter any action taken by the full Board or any matter that is final. It is prospective interpretive guidance and it's not even binding on the
Board in that it is not itself a rule.

So just for the committee's sake, for the public's sake, this committee is not going to be proposing new standards to be interpreted or it can only provide interpretation of the plain meaning and plain wording of its current statute and rule and interpret or take in comment as to maybe tweaks to be made for the next rule, but when those tweaks maybe reach some favor with the committee and maybe they're talked about as oh, that's a good idea, but that doesn't make it a rule that's enforceable now.

So that said, I'll turn it over to Marni.

Thank you.

MR. VASQUEZ: Thank you, Mr. Eccles.

MS. HOLLOWAY: Good afternoon, Chairman Vasquez, Mr. Braden. I'm Marni Holloway, I'm the director of Multifamily Finance. I remembered to say that.

(General laughter.)

MS. HOLLOWAY: Item number 1 is presentation and discussion of the Resident Survey. You'll recall we talked about this just a little bit at last month's Board meeting just so that everyone could have an opportunity to take a look at it over the past month, it was published in the Board book. Today we're hoping to take a little bit deeper dive into the survey results.
As we discussed last month, the survey respondents were over-represented the elderly population in the TDHCA portfolio, so across the portfolio about 28 percent of the heads of households for units are classified as elderly, for the survey 63 percent of the survey respondents are classified as elderly. There were 653 respondents, so that means roughly 411 were considered elderly and the remaining 242 were considered not elderly.

The fact that survey respondents are disproportionately elderly doesn't prevent us from drawing helpful conclusions from the survey that should be taken into consideration when looking at results that aren't split out in the report that was published.

We are able to isolate non-elderly and family responses to the survey which provides insight into how differing resident groups feel about housing choices. An early question in the survey asked residents from the zip code of their previous address which was compared to the zip code of the property they're currently living in, and while this question should be tested again in future surveys to assure its validity, since memory recalls are prone to error -- I don't remember my last zip code -- initial findings suggest that 75 percent of respondents moved from different zip codes. This information shows us that income-eligible renters actively look for properties
in many parts of their cities or towns and not just in
their current neighborhoods. If this is supported by
future testing, it supports the Department's continued
focus on dispersion and offering eligible residents choice
of where to live.

Because TDHCA serves so many households, we are
called on to meet differing needs. For some households,
such as those on fixed incomes or the elderly, affordable
housing in a TDHCA property is a long term stable housing
solution. For other households, affordable rental housing
might be a stepping stone to homeownership. In the
survey, the 77 households with children were asked if
owning a home is a medium to long term goal; 53 of them
said yes. Of those 17 said that they plan to pursue
homeownership within the next two years. So through
tenant surveys or simply a brochure that's available at
tenant properties, TDHCA could inform family households
that hope to one day own a home about the programs
administered by the Department and its partners across the
state that could assist them with that.

Residents were asked if they find certain
neighborhood amenities to be important. All of the
amenities listed were taken from our opportunity index
menu items, and while all neighborhood characteristics
received some level of support across the survey, some
features had an overwhelming number of residents select them as important. So just as a group but not ranked, most residents identified the same top five as being near a grocery store or pharmacy, being near a health care provider, the attractiveness of the neighborhood, so no trash or abandoned buildings, safety of the neighborhood, and being near family and friends.

When households with children are isolated for their responses, they largely agreed except school quality became more important than being near family. Schools with a Met Standard rating, as you know, are part of our undesirable neighborhood characteristic rule, so this is something that we are addressing to some extent with our current rules.

Residents were then asked to rank all the amenities that they identified as important, so within everything they chose. The 653 respondents ranked safety of the neighborhood as being the most important neighborhood characteristic. This ties directly back to the crime rate in the undesirable neighborhood rule and to the property crime rate item in the opportunity index menu. Being near a grocery store or pharmacy was ranked as the second most important, and being near one's health care provider was ranked as the third most important neighborhood characteristic.
In light of these responses, we could consider how to reflect these preferences in future rules, whether through competitive scoring items in the QAP or threshold requirements in the Uniform Multifamily Rules in Chapter 10.

Respondents were also asked to identify the importance of various characteristics such as the size of units, storage inside units, and amenities at the apartment complex. Most residents identified the same top five that were most important -- again, these are not ranked -- those are utility bills, noise level, the attractiveness of the apartment homes, physical condition of the apartment and property, and then lighting throughout the building and grounds of the community.

When households with children were isolated for their responses, they largely agreed except that they overwhelmingly identified size of my home as being an important development characteristic.

When those amenities were ranked, size of unit was the most important, utility bills was next, physical condition of the apartment and property was third.

In light of those responses, we could consider how to reflect the preferences in the Uniform Multifamily Rules, or development characteristics are included through minimum point requirements tied to items selected from a
long list.

