TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

July 12, 2018
8:02 a.m.

MEMBERS:
J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESENĐIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member
TIMOTHY K. IRVINE, Executive Director
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CONSENT AGENDA

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED  5

IN THE BOARD MATERIALS:

MULTIFAMILY ASSET MANAGEMENT
a) Presentation, discussion, and possible action regarding a change in Ownership Structure prior to issuance of IRS Form(s) 8609 and amendment to Developer and Guarantor:

17275 Aria Grand Austin

COMMUNITY AFFAIRS
b) Presentation, discussion, and possible action on approval of the Federal Fiscal Year 2019 Low Income Home Energy Assistance Program Application and State Plan for submission to the U.S. Department of Health and Human Services and approval of the associated 2019 LIHEAP awards

HOME AND HOMELESSNESS PROGRAMS
c) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program Single Family Programs Homebuyer Assistance and Tenant-Based Rental Assistance Notice of Funding Availability

MULTIFAMILY FINANCE
d) Presentation, discussion, and possible action on the Second Amendment to the 2018-1 Multifamily Direct Loan Notice of Funding Availability

HOUSING RESOURCE CENTER
e) Presentation, discussion, and possible action on the 2019 Regional Allocation Formula Methodology

ON THE RECORD REPORTING
(512) 450-0342
ACTION ITEMS

ITEM 2: REPORTS

a) Report on the meeting of the Audit and Finance Committee and action on recommendations of that committee:
   I. Approval of the items for inclusion in the Legislative Appropriations Request for fiscal years 2020-21

b) Report regarding schedule and proposed changes for 2019 QAP and Multifamily Rules submission

ITEM 3: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to the Appeals Process:

   18020 St. Elizabeth Place Houston
   18086 The Village at Overlook Parkway San Antonio
   18157 Bamboo Estates Lyford
   18221 Cypress Creek Apartment Homes at Hazelwood Street Princeton

b) Presentation, discussion, and possible action on a remanded Request for Administrative Deficiency regarding site eligibility under 10 TAC §11.3(g) related to Proximity of Development Sites:

   18033 The Miramonte Fifth Street CDP
   18043 Huntington at Miramonte Fifth Street CDP
   18047 Miramonte Single Living Fifth Street CDP

  c) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(2) related to Applicant Disclosure of Undesirable Site Features:

   18217 Cypress Creek at Santa Fe Santa Fe
APPENDIX
Multifamily Application Logs

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS  none
EXECUTIVE SESSION  none
OPEN SESSION  none
ADJOURN  none

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MR. GOODWIN: We will convene the July 12, 2018, Board meeting for the Texas Department of Housing and Community Affairs, and we will begin with a roll call.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Goodwin here.

Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: We have a quorum. I would ask Tim to lead us in the Pledge of Allegiance.

(Whereupon, the pledges were recited.)

MR. GOODWIN: We will begin with the consent agenda. Is there anyone that wants pull anything off of the consent agent or any comments or questions about the consent agenda? If not, I will accept a motion to approve.

MR. VASQUEZ: So moved.

MR. GOODWIN: A second?
MS. RESÉNDIZ: Second.

MR. GOODWIN: All those in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Next we will go into the action items, and our first action is 2(a), a report of the meeting of the Audit and Finance Committee. Ms. Thomason?

MS. THOMASON: Yes. We had a meeting of the Audit and Finance Committee earlier this morning, and at that meeting, Michael Lyttle presented certain policy elements related to the Department's LAR for 2021 -- I'm sorry -- 2020 to 2021.

The Committee voted to recommend approval by the full Board, and Mr. Lyttle would be available to answer any questions.

MR. GOODWIN: Okay. Any questions for Michael?

(No response.)

MR. GOODWIN: If not, do I hear a motion to approve?

MR. IRVINE: And just for the record, the elements presented including the administrator's statement, the proposed 10 percent reduction schedule requested by the Governor and the Legislative Budget Board, as well as the details of the appropriations
request itself, plus there was an extended discussion over
earned federal funds.

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

MR. BRADEN: I'll move to approve.

MR. GOODWIN: Move to approve. A second?

MR. VASQUEZ: Second.

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. LYTTLE: Mr. Chairman?

MR. GOODWIN: Yes, sir.

MR. LYTTLE: If I may make one comment about
that item? I would really be remiss if I didn't
acknowledge some of the hard work of our staff on this
project.

You know, David Cervantes, our director of
administration, CFO, he and his staff did fabulous work;
Ernie Palacios, Krissy Vavra, Joe Guevara, Paul Ford, they
were all real all-stars. From my staff, Elena Peinado
worked tirelessly on this -- on the LAR and helped with
performance measures, and also Julie Lang from our Fair
Housing Data Management Reporting Division also put in a
lot of hours in helping with performance measures.
And you know, in some respects, like the competitive tax credit realm, the LAR process is a long process, an arduous process, and really doesn't complete until the -- you know, the end of next session when the budget gets approved hopefully and receive our appropriation.

But you know, we've got some great people, and they did a lot of great work on this. So I just want to make sure that they are acknowledged.

MR. GOODWIN: Thank you for acknowledging them, and if any of those people are here, would you please stand up so we can say thank you. Thank you.

(Applause.)

MR. LYTTLE: Thank you.

MR. GOODWIN: Thank you, Michael. 2(b).

MS. HOLLOWAY: Good morning, Chairman Goodwin, members of the Board. I'm Marni Holloway. I'm the director of the Multifamily Finance Division. Item 2(b) is just a quick report regarding schedule and proposed changes for 2019 QAP and the Multifamily Rules submission.

The proposed 2019 QAP is required by statute to be approved by the Board prior to September 30 and sent to the Governor no later than November 15 for his approval, rejection or modification. Staff anticipates posting an initial draft of the QAP on our website in August to
solicit informal input, not formal public comment, but to solicit input from stakeholders.

We are hoping to have a meeting of the Rules Committee shortly after, and we'll be presenting the proposed version of the QAP to you at the September 6 meeting. Statute describes the QAP as setting criteria and priorities for the allocation of tax credits and providing information regarding the administration of and eligibility for low income housing tax credits.

Staff believes that compiling all requirements applicable to the 9 percent round will make the rules more usable and more clearly comply with statutory requirements. Therefore, we will be reincorporating most of Chapter 10 into the QAP, so into Chapter 11.

Because Chapter 10 will no longer exist in its current form, the corresponding changes will be made to Chapter 12, which is our Multifamily Housing Revenue Bond Rules, and Chapter 13, which is our Multifamily Direct Loan Rule.

The Asset Management and Compliance Rules will remain in Chapter 10. That's my report. If there any questions?

MR. GOODWIN: Jean, did you want to comment on this report?

MS. LATSHA: Yes, just really quickly. Jean
Latsha with Pedcor Investments. I've had a little bit of back and forth with staff on this, because I read what was going on, and I have to admit, I was struggling trying to figure out what problem we were trying to solve.

I think the rules have been in place the way that they are for a while and there was a lot of thought given to making sure that they were meeting those statutory requirements.

There's a statement at the beginning of Chapter 11, I think it is, that talks about incorporating Chapter 10, and looking at the QAP as one document. In order to satisfy those statutory requirements, possibly maybe just a revision to a couple of sentences at the beginning of that, instead of a complete reorganization. If there really is a statutory problem, it might be an easier fix. I haven't delved into this a whole, whole bunch, like I said, just a little bit of back and forth, but I think there's a way to kind of keep the structure that we have, that we've had for several years, that there was a lot of thought given to that structure, and how the development community uses it, as well as staff.

I personally think it's working. I don't know that I've heard much from the development community to think it's not working, so if there's a way to keep it, my
suggestion would be to keep it. Thanks.

MR. GOODWIN: Thank you. Any questions or comments?

MR. IRVINE: If I might make a comment on that?

MR. GOODWIN: Well, your mic is not on.

MR. IRVINE: Sorry. If I may make a comment on that, I don't believe there's any statutory infirmity or problem. I think that this is a matter of clarity and simplicity, and frankly, consistency.

It's been pointed out to me by several people that as multiple rules treating a common set of activities tend to evolve, they don't always evolve in complete synchronization, so there is a desire to go through this kind of from the ground up, and ensure synchronization.

We also want to follow this Board's perceived policy direction to simplify and streamline. So also, you know, Texas is a great place to invest, and we're attracting lots and lots of new folks to participate in multifamily development, and we think that a single one rule for the Tax Credit Program will make it easier for newbies to come into the world.

MR. GOODWIN: Any other questions or comments from the Board? If not, I'll entertain a motion for approval of this report, acceptance and approval.

MR. BRADEN: So moved.
MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any other discussion? If not, all in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. We're moving on to item 3, and we've got -- we've had two applications in item 3(a) that have been withdrawn and one that has been approved, so we have one remaining, which is 18020 St. Elizabeth. The others, 18086, 18157 have withdrawn, and 18221 has been approved.

MS. HOLLOWAY: Correct.

MR. GOODWIN: Good. Okay.

MS. HOLLOWAY: All right. Item 3(a), presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC Section 10.902 of the Department's Multifamily Rules relating to the Appeals Process.

This is -- as you mentioned, this is application 18020 for St. Elizabeth Place. Through a letter submitted as public comment, we were informed by the Progressive Fifth Ward Community Association that they had not received notification of the St. Elizabeth Place
application as required by statute and the rules.

We confirmed that Progressive is a neighborhood association that was on record with the Texas Secretary of State's Office as of the beginning of the application acceptance period -- this is the first test and rule -- and that the organization's boundaries included the entire development site. This is the second test.

The two tests informed the applicant which neighborhood organizations must receive the specific notifications described by rule and statute. The preapplication and application forms include space to list the neighborhood organizations that have been notified.

In this case, Progressive was not listed in either place. The preapplication listed four neighborhood organizations, three of which have the same street address as the Applicant. We issued an administrative deficiency requesting evidence that notification had been sent or that it was not required.

The Applicant was not able to provide either. In their response, Applicant described searching city records for neighborhood organizations. Both the statute and the rule specifically call out organizations registered with the county or state.

Progressive Fifth Ward is registered with the Secretary of State and a search for Fifth Ward on the
website pulls up a name -- pulls up their name and a list of business organizations. A search for Progressive Fifth Ward on that site pulls up the organization directly.

So you're able to just search through the Secretary of State website and find them. The Applicant further describes how Progressive was formed in 2017 by a group of board members from Fifth Ward Redevelopment Corporation, which is one of the groups that share an address with the Applicant.

They describe the involvement of Progressive members in early development planning and claim that their participation negates the requirement to provide notification because the individuals knew of the redevelopment plan.

They also claim they were unaware that Progressive had incorporated. The Applicant also describes sending a letter to Progressive on January 17 requesting that they provide a letter of support to the City of Houston, and they claim that they have provided Progressive with the quantifiable community participation packet on February 27.

Quantifiable community participation is a method to gain eight points on an application. They state that multiple efforts were made to have Progressive provide comment concerning the project to TDHCA. The
requirements for neighborhood organizations that provide
input for scoring under QCP are the same as for
organizations that must be provided notification.

The Applicant goes on to describe a letter sent
by State Senator Borris Miles to Progressive regarding the
preapplication which included a copy of a part of the
notification TDHCA sends to all elected officials. The
letter does not contain all of the information required by
rule to be in a neighborhood organization notification and
it does not fulfill the clear requirement in statute and
rule that the Applicant must provide the notification.

Further, the addressee on the letter has been
redacted, so we're not able to confirm that it was sent to
Progressive. The Applicant claims that emails and phone
calls to Progressive provide the same information that
would have been provided in formal notification, but they
fail to produce these emails or any evidence that the
information was provided prior to the preapp.

Clearly, the Applicant was aware of Progressive
Fifth Ward Community Association, and the information
confirming that they should be notified was readily
available prior to the beginning of the application
acceptance period.

The full application includes a signed and
notarized certification that the preapplication met all
threshold requirements and no additional notifications were required. Information provided in the deficiency response indicated that this certification is not accurate and that the application failed to meet the notification requirements.

After evaluating the response to the administrative deficiency, staff determined that the Applicant had not adequately proven that they made the required notifications to the appropriate neighborhood organizations.

A letter removing the six preapplication points, because the preapp did not meet threshold, and terminating the full app because it also did not meet threshold, was sent to the Applicant. In their appeal, the Applicant restates some information included in the deficiency response and again describes their good-faith effort to identify neighborhood organizations of record.

They describe a lack of a list of civic organizations at both the county and state and claim that there has been a change in rule that removed what they call a safe harbor. They are referring to it as a safe harbor.

In response to this claim, we've gone back to QAPs from 2013 and forward. All include the language regarding being on record with the county or state. In
2017, we clarified that the state agency that maintains
records of incorporation is the Secretary of State.

As I mentioned earlier, a search of their
website did pull up this organization under multiple
search modes. The appeal continues to discuss the four
organizations that were notified, stating that membership
of Progressive in a larger group of neighborhood
organizations, which is the Greater Fifth Ward Super
Neighborhood 55, which did receive notification, fulfills
the requirement.

They provide no evidence that the notification
provided to Super Neighborhood 55 was passed through to
the membership, so it's impossible for us to evaluate that
claim. In summary, the notification prior to
preapplication was not timely accomplished, as required by
statute and the QAP.

As a result, the preapplication is rejected.
This renders the application ineligible for the preapp
points. The notification prior to full application was
not timely accomplished as required by statute and by law.
As a result, the application has not established -- the
Applicant has not established that it met a threshold
requirement.

This isn't something that can be cured at this
point, which presents grounds for termination. Staff
recommends that the Board deny the appeal.

MR. GOODWIN: Any questions for Marni?

(No response.)

MR. GOODWIN: If not, do I hear a motion to hear comments?

