TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

June 27, 2019
8:00 a.m.

MEMBERS:

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

DAVID CERVANTES, Acting Director

ON THE RECORD REPORTING
(512) 450-0342
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MULTIFAMILY FINANCE

g) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §11.101(a)(2) related to Applicant Disclosure of Undesirable Site Features

19238 Franklin Trails Franklin

h) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19420 Pythian Manor, Dallas)

I) Presentation, discussion, and possible action regarding changes to the capital structure for RBJ Phase I (HTC #18448/NHTF Contract #82700018448)

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j) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

15340 Royal Gardens Mineral Wells
Mineral Wells

15407 Reserve at Quebec Fort Worth

k) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

99001 Oakwood Place Apartments Dallas

l) Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area

16246 Gala at Four Corners Sugar Land

RULES

m) Presentation, discussion, and possible action on an order adopting the repeal of
10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, and an order adopting new Subchapter H, Income and Rent Limits, and directing their publication in the Texas Register

n) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.24, Protected Health Information; and an order adopting new 10 TAC §1.24, Information Security and Privacy Requirements; and directing their publication in the Texas Register

o) Presentation, discussion, and possible action on an order adopting an amendment to 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, and directing publication in the Texas Register

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) TDHCA Outreach Activities, (May-June)

b) 2020 QAP Planning Project report

c) Report clarifying the number of Direct Loan units for Grim Hotel (Application #19409/#18454)

ACTION ITEMS

ITEM 3: BOARD

Presentation, discussion, and possible action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030 (PULLED)

ITEM 4: AUDIT AND FINANCE COMMITTEE

Report on the meeting of the Internal Audit and Finance Committee

I. Approval of the updated FY 2020 Operating Budget

ii. Approval of the FY 2020 Housing Finance Division Budget

ITEM 5: OCI/HTF/NSP DIVISION

Presentation, discussion, and possible
action on the 2020-2021 State Housing Trust Fund Biennial Plan

ITEM 6: COMPLIANCE
Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee

19094 Laurel Vista Beaumont
19095 Sagebrush Terrace Jarrell
19179 Riverwood Commons II Bastrop
19228 Chaparral Apartments Midland
19232 The Commons at St Anthony's Midland
19414 DeWetter Apartments El Paso
19415 Kathy White Apartments El Paso
19340 Nuestra Sonora El Paso
19344 Patriot Place El Paso

ITEM 7: MULTIFAMILY FINANCE
a) Report of remanded Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2019 Qualified Allocation Plan for #19315 Hammack Creek Apartments

b) Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application #18269, 2400 Bryan

c) Presentation, discussion and possible action on timely filed appeals:

19013 Our Lady of Charity Apartments San Antonio
19126 3104 Division Lofts Arlington
19158 Pendleton Square Harlingen
19215 West Ridge Apartments Pharr
d) Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors:

19227 Reserve at Risinger

e) Presentation, discussion, and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features:

19180 St. Elmo Commons Austin

19185 Edgewood Villas Killeen

f) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §11.101(a)(2) related to Undesirable Site Features; 11.101(a)(3) related to Neighborhood Risk Factors; and 10 TAC §11.10 related to Request for Administrative Deficiency, for #19301 Prince Hall

g) Presentation, discussion, and possible action to issue a list of approved Applications for 2019 Housing Tax Credits in accordance with Tex. Gov't Code §2306.6724(e)

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

EXECUTIVE SESSION none
OPEN SESSION --
ADJOURN 255
MR. GOODWIN: Welcome to the June 27 Board meeting of the Texas Department of Housing and Community Affairs.

We'll start with a roll call. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Mr. Goodwin, yes.

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.

If you would, please stand and join as David leads us in the pledge to the American flag and the State flag.

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

MR. GOODWIN: We'll start with the consent agenda. Anybody have any items on the consent agenda that they want pulled or discussed?

(No response.)
MR. GOODWIN: If not, I'll accept a motion for approval of the consent agenda and report items.

MR. BRADEN: 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: The consent agenda is passed.

We'll move on to the action items. We are pulling action item number 3 to be dealt with at our next Board meeting.

Action item number 4, a report from Ms. Thomason regarding Audit and Finance.

MS. THOMASON: Yes. Thank you, Mr. Chairman.

The Audit and Finance Committee, we met this morning at 7:30. The Committee had a report from staff leading the effort to develop the operating budget for the first year of the biennium. The Committee had two recommended actions for this Board. Because they come from the Committee, no second is required. Staff is here to answer any questions if we have any.

The first is approval of the annual operating budget, a copy of which can be found at tab 4(i) of your
Board materials. This is within the appropriated resources set forth in the General Appropriations Act. It reflects a conservative approach to the use of the resources that are entrusted to us. It addresses continued management of the salary budget, provision for updating equipment to ensure the information security, and an increase in inspection services related to new IRS regulations.