Earlier today we met with stakeholders at our planning meeting to discuss, among other things, development amenities. I think we had a productive conversation and we will be providing the Board a report on that meeting next month once we have the time to write it down, we don't have time to get it out before tomorrow morning.

The Uniform Multifamily Rules require that every development offer some tenant supportive services to its residents and the survey invited respondents to identify those services that they find to be most important. This was another topic of our meeting earlier today. Most residents identified the same two top two services that are most important, that is health services and transportation. Given that the survey respondents weighted more heavily towards elderly residents, this preference is not surprising.

When households with children were isolated for their responses, they largely agreed except for one difference. The third service tied with another as being identified as most important is education services for children.

Respondents were asked: If you could have your dream home, would you keep your home in your current
neighborhood or would you move your home to another part of town? They were then asked a series of questions that asked them to reflect on the qualities of good and bad neighborhoods. Respondents were then asked the first question again but in a different way: Imagine you can move to the best neighborhood in your town or city, which would you prefer: number one, stay where I am but pay cheaper rent, or number two, pay a little more rent but live in the best neighborhood. This series of questions tried to uncover respondents' motivation for selecting a new apartment unit, is it location, is it cost.

Because we know where the respondents live, we can interpret their responses in light of the conditions in their neighborhoods, like poverty. We can ask questions like: Are residents who live in a high poverty census tract more likely to want to move away than residents who live in a low poverty census tract? So compared to residents in census tracts that qualify for opportunity index threshold points -- so that basic threshold you have to pass to get to opportunity -- with those in census tracts that would not qualify, a higher percentage of residents in census tracts that do not qualify for opportunity index preferred to move to a different neighborhood when first asked where they would locate their dream home. Similarly, a higher percentage
of residents in census tracts with relatively high concentrations of tax credit housing preferred to move to a different neighborhood.

Without any regard to who is responding or the neighborhood characteristics of where they live, 57 percent of all residents preferred to locate their dream home in their current neighborhood and 43 percent preferred a different neighborhood. For those who initially preferred a different neighborhood, nearly half of them change their minds when presented with the option of cheaper rent by staying in their current neighborhood. The other half maintained their preference to move to the best neighborhood even if it meant a little more rent each month. A possible conclusion from these findings is that providing neighborhood choice to residents supports the preferences of the many households we serve across the state.

When respondents stated that they would prefer to locate their home to another part of town because of the benefits they see there, the survey asked them to identify the features of that neighborhood. For those respondents who initially stated they wished to move, they were looking for more community resources, things like grocery stores, parks, other -- we don't know what it is -- crime and safety is an issue, and then
attractiveness of the neighborhood.

For those respondents who initially stated they wished to stay in their current neighborhood but that their neighborhood could improve in some ways, the top four items identified for improvement were: crime and safety; attractiveness, so no trash or abandoned buildings; more community resources, those same grocery stores and parks; and then better public transit.

Staff has not begun drafting rule changes in response to the survey results. Many of the rules we already have in place like the opportunity index or undesirable neighborhood characteristics support some of these resident preferences. At the same time, we welcome direction from committee members regarding rule changes that may better align our programs with resident preferences in the future, along with input from stakeholders such as we received today at our meeting.

I'll be happy to take any questions.

MR. VASQUEZ: Does anyone?

MR. BRADEN: So was there anything that you found surprising when you went through these results?

MS. HOLLOWAY: Not so much. I think that given the limited period of time that we had to conduct the survey and then sort of the limited scope of that because of the time, there wasn't anything that was a big shock.
I think that having the survey so heavily weighted towards elderly respondents really skews a lot of these results, and I would hope if we are able to do more surveys in the future and are able to reach out to our entire group of residents or a larger group of residents that we would get a more reliable result of what everybody is looking for.

And I think, anecdotally, we've heard all of these things in the past. I think that the survey just helps support some of those conversations.

MR. VASQUEZ: And it would definitely be good to be able to not have it so skewed with the elderly.

MS. HOLLOWAY: Right.

MR. VASQUEZ: And I didn't hear you mention anything about was there any comparison between urban versus small town?

MS. HOLLOWAY: There are clusters in the survey and I believe one of those splits out to urban and rural but we have not divided out these results in that manner.

We absolutely, since we have that data, I believe could do that. I'm looking at Patrick, he's nodding his head.

Actually, the thing I forgot to say when I first started is that huge kudos go to Patrick and to Julie Long for their tremendous work on the survey. It just would not have happened without the two of them.

MR. VASQUEZ: Well, again, this I think is
great work and gives a great slice of perspective on everything that we're working on. As you mentioned, if we keep doing it every year and start building actual trends, and again, diversify that group that we're talking to, I think it would be very valuable for us going forward.