MR. VASQUEZ: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: All in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. I'm assuming --

MS. ANDRÉ: Good morning. My name is Sarah André, and I am here on behalf of the Applicant, for St. Elizabeth Place. You heard from the staff that the Applicant failed to notify a neighborhood organization, and I think staff did a great job of setting a plate of food in front of you.

You've got, you know, your meat and potatoes there, but they did not give you any aroma or flavor of what happened. We understand staff's opinion in this matter. We wholeheartedly disagree with it. Two weeks ago, I stood here before you and told you how proud I was to be part of this team, to be part of this development,
and I feel the same way today.

Fifth Ward Community Redevelopment Corporation is by design a community-based organization. They are inclusive by nature. They uphold integrity and honesty as their core values. They would never, ever knowingly disregard or un-inform a stakeholder.

Progressive Fifth Ward, who has raised these allegations, if you will, they're a splinter group with a $50 membership fee. That's the base of entry that was previously part of Fifth Ward Civic Club, which received a notification according to the rules.

Progressive is also a part of the Greater Fifth Ward Super Neighborhood 55, which likewise received that formal notification. Ms. Erica Hubbard, who leads Progressive, not only received notification of the application, she was involved in the committee that chose the architect for this project and the co-developer for this project.

She sat in those meetings, filled out a score sheet and provided an opinion. Her letter to TDHCA, which is in all the packet, dated June 11, where she raised these procedural issues, states very clearly that she received notice prior to the deadline.

You've heard all these details and, you know, sort of the who, what, how of the rules, and I am not
saying that rules are unimportant. They are important.

But there's a time and a place for common sense to come to the fore, and as a Board, as this body has the latitude to exercise its good judgment.

In a case like this, you've got some privileges that the staff is not allowed to take. The law states that Applicants must give notice. It doesn't state how, when, what. I think what we take away from that is that what's important is that notice is given, that developers who intend to use federal funds reach out, are forthright with the community in their intent to use those public funds, and what you're going to hear is, that's exactly what happened.

I have one final point, if somebody will donate some time. I find it very ironic that one can send a certified letter that never gets opened or, in many, many cases, comes back to my office and that checks the notification box that an organization that was involved in making decisions on the project has not been notified.

Thank you.

MR. GOODWIN: Any questions for the speaker?

(No response.)

MR. GOODWIN: Okay. Next?

MS. FLANAGAN-PAYTON: Good morning, Board members. As Kathy Flanagan Payton, the CEO of the Fifth
Ward Community Redevelopment Corporation and the person responsible for ensuring process and implementation, I can accurately affirm that Erica Hubbard and Progressive received notification, both verbal and written notices, regarding St. Elizabeth, provided by myself and at least two other members of my team before and after the preapplication and application deadline.

And quite frankly, I want to share with you that regardless to whether we were using tax credits or not, as the Fifth Ward CRC has long since developed a corporation organizational policy of community building, engagement, outreach and inclusion, Progressive, along with other community groups are always notified and solicit their input in our projects and in our activities.

I'm disappointed at the fact that, with the exception of Progressive, every community organization that has a role in that community has provided this project with a letter of support.

I will assure you that if I'm guilty of anything, it's over-notification and over-solicitation of requests for support from Progressive. I say that now because I've developed a reputation within the community, because you see, in 1963, the Houston Chronicle's headline read, "A First All the Way Around."

And the reason it said that is because I was
the first baby born in Houston that year, who also
happened to be born at St. Elizabeth Hospital, where my
mother also served as a nurse. So in that event, I think
I'm special.

So every time I walk into a room now I speak
and boast about how proud we are of the potential of this
adaptive, mixed-use, redevelopment project that is an
anchor for Houston's Fifth Ward.

Allow me to be very candid, that in this
community today, affordable housing is being outpaced by
market-rate housing at an alarming rate, and we tried to
explain that to you regarding gentrification comments last
week.

Our notification process is an intentional
inclusion strategy to solicit community input that, given
the changing demographics in the area, sometimes makes it
challenging to reach consensus. I don't want it to get
lost.

This is why we personally invited four
residents to participate on a nine-member selection
committee that helped us to develop the RFP, which
suggested the use of tax credits, as well as review
responses that were received by our respondents.

Erica Hubbard and the Progressive Group
participated in this process. Each of the Respondent's
proposals suggested that we use tax credits to finance this project as one of the most viable strategies. Beyond that, Senator Miles -- if I may complete?

MR. GOODWIN: Okay.

MS. FLANAGAN-PAYTON: Beyond that, Senator Miles, who just this past November moved his offices to Lyons Village, a tax credit project in the heart of Fifth Ward, and provided residents -- notification to those residents. After receiving this email and this mail from Senator Miles' office, Ms. Hubbard also called me, and we spoke at length about this letter and about the project definition and objectives to assure her that the original proposals had not changed.

So I too concur with staff who speaks about the confusion regarding our request for support. They are correct, but we erred on the side of caution, because we notified all of our community stakeholders and continue to do so and engage in dialog and solicit their input about the shaping and the development of St. Elizabeth Place.

So in closing, after 25 years as a CEO, I recognize that we cannot satisfy 100 percent of the people 100 percent of the time. And this is one of those instances where we're not able to solicit the support of one of 40,000 residents who are excited about this development and cannot wait to see it happen, to create a
better place for people to live and work and play in Fifth Ward. Thank you.

MR. GOODWIN: Any questions?

MR. ECCLES: Just a -- it's a quick question, and it's going to run through any of these presentations because I don't think that we're talking about the caliber of this project whatsoever or the veracity or intentions of the Applicant.

None of that is really in play, but my question is going to just deal with the statutory requirements for preapplication and application, and that is, what evidence is in the preapplication that the Applicant notified the Progressive Fifth Ward Community Association?

MS. FLANAGAN-PAYTON: We have email communications between myself and my staff. I personally sent an email, I personally called Ms. Hubbard, so has my staff, Jernason Gonny [phonetic], as well as Jessica Thompson, who notified the Applicant, who notified the stakeholder of the definition of this project which outlined the number of units, the financing structure, the detail, the unit mix.

Everything about this project was explained in that letter and in those conversations.

MR. ECCLES: Now -- and the reason why I'm asking this, and if others want to address the more
specific requirements of the statute, because it's going
to be repeated, not just at preapplication but at
application, it's the same thing.

   It's evidence in the preapplication, evidence
in the application, that Progressive Fifth Ward Community
Association was notified, because when we look at the
preapp and then we look at the application, there are
community organizations listed, and Progressive is not one
of them.

   And then at the application, there's a
certification that every one of the community
organizations that need to be notified was notified at
preapplication, and Progressive is not added to that list.

   So that's the statutory thing that this Board
is having to deal with.

   MS. ANDRÉ: Sure. And I'd like say those are
in the rules and the QAP. They aren't in the statute.
The statute doesn't address what one -- or how one does
this, and it is common knowledge and commonly done that
you can change between preapp and full app. So at preapp,
there was no knowledge that Progressive would have fit the
development.

   In particular, on my part, I never heard of
Progressive Fifth Ward until February 27. I don't know
how much head space you guys have, you know, a day before
a Board meeting, but the day before the deadline, I was
focused on quantifiable community participation, not did
we notify these people at preapp and did they exist at
preapp?

So between preapp and full app, you've got that
ability to say, oh, another group has come to the fore.
They are located -- they are listed on page 10 of the
Secretary of State between a boxing club and a church.
They are difficult to find.

So you know, if we want to get into the nitty-
gritty, we can. What I have said over and over again is
that I believe we meet the statutory obligation to engage
with the community and to notify them. We've never said
that we met the QAP or the Multifamily Rules' definition
of the letter.

There was a letter written like that. I have
seen it. Ms. Payton believes she sent it; she just simply
cannot prove it. They have done a massive file clean-out,
and you know, many people would have just created a notice
and sent it in to you, and we would not be here today.

But these are people of integrity who are here
giving you their belief of what happened.

MR. GOODWIN: Any other questions?
MR. BRADEN: I just have one or two. So --
MR. GOODWIN: I think we have a Board question,
Sarah, for you.

MS. ANDRÉ: For me?

MR. BRADEN: Yes.

MR. GOODWIN: Uh-huh.

MS. ANDRÉ: Yes, sir.

MR. BRADEN: You just made a statement that statute doesn't require this. I, like many people on this Board, think this is an exciting project. We were excited about it. But this action item forced me to pull out the statute and read all this stuff in detail.

You know, the statute says the preapplication process must require the applicant to provide the Department with evidence that the applicant has notified, and then lists any neighborhood organization on record with the State.

I understand you made good-faith efforts and nobody tried to hide anything, but they were on record with the State. It's not -- you know, it didn't --

MS. ANDRÉ: I'm not denying that.

MR. BRADEN: But you just argued statutorily that that wasn't the case --

MS. ANDRÉ: Because --

MR. BRADEN: -- and it's not correct that --

MS. ANDRÉ: -- what staff is arguing is that we're required to provide a specific type of notice in a
specific manner.

MR. BRADEN: That's not what staff is arguing.

MS. ANDRÉ: That is what they're arguing, and that is what we've been through over and over again. We've looked at this upside down and backwards. I'm going to let the attorney take it.

MR. PALMER: So the statute requires that you provide --

MR. GOODWIN: Name, please.

MR. PALMER: Oh, this Barry Palmer with Coats Rose. Sorry. The statute provides that you must provide notice to any neighborhood organization on record. It doesn't say how that has to happen. The Department's rules require that it be in writing. Statute doesn't require that it's in writing. So --

MR. BRADEN: But you're supposed to provide the Department with evidence that it took place --

MR. PALMER: Yeah, and --

MR. BRADEN: -- and so there were certifications with respect to this organization. The emails and things which may very well took place -- I guess they were not provided as part of the preapp. I mean, where is the --

MR. PALMER: But --

MR. BRADEN: -- evidence that notice took
place?

MR. PALMER: Yeah. Well, we are going to be reading into the record here in a minute letters that we have evidencing that the notice took place --

MR. BRADEN: As of the preapp date?

MR. PALMER: -- but -- yes, as of the preapp date, but we've never read that requirement on the preapp to say that you've got to put all your evidence in your preapplication location that notice was given. All you put in the preapp is certification that notices were given.

MR. BRADEN: Right. But that certification did not include this organization.

MR. PALMER: That's true.

MR. BRADEN: So at the preapp, there was no evidence put in there to indicate notice was given to this organization.

MS. ANDRÉ: There is no evidence provided in any preapp for any applicant --

MR. BRADEN: I disagree. The certification is evidence. That's what Barry was just saying.

MS. ANDRÉ: The certification is what you know. If you read the certification, it says, our knowledge. We have done this to the best of our knowledge. You cannot notify a group you've never heard of. You cannot
notify a group that you're unaware is registered in a specific way.

I have made that error in the past, and I've notified, you know, Austin Bicycle Club, which has its boundaries as the entire Austin -- all these different groups. You can't do that if you don't know that they have the boundaries -- that they have your site in the boundaries.

It's impossible to do that. So the certification is to your knowledge.

MR. IRVINE: May I make a comment --

MR. GOODWIN: Sure.

MR. IRVINE: -- to that point, Mr. Braden? The statute is very clear that you cannot amend or supplement or change your application once filed, with one very narrow exception, and that is in response to an administrative deficiency.

An administrative deficiency was provided, and in the Applicant's response to the administrative deficiency, this documentation that's being discussed was not provided. So as a matter of record, we do not believe there is any documentation or other evidence that the notification was provided that is in the application.

MR. PALMER: We have some evidence that we'd like to present on that.
MR. GOODWIN: Let me ask our counsel a question. Is it appropriate, when this was required to be submitted with the administrative deficiency, to now hear it as an appeal?

MR. IRVINE: I believe the appeal rules do provide that the record may not be enlarged upon appeal.

MR. PALMER: I don't believe it's appropriate to say that this information that's being presented right now in front of the Board can somehow join the application or preapplication, if -- that said, it's -- that would be the legal import of it, is that this would be demonstrative or argumentative, but I don't believe that it can technically join the application or preapplication right now.

MS. BURCHETT: Sally Burchett with Structure Development. Unfortunately, these two folks couldn't take off work and so I'm here reading their testimony sort of as a proxy for them. I'd love to read the letters if you don't mind.

MR. ECCLES: That's your call.

MS. BURCHETT: Okay. So I have four letters. Two are -- you will care less about, so I will be very brief. I'll read excerpts. The first one's from Bridget Steel, who is a member of the Progressive Fifth Ward Community Association.
The second one is from Joetta Stephenson, the president of the Greater Fifth Ward Super Neighborhood No. 55, and then the Fifth Ward Chamber of Commerce and Habitat for Humanity. This is from Bridget Steel.

"Dear Ms. Holloway. My name is Bridget Steel and I'm a member of the Progressive Fifth Ward Community Association. I attest that I was fully aware before January 9, 2018 of the proposed adaptive reuse of 110 apartments financed with low income housing tax credits with construction commencing as early as 2018.

"The planned renovation of St. Elizabeth Hospital for affordable housing is the buzz of our neighborhood and the Progressive Fifth Ward Community Association. The adaptive reuse project is common knowledge and not a result of a private conversation I had with any one individual.

"Furthermore, the objections of the Progressive Fifth Ward Community Organization president expressed in the letter to TDHCA dated June 11, 2018 do not reflect the opinions of the Progressive Fifth Ward Community Association at large."