With that the Board can vote.

MR. GOODWIN: Okay. Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving to the next item.

MS. THOMASON: Yes. The next is approval of the annual Housing Finance Division operating budget, a copy of which can be found at tab 4(ii) of your Board materials. This is a subset of the operating budget that we just approved, addressing only resources tied to the traditional housing finance activities of the Department and are provided for in the Department's appropriation.

MR. GOODWIN: Any discussion?

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

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MS. THOMASON: We also had two report items this morning. Mr. Mark Scott, the director of Internal Audit, discussed the audit of the construction cost certification section, and he also discussed any external audits that are currently underway.

That concludes the report from our Audit and Finance Committee.

MR. GOODWIN: Okay. Any questions for Ms. Thomason?

(No response.)

MR. GOODWIN: Thank you for a wonderful job.

Moving on to item 5, Raul.

MR. GONZALES: Good morning, Chairman Goodwin and Board members. For the record, my name is Raul Gonzales, and I'm the director of the Office of Colonia Initiatives, Housing Trust Fund, and Neighborhood Stabilization Program.

The Texas Legislature established the Housing Trust Fund in 1993 to provide state general revenue for affordable housing activities. Rider 9C of the General Appropriations Act requires the Department to provide a
biannual report to the Legislative Budget Board, the House Appropriations Committee, and the Senate Finance Committee no later than October 1, detailing the Department's plan to expend funds from the Housing Trust Fund.

The General Appropriations Act, enacted by the 86th Legislature appropriated the Department with $10,443,402 of state general revenue for the 2020-2021 biennium, which includes an estimate of $2.4 million per year in interest earnings and loan repayments from previous Housing Trust Fund projects.

Staff is recommending that the funding be utilized as follows: out of the $10,443,402, 10 percent for administration for the Department of $1,044,340, $6 million for the Texas Bootstrap Loan Program, and the remaining balance of $3,399,062 for the Amy Young Barrier Removal Program.

Staff is also recommending that the Board continue to authorize the use of late fees collected above the $2.4 million from the Housing Trust Fund for single-family asset management activities. Up to $250,000 will be reserved from interest earnings and repayments for single-family workout activities. The maximum balance of this account shall not exceed $250,000 at any time. At the beginning of each biennium only the amount of Housing Trust Fund loan repayments and interest earnings needed to
reestablish a $250,000 balance shall be added.

These funds will allow the Department to budget for transactions that may arise through the course of single-family asset management such as paying off first lienholders on delinquent single-family properties on which the Department is in the subordinate lien position, paying off taxes to avoid tax foreclosure, securing and repairing abandoned properties to return to the marketplace. The Housing Trust Fund will utilize late fees for single-family asset management activities only when the appropriate solution cannot be addressed with other funds.

Thank you.

MR. GOODWIN: Any questions for Raul?

(No response.)

MR. GOODWIN: Do I hear a motion to accept this report?

MS. BINGHAM ESCAREÑO: Move to approve.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

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

All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Thank you, sir.

Next we have item number 6, Patricia.
MS. MURPHY: Good morning. Patricia Murphy, director of Compliance.

The next item on your agenda is presentation, discussion, and possible action on a dispute of the Compliance Division's assessment of the applicant's compliance history to be reported to the Executive Award Review Advisory Committee, also known as EARAC.

I believe this is the first time this Board has heard this kind of dispute, so I'm going to give you a quick background about the process before going into the particulars of the disputes before you.

The Compliance Division monitors each property once every three years. If there are findings of noncompliance, the owner gets a written notice and 90-day corrective action period, which can be extended to give a total of a six-month corrective action period.

After the end of the corrective action period, if there are any findings the owner has not corrected, they get an additional ten days to kind of clarify what they submitted and wrap things up. After all of those corrective action periods, if there are any findings that are still not corrected, those are the items that get taken into consideration during future previous participation reviews.

So for example, say we monitored a property in
2018 and we went out and they had ineligible households
and they were overcharging rents and they weren't doing
social services. They get a written notice that has 90
days or six months to fix that, and if they fix the rent
problem and they reoccupy the units with eligible
households but they don't fix the social services, then in
the next previous participation review we would consider
the social services finding only. The other events of
noncompliance are disregarded because they were fixed
during the corrective action period.

And if you're wondering why we do it this way,
it's rooted in 2306.6791, so it's statutory that we do not
consider events that were corrected during previous
participation reviews; we just look at things that were
not corrected. And the other thing to note is that events
that are on the applicant's track record, they drop off
three years after they've been corrected.