MS. HOLLOWAY: Absolutely. And I don't know if we can get it done for next month's Board book, but we certainly can start to break out the urban and rural preferences.

MR. VASQUEZ: It just would be interesting to see if there's some differences.

MS. HOLLOWAY: It would. And I think that it would be useful, particularly as we continue to work with groups like the Rural Rental Housing Association and they have a different set of priorities than developers who are working in the urban areas, it would be useful to have that information.

MR. VASQUEZ: Sure.

MS. HOLLOWAY: I don't know if anyone has anything.

MR. VASQUEZ: Does anyone want to comment on the survey?

(No response.)

MR. VASQUEZ: There will definitely be more in the future.
And can we note for the record that Ms. Bingham joined us midway through the presentation?

MS. BINGHAM ESCAREÑO: Sorry I was late.

MS. HOLLOWAY: All right. Number 2 is presentation and discussion of the 2019 QAP project plan.

So the 2019 QAP rules project kicked off on December 14 of 2017 when staff met with stakeholders to discuss issues that arose in previous cycles and to brainstorm possible topics of discussion for the upcoming roundtables. Stakeholders requested fewer but more in-depth roundtables, so in response to that feedback we have scheduled four meetings between January and June, not including any possible committee meetings. We've also reiterated our commitment to meet with smaller groups regarding very targeted issues that concern them.

We have continued our efforts to coordinate programs with other governmental entities, like the USDA and the Texas Historic Commission, in order to create alignments which may lead to future rule changes.

The first meeting topic was opportunity index and employment area proximity which fulfills one of the goals in the plan which is weighting scoring items to encourage more competition among applicants and more fine-tuned public policy that responds to quantifiable real estate metrics. Unfortunately, this meeting was canceled.
because of weather in January, so we've posted a condensed version of this topic to the Department's online forum. This includes possible revisions to the opportunity index. We have received two comments on the forum regarding opportunity index, and we actually discussed that a little bit with the group at our roundtable meeting earlier today that this would be their opportunity to provide us that input regarding the opportunity index, do they want us to stick with it what we have, do we need changes, and so we're looking for that feedback from our stakeholders.

Regarding proximity to jobs which was posted as a topic, we have not posted anything to the forum but we hope to do so in the future. We've had some conversations with staff at the U.S. Census and the Texas Workforce Commission -- or actually Patrick and Julie have -- to ensure that the jobs data we would rely on is valid. This is a scoring item that has come up in conversations in the past but we just haven't been able to get to a conclusion. These conversations have assured us that within certain parameters the data is valid, and the next step for this new policy will be identifying how scoring proximity to jobs might be incorporated into the QAP.

The next roundtable focused on real estate analysis, housing tax credit efficiency and the direct loan program. The purpose of this conversation was to
fulfill a second goal of the plan which was recognizing but also containing rising costs and encouraging housing tax credit allocation efficiency. Staff wanted to discuss tax credit efficiency because the number of units produced annually by the 9 percent program has been dropping year after year. Admittedly, there are a number of reasons this may be happening, but the value proposition behind exploring these questions is that through greater efficiency we hope we can fund more developments and more units.

Stakeholders gave staff some really helpful feedback at that roundtable, including requested efficiency be consolidated into one rule instead of several, which is something that we're going to continue to discuss. On the multifamily direct loan rule, what we realized as staff, out of the conversation with stakeholders, is that we have not done a good job of letting everyone know what's available through our direct loan program. There were a couple of questions of people said, Look, you should change it so it does this. And we said, But we already did. So clearly we need to do a little more work there. The Board report posted for tomorrow's meeting includes a more detailed report on that roundtable and efficiency.

And then just before his meeting we held
another roundtable. The topic was common and unit amenities, building standards, resident services and the integrated housing rule, which also speaks to goals in the plan of better categorizing resident services and actually reflecting the value of items with weighted scores and better categorizing common unit amenities and accurately reflecting the value of items with weighted scores. The report for that meeting will be in next month's Board book and will also post to the Department's online forum.

We have one more roundtable scheduled with stakeholders in May which will focus on tiebreakers in the QAP, also on Chapter 12, our bond rule, and as a result of the conversations at today's roundtable, we're going to be talking about the Section 811 program -- the group wanted to have a broader discussion about that program.

So the tiebreakers, of course, play a huge role in determining awards, in many regions the scoring is relatively flat so we wind up going all the way out to tiebreakers, so that should be an interesting conversation.