And her number and email for questions. And I sent this to staff last night. The second one is from Joetta Stephenson --

MR. ECCLES: And I just need to interrupt to
contextualize this. This was sent to staff last night.
Ms. Steel, Bridget Steel, is not listed on the certification of formation of nonprofit corporation for the Progressive Fifth Ward Community Association as the registered agent for service --

MS. BURCHETT: Yes.
MR. ECCLES: -- on the organization.
MS. BURCHETT: She is a member.
MR. ECCLES: As recited in that letter.
MS. BURCHETT: Yes. Okay. Thank you.
The second letter is from Joetta Stephenson.
"Dear Mr. Irvine. As president of the Greater Fifth Ward Super Neighborhood No. 55, I'd like to offer you the following information.
"Our neighborhood organization is a parent organization with many members. One of our members is the Progressive Fifth Ward Community Association. We have regular meetings where we provide details of proposed neighborhood developments and happenings, et cetera, to our members.
"The Progressive Fifth Ward Community Association president, Erica Hubbard, has attended several of our meetings, including the installation of new officers, during which I became president of the Greater Fifth Ward Super Neighborhood No. 55 on January 3, 2018.
"Her super neighborhood attendance document through several of our sign-in sheets Ms. Hubbard was present at the following meetings: January, February, April and June."

And she has her number and email too if there are any questions. And then Fifth Ward Chamber of Commerce.

"Fifth Ward Chamber of Commerce members and executive committee has attended multiple neighborhood planning meetings." This is by Bridget Dorian.

And then Habitat for Humanity goes to say that Fifth Ward CRC has been intentional about making sure the Fifth Ward community and neighbors were included.

And so if I just may sum up, we acknowledge that we did not meet the rules or QAP, but we do purport that the Progressive Fifth Ward had notice and knowledge of the project before the preapplication.

MR. GOODWIN: Okay.

MS. BURCHETT: Thank you.

MR. PALMER: Good morning. Barry Palmer with Coats Rose speaking on behalf of the Applicant. And we've had a lot of talk here initially about following the rules, but if we were really following the rules, we wouldn't even be here today, because what triggered all this was an RFAD submitted by Erica Hubbard after the RFAD
deadline and without paying the fee.

Ms. Hubbard testified at the Houston City Council, and she acknowledged that she had been aware of the project for a couple of years, that she participated as part of the selection committee for the developer, but that at some point, she turned against the project when she learned that they were going to house some veterans in the project.

But she was certainly aware of the project for quite some time and had received notice in a number of ways through the Super Neighborhood Group, through conversations and emails with Kathy Payton, and when she failed at City Council to derail the project, she sent an RFAD to TDHCA claiming that she hadn't received proper notice.

But she sent that RFAD on June 11, after the June 1 deadline for RFADs, and she didn't send the fee, the check, that you're required to submit with an RFAD. So if staff had properly followed the rules, they would have responded back to Ms. Hubbard saying, You missed the deadline for filing an RFAD, and by the way, you didn't send a check.

But instead, they had recommended termination of this application on, you know, a technicality that would not have ever been raised if it weren't for this
June 11 RFAD submitted after the deadline, and you know, I
guess you could try to call it something else than an
RFAD, but if you look in your Board write-up, staff refers
to this as being in response to an RFAD that they did this
research.

So I would request that you acknowledge that we
have met the statutory requirement, and that notice was
given. This Applicant was -- or this neighborhood group
was well aware of the project for quite some time and that
you deny the staff request for termination. Thank you.

MR. GOODWIN: Any questions?

MR. BRADEN: Actually, I have a question maybe
more of Tim. So, Tim, how do you respond to that, like
that the RFAD came in after the fact and without a fee so
it didn't qualify, so --

MR. IRVINE: Well, I did not view it as being
submitted as an RFAD. I viewed it as somebody who, by
statute, was entitled to notice advising us that they had
not received a statutorily required notice. The other
aspects of the letter talked about various issues with
regard to the development, and I frankly ignored them.

But I didn't see how staff could ignore a
person who was statutorily required to be notified
advising that they were not notified. To me, it's -- you
know, it's one of those things where it's not just a
matter of substance; it's actually a matter of procedure.

You know, if somebody says, hey, I hear you're going to court on Monday morning at nine o'clock, and you know you're going to court on Monday morning at nine o'clock, but unless you've been served, that proceeding is not going to go forward, so --

MR. PALMER: So most of the RFADs --

MR. GOODWIN: Mr. Palmer, just a second.

MR. PALMER: Yeah.

MR. VASQUEZ: Mr. Irvine, I guess I have a question then, given this counter-technicality that's just been presented by Mr. Palmer: At what point would we say this letter is too late?

I mean, if we had already -- today you're saying it's on time, but if this information came up after they had already been qualified -- we'd already deemed them qualified, when then would it be too late?

Would it be after we allocated the funds to them and then we find out that they weren't apparently, you know, properly notified? Would that be too late to submit this? Would it be right before they signed the final documents to get the funding, and then we find out, oh, you didn't -- this mystery organization submitted this letter and they shouldn't have been qualified in the first place?
MR. ECCLES: Well --

MR. VASQUEZ: I mean, at what point do we draw that line, if they're not following the rest of this -- it is a de facto RFAD.

MR. ECCLES: I --

MR. VASQUEZ: I mean, they missed the deadline and didn't present it properly.

MR. ECCLES: Let me answer those questions kind of in order and as presented by this situation. If what was sent in after the RFAD deadline was an allegation that a rule created by this Board, and it was a Board rule, but not a statutory requirement, and it was a request for administrative deficiency, I think that would have just been taken as -- it's too late and there's no check with it.

This is a statutory requirement. That's not something within this Board's authority to say it's too late when we have not vested this property interest in this. The award has not been made at this point. The ability to have the process necessary to ask again and allow the ability to appeal to the executive director to come before this Board and show that it had satisfied the statutory requirements was still available.

So again, the distinction between RFAD and it's too late, and coming back before the Board, is one of --
is it something that this Board could waive as a rule, or
enforce in accordance with its RFAD rule? This is
actually outside of that.

Yes, it is a rule, but it is a rule that is
verbatim in many instances quoting the statutory
requirement. Thus, when notified prior to award of a
statutory infirmity of the preapplication and application,
I believe it had to travel this path.

MR. VASQUEZ: So up until the actual award is
finally made -- you're advising as our counsel that up
until the award has been made, new information could come
to kill the deal or disqualify a deal? I'm sorry.

MR. ECCLES: Well, I'm not going to say, like
if somebody comes running in with something, you know, at
the next Board meeting and says, it's all got to stop.
Recall that what I also said is, with the opportunity for
staff to say, respond to this, and for them to appeal to
Tim, and then to come before the Board.

There was the ability for the process to play
out in an organized fashion and allow every step to
progress. So that's also part of the sort of sliding-
scale property interest being vested in this.

MR. BRADEN: And one of the distinctions is
that it's a statutory RFAD?

MR. ECCLES: It's a principal distinction.
Yes.

MR. PALMER: So Mr. Eccles, what I understand you to be saying is that if somebody is raising a statutory RFAD, that they're not subject to the deadline and they don't have to pay a fee. So if somebody raises in their RFAD a statutory issue, they don't have to pay the fee and they don't have to abide by the deadline? Is that what you're saying?

MR. ECCLES: Mr. Palmer, I said what I said in response to a question from you and from a question from my Board member.

MR. GOODWIN: And I don't think the debate is over this process. It's over this statute and this situation that's up here at this point. I think if you want to bring that up as a point, put it on a future agenda and we'll be glad to discuss that. Okay.

MR. BRADEN: But in -- I mean, I don't want to drag this on any more than necessary, but there's some validity to that comment, and I'm not sure the answer is no, because if at any time somebody brings to our attention a statutory defect, we have -- and we have enough time to address it, I think we have to address it. You know, you talked about it. It's a process that if somebody brings to our attention a statutory defect, then Tim and staff has this process to go through,
and then if the conclusion is there's an actual statutory defect, then we have to address that, and we can't -- I mean, whether they filed the fee or not.

MR. PALMER: And we believe that we have satisfied the statutory requirements of providing evidence that notice was given to this neighborhood group.

MR. GOODWIN: Okay. Any other questions? Does anybody else want to comment? I see one gentleman --

MS. HOLLOWAY: If I may, just --

MR. GOODWIN: Okay. Marni?

MS. HOLLOWAY: -- to correct the record, this correspondence was received by Ms. Hubbard to our Housing Tax Credit public comment email address. It was submitted as public comment and was well within the deadline for that submission. It was not submitted as an RFAD. I just happened to open it up and read it, you know, before we started putting all the comment together that we'll present to you at the next meeting, and happened upon this.

There is provision in, I believe, the third-party -- in the RFAD rule that any party may bring these types of questions to the attention of the executive director outside of the RFAD process.

MR. GOODWIN: Okay.

MS. HOLLOWAY: I just wanted to correct the
record on that.

MR. GOODWIN: Okay.

MR. KOOGLER: Good morning. I'm David Koogler, president of Mark-Dana Corporation. We have been developing affordable housing using the LIHTC Program since its inception. We develop in Virginia and in Texas. Prior to joining Mark-Dana on a full-time basis, I was partner in the corporate finance sections of two Houston law firms and associate general counsel of an energy company.

I'm here today to make comments with respect to TDHCA Application No. 18020, St. Elizabeth Place. My comments may or may not help St. Elizabeth Place, but I feel I need to -- well, I also need to point out that we do have two applications in Region VI urban, one of which may be negatively impacted by the termination of St. Elizabeth Place.

But I'm here to ask you to look back at the decisions you've made with respect to these notification provisions and evaluate whether we're taking a consistent approach.

I think in order to take a consistent approach, TDHCA should either, one, find that Progressive Fifth Ward Community Association effectively received notice, and therefore reinstate the six points and rescind the
termination of the application, or you need to find that proper notice was not given and the applications regarding notification to the new school board president in Houston and in Lubbock, those notifications are also statutorily mandated.

In the school board president notification cases, TDHCA found that the new president effectively received notice because she was a board member at the time that the president of the ISD received notice, but she actually never received notice from the applicant.

The facts underlying notice to Progressive seem to be analogous to me, analogous to the school board cases. To be consistent with the school board cases, I think TDHCA should find that the president and other members of Progressive effectively received notice prior to the preapplication deadline because they had actual knowledge of the St. Elizabeth development and the St. Elizabeth application.

They even worked on the St. Elizabeth development prior to the application deadline. So I urge you to be consistent with the application of these notification rules. They're in the same section of the statute. They're in the same section of the QAP and the rules.

I think we either need to take a strict
interpretation approach in all cases regardless of the outcome, or a spirit of the rule interpretation in all cases regarding -- regardless of the outcome. I personally favor the spirit of the rule approach, because there are already too many traps in this QAP that can derail a good application. Staff's recommendation with respect to the St. Elizabeth/Progressive notification is based -- I just need to wrap --

MR. GOODWIN: Okay.

MR. KOOGLER: -- is based on a strict interpretation of the notification rules and requires notification from the Applicant whether or not Progressive had actual knowledge of the St. Elizabeth application or received notification from other than the Applicant.

While in the school board president cases, it seems TDHCA used the spirit-of-the-rule approach and did not require notification of the -- from the Applicant to the new school board president because the new school board president already had actual knowledge of the applications.

MR. GOODWIN: Okay.

MR. KOOGLER: Thank you.

MR. GOODWIN: Thank you. Any questions?

MR. BRADEN: I have a question. Again, maybe it's more of staff.
MR. GOODWIN: We've got a question --

MR. BRADEN: In the school board cases that he refers to, school board president cases, none of the school board presidents were showing and complaining that they didn't receive notice.

MR. ECCLES: Well -- and this actually may be a process question for Marni. I believe actually the distinction between those two -- it's not really a statute or as much as a rule-based discussion of the election of a school board superintendent taking place, and whether that was actually an election or just the new appointment of a school board superintendent.

So Marni, do you have thoughts on that?

MS. HOLLOWAY: I believe that that's how we got there, how we landed on that decision. All of the -- both in Houston and in Lubbock, those questions were the result of an RFAD, of RFADs, and in all cases, we either had -- actually, in all cases, we had information from the superintendent that they had received notice by virtue of being on the board or in other roles or that when they started the job, the notification was handed to them from the previous --

MR. BRADEN: I remember that now, and superintendents aren't elected.

MS. HOLLOWAY: Yeah. Well, and I think that,
you know, there's a difference between -- the difference
here is that it's an organization that's saying, we as an
organization were not notified.

MR. GOODWIN: Any other questions?

MR. VASQUEZ: I have a question. And just
seizing upon -- David, I didn't get your last name.

Sorry. But just one phrase he used in this, saying --
referring to the staff's interpretation of the rules -- is
that a fair characterization that it's -- the notice --
we're interpreting what the rules or statutes say is
deemed as notice?

MS. HOLLOWAY: I am applying the plainest
reading of the statute, which says the applicant must
notify the neighborhood organization that is registered
with the county or state.

MR. VASQUEZ: But the format of that
notification is staff's --

MS. HOLLOWAY: Is described in --

MR. VASQUEZ: -- interpretation?

MS. HOLLOWAY: -- is described in rule, and
it's all written out, you know, all very specific about
what that notification should contain and we actually
provide a template for applicants to use to provide those
notifications.

MR. IRVINE: And I would layer on one other
important element. I think that the question is, does the
preapplication and/or the full application, as
supplemented or clarified by the response to the
administrative deficiency process, set forth a record that
provides evidence that the required notification was given
by the Applicant?

MS. HOLLOWAY: Uh-huh.

MR. IRVINE: That's a question.

MS. HOLLOWAY: Uh-huh.

MR. GOODWIN: Any other questions for Marni?

Do you have a comment you wanted to make, sir?

MR. KOOLGER: For whatever it's worth, yes.

You know, I know that the school board cases also looked
at this election appointment distinction, but I'm not sure
really, and I also think you probably don't want to
revisit this, but I'm not sure it was a valid distinction,
frankly.

And so it appears, and it has the appearance of
in some cases -- we interpret the underlying facts in a
manner that results in the outcome that we want and in
other cases, we don't because it results in the outcome
that we want.

I don't think -- and correct me if I'm wrong,
but I don't think the statute talks about reading
notification at all, whether it's with respect to elected
officials or not. I think the statute just says you have
to notify these people at preapplication and you have to
notify these people at full application.

So kind of -- you know, if you didn't renotify
these people at full -- at preapp, you still have to
notify them at full app, whether you have language in
there that says you've got to renotify. Just the reading
of those two provisions in the statute would require that
renotification.

So I'm not sure the election distinction was
ever really the distinction that should have been made,
but be that as it may, I still think that a strict
interpretation of the statute really wouldn't apply to the
school board cases, and it clearly is being applied here.

I would say bad facts make bad law, and
unfortunately we've got some bad facts here, but I hate to
see this application lose out on a technicality, because
again, it does appear to me -- and I haven't been involved
at all, so I'm just listening to the same things you
are -- it does appear that Progressive was fully aware --
probably was made aware through discussions, emails.

So I think you could find that they did receive
the statutory notification, that they did receive all of
the elements that are contained in the template, even
though they did not receive the template. So those are my
thoughts. Thank you.

MR. GOODWIN: Any additional questions?

MR. PALMER: Could I just --

MR. GOODWIN: We have a new speaker.

MR. PALMER: -- say one other --

MR. GOODWIN: Let the new speaker come first and --

MR. PALMER: May I have a moment?

MR. GOODWIN: Okay, sure.

MR. PALMER: I just wanted to read one sentence from the rules. This is on RFADs. "Information received after the RFAD deadline will not be considered by staff or be presented to the Board."

MR. GOODWIN: Thank you.

Yes, sir?

MR. CLEMONS: Harvey Clemons, Jr. with Fifth Ward Community Redevelopment Corporation.

MR. GOODWIN: I need for you to sign in, Mr. Clemons.

MR. CLEMONS: Can I --

MR. GOODWIN: Sure.

MR. CLEMONS: Will my minutes start after I sign in?

MR. GOODWIN: Yeah, after you sign in.

FEMALE VOICE: I'll make sure.
MR. GOODWIN: We already docked you 30 seconds for Barry's time.

MR. CLEMONS: Okay. Mr. Chairman and to the Board, my point is simply this. We all know what's going on here. It's clear. This is a NIMBY situation. We -- I mean, it's clear the Mayor of Houston and City Council put $5 million into this project because they know the value of it.

State Senator Borris Miles is on record with support of this project. Harold Dutton, state representative, has sent a letter in support of this project.

MR. GOODWIN: In all due respect, sir, this is over the issue of -- has notification -- not the project and not that it doesn't have wide support, not that there wasn't a good-faith effort. It's -- can you speak to the point that's really in front of us, sir?

MR. CLEMONS: Yes, sir.

MR. GOODWIN: Would you please.

MR. CLEMONS: The point is, it is very clear that Ms. Erica Hubbard knew about this project. She not only knew about it; she participated in bringing it on board at the genesis of the project in '16. She voted on the selection committee of who the development team would be.
She knew about it. You can't say, I know, and then turn around and say, I don't know. We participated with her. So from a statutory point of view, if the idea is to make the entire community aware, we did that. She was very much aware.

She is very much aware, and all the way through the process, we continued to talk with her, and the project did not change materially from what she selected to the point to where we are now. So all I'm saying to us is that judgment, good judgment, from the standpoint of helping this community and bringing about comprehensive neighborhood revitalization, requires at least a desire to want to make this thing happen and to look at the rules as you just looked at the rules in terms of your favor about the notification.

If the notification came after the deadline, and you continue to want to look at it, it's the same thing that if you say that we didn't meet the deadline. So I'm asking you, for the better judgment of the people of this community and for consistency with looking at what is real and what is factual, to approve this project because it does not violate, in our opinion, the spirit of the notification rules and regulations.

She was aware. She knew. The organization knew. Thank you so very much.
MR. GOODWIN: Any questions?

MS. RESÉNDIZ: Mr. Chairman, I have a quick question, and this question is more for Kathy, please. So just listening to everything, it honestly does appear that Erica Hubbard with Progressive Fifth Ward had a clear understanding of what the project entailed as it relates to St. Elizabeth.

This may be much too simple, and if you will just help me understand. With the public hearings, when it was mentioned that there were several months of logs that Erica had participated in, you know, various forums, on that log, wouldn't there be a section where these individuals have -- are representing a certain organization, therefore, you know, making it known that Erica is representing Progressive Fifth Ward, because if that's the case, then based off what Sarah had mentioned, there was no knowledge of Progressive Fifth Ward amongst your organization.

Will you help me understand if --

MS. FLANAGAN-PAYTON: So in February 2016, Erica Hubbard was a member of the Fifth Ward Civic Club. Her and a few of the residents exited that particular group and formed the Progressive. The reason they left the organization that they were originally a part of is because they did not want to apply structure, did not want
to govern themselves by Robert's Rules of Order, did not
want to entertain a structure that would allow people to
conduct business.

Erica was a new -- is a new resident to the
community, has an express interest in helping the Fifth
Ward community, and in her role as a leadership of that
organization, we invited her again to be part of these
conversations and the dialog.

At no point in time were we aware that
Progressive Fifth Ward had incorporated. I did a personal
search. I'm in regular communication. So if your
question is to ask me is if I un-notified her, it's
impossible.

When she was part of the decision-making
process to define the structure of these project, the
number of units that this project would invite to this
community so that the density would not create hardships
in terms of traffic -- if you ask me in terms of the
selection of the developer, she was active in that
process, had extensive dialog, active and communicating
with the architect.

Still to this day, in terms of understanding
where we are in this project, she can acutely articulate
the definition of this project as it has been explained to
her, as she's participated in the program. When you look
for, in areas like Fifth Ward, there are a number of organizations that just start up.

We recognize them all. They don't have to have a registration to be a part of the dialog, because we are looking for inclusion. Staff is correct. But when you Google Progressive -- is what we know, because this organization has used five names.

They refer to themselves as North Park Circle.

They refer to themselves as PFW. They refer to themselves as Progressive. They refer to themselves as Progressive Civic Association and not Community Association. And when you look up Progressive, every insurance company in the state of Texas shows on the -- and that's not an exaggeration. I did it myself.

This was not an attempt to exclude this organization from being a part of this process. And I am personally offended that she claims that she did not receive notification and all of a sudden, now, she doesn't know anything about this project.

She's very acutely aware, and we've received correspondence since then, and this is about a number of issues that have nothing to do with the betterment of life in that community.

MS. RESÉNDIZ: So and just to be clear, my comment wasn't about taking her or the organization out of
the equation, but just to expand on what you just said, what are they incorporated as? What name are they incorporated as with the Secretary of State's Office?

MS. FLANAGAN-PAYTON: The information that was provided by this Department now shows, I believe, that it is Progressive Fifth Ward Community Association, as opposed to Civic Club.

MS. RESÉNDIZ: Right, right. But you said that they go by all of the other --

MS. FLANAGAN-PAYTON: North Park Circle, Fifth Ward Solidarity, PFW Community Association, and then Progressive Civic Club --

MS. RESÉNDIZ: Okay.


MS. RESÉNDIZ: So would these all have been organizations that you would have needed to include in the documentation that staff was needing?

MS. FLANAGAN-PAYTON: No, they're all one organization that operate under these aliases.

MS. RESÉNDIZ: Okay.

MR. GOODWIN: Other questions?

MS. ANDRÉ: If I can just address the technical nature of that, and they are not registered with the Secretary of State, all those aliases, so that's the
measure that we're looking at today, is whether or not an organization is registered with the Secretary of State and meets other criteria, but that's the primary one.

MR. GOODWIN: Okay.

MS. RESÉNDIZ: Thank you.


MS. MYRICK: Just one more. Good morning. My name is Lora Myrick, and I am with Becker Consulting, and I would also like to read a portion, just a sentence, of the Multifamily Rules, where it talks about interested persons. Actually, it's the QAP. Pardon me.

"Interested persons may provide testimony on this report before the Board takes any formal action to accept the report." And that has to do with the RFADs. But I think what I want to come up here and talk about is the one thing that I listen through all of this discussion and exchange, is that I heard someone say, I didn't find out about this group until February 27.

That's still before March 1, and you still could have grabbed a notification, put it in the mail, put it -- gotten it out there, if nothing else, to cover your bases, because of -- this development is so important and complex, why would you want that to get in the way of your development?
So I heard someone say, I acknowledge that it was present on the 27th of February. We've known that they're out there. We don't need to be here because if that notification was sent, we wouldn't be discussing this. Thank you.

MR. GOODWIN: Thank you. Any questions? Are Board members ready? Marni, will you come back up? Leo, did you have a question? Karen, did you have a question?

MR. VASQUEZ: I guess I was just looking for some summary clarification from staff and counsel.

MR. GOODWIN: Okay. Give some summary notification, Beau, as to what we've focused here on. It seems to me that we're focused on the notification and the preapplication points, and did it meet statute requirements. You had --

MR. ECCLES: I think that that's --

MR. GOODWIN: What Marni --

MS. HOLLOWAY: That's exactly the question. You know, was notification as required by statute and rule provided to this organization that was registered with the Secretary of State both when the preapp was submitted and when the application was submitted?

MR. GOODWIN: Uh-huh.

MR. IRVINE: And was there evidence in the application?
MS. HOLLOWAY: And was there evidence? Yes.

MR. GOODWIN: Yeah.

MR. BRADEN: I have a question, and I believe it's more for the legals. So let's assume, and I think I've been personally satisfied that the Applicant has demonstrated that Progressive, this agency, had actual knowledge.

But that is not satisfactory -- I'm asking a question -- for the notice requirement under the statute? And I'm also asking, in light of -- what -- I forget the gentleman -- he made the point about the superintendent and the presiding officer.

I mean, you know, obviously those people were not here objecting, saying, I didn't get notice, so there's a huge distinction. But --

MR. ECCLES: Well, the question that I think would govern all of those questions as it relates to 2306.6704 preapplication process would be, is there evidence in the preapplication that the Applicant has notified here the neighborhood organization on record with the State or county?

And when it relates to the superintendents, was there evidence in those preapplications that the applicant had notified the superintendent and presiding officer of the board of trustees of the school district? If there
was evidence of that happening, that's what satisfies the statutory requirement.

I think in the superintendent cases -- and I don't want to speak out of line on this -- I think the question was, between preapplication and application, somebody else became the superintendent, but it doesn't mean that there was no evidence that the superintendent was notified.

It's just that the superintendent changed, and then we get into the rule-based question of -- is that an election when a group of trustees gets together and says, who's going to be our president of the board of trustees next year?

Is that an election or is that part of -- we're only talking about a public election along the lines of a state representative?

MR. BRADEN: Okay. So let's assume the superintendent stuff is factually different. So in this case, we have -- they say that they presented evidence that there's actual notice, that these people actually knew what was going on, but that's not sufficient.

That cannot be constructive notice under the statute?

MR. ECCLES: Well, again, the question is, when they submitted the preapplication, when they submitted the
application thereafter, was there evidence in that
preapplication, in that application, that the Applicant
had notified?

I think we've established and it's been agreed
that Progressive Fifth Ward Community Association is a
neighborhood organization on record with the State in
which the development is to be located and whose
boundaries contain the proposed development site.

So Progressive Fifth Ward Community Association
is an organization that should have received notification.

Is there evidence in the application, in the
preapplication, that they received that notice?

MR. VASQUEZ: And do we have the discretion to
say that the Applicant is representing to the best of
their knowledge and good faith they have notified everyone
that needed to be notified and outside of that written
preapp, I think they've presented compelling evidence that
that one organization, by virtue of their -- that
organization's president being part of the discussion, was
in fact notified.

The president of the organization was notified;
therefore the organization was notified. So we have kind
of two different parts. To the best of Applicant's
knowledge, they made the notification to everyone that
they thought needed to be, and then in reality, the actual
facts of the matter -- the organization, Progressive, was actually notified, because their president was intimately involved and knowledgeable of the --

MR. IRVINE: I would respond that, if in response to our administrative deficiency, they had provided the emails that were given before the applicable dates to the other folks, then there would have been some evidence that the notifications had been provided, and at that point, I would think the issue is not -- was the statutory requirement met, but was the rule requirement met?

And I think that the Board would have a great deal more latitude in addressing a rule construct than a statutory construct.

MR. ECCLES: Well, and let me put it even more plainly. Let's say that they had sent notification to the Progressive Fifth Ward Community Association but had failed to list it in their preapplication and application, and then in response to -- hey, where is this; this is a notice of administrative deficiency -- they had said, oops, forgot, here it is, here is our notification that satisfies the threshold requirements as listed in the QAP, which is what the statute later requires, if they then showed that, that would be one thing.

But in response to the administrative
deficiency, it was admitted that they checked with a City
website to see who are the neighborhood organizations that
we should give notice to, and Progressive was not in that
City database.

But the statute requires that it's those
neighborhood organizations on record with the county or
state, and those weren't checked. This is --

MR. VASQUEZ: It's a gotcha.

MR. ECCLES: -- this -- it's a statutory
gotcha. That's the problem.

MR. GOODWIN: The rule comes down to the
evidence being in the application or in the
preapplication.

MR. ECCLES: That's what the statute comes down
to.

MR. GOODWIN: That's what the statute comes
down to. Okay. Any other questions.

MR. ECCLES: We have one more.

MR. GOODWIN: One more comment?

MS. DULA: Thank you. I'm Tamea Dula with
Coats Rose. I wrote the response to the administrative
deficiency. I'd like to point out that staff has
overlooked the fact that we included with that response
the letter from Senator Miles that was provided by Erica
Hubbard on February 28, I believe, sent to Kathy Payton
with regard to this.