Our timeline for the rest of the year, we are hoping to have a staff draft of the QAP and parts of Chapter 10 posted sometime in August, so that would be just the staff draft just for everyone to take a look at. We would plan another QAP and Rules Committee to be held...
in September to discuss that draft rule -- you remember we did that last year -- before it is presented to the Board, and then the public comment period would fall between late September and early October. The final QAP and parts of Chapter 10 will be presented to the Board for adoption at the November 8 Board meeting. Also at this meeting the draft remaining parts of Chapter 10, which would be the asset management and real estate analysis sections, along with Chapter 12, the bond rule, and Chapter 13, the direct loan rule, would be presented as draft with a public comment period following. And then, of course, once the final is approved by the Board, the QAP and rules will be sent to Governor Abbott for his review and approval.

I'll be happy to answer any questions.

MR. VASQUEZ: So in the roundtables how many people are participating or how many representatives, roughly, ballpark?

MS. HOLLOWAY: The registration was 55 today. I haven't looked at the sign-in but it was a good size group.

MR. VASQUEZ: Probably this group here.

(General laughter.)

MR. VASQUEZ: And from what you're saying, there weren't any really new major topics or major areas, pretty much tweaking everything that we already have?
MS. HOLLOWAY: Right. And we've heard a number of times from the development community that their preference is for incremental changes to the rules. They're all out there right now looking at sites for 2019, so if we make a big change, then that throws a wrench in what they're doing so that's understandable. The other part of it is if we make big changes, then we don't know which parts are successful in bringing whatever result. If we change this smaller thing and it brings this result, then we can identify it, but if we change a bunch of stuff, then we don't know what brought about those changes. So that's part of the conversations that we've been having about tweaking what we already have. But I think that we got some really good perspective yesterday about some of the changes that we need to be looking at in order to make those sections of our rule more effective.

MR. VASQUEZ: Could you comment about any discussion relating to simplification rather than complication?

MS. HOLLOWAY: Complication? We haven't talked about that. I mean, there has been conversation about condensing some parts of our rules, for instance, this efficiency measure, there's a request to condense it down into one item rather than three. I don't recall right now anyone saying the rules need to be simpler. I'm sure
everyone would like them to be simpler but that hasn't
been part of those conversations.

        MR. VASQUEZ: I think from my perspective, I
don't know about the entire Board, but anything we can do
to help simplify this process and streamline it and remove
a many of the nits as we can, I think would be helpful for
everyone involved. Just keep that in mind.

        Does anyone else have any comments?

        MR. BRADEN: I have a couple. Have we ever had
a QAP that lasted more than one cycle?

        MS. HOLLOWAY: Not that I know of, but then I
haven't been at this, this is my third round. Part of
that, though, is that every year it has to go to the
governor, so we could call it a two-year QAP but it still
would have to go to the governor in the interim. I
believe that there was work toward a two-year QAP at one
point, and I wasn't involved in that, but they got into
that two-year QAP and realized, oh, we really need to
change some things, and then it wasn't a two-year QAP.

        MR. BRADEN: I mean, recognize that this is a
very helpful process and I think it's great that you're
getting so much -- you know, we need to get the public
comments you're getting, but it just seems like it's a
huge drain on not only staff but the community's time and
effort to do this every year. It seems like as soon as
you're done you're doing it again, and if we could get to a point where you could just tinker with it or just change the dates and have the governor sign basically the same thing for two periods and then change it when the legislature starts changing things, it just seems like it might be more efficient. Maybe that's not possible because of the way the program works.

MS. HOLLOWAY: I don't know that it's not possible. I think that there would need to be -- an effort like that I think is one that the majority of folks would have to agree that this is what we're going to do, that this is as good as it's going to get for two years and then we'll work on it for the next one. There are so many sort of disparate focuses, foci -- I'm not remembering my geometry -- on the QAP, people come at it from so many different directions that sort of gaining that consensus is a good job, we certainly could work towards it. I know all of us would really like to have a fall, that would be nice. It's like we just finish 9 percent and we're off into rules. So I don't disagree.

MR. BRADEN: Maybe as part of your outreach when you're doing these roundtables you can get the views of the group to see what they think about the possibility.

MS. HOLLOWAY: Absolutely.

MR. BRADEN: It's probably a longer term goal
but it still may be something we want to try to work toward.

MS. HOLLOWAY: I think that it's a worthwhile goal. And I agree with you, it takes a great deal of time and effort to do this every year.

MS. BINGHAM ESCAREÑO: I think it is one of our charges to think about what we could do to have a QAP last more than one year, and you know, there would be ways to weigh the pros and cons of doing that. I know that if we had no choice and our resources were limited, heaven forbid, through budgetary decisions or whatever, we would choose to put our resources in processing applications and going through the funding of developments as opposed to constantly rewriting administrative code. So I think it should be kind of one of our overarching charges, something that we should be looking at collectively.

MR. VASQUEZ: I'm trying to detect nodding in the audience. It's a little bit. My unscientific study.

(General laughter.)