    In the letter as responding to the administrative deficiency, we discussed the conversations that have been had. Attached is an exhibit with a certification by Kathy Payton that the details in the letter were true and correct to the best of her knowledge.

    That is evidence that was provided pursuant to the administrative deficiency. Number two point that I'd like to make. There's a problem here. We have to show that all neighborhood organizations of record with the State and the County have been notified.

    If you call the Secretary of State and say, may I please have a list of the neighborhood organizations in Harris County or some other location, they don't maintain such a list. You cannot obtain such a list by checking, you know, a search of registered entities.

    If you call the County -- and I did this -- the County says, we don't maintain such a list. We recommend you go to the City. Now, years ago, it was said that if you went to the City and got their list, that the City, being an outpost of the state, so to speak, that was considered being of record with the State.

    Anybody that had registered with the City and said, we are a neighborhood organization. We have an interest in the Fifth Ward. Here are our boundaries. And
that would be who you would notify. Now, there's nothing like that to let you know who to notify.

This organization went to the City and said, you know, give us your list, and they were directed to the list that the City maintains and a website where you put in your address and the website identifies what neighborhood organizations are active in that area, and they did both, and they notified everybody.

And Progressive was not on that list. They couldn't get anything from the county clerk, but Progressive is likely to have been registered with the county clerk, because generally speaking, not only neighborhood organizations -- excuse me -- not only property owners' associations or homeowners' associations are registered with the county clerk by virtue of filing something in the county records to show that they have some interest in that property, and that information comes up through the title commitment.

The title commitment showed nothing had been filed in Harris County with regard to any kind of property owners' association or neighborhood organization or homeowners' association. So we've got a problem here. There's no way to be sure when you go looking for an organization that you have found every neighborhood organizations that's entitled to notice.
Had Progressive instead called themselves Unknown Neighborhood Association with an Interest in the Fifth Ward, how would they ever been -- be located, especially if they chose to lay low? This is something that can be misused by unscrupulous developers who see potential competitors out there.

You can easily create a neighborhood organization, easily file a record with the Secretary of State one day, and then not say anything. Choose a name that doesn't have any connection to the location that's in issue, showing your certification of formation, as did Progressive, that you have certain boundaries. Include the boundaries of your competitors' properties, and then after the fact, on June 11 of that year, notify the TDHCA that you had an interest and were not notified.

How could they have found you? Something needs to be done to fix this.

MR. GOODWIN: Okay.

MS. DULA: Thank you.

MR. GOODWIN: Tamea, I don't think you stated your name when you started.

MS. DULA: I am very sorry. Tamea Dula, Coats Rose.

MR. GOODWIN: Any questions?

MR. BRADEN: Mr. Chair, it's my recollection...
from reviewing the packet is that the letter that was referenced was dated January 31 from the state senator. What's the --

MR. GOODWIN: That's correct.

MS. HOLLOWAY: Yes, it is.

MR. BRADEN: -- the preapplication -- when was the preapplication due?

MS. HOLLOWAY: The preapplication final date was January 9.

MR. BRADEN: Even if you would take that as a record, it wasn't on file. It wasn't evidence on file with the preapplication deadline.

MS. HOLLOWAY: No.

MR. BRADEN: At the very least, you'd lose those six points.

MS. HOLLOWAY: That is correct.

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

MR. GOODWIN: If not, do I hear a motion from a Board member as it relates to staff's recommendation?

MR. VASQUEZ: Okay. I'd like to make a motion, but I want to make sure that legally the Board can take this action, because I've been hearing different perspectives on -- that might be an idea.

MR. GOODWIN: What was the idea?
MR. VASQUEZ: Well, okay. I mean, I would like to make the motion to deny the staff's recommendation, but I want to make sure that there's not any legal hurdle or blockage to actually us doing that, and I want to say that if we don't let this project continue on -- I mean, this is -- we're just -- in my estimation, it's just a travesty in bureaucracy.

I mean, again, it's another gotcha, that we're trying to get out of that, and actually, in this case, I don't think it's as much the Department saying, gotcha, as this -- as Erica Hubbard doing this, you know, this one person, who clearly was involved and had clear knowledge of this project all the way through.

Therefore, in my mind, from a business perspective, not necessarily from the lawyer perspective, the organization, Progressive, had de facto notice throughout this whole process. Them submitting this letter saying, we didn't receive notice -- I mean, to me, that's borderline -- it's quite -- it seems disingenuous to be submitting this document to a state government organization.

The arguments that the speakers have made here today are compelling, I think, in the -- whether it's the RFAD notice, or you know, missing timings and deadlines. Some of these precedent other areas, I think, are -- maybe
not be exactly on point, but they reasonably correlate to this.

We're looking for -- I think one of the early speakers talked about -- let's look at this as a common-sense approach rather than technicalities. So with all of those factors in mind, again, I would like to make the formal motion to deny staff's recommendations and not disqualify the 18020 project.

MR. GOODWIN: Okay. A motion has been made.

Is there a second?

MS. RESÉNDIZ: Second.

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

MR. BRADEN: Yeah. I appreciate the sentiment that's being expressed. I can't vote for that, because I don't think we have authority under the statute to do that.

MR. VASQUEZ: And that's why I'm asking if --

MR. BRADEN: Again, you know, I think we've been given that advice by our general counsel. You know, I pulled all the statutes out. I just read it myself. I can't disagree with that advice.

So, you know, even the arguments -- you know, what I started thinking about is -- well, if we take the January 31 letter from the senator as more evidence of
some type of notice that didn't come from the Applicant, which is not consistent with the statute, but even then, they lose six points, because the preapplication didn't have it.

So that probably -- in fact, we have a problem there, but while I -- you know, and I think everything that was pointed here is correct. I think people acted in good faith. I think there was, you know, actual knowledge, and the only argument you can make is constructive notice.

But I don't know if we have that latitude, so that's why I cannot support this, and if it's voted for, I'll have to vote against it.

MR. GOODWIN: I will be in the same boat for the same reasons.

MS. THOMASON: I will too.

MS. BINGHAM ESCAREÑO: I -- just before -- it sounds like it's going to die. I mean, I think the Applicant has done a really good job. I mean, obviously, it goes without saying -- I think we've all said it in one way or the other -- it's an awesome, you know, application, it's an awesome plan.

And I know you guys know that we're struggling up here doing everything we can to try to figure out if there's a way to get this done. What I hear
saying, though, is kind of -- and I completely understand.

Presenting both angles, right? I kind of hear two arguments. I could be wrong. One is, we didn't know that this was a registered entity that needed to be notified. That's one. And then the other -- kind of, I hate to say -- angle, but the other argument is -- okay, but if they were, they were notified. Right?

That's what I hear Mr. Palmer -- kind of the argument. And I think where we're stuck a little bit is, if you take -- so the first argument doesn't sound like it's holding a lot of water because it is a registered entity. Correct?

Like so -- so that one's -- we're struggling with a little bit, although I understand the argument about -- it's not very easy to find them between boxing organizations and churches and stuff, that it's not easy.

Unfortunately, that sounds like something that we need to handle somewhere down the line, but we have that expectation for all applicants and all applicants are doing their best to achieve that, then for us to carve this one out and say, wow, it was hard for you guys.

We understand why you weren't able to find this entity -- might not be the most equitable thing, you know, for the Agency or the Board to do. The other argument, though, is well, if it is an entity, the principal of this
entity did know that this development was being discussed, had been notified.

I think the struggle that we’re having with that is, the statute, not the rule -- the statute says there has to be evidence of it. Doesn't say, you know, what the evidence needs to look like. The rule says what the evidence needs to look like.

But the statute says there has to be evidence in it, and I don't think -- just speaking for myself, I unfortunately -- I don't hear what evidence was in the preapplication. I hear it now. I hear it in a lot of different forms now, but at the time, I don't hear where the -- where we as a Board can say, yes, there was evidence in the preapplication that the notification had been made.

So on that basis, I probably would not be able to vote affirmatively either.

MR. GOODWIN: Anybody else? Any other comments?

(No response.)

MR. GOODWIN: We have a motion and a second on the floor.

Leo, are you ready for a vote on that motion?

MR. VASQUEZ: Let's do it.

MR. GOODWIN: All in favor, say aye.
MR. VASQUEZ: Aye.

MS. RESÉNDIZ: Aye.

MR. GOODWIN: All opposed, aye.

MR. BRADEN: Nay.

MS. THOMASON: Nay.

MS. BINGHAM ESCAREÑO: Nay.

MR. GOODWIN: I think the motion -- your motion has failed. Do we have a motion to approve staff's recommendation?

MR. BRADEN: I regretfully make the motion to approve staff's recommendation.

MR. GOODWIN: Do I have a regretful second?

MS. THOMASON: Second.

MR. GOODWIN: Which I think speaks for everybody up here. All those in favor say aye?

(A chorus of ayes.)

MR. GOODWIN: Opposed?

MR. VASQUEZ: Nay.

MS. RESÉNDIZ: Nay.

MR. GOODWIN: Nay? Okay. I think the motion has passed. So we're moving on to --

MR. VASQUEZ: Could -- Mr. Chairman, just --

MR. GOODWIN: Yes, sir.

MR. VASQUEZ: -- given the -- I would just like to make an encouragement to the developers and the
community. In my mind, it's damn the torpedoes. I encourage you to do everything you can to continue with this project.

Forget -- don't let Erica Hubbard stop you from doing it. There are so many bankers and community organizations that if the community -- that if the City's kicked in money for it, let's find others that can help continue this revitalization of this area, because it's so needed.

Don't give up, please.

MR. GOODWIN: I don't believe anything prevents them, does it, Marni, from coming back next year with --

MS. HOLLOWAY: Oh, no, not at all.

MR. GOODWIN: Oh, so the project's still going to be there, I'm going to assume, this time next year.

Okay.

MS. HOLLOWAY: Okay.

MR. GOODWIN: Moving on to item (b).

MS. HOLLOWAY: On -- item 3(b) is presentation, discussion, and possible action on a remanded Request for Administrative Deficiency regarding site eligibility under 10 TAC Section 11.3(g) related to Proximity of Development Sites. The applications in question are: 18033, The Miramonte, and 18047, Miramonte Single Living.

We have included mention in the Board item of
18043, Huntington at Miramonte, simply because it's
another application on that same site. So we received a
third-party request for administrative deficiency
requesting that staff review the application and determine
whether the development sites for applications 18033 and
18047 should be considered contiguous under our rules
related to proximity of development sites.

At our last meeting, the Board heard testimony
about the RFAD and directed staff to re-analyze these
applications and present this issue for Board
consideration.

We have included application 18043, Huntington
at Miramonte, which was not part of the RFAD or the
discussion at the last meeting, because it is the third
development at this site.

It is an elderly development, so it does not
violate the rule. Under our rule, if two development
sites serving the same population are contiguous, the
lower-scoring of the two applications is deemed non-
priority and not reviewed for award unless the higher-
scoring of the applications was withdrawn or terminated.

The development sites for these three
applications are carved out of a 38.199-acre tract of land
under common ownership. Exhibits A through C, which start
at page 101 in the Board Book Supplement, depict the
Applicant's delineation of the development sites, and Exhibit D, which is on page 107, was inserted from the RFAD.

It depicts the three sites together on the property. The 38-acre tract has not been legally subdivided. The information you see is only contained within these three applications. The survey from the site design and feasibility report depicting the three sites and the drainage reserve is included as Exhibit E, at page 109.

Contracts for the development sites are attached also, and it is notable that the purchaser of the 38-acre tract is also the Applicant for 18033 and 18047. Staff had initially reviewed the RFAD and determined that the drainage reserve indicated in the contracts and on the site depictions represents a parcel of land between the development sites, and the rule was not applicable, as the two development sites are not touching due to that retainage by the seller, and so they are not contiguous.

We applied the determination of whether the two sites were contiguous at full application only and did not take into account whether the sites were represented as contiguous at preapp.

Statute requires that we establish at preapplication process -- the rule begins with: "The
preapplication process allows applicants interested in
pursuing an application to assess potential competition
across the 13 state service regions, subregions and set-asides." Based on an understanding of the potential
competition, they can make a more informed decision
whether they wish to proceed to prepare and submit a full
app.

Further on, it states that "preapplications are
subject to the same limitations, restrictions or causes
for disqualification or termination as applications."
The preapplications for 18033 and 18047 were
both listed as developments to serve a general population,
and the preapplications internally referenced each other
to the point of showing the same site sketch, which is at
page 137 in your Supplement.

Under a plain definition of the term, these
development sites, as presented at preapplication, are
contiguous. Although it is not uncommon for a large
parcel of land to be submitted at preapplication as
multiple proposed development sites, as occurred in this
instance, the rule ensures that when contiguous sites
serving the same population are submitted at preapp, one
of them will not move forward or will be a non-priority
application.

Either way, an applicant assessing potential
competition at preapp would be able to count on only one of those contiguous preapplication sites moving forward. However, at full application, the development sites for 18033 and 18047 have been changed.

They are still next to each other, but they are separated now by a strip of land that's being retained by the seller of the property. This appears to have occurred as a result of a February 11 amendment to the contract which seeks to clarify that the seller is retaining 10-foot strips between the parcels and purports to make the amendment effective as of January 4, 2018.

The January 4 date is important because it's when the application acceptance period began. The question for your determination concerns the timing of contiguity.

If submitted preapplications show two proposed development sites as contiguous and serving the same population, does the rule and the statutory rule stated purpose of the preapps support the conclusion that only one of the two contiguous preapplications could proceed?

Accordingly, must contiguity or the lack of contiguity be plainly evident in the preapplication or is that determination made only on the basis of the development site information presented with the full app?
determinations are made at preapplication, then only the higher-scoring of these two applications may proceed to award. The lower would go to a non-priority status.

If the Board determines that contiguity determinations are made only at full application, then both of these applications would move forward. Staff does not have a recommendation on this matter. We are presenting it for the Board's determination.

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

(No response.)

MR. GOODWIN: We have speakers that want to speak.

MS. DULA: Generally, you permit the developer or the applicant to speak in response to the staff, and we'd like to exercise that opportunity.

MR. GOODWIN: Okay.

MS. DULA: We know we have some opposition here. On the last name, do I have to sign again?

MR. GOODWIN: I'm not sure about that rule.

MS. DULA: All right. Tamea Dula --

MR. GOODWIN: What is the statute on that rule?

MS. DULA: -- with Coats Rose. I'll do it in an excess of legitimacy here.

Okay. Tamea Dula on behalf of Mgroup and Mr.
Mark Musemeche, the developer. What you heard at the last Board meeting were complaints by competitors that two general population developments were separated only by these strips retained by the seller.

The opposing developer suggested that these developments were actually contiguous. Staff, however, has reconfirmed that they have determined that the developments shown in the applications are not contiguous because they do not touch at any point.

Complaints were also made that the two developments were in Fifth Street, a census-designated place, and these were likely to be funded when Houston needs so much post-Harvey housing assistance. Actually, Fifth Street CDP is located in the ETJ of Stafford in Fort Bend County, and it is in the Houston/The Woodlands/Sugar Land metroplex.

Of the 12 counties that are in Region VI, these two developments are the only urban subregion applications to be funded in any county other than Harris. They therefore provide much-needed diversity. If one of these applications was deemed non-priority due to being contiguous in the preapplication, then the next applications to be funded would be more Harris County applications, and there would be none from any other county.
Fort Bend County was also ravaged by Hurricane Harvey, and these developments will provide 142 units of affordable housing in Fort Bend County that are fast-tracked on the readiness-to-proceed schedule.

I'd like to point out that this matter is before the Board as a determination of whether continuity determinations under 11.3(g) of the QAP are made on the basis of preapplications or only on the basis of information submitted in the full application.

If only the full application is considered, both applications are good and eligible. Whether the preapplication must show non-contiguity was never a question that was presented to the Applicant, who only found out about this issue when the Supplemental Board Book was published on Monday evening.

The question that was presented to Mr. Museemeche to answer was as follows: "Yesterday at the Board meeting, interested parties addressed the Board regarding staff's determination on the RFAD that was filed for your applications."

"As a result of the RFAD" -- may I finish the quote?

MR. GOODWIN: Sure.

MS. DULA: "Staff found that the sites for 18033, the Miramonte, and 18047, Miramonte Single Living,
were not contiguous. At the meeting yesterday, the Board directed staff to bring the issue to the Board at the July 12 meeting.

"The Board heard testimony regarding the practical purpose of the drainage ditch as it alone separates the two sites. If you would like provide any further information regarding the drainage easement for staff and the Board to consider, please send it to me by five o'clock p.m. on Tuesday, July 3."

We responded to that, to that question. Nothing about preapplications. That has never been an issue. We were especially surprised because the requirements for preapplication --

MR. GOODWIN: I thought you were just going to finish that quote.

MS. DULA: It's this much more. The requirements of preapplication submission make no reference to contiguity in the QAP. The rules or the statutes, none of them use that word in connection with the preapplications.

Statutes relating to tax credit housing do not even mention the word contiguous, contiguity, or any variation of it. Non-contiguity is entirely a requirement of the Department, not the legislature.

As written in 11.3(g) applications, which is a
defined term in the statutes, are what must be reviewed to
determine whether or not they are contiguous, and
therefore come within the meaning of 11.3(g)'s prohibition
of proximity, and staff has already determined that the
applications are not contiguous. Thank you.

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

MR. GOODWIN: Next speaker? In favor or
against the project?

MR. PALMER: In favor.

MR. GOODWIN: In favor of the project.

MR. PALMER: Barry Palmer with Coats Rose.

Yeah, I --

MR. GOODWIN: Let the record reflect that Ms.
Reséndiz has left the --

MR. PALMER: Okay.

MR. GOODWIN: -- room.

MR. PALMER: Yeah. I'd like to point out that
this was an RFAD presented to the Board last month. The
Board -- or the last meeting, the Board asked staff to go
back and look at it again. Staff looked at it again and
confirmed that the applications are not contiguous under
the rules, and the rule on contiguity, 11.3(g), talks
about two or more competitive Applications, with a capital
A.
It's a defined term that means the full application. There's no rule that says preapplications can't be contiguous. So we were a little blindsided when staff came out with this new concept at the 11th hour -- well, what about preapplications -- which had never been talked about before, never -- the Applicant never received any deficiency or opportunity to respond or opportunity to appeal a negative determination.

So we really feel like there hasn't been a lot of due process here for this brand-new issue to come up two business days before the Board meeting. The Supplement was posted Monday night, raising for the first time this concept of, well, what about preapplications being contiguous?

Which again, the rule is pretty straightforward on this. It talks about a prohibition of contiguous applications: defined term. It would make no sense to have the contiguous rule apply at the preapplication stage because at the preapplication stage, you're not required to nail down what your site is.

You can just submit a 30-acre tract and say in the preapplication, it's going to be somewhere in here, and then at the application stage, you show it's going to be these six acres. So how can you, at the preapplication stage, determine contiguity if people can move their site
effectively between preapplication and application time?

So I would argue that the issue that you asked
to be re-looked at has been re-looked at by staff and
decided the same way they decided it before, and that this
new issue that they've raised, that was never in the RFAD,
it was never discussed at the Board meeting last month, it
was never noticed to the developer, is, number one, just
on its face -- it's not supported by the rules, but number
two, you know, it violates all concepts of due process.

MR. GOODWIN: Okay.

MR. PALMER: Thank you.

MR. GOODWIN: Questions for Barry? I have a
question, Barry. Why -- these two projects are right next
door to each other. There's a 10-foot strip. Why not
just make them one project? What was the motivation to
make them two projects?

MR. PALMER: It would exceed the credit cap.

MR. GOODWIN: Ah, that's what I hear.

MR. PALMER: But I would point out that in the
rules, there are other rules that are judged by distance.
There's the one-mile -- the two-mile/one-year rule.
There's the one-mile/three-year rule. So if the purpose
of this rule is to be -- is going to be proximity rather
than contiguity, then for next year, let's change the rule
and make it a quarter-mile, let's say.
You can't have a project within a quarter mile, or whatever you want it to be. But right now, the rule says contiguous, and developers have relied on what the rule is right now. So you know, keep in mind, in Region VI, we have the readiness-to-proceed points that were put in by the Governor this year, where developers who are funded have to close by October 31.

So developers in Region VI, including this developer, have relied upon the -- you know, the fact that they were shown to be in the money, that they didn't get any deficiencies, they were cleared by staff, and this developer spent over $400,000 on this project, because in order to close by October 31, you've got -- by now, you've got to have full plans and specs.

You've got to be in for --

MR. GOODWIN: You went -- I think you went way past my question. I do have another question, though, if somebody else doesn't have one.

MR. BRADEN: Go ahead. I have a question in relation --

MR. GOODWIN: My land development experience tells me that I don't just put drainage ditches wherever I want them, that usually a city requires me -- a municipality of some governmental entity tells me when and where I'm going to put those drainage ditches.
So I see this drainage ditch, which I think last month was argued to be kind of an unusual formation. Was this required by the City? Has the City of Stafford required the drainage be done in this way?

MR. PALMER: I don't know. The --

MR. GOODWIN: Okay.

MR. PALMER: -- developer could respond --

MR. GOODWIN: Okay. All right.

MR. PALMER: -- to that question, though.

MR. MUSEMECHE: Hi, I'm Mark Musemeche. I'm here representing Mgroup and Developments. So I apologize for not being able to be here last Board meeting. We were traveling, and so I think, had I been there, I probably could have put a lot of this information -- corrected it back then.

I understand there was concerns regarding the perception of drainage strips that were done to separate the property. There's two things here. Clear, we understood the rule. The rule is simple. It's not ambiguous.

It says, you cannot have two same-population applications being contiguous. So we knew that. That's the same rule every other developer had to work with. So we're playing within the rule. Fact. But secondly, we try to create a way that would also allow some purpose to
the original concepts when -- understanding these are conceptual plans that go together in a preapp.

Or in January or November, we're putting things together. It's not refined yet. We're still working on the whole master development. We're working on all kinds of complicated aspects to get our development. Well, at that time, there were considerations for regional detention, and master detention facilities for all three parcels.

We didn't know yet. But we want to ensure that, A, we met the rule, but B, that if we had to have some drainage path that allowed all sides to have connectivity to get to the public road, we accomplished that.

So that was the question you had at the Board meeting. And so when I was asked to speak to that, I had Tamea prepare a letter responding to that. And if you read that, you would see that, from that point to now, they have developed even more.

The plat that was submitted and provided in the testimony shows preliminary plats already approved by the staffer, and it shows now an open landscape reserve. So at the end of the day, we didn't have to do all the drainage fee strips that we thought.

But today, on a plat that's already been
approved, it shows a fee strip of landscape reserve done
to meet the rule. There's no harm, no foul. I mean, you
can't penalize the developers for complying with the rule.
I didn't write the rule.

I'm not saying it's a good or bad rule, but
that's the rule, and it's the rule as of the Application,
capital A, not preapplication. So you know, we need to
rely upon, as a developer, the plain reading of that rule.

As Barry said, we're way down the road.

I mean, we are way down the road and the
project is being developed, being -- we spent a fortune on
these projects getting them to meet our commitment to
close by October 31. So this whole thing is just
completely blindsiding me today about a preapp argument,
which I don't agree with.

And so I'm just asking that we move on, that we
take the issue, what was asked last Board meeting, which
is -- what is the application requirement, and let us
proceed. And then the last thing I want to -- just one
final comment.

You realize that we're talking about 52 more
units going into this area, 52. That is the size of the
second deal that would either be a priority or non-
priority. I hardly think anybody is going to argue that
we're over-concentrating all of these units and Fifth
Street which is surrounded by Missouri City, City of
Stafford, and Fort Bend County, which was just as damaged
as, you know, Harris County.

So I think it's really a joke, quite frankly,
considering that we're doing all this over-concentration
in this area, when it's only 52 more units being the
second deal. Thanks.

MR. GOODWIN:  Paul, you had a question?

MR. BRADEN:  And I can ask it at any point in
this process, but who asks to retain the fee simple
strips? Did the seller say, oh, I want to keep these
strips?

MR. MUSEMECHE:  The seller was going to sell
land. I mean, I'm sure he doesn't want to -- he didn't
want to retain that on purpose, but he had no choice to
sell the land --

MR. BRADEN:  Did you or your legal
representative say, don't sell us these strips?

MR. MUSEMECHE:  I'm not sure I follow your --

MR. BRADEN:  Who came up with the idea that the
seller was going to retain the fee simple strips?

MR. MUSEMECHE:  Collectively, between the
developer, us, and the land seller -- again, I'm not
denyng any -- whatsoever that the rule wasn't part of the
process to meet the land configurations.
MR. BRADEN: Why would -- so what you're saying -- you suggest -- I'll stop.

MR. GOODWIN: Okay.

MR. MUSEMECHE: Well, I mean -- Paul, again, we can't get into what a land seller wants to do or not do.

MR. BRADEN: I understand what went on. You all came up with a good idea, that you -- you know, some clever lawyer came up with a good idea that they thought it was a way to circumvent this rule. And so I understand what's going on here, but the other part I don't understand is -- you know, you look at that first amendment.

So you walked in with the contract where it was all contiguous. You amend in February, and you have an amendment dated back to, you know, January 4, and that's when it's no longer contiguous. The amendment says it's for drainage purposes, but now the letter most recently from Coats Rose says it's for open space.

MR. MUSEMECHE: As I said, this process is fluid. There's not any developer that can get up here and tell you, January 1 or November 1, we know exactly what's going to happen six months later.

MR. BRADEN: I understand that, but why would a seller of land want to keep the land for open space? There wouldn't be any reason for it.

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MR. MUSEMECHE: But that's his prerogative, Paul. I mean, it's his prerogative. I get it. I'm not sitting here and deny -- but there are other -- again, there's other aspects. It could be a POA. There's a POA involved with other -- the other attributes of these developments.

It could be deeded to a POA. It doesn't really change the fact that the rule doesn't require defense or explanation as to the practical purpose of the fee strip. It is a fee strip dedicated legally by subdivision plat. I mean, I can't deny that.

I mean, that's what it is. And you can say you don't like it or not --

MR. GOODWIN: And potentially --

MR. MUSEMECHE: -- but it doesn't really change --

MR. GOODWIN: -- to have two separate sites to avoid the cap of --

MR. MUSEMECHE: So --

MR. GOODWIN: -- the award.

MR. MUSEMECHE: -- this again -- and just for what it's worth, we brought this up to staff. I've commented on this about this particular proximity issue. It didn't go anywhere. I mean, I tried to say, hey, you're going to have over-concentration, in particular in
census tracts, which this is more likely, where you have a
bunch of census tracts, or like, one census tract that's
the hot census tract, and so all these developers go put,
you know, deals in there.

I've brought it up. It didn't go anywhere, so
perhaps next year, when you're drafting the new QAP, you
look at this and you put in a distance to really define
how far apart you want deals that aren't governed by the
statute which is the one-mile/two-mile rule.

MR. GOODWIN: Okay. Any other questions?

Other speakers? I assume these are the same gentlemen
that spoke last month?

MR. KELLEY: Yes, sir.

MR. GOODWIN: Or two weeks ago?

MR. KELLEY: Good morning, Chairman Goodman,
members of the Board. My name is Nathan Kelley, with
Blazer. I would like to request that the Board deem
Applications 18033 and 18047 contiguous and to designate
the lower-scoring application as a non-priority
application under Section 11.3(g) of the QAP.