MS. HOLLOWAY: Well, and a question like that is absolutely something we could put up on forum or we could include in future conversations and see what thoughts are.

MR. VASQUEZ: From my business perspective, if I just know what the regulations are, even if I don't like
them, if I know what they are I can just start dealing with them for the future, and that knowledge of what playing field we're playing on goes a long way, even if I don't like all the rules.

MS. HOLLOWAY: Right.

MS. BINGHAM ESCAREÑO: Marni, when you went over the timeline and we were talking about everything that kind of hits for public comment around the same time, is that the way it usually runs?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: So we always have all that stuff kind of hit at the same time.

MS. HOLLOWAY: Yes. The QAP and then parts of Chapter 10. The asset management and REA rules the last couple of years have followed by a month, and then the bond rule and the direct loan rule follow by a month also, just kind of gives everybody a little more breathing room.

MS. BINGHAM ESCAREÑO: Yes. And I don't have any other questions.

MR. VASQUEZ: Okay. Let's see if we can have some comment. Again, this is more on the process of the QAP, not the details of this one or that one. Would anyone like to speak?

MS. BAST: Cynthia Bast from Locke Lord.

I actually was not planning on speaking today,
but Mr. Vasquez, your question about simplicity struck a chord with me because of a recent experience I had, and so I wanted to relay that to you all for you to see something that's actually going on out here in the community.

I was working with a client that was doing an application for bonds and tax credits with TDHCA as the issuer, so we're marrying two programs here, and the client asked me a question and it was a tax credit related question, so I went to the QAP and I found an answer. And then in corresponding with the client, what I realized was that there were multiple sources where this topic was addressed in different ways and that the language in the various places was not the same. So I compiled a two-page summary of the differences between the bond pre-application, the bond pre-application manual, the multifamily procedures manual, the QAP, and this also had to do with a demographic issue so the demographic report, five sources, different language in all of them.

Now, I don't want to say that we need to get rid of manuals because the community needs that interpretive guidance, it's very important, but when you have that many sources to go to, you've got to have some level of ability to have quality control to ensure that they're consistent.

I don't know if it would ever even be possible
for the Department to hire an outside set of eyes, an
independent vendor consultant that would actually look at
these things and find these things. Because I think many
times our eyes get weary and foggy and we think we know
what it means and so we don't really consider it until
someone comes in and asks a question and you go, oh, my
gosh. So I'm just throwing that out there in the
simplification realm of I'd like to see us work on
consistency in not just our rules but the guidance for the
rules.

MR. VASQUEZ: Thanks.

MS. RICKENBACKER: Donna Rickenbaker with
Marque.

I echo what Cynthia is saying very much so.
Something that was said at the workshop is that hopefully
will resonate with you all is, first of all, I don't think
that we made a lot of huge substantive changes between the
2017 and '18 rules, if there were substantive changes. I
think it was more from the governor's changes than
anything else. That being said, these workshops start in
January, the rules are just signed by the governor in
December, everybody is kind of working frantically to put
their applications together and do what they need to do to
get in good quality applications based on those rules that
were signed by the governor in December.
Starting a rulemaking process in January for the following year, you know, I just think that timing-wise if we could kind of reschedule the topics, if you will, QAP, point-based rule changes, I think if we could kind of take a look at those when we're a little further along in the year, like in March-April, maybe even May, when not only have the development owner community kind of had an opportunity to look at applications and see how everything looks like it's going to be falling out, but then staff can look at it and see what we really need to do to kind of adjust the rules based on what they're seeing happening. If it's all great, then we don't adjust.

I am of the opinion, and I think most of the development community is of the opinion we don't want to make really big broad holistic changes to the rules, I'm very much in line with that, but I think honest sincere tweaking of those rules that need to be adjusted for probably need to be looked at, and we could kind of take a look at those topic areas, QAP rule point-based categories at a later time period than January-February when a lot of people aren't showing up at workshops, they're putting together their applications, might be beneficial to everybody.

Thank you very much.
MR. VASQUEZ: Great. Thanks.

Would anyone else care to comment on this topic?

MS. MARTIN: Hi. Audrey Martin with Purple Martin Real Estate.

I just wanted to help you in your visual survey efforts looking for nods earlier related to a potential two-year QAP. I do think people would be supportive of that idea. It's something that's come up in the past as an attempt, like Marni was talking about; we didn't quite get there to actually let the second year run its course.

But your point is well taken about for us in the development community to know what the rules are early. It helps us put together better development proposals for staff to consider. I think it's better for everyone longer term.

And related to the process, I really think that staff has done a super job getting feedback and doing these roundtables so frequently with us, but I do agree that it's got to be such a staff drain. I mean, you can look at the project plan and see how much work goes into that. So I like that we had fewer this year than we had the year before. I do agree with Donna's point that it might be beneficial to put those scoring questions a little later just so we know what the impact is as we're
working through our applications, as we're trying to see how the sites actually fit with those.