As you mentioned last month at the June 28
Board meeting, we discussed these applications as they
relate to that, and whether they are contiguous and serve
the same population, and in a letter that the Applicant
delivered to the Department dated July 3, the Applicant
argued and just admitted that the sites aren't contiguous merely because of this intervening ownership of fee simple title being retained by the seller of the sites.

They explained the definitions of contiguous and cite different dictionary definitions or references, but they don't -- they failed to provide any evidence as to the reason why this fee simple strip was retained.

And the reason being is that there is no need for the seller to retain, maintain, pay taxes on this strip of land, other than to help the Applicant avoid this rule, and further, the Applicant noted in this letter that the 10-foot strip of land is no longer dedicated to drainage, as was testified last month, but is now a landscape and open space buffer, which is evidenced in their narrative response, as well as in the preliminary plat that the City of Stafford reviewed and approved, and that they attached as an exhibit.

But this information only further proves the point that the seller is retaining the strip of land, that the seller's retention of this strip of land is needless, and only to make these sites not contiguous, and an obvious circumvention of the rule.

The Applicant also points to an email exchange between itself and the Department dated February 7, 2018, and I would note that the Applicant's question to staff
did not disclose the fact that they were arbitrarily leaving this 10-foot landscape buffer to the seller only to avoid Section 11.3(g).

I assume, and would like to think, that if the Applicant had disclosed and been more transparent in its question to the staff, that they would have made a more clear -- that it would have been more clear that this was intended to circumvent the rule, and the staff would have responded appropriately.

Now, the Applicant further argues that circumvention in this case should be allowed to pass muster because they've spent money to advance their development, and I believe that this argument is irrelevant considering the circumstances, that we are all, Harris County, Fort Bend County, what have you, in a readiness-to-proceed situation, and other developers and applicants behind these applications have gone through that same process and spent time, money and other resources to advance their developments.

I would also note that in 2016 and 2017, Fort Bend County received seven deals and 700 units. So as to say that they have not been under-subscribed over the last few years, to the point where losing one deal this year would put them at a -- you know, in a detrimental situation relatively to Harris County receiving another
deal.

So I appreciate your comments and the opportunity to speak in front of you again today.

MR. GOODWIN: Okay. Any questions?

(No response.)

MR. GOODWIN: Okay.

MR. BARTHOLOMEW: Good morning again. Jeremy Bartholomew. Thank you all for your time and for your service. I want to start -- I'm speaking in opposition of these projects. Let me start, just big picture, of why does this rule exist?

What is the purpose of a non-contiguous rule? If we go grab a guy on the street and say, hey, there's this non-contiguous rule. And you say, why would that exist? The most obvious thing anybody is going to say is, well, you don't want to put two projects right next to each other.

That's the point. That's the entire point of the rule. All this notion of, you know, does -- the way that Fort Bend or Harris County or this -- the Applicant is line to receive a project for Fort Bend County. Let's just be clear.

What we're talking about is getting two and potentially three projects, 21 to 32 percent of the credits to the Stafford ETJ, which Stafford has 19,000
people. The CDP has 2,000 people. But that's not the point.

The point is all related to this contiguous notion. So as has been brought up, Mr. Braden asked specific questions last -- at the last meeting, stating, give me some type of reason why this exists. I'll note that it was on record that the response received from the Applicant's attorney at the last meeting was it was for the QAP, as has been determined today, and for drainage.

So I nearly fell out of my chair when I read that now drainage is not the issue. Now it's turning into a -- it's a landscape reserve. So it is utterly ludicrous that we're sitting here talking about a situation like this.

So red flags are going off everywhere. I'd like to submit after I'm done speaking -- I have a letter from Commissioner Rodney Ellis from Harris County Precinct 1, who is bringing up concerns with this same issue.

I would ask that it be read after I conclude. The final point is, if you only look at this rule at full application after a site plan is drawn, it is utterly useless. It has no purpose. All you're telling developers is, go gerrymander a site plan and then come bring it to me and it will be okay, as long as the sites
This rule only makes sense if you evaluate it before a site plan is drawn. So what they're saying in this case, and what staff is saying is -- it only makes sense at preapp, when you look at it before you've had a chance to gerrymander it.

Otherwise, it's totally worthless. You're giving developers -- it's a two-for-one special of saying, oh, just go cut your site up and then you're good to breach the cap. So again, there's going to be a project, that -- Fort Bend County is going to be served.

The point is, it is in direct violation of the spirit and the letter of this rule. May I submit this letter, please?

MR. GOODWIN: Sure. Do you want to read it into the record?

MR. LYTTLE: It's addressed -- letter is addressed to J.B. Goodwin, Chair, TDHCA Board:

"Mr. Goodwin, I write to you today to express my steadfast commitment to affordable housing in Harris County Precinct 1 and the greater Houston area as a whole.

"The need for quality affordable housing is one of the greatest challenges facing our county, and I commend and support the Texas Department of Housing and Community Affairs in the good work you do providing,
facilitating, and regulating such vital development in my
precinct and across Texas.

"Hurricane Harvey presented unprecedented
challenges in a number of sectors, perhaps none more so
than housing, and while the floodwaters did not
discriminate based on income, we know that recovery is
particularly difficult for our low- to moderate-income
individuals and families and that the damage to existing,
affordable multifamily properties exacerbated an already
dire situation for many.

"To that end, I am concerned by recent attempts
to take advantage of loopholes in TDHCA regulations in
such a way as to unfairly disadvantage qualified
competitive low-income tax credit applications in Harris
County.

"While I appreciate and support diversity in
affordable housing, acknowledging that this is not just a
large, urban county issue, regulations designed to benefit
less populous counties should not be open to exploitation
in such a way as to disadvantage other qualified
applications.

"I acknowledge the competitive nature of the
application process, but I am especially concerned with
the current situation in that as a direct result of the
exploitation of the contiguous property rule, no
applications in unincorporated Harris County stand to be
approved in the 2018 cycle.

"The Sheldon area, in particular, had an
existing need for affordable housing which was compounded
by the devastation suffered in that area during Harvey,
and as such, while I am concerned in principle by the
manipulation of the rules of TDHCA, I am particularly
troubled by the fact that an application such as
Rutherford Park, which I have supported as a step towards
addressing that need, stands to be denied as a direct
result of that loophole.

"Thank you for your consideration in this
matter and please contact me if you have any questions.
Sincerely, Rodney Ellis, Precinct 1 Commissioner."

MR. GOODWIN: Thank you. Yes, ma'am.

MS. BAST: Good morning. Cynthia Bast of Locke Lord. I represent Blazer Residential and am testifying in
support of finding these two sites contiguous. I'd like
to refer to Mr. Palmer's testimony about this distinction
between application and preapplication.

The definition of an application in your
statute is an application filed with the Department by an
applicant and includes any exhibits or other supporting
materials. There's no distinction between preapplication
and application in the statute.
The word "preapplication" is not defined in your rules. It's used in lower case. There are times in your rules when application is used with the modifier "full" application, and then times where it is not. I think that's intended to distinguish between preapplication and application.

Notably, the application acceptance period begins on January 4. By definition, that's when the preapplications can first be submitted. So I believe that this is all part of the application process, and for the reasons described by Mr. Kelly for the competitive process and the fairness of looking at this, you have to be able to look at this at the time of preapplication.

I advise clients on these kinds of issues all the time. I have plenty of clients who acquire more land than they need, and then they try to figure out how to configure it. Mr. Musemeche is right. This is a fluid process. There's no question about that.

There's an application in this round -- there are two applications that I advised on that are, you know, a general population and an elderly population that are in proximity to each other. That fits the rule. They didn't try to fit a third one on there. They didn't, you know, try to do anything fancy.

Honestly, if I'd looked at this situation, I
probably would have said, why don't you put the general
and the elderly next to each other, and then if you want
that third application over there with that other
developer, you know, then put that one over there, and you
could fit into the rule that way.

But I do believe that there is good cause
within your discretion to tell the staff that, in
interpreting this rule, which is a procedural rule, that
the lowest-scoring application should not be prioritized
here because these two applications have contiguity at the
time of preapplication. Thank you.

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

MR. GOODWIN: Any other --

MS. DULA: Tamea Dula, Coats Rose. I'd like to
respond to that set of comments. First of all, in the QAP
and the rules, consistently preapplication and Application
with a capital A are referenced. They are two separate
concepts.

In our discussions here this morning, Mr.
Eccles has segregated them into the application and the
preapplication, different concepts in your speech. We're
looking here at two different concepts: application and
preapplication. They are not one and the same.

Number two, the January 4 effective date of the
amendment to the earnest money contract. This is something I do regularly. So do many, many, many real estate attorneys. An amendment was made.

It was not intended to reflect a change of approach in the middle of the deal but is intended to be the parties' agreement as of the beginning of the contract. That's why it's stated to be effective as of the date -- the effective date of the entirety of the earnest money contract.

So I don't think that that is a relevant factor with regard to this. There was no effort to make it effective as of the preapplication necessarily. But the contract refers to the fact that the actual location of the two tracts that are being purchased from the same seller will be contingent upon the survey and defined by the survey.

So it's always contemplated that we would go back and look at where the different projects were going to be. And, yes, indeed, the seller is retaining that strip. He has an inducement to do so. He wants to sell the land.

And so it was a discussion between the purchaser and the seller as to how the land which was being acquired in two different tracts and ultimately is to be acquired in three different tracts because
additional land was brought in, which is within the rules -- a discussion of how that could be done within the rules of the QAP.

Here, it is within the clear language of the QAP. Now, sometimes we screw up, and the rule doesn't say what we thought it did, or the rule doesn't say what we wanted it to say, and that might be the case, that you don't want them to be non-contiguous.

You want them to be further apart than that, but this rule is not just for one developer who wants to do side-by-side projects. It also affects a project by Mr. Kelly, which might be contiguous with a project by Mr. Musemeche.

One of those would go. Here, we do not have contiguity, however, and so both projects are eligible under the QAP.

MR. GOODWIN: Any questions?

MS. DULA: Thank you.

MR. GOODWIN: Barry, did you want to speak again?

MR. PALMER: Yeah. Barry Palmer from Coats Rose. You know, the history of the Department in -- you know, there are always rules that come up each year for re-looking because, you know, the QAP is never perfect. And when there's something that the Board realizes doesn't
yield the result that they want, that the precedent has been to change that rule for next year.

But when you've got a rule that's clear on its face, you really need to stick with that rule and change it next year if you don't like the result, rather than find some way to get around the rule that you don't like by saying, well, contiguous -- it's not just really contiguous; it means if you're some distance apart.

Well, what is that distance? I think if we want a rule on proximity, let's have a rule next year, revise the rule to say, proximity. But this year, let's follow the rule as it currently is written, and that the developer community has relied upon and find that these projects are not contiguous.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Marni, I've got a question for you. We obviously have --

MS. HOLLOWAY: Yes, sir.

MR. GOODWIN: -- 100-plus applications.

MS. HOLLOWAY: Uh-huh.

MR. GOODWIN: Has anybody else tried this and declared this? Do we have any others that are in a similar boat, where --

MS. HOLLOWAY: I --

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MR. GOODWIN: -- you started preapplication
and --

MS. HOLLOWAY: I have not seen another
application that's handled this situation in this manner
with these strips.

MR. GOODWIN: That's what I'm asking. Okay.
Okay.

Go ahead, Sharon.

MS. THOMASON: Also for Marni. So if it had
been presented as it is now at preapplication, would staff
have had other -- another --

MS. HOLLOWAY: So we as staff have -- only have
the ability to apply the rule as it's written, and the
rule as it's written says "contiguous," and you know, by
definition, that means they don't touch. That's how we
came to that original conclusion with the RFAD.

MR. GOODWIN: Yeah?

MR. VASQUEZ: I'll probably have a question in
here somewhere, but I mean, this is interesting. As y'all
have probably picked up on, I'm against gotchas on
technicalities and everything. But in this instance, I
have to applaud the developer and his advisers that have
used these technicalities, gotcha, against us, because
this clearly, just blatantly, you know, flaunts the
intents of what we have, but follows the specific
technicalities --

MS. HOLLOWAY: The letter of the rule.

MR. VASQUEZ: -- and I'm assuming that this 10-foot strip is going to have to have its own appraisal district ID number and everything is going to be plotted and platted and everything like that, and as a former tax assessor-collector of Harris County, I can tell you what's going to happen is Divine Farms LLC will technically own this 10-foot strip and abandon it.

I mean, so I would never pay taxes on it. And the county's not going to come in to take it, because it's useless, I mean, other than for these developers. So getting back to -- so if we're going to go with technicalities and -- rather than the spirit of what was the intent, I don't see how we are going to deny the way that this was put together.

I mean, it follows that technicality. What I'd like us to discuss a little bit more, not in relation to this vote that I think is going to happen, but is more something -- I think it was Barry that first admitted it, that really the root cause of this is the size of the dollar value and then the ratios and everything that apply, I mean, because if we could have put it all in one project, it would have been a lot easier, I would think.
MS. HOLLOWAY: Right.

MR. VASQUEZ: -- so the real root cause of this on breaking it into two projects is due to our rules on --

MS. HOLLOWAY: I'm -- yeah, I'm --

MR. VASQUEZ: -- the cost for putting --

MS. HOLLOWAY: -- not prepared to speak on why the Applicant made that decision.

MR. VASQUEZ: Well, I'm just saying, the -- it may not be our contiguous rule.

MS. HOLLOWAY: Uh-huh.

MR. VASQUEZ: It could really -- the root cause of this is really caused by these other rules on the finance structure and --

MS. HOLLOWAY: Well, and -- but -- and I would --

MR. VASQUEZ: -- pretty much. Is that correct? I mean is that --

MR. PALMER: Can I answer that question?

MR. VASQUEZ: That's -- and I wouldn't mind him --

MS. HOLLOWAY: Okay.

MR. VASQUEZ: -- you know, answering that as well, because I think that's --

MR. PALMER: Yeah. Well --

MR. VASQUEZ: -- what we might have to look
MR. PALMER: You're not seeing the whole picture, obviously, as well. There really are two different developments in all practical -- there is a multifamily, four-story, modern urban development on the Miramonte, one- and two-bedroom conventional apartment stock.

The second one are single-family and duplex units. So it is different. And so cohesively, it was thought out to be a bigger master plan. So that's the logic behind -- you asked about why, and so yes, they're general population, but they are different.

They're -- it's a single-family serving a completely different population group than the workforce being the more one- and two-bedroom apartment development. So if that answers your question -- there was thought to how these were created, but there was no assurance they would all get awarded.

We don't know. I mean, we didn't, but we thought we could try, and if it worked out, it worked out. And so that's where it is today, but there was no assurance we would get any of them. It was just -- let's see what happens.

Any developer that competes does their best, but we don't have any assurance until you get to where we
are today, where we are at this point, which -- these are in the credits. They are in the money. So they can move forward.

MR. GOODWIN: Well, I understood you to answer my question earlier that it was motivated by the cap on the award, that if you put these two projects together, it would exceed --

MR. PALMER: Well, that's --
MR. GOODWIN: -- our cap.
MR. PALMER: -- correct. That's partially true as well. I mean, again, that's --
MR. GOODWIN: That's partially true?
MR. PALMER: -- there's a cap -- yes, sir.
MR. GOODWIN: I have trouble with "partially."
MR. PALMER: Well --
MR. GOODWIN: Is it true or isn't true?
MR. PALMER: Well, yeah, that's true, that there is a limit to how many credits an application can make --
MR. GOODWIN: It's motivated --
MR. PALMER: -- but there is a cap to what we can get as a whole anyway. Whether I've got one project in Houston and one project in Dallas, I'm limited to what I can get as a whole. Here there's still a cap to what we're going to require, but, yes, it allows us to do
larger developments meeting the cap rules --

   MR. GOODWIN: Uh-huh.

   MR. PALMER: -- for sure.

   MR. GOODWIN: And I don't think we're as
defined, frankly, from what you said as -- if we take the
word to mean, application. When I heard it read, any
application is considered an application, not just
necessarily the full and final application.

   So I think if we were so preconceived to look
up and say -- or at least, I was -- that you know, this
was clearly one project that was cut up for reasons to
circumvent this rule, maybe the application that came
in -- the preapplication, that I can use that to justify a
vote in that position.

   MR. VASQUEZ: I'm sure the Blazer guy is saying
to circumvent the rule, but they --

   MR. GOODWIN: Yeah.

   MR. VASQUEZ: -- will say to comply with the
rules.

   MR. PALMER: Again, I cannot take exception
that there's some kind of, you know --

   MR. VASQUEZ: It's the rule.

   MR. PALMER: Right. I mean, we're meeting it.

   I mean, and I can't -- there's all there is to it.

   MR. BRADEN: And some of this are questions or
comments for staff -- again, you know, this whole item made me pull out the QAP and kind of comb through the rules, which is something I don't really love doing, but --

MR. PALMER: I'm so sorry.

MR. BRADEN: -- you know, the question -- you know, they're making statements that it technically complies with the rule. I mean, but clearly, they found a loophole or they think they found a loophole, but relying on a very technical reading of the rule.

So it forces me to technically read the rules too. So you know, I was looking at 11.9(e)(3), and that's where all the preapplication points are set out. And there is a section there -- there's (H) of that subsection, and Tim and Beau are really the ones who commented to this -- that says -- and these are just from my notes.

I didn't bring my QAP. But all applicable requirements were met. And one of the applicable requirements -- there well could be 11.3(g) which talks about the proximity of the development site. So at your preapp, you know, you're supposed to have all applicable requirements met, but one of the applicable requirements could be proximity, because that's another part in our rules.
And so the whole argument of whether or not the
preapp or the app, you know -- clearly, it was not
contiguous at the preapp. It's contiguous now at the app.
So I'm not -- did I say that wrong?

MALE VOICE: Yeah.

MR. BRADEN: But it was contiguous at the
preapp and not contiguous at the app. So they're saying,
oh, no, that's what the rule says. Well, I'm not sure.
You know, when I start combing through the technical
reading of these rules -- again, they're relying on a very
technical interpretation -- I read through that.

I'm, like, maybe, maybe not. I mean, I think
we could very easily say at preapp it should have been
this way.

MS. DULA: Marni, if that's --

MS. HOLLOWAY: Of course.

MS. DULA: Could I speak to that? Tamea Dula.

At the preapplication, you do not have to define what
your development site is. That's capital D, Development,
capital S, Site. What you have to do is show you have
site control, which is a defined term also.

This -- in this instance, there was site
control over about 30 acres. The development site for
these two different developments was not designated in the
preapplication, as is appropriate. When you get to the
application, the development site, which is shown in the
application, must contain some of the land, but not all of
it, and it could contain land that was not in the preapp.

But it must contain some of the land in the
preapp in order to be qualified for the preapp points.

MR. BRADEN: So then the preapp section --
right -- 11.9(e)(3)(H), would require that applicable
requirements be met. One of our applicable requirements
is proximity. Isn't that required by the preapp?

MS. DULA: It may well be, but you're not
defining what your development site is, so how can you say
that --

MR. BRADEN: Well, how would apply proximity to
the preapp? But you're --

MS. DULA: You can't.

MR. BRADEN: Well --

MR. IRVINE: Well, you would need to amend the
rule to define the requirement at preapp -- was to define
the development site, I guess.

MS. DULA: I would agree with that, because the
development site as a defined term doesn't -- is not
created until you get to the full application. Of those
30 acres that were in the preapp, 25 might have been
discarded and no longer under contract.

In this instance, all of the land plus some
extra land that hadn't been in the preapp was --  

MR. BRADEN: I mean, clearly, we need to fix the rule next year. The real issue is whether or not the rule this time -- you know, they gamed the system. Maybe they've won this time, but it's -- you know, it's whether or not, you know, we can get there otherwise.

MR. GOODWIN: Okay.

MS. DULA: Okay. Thank you.

MR. GOODWIN: Any other questions? Do you have anything new to add, sir?

MR. PALMER: This is just really brief. It is -- you all do have the discretion, though. This does not exist in a vacuum. Everybody is aware of what's going on here, and by going along with this, it's allowing this to be made a mockery.

Everyone sees what's happening here. So my encouragement would be to look at it with common sense and to do the right things for this.

MR. GOODWIN: Okay. Any other questions, comments?

MS. THOMASON: I have a question.

MR. GOODWIN: Okay. We have a question.

MS. THOMASON: Maybe more for Beau and Tim. So in the previous case that we were talking about, there was clearly a statute that the Board didn't feel that we had
discretion to take an action that would not be in line with that statute.

Is that the case here, or is this more just the rule?

MR. ECCLES: This is an interpretation of a Board rule. The nexus with statute is, as Mr. Palmer has pointed out, Application is with a capital A. Application is not defined in the rules. Application, I see, is defined at Texas Government Code 2306.67022, which Ms. Bast read previously.

So within 11.3(g) in our QAP, you have the Board interpretive question of -- if two or more competitive HTC applications that are proposing development serving the same target population on contiguous sites are submitted in the same program year, the lower-scoring application, including consideration of tie-breaker factors, if they are tied scores, will be considered a non-priority application and will not be reviewed unless the higher-scoring application is terminated or withdrawn.

The question is whether Application, capital A, in 2306.67022 would include, in this Board's interpretation, the preapplicant.

MR. GOODWIN: Any other questions or comments? Tim?
MR. IRVINE: Just one other comment. Going back through the preapp points rule to Mr. Braden's question and to Ms. Dula's comment about defining the development site, it specifically says the development at application is at least in part the development site at preapplication.

So there is that one connecting statement.

MR. GOODWIN: I'm sorry, Paul?

MR. IRVINE: That's what it says.

MR. BRADEN: Which is being satisfied.

MR. GOODWIN: Right. Okay.

MR. PALMER: Barry Palmer.

MR. GOODWIN: Something new?

MR. PALMER: Yeah, something new. Well, you know, I had raised the issue of due process, and if this decision is going to be made based on the concept of preapplication proximity or preapplication continuity, you know, we just found out the staff was raising this issue two business days ago, and have not had the opportunity to properly brief it and go through the normal appeals that we would ordinarily.

So if the decision is going to be on this concept of preapplication, I would request that the Board table this until the next meeting to give us the chance to properly brief it. If the Board, however, decides to
decide this issue based on the rule at application, then we would encourage you to vote that these are both eligible.

MR. GOODWIN: So let me make sure I have it clear. If we are in favor of you, then you would like to know, yes, today, but if we're not in favor, you'd like to have another shot at it this month?

MR. PALMER: No.

MR. GOODWIN: Or at the end of month?

MR. PALMER: If --

MR. GOODWIN: I mean, I just want to make sure I'm understanding it correctly.

MR. PALMER: No, no --

MR. GOODWIN: I'm not understanding it correctly?

MR. PALMER: Right. The -- what I'm raising is, if a decision is going to be made on the preapplication, based on the preapplication concept that was just raised a couple of days ago, that we are requesting that it be tabled.

MR. GOODWIN: So that, I would assume, be your thinking that it would be voting against your client's proposal in calling them contiguous, and that -- so I don't think we can give you that option. I think the option -- whatever motion is going to come -- unless you
would like to proceed and say you'd like to see the matter
tabled till next month, I would ask, are we going to have
to listen to another hour of everybody saying the same
thing that we've already listened to?

MR. PALMER: Well, we --

MR. GOODWIN: Do you want to table it now? Are
you getting a feel or a flavor that you want to table it
now? I can't undo a vote after --

MR. PALMER: Right.

MR. GOODWIN: -- a vote's been done, but --

MR. PALMER: I think that's a procedural
question that you need to ask. I mean, we're just trying
to -- I think the point was clear. I hope it's fine. I
sense --

MR. GOODWIN: Beau, you tell me if I am out of
line.

MR. IRVINE: I would respectfully say it's a
question to the members of the Board. Is there any member
that wishes to table the item?

MR. ECCLES: Well, if -- actually, before we go
there, you've raised due process. You believe that you
have not had an adequate opportunity to respond. What is
it that, if you had more than what you perceive as being
raised for the first time on Monday, that you have not had
an adequate opportunity to respond to before the Board
today?

MR. MUSEMECHE: I can answer that, Barry.

It's a question of whether or not what's provided or not provided in the preapplication was in fact contiguous. That whole discussion has not been had. They're assuming that what was in the preapp was contiguous.

We're not -- you know, we haven't discussed all that. So I don't think you're there. I sense that you're -- may not like the rule. I sense that you, you know, feel like the application was sufficient at 11.3(g), but if for some reason you don't, then this whole discussion about preapp is based upon what we did or did not provide in the preapp.

And so we haven't discussed what we did or did not do in the preapp.

MR. ECCLES: Respectfully, to the Board, and I do believe that the Applicant was asked whether they would want to come to this meeting or the next one. I didn't personally ask that --

MS. HOLLOWAY: I --

MR. ECCLES: Was this for a different app?

MS. HOLLOWAY: I think that we were pretty clear that we, staff, prefer to come to this meeting --

MR. ECCLES: Sure.
MS. HOLLOWAY: -- so that we're not going into --

MR. ECCLES: I understand that.

MS. HOLLOWAY: -- the last July meeting with any uncertainty.

MR. ECCLES: I'm a bigger fan of providing more process than truncating it, and I would recommend that if the issue has been raised and they believe they have had an inadequate opportunity to respond that would be satisfied by going to the late July meeting, then I would recommend tabling.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: Do I hear a motion to do so or a motion -- should we deal with the issue now?

MR. VASQUEZ: It doesn't seem to me that it would be in the best interests of the Applicant to wait any longer for this decision. I mean, if we're going to follow along with the --

MR. GOODWIN: We're not discussing --

MR. VASQUEZ: -- if we're following along with the technical -- continuing to follow along with the technical application of our rules and statutes, if I'm the Applicant, I'd say, hey, please vote as fast as you can on this.
MR. GOODWIN: I hear nobody saying they want to table it, so do we hear a motion?

MS. BINGHAM ESCAREÑO: Move to find both applications eligible and move forward, and then would make a friendly recommendation to instruct staff to look at the rules for future rules and further define --

MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: -- the rules around contiguity.

MR. GOODWIN: Do I hear a second for that motion?

MR. VASQUEZ: Unfortunately, yes, I have to second.

MR. GOODWIN: Okay. Any further discussion?

(No response.)

MR. GOODWIN: Did you want to speak, sir? No?

Okay. All those in favor, say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed, say no.

No.

Okay. It passes. We're moving on to -- item 3(c) has been withdrawn. Right, Marni?

MS. HOLLOWAY: Yes.

MR. GOODWIN: So all we have left is --
MS. HOLLOWAY: Public comment.

MR. GOODWIN: -- public comment. At this point in the agenda, we'll take comments from the public for items for the future.

(No response.)

MR. GOODWIN: Hearing no public comments, do I hear a motion to adjourn?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: Seconded?

MR. BRADEN: Second.

MR. GOODWIN: All in favor, aye?

(A chorus of ayes.)

MR. GOODWIN: We'll see you back in a couple of weeks.

(Whereupon, at 10:36 a.m., the meeting wasadjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: July 12, 2018

I do hereby certify that the foregoing pages, numbers 1 through 123, 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: July 17, 2018

(Transcriber)

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7703 N. Lamar Blvd., Ste 515
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