So just a few thoughts. Thank you.

MR. VASQUEZ: Great. Thanks, Audrey.

MS. SISAK: Hi. Janine Sisak, DMA Development Company.

I just want to say a few brief things. I'm in full support of simplifying the QAP. I think there are some point categories in there, Marni mentioned them, I was encouraged that she mentioned some of the cost containment or efficiency point scoring items. There are three of them, I think there should be one of them. The one that should stay should be cost per square foot because that's in the statute, that's the one that need to stay. It's a really good example of how I'd like to see the QAP go and let's kind of strip it down, simplify it, reflect certain statutory requirements, all the statutory requirements, of course, and then a couple of important aspects that we've boiled into the QAP, high opportunity, CRP and perhaps concentration measures obviously need to stay.

But I would love process-wise for us to focus on the tiebreakers more. If we get to a place for the QAP, the scoring items are kind of achievable for everyone, and that's what we're seeing is that everybody
kind of gets the basic points and then everything is
determined by the tiebreakers, and so what happens is we
kind of spend all this energy rehashing the same things
every year and by the time we get to the tiebreakers,
everyone is kind of sick of talking about it. But I think
that's a really good opportunity for the Board and for
staff every year to kind of re-look at those and say,
okay, this year what are we going to prioritize, is it ex-
urban deals, is it urban core deals, is it senior deals,
and I'd like for us all to focus on that instead of
rehashing these other categories over and over again.

I think there's a really great opportunity for
us to, again, kind of re-prioritize public policy year
after year, and if we just focus on that we can do it
eyearly enough in the season that we as developers can go
out and find sites early enough.

But thank you for your service and for staff's
efforts this year. I look forward to seeing the draft
QAP.

MR. VASQUEZ: Good. Thanks, Janine.

And actually, not to cut off comments but I'd
like to continue on with the overall agenda to the next
topic.

MR. IRVINE: Good afternoon. Tim Irvine,
executive director, TDHCA.
The next topic has to do with the distribution of accessible units, and this is going to be couched as an interpretive matter where I'm seeking input as to whether you agree with my interpretation.

We have two provisions in our statute, they're found at 2306.6722 and .6730 and they use pretty much the same language. They say that tax credit developments will have the accessibility standards under 504 that are set out in 24 CFR, Part 8, Subpart C. If you ever go to that subpart of the HUD regs, it's very conveniently laid out in the left-hand side that there is a section that is called accessibility standards, and our deals meet those accessibility standards.

In addition, there's a Section 8.26 that deals with distribution of accessible units. If you receive HUD funds and you are subject to that particular HUD rule, you must distribute your accessible units in accordance with 8.26, the HUD rule. If you're in a tax credit deal, tax credit only, no HUD funds involved, then it's simply the application of our statute through our rule that deals with distribution. I think it's a basic precept of the Fair Housing Act that there should be distribution. You don't want to concentrate accessible units in one or two particular parts of a development, you want to make sure that persons with disabilities have the same equivalent
choice, the functional choice and options that anybody else would have.

Interestingly enough, 8.26 is couched pretty much in that kind of language. It says that persons with mobility impairments or hearing or vision impairments should have the same comparable choice to other persons accessing the same program.

What we have tried to do in our rule is, I think, perhaps over-complicate this issue. I think that the standards set out in 8.26 is just a really straight up common sense approach. We've tried to develop other ways of looking at this and making it more precise. For example, staff has developed a wonderful tool that you could use to calculate and determine how your five and two should be distributed throughout your development, and there's no doubt that if you follow that methodology it's compliant.

But in discussions with HUD, HUD has made it very clear through their Fair Housing and Equal Opportunity Office that under different facts and circumstances there are lots of ways of looking at unit distribution. You can look at it on a development basis, you can look at it on a portfolio basis, you can look at it on a regional basis.

So I think that when I go back and read our
rule and look at what it specifically does and does not require, what it requires is that you've got the 5 percent for persons with mobility impairments, the 2 percent for persons with hearing and visual impairments, and that you will distribute those throughout your development in a reasonable way to provide comparable choice to persons with disabilities such that they are not being concentrated but they're having, in fact, an opportunity to choose throughout the development.

I really think that the language in our rule that references 8.26 is not clear exactly how it references it. I think you could look at it as perhaps a source of a sentiment on distribution but I don't think it specifically incorporates 8.26 by reference. I do not believe that our rule specifically says you should use our particular tool, although staff would certainly view that as an acceptable way to determine the distribution. I think our rule just basically says you should distribute you units throughout your development on a reasonable basis. That is the way that I look at what our rule says and that is the way that, unless you disagree with me, I would like for staff to administer that rule.

I also want to make clear that we do have a number of developments, including developments we've funded and developments that have been funded through.
other sources, where HUD funds are brought into those, and
where those HUD funds are brought in there is no question
that all of Subpart C applies, including 8.26, but there
is a federal application of a federal regulation to those
particular recipients of federal funds and I believe that
the cognizant agency in that case is HUD, it is not us,
and if HUD is of the view that a particular distribution
is acceptable to them, I think it's appropriate to defer
to the appropriate federal cognizant agency.

So that's really all I have to say on unit
distribution unless folks would like to come in and
amplify on that.

MR. VASQUEZ: I have a question, Tim. So does
the example fit into this discussion where the way that we
have been administering or applying the rules exceeds the
requirements of the federal requirements.

MR. IRVINE: I think as I read the rule it does
not exceed the federal requirements, because I think it's
clear that under Fair Housing you need to have
distribution. I don't think we have to, in fact, pull in
8.26 which arguably would go beyond a narrow reading of
our statutory directive to use the accessibility standards
in Subpart C. No, I really don't think we do go beyond
the rule.

I think if we were to, for example, try to
impose the application of our tool as the exclusive way that you determine unit distribution, I think that might go beyond what the statute requires and would be such an instance.

MR. VASQUEZ: Again, I think what we're looking at from the Board perspective is that Texas, again, should not be overcomplicating anything, we should be simplifying and should not be stretching beyond what the federal regulation is.

MR. IRVINE: Right. And I think what I've tried to lay out for you is a well thought out, reasoned assessment of our rule that aligns with the requirements of state statute, aligns with the federal requirements under Fair Housing laws and 504, and also pulls in a level of deference to HUD as a cognizant agency on HUD-funded deals.

MR. VASQUEZ: So there's no reason for us to change rules?

MR. IRVINE: I think if you want to change rules, then I'm certainly all ears if you've got ideas but those would not take effect till they went through the entire rulemaking process. I believe that probably when we bring the rule back next year we will clarify some of the I won't exactly call it ambiguity but the confusing superfluous information. For example, when you bring
non-exclusive examples into a rule, I think it often makes it murkier rather than clearer.

MR. VASQUEZ: Again, I just want to make sure that staff understands our goal is not to add more than is necessary.

MR. IRVINE: We understand that.

MS. BINGHAM ESCAREÑO: So like in the committee material that you provided for all of us today, you highlighted where in our rules we try to go into examples and all that kind of stuff, and so what I hear you saying is if we could simplify by saying, you know, HUD is pretty clear on -- we don't stray but where we start trying to put more layer and detail is in the distribution part. Right?

MR. IRVINE: Exactly.

MS. BINGHAM ESCAREÑO: In the accessibility, everybody is pretty clear.

MR. IRVINE: I think that part is pretty clear.

MS. BINGHAM ESCAREÑO: And when there are deals that don't include HUD funds, then we've done our own part to try to say what distribution should look like. Right? And what you're saying is even if there aren't HUD funds involved at the time of the deal, there could be HUD funds brought in at some other time, but if HUD already has rule and language around distribution, then would it not make

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sense for our agency to follow kind of the language as HUD has placed it.

MR. IRVINE: Fairly stated.

MR. BRADEN: I agree, and I agree with your interpretation, and I have specific comments about what maybe we should change in the rule but they're in line with yours about even those examples really aren't helpful and that one part of the example that's not an example should really just be separate section of that rule.

But one of the scenarios you put in the backup for this material, this scenario one, which if you read the breakup, it seems to me that it complies and apparently made an award on the basis it complied, but then there's a comment in here that said, "A compliance issue had been raised with the development." So that would be somebody is asking questions of whether or not they agree with your interpretation?

MR. IRVINE: When a deal is about to be placed in service it's got to go through a final inspection, and one of the things that our compliance staff will check for is that you, in fact, have a compliant unit distribution. And I think that the compliance staff, as I said, has developed a fantastic tool and I want them to know that the way that I look at this is that tool would certainly be an acceptable way to distribute units but it is not the
exclusive or controlling way and the real ultimate standard is, frankly, more one of a reasonableness standard.

MR. BRADEN: And I agree with that, and it sounds like the tool is based on the example in our rule.

MR. IRVINE: Correct.

MR. BRADEN: And it's treating that more as a bright line as opposed to just an example of one way you can comply with our rule.

MR. IRVINE: Exactly. I do not believe the examples constitute a bright line.

MR. BRADEN: And I agree with that.

MR. IRVINE: So the chairman was looking for nods, I'm looking for more than nods. I think you've made it clear that you agree with the way that I'm reading our current rule and propose to go forward administering it. I think I've got good direction on how to tighten up and clarify the verbiage in our rule. And the third point that I'd like to know is whether you agree that where HUD is saying for somewhere over whom it has jurisdiction, this is an acceptable way to us to deal with your unit distribution, that we defer to them.

MR. BRADEN: I agree with that.

MR. VASQUEZ: WE concur with that.

MR. IRVINE: Excellent.
MR. ECCLES: That it's in line with a plain reading of it.

MR. IRVINE: Yes, that's in line with a plain reading.

MR. BRADEN: I think everything you discussed is interpretive, we're not changing it in the rules right now, and I think it is in line with a plain reading of the rule.

MR. IRVINE: And I would also like to say that even though it's something I can't describe with specificity or detail because it is not a posted item for today's agenda, I'm working on some, I think, pretty significant improvements to the way that we approach our rules that I will bring back to you for similar discussions at a future meeting that I think will help us make them simpler and more straightforward, easier for us to administer, easier for the development community to understand and follow, and to me that will largely set the table for the possibility of a two-year QAP.

When we make tweaks and improvements to our QAP, they are invariably not to make large changes to the way we approach things like scoring or threshold or anything like that, they're usually to address issues that have come out from scenarios that have developed over the prior round, and I think that if we take an
approach that embraces simplification and that type of Board level policy value that we really can get to the place where we can have a two-year QAP.

Any questions?

(No response.)

MR. IRVINE: We do not plan to go through the right of first refusal issue at this time. We're continuing to work through that at the staff level, and so that said, I don't believe we have anything else.

MS. BINGHAM ESCAREÑO: Is that item 4?

MR. VASQUEZ: We're not going to discuss item 4 in this meeting.

MS. BINGHAM ESCAREÑO: Understood.

MR. VASQUEZ: So we can open up for public comment on matters other than the items for which there were posted agenda items.

MS. LANGENDORF: Good evening. My name is Jean Langendorf, I'm with Disability Rights Texas.

And just as a follow-up -- and I look forward to seeing what all Tim put together regarding the accessibility and distribution -- I do want to say that we did -- I think it was like two years ago or so we did a public information request to see how the Department was overseeing the accessibility requirements and other things to do with the tax credit properties, and in doing
so kind of did a random sample, they were great with providing us everything to look at as far as how they were implementing the accessibility requirements, and I just want to take this opportunity to say they were doing a great job. And I can tell you from those of us in the disability community and the attorneys that were also doing the review, we didn't necessarily expect that.

But I do want to compliment the compliance staff. They had great attention to it and some of the issues that we saw in reviewing the files was the back and forth about the placement of the various units and the distribution of the units. And the thing that's really important, and I think Fair Housing addresses a lot of this, is that you do have options for individuals with disabilities, that the development, say they have one, two and three bedrooms, that the accessible units are not all just a one bedroom, or they're not all off in one building all by themselves.

So in the disability community this is a very important issue, there is a lot of guidance on it. I don't know what's being proposed but I trust Tim and a lot of the staff as far as compliance goes, that we are going to be looking at there are options and there are the same Fair Housing requirements and opportunities for individuals with disabilities that have mobility or need
the flashing lights and some of the other things.

But I just wanted to compliment, because these guys know I rarely am one to be complimentary about what's being done in the disability community, so I did want to take the opportunity to say the compliance staff was great. I'm not sure the developers, in looking at the conversations back and forth, would agree with us on that, but this is one area that they've been really good to make sure that the disability community is being served.

MR. VASQUEZ: Good. Thanks, Jean.

Anybody else?

(No response.)

MR. VASQUEZ: It's after 5:00 and let's go.

Right?

(General talking and laughter.)

MR. VASQUEZ: I'd actually just like to again thank everyone for staying involved and your input really is valuable. I know the staff is looking for it all the time, and we as Board members are as well. Maybe overstepping some bounds, so I'm only speaking for myself, not the entire Board, but again, we truly are looking for simplification, how can we make these -- codify everything into its most basic elements. We need to change the policies to not be gotcha policies on
whether it's an administrative deficiency versus a material deficiency, we really have to distinguish between those, and we're trying to help move the process into that where everyone makes a mistake but if it's easily fixable, that shouldn't be a reason to throw out that entire application or these projects we know you are investing lots of money in and taking a lot of time.

So as you see us going forward, I think there's consensus on the Board we're trying to move away, it's not we caught you, you're out, it's going to be please fix this and let's all move forward together. So hopefully that will work out better.

And seeing that there's no other items on the agenda, it's 5:13 and the meeting of the QAP Committee is hereby closed.

(Whereupon, at 5:13 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA QAP & MFR Committee
LOCATION: Austin, Texas
DATE: April 25, 2018

I do hereby certify that the foregoing pages, numbers 1 through 45, 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.

DATE: May 1, 2018

/s/ Nancy H. King
(Transcriber)

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