So what I want to make sure everyone
understands is that there's like nine applications in this
agenda item, and all of the events from all of these
applicants, everything at this time is now corrected.
None of these applicants have anything uncorrected, and
all of the corrective action periods, all of that has
passed, so this an end of the line kind of thing, we're
just waiting for the three years for the drop off.
Previous participation reviews are required by 2306.057. The Department has adopted a rule that provides a process and procedure for this review. The rule takes into account the size of the applicant's portfolio and the number of events that were not fixed within that applicable corrective action period and classifies an applicant's portfolio as either Category 1, 2, or 3.

The rule then goes on to require the Compliance Division to recommend denial of Category 3 applicants to EARAC. In turn, EARAC, or that Executive Award Review Advisory Committee, they're supposed to recommend denial to the Board.

This rule was adopted December 30, 2018, the current rule that we're operating under. The previous rule did not have this hard and fast the Compliance Division must recommend denial.

Under the old rule, EARAC and the staff could work with the applicant to come up with conditions that were meant to address their compliance problem and say, We'll condition your award based on if you're going to do these actions to take care of things. So these applicants are in front of you today because there's this new rule.

So before I talk about these particular applications, do you have any questions about the monitoring process or the rule?
MR. GOODWIN: I just want to make sure I'm clear. Are you saying that all the reasons that these nine applicants are on here have all been corrected?

MS. MURPHY: That is correct.

MR. GOODWIN: One hundred percent?

MS. MURPHY: One hundred percent. At this time these applicants have no uncorrected events of noncompliance.

MR. GOODWIN: Okay.

MS. MURPHY: Any other questions?

MR. VASQUEZ: Can you clarify a little bit more for us the Category 1, 2, 3 and what gets someone in any of those levels?

MS. MURPHY: Yes.

MR. VASQUEZ: Generally speaking.

MS. MURPHY: I brought that rule with me in case you asked.

Okay. So there's a number of things that could classify you as a 1, 2, or 3. Like for example, you could be considered a Category 3 if you owe us money or if you have an agreed final order and you violated it, if you're debarred, those kinds of things. So one of the things that causes you to be a Category 2 or 3, which is what is grouping in these applicants today, is the number of events of noncompliance in relation to their portfolio.
So for a Category 2 you're considered a Category 2 if the number of events of noncompliance that were not corrected is at least three but it's less than 50 percent. But you're considered a Category 3 if the number of events that were not corrected during the corrective action period exceeds 50 percent of the number of properties you control. So if you have 20 properties and you have eleven events that get picked up because they weren't fixed, you're going to be a Category 3.

Does that answer your question?

MR. VASQUEZ: Okay. So it's not necessarily severity, it's accumulation?

MS. MURPHY: That is correct. There is no distinction between your building is falling down and you missed a paperwork requirement, it is the events of noncompliance that were not corrected.

MR. VASQUEZ: Okay. So again, if you have 20 properties in your portfolio and one had a really severe issue, that group would still only be in Category 1, versus if they had eleven minor issues they'd be in Category 3.

MS. MURPHY: If you had 20 properties and you had one that was seriously out of compliance and was still uncorrected --

MR. VASQUEZ: And being corrected.
MS. MURPHY: Right. That's correct.

MR. VASQUEZ: It's still got to be one versus eleven minor accumulates to a 3?

MS. MURPHY: Correct.

MR. VASQUEZ: All right. Thanks.

MS. MURPHY: So this is about your ability to be in compliance the day we show up, and if you're not, get things fixed.

MR. VASQUEZ: Okay. Thanks.

MS. MURPHY: Any other questions?

MR. BRADEN: To the Chair. Can you just describe a little bit what the rule change was in terms of under the new rule? Hard for you to say what the intent was, but was the intent for these things to come to us, or is this through an unintended consequence?

MS. MURPHY: I don't know what the intent of this rule was.

MR. BRADEN: Can you describe what the rule change was?

MS. MURPHY: Under the old rule applicants were classified as a Category 1, 2, 3, or 4, and all of those different categories, EARAC had the ability to recommend award with conditions. EARAC also had the ability to recommend denial under the old rule if you were a Category
4, but all of them, I don't think there was ever a recommended denial under the old rule.

It was more we worked with the applicant to say, hey, what's going on, why are you out of compliance the day we show up, why can't you solve these things within the corrective action period, why aren't you responding to us, you know.

And then we worked with them to come up with conditions that they would change something internally on their side. And I've got to say it was really effective. We had some very noncompliant portfolios and they took it seriously and looked at why are we out of compliance, what's going on, and they got their act together and now they're okay.

MR. BRADEN: But under the new rule, EARAC doesn't have that flexibility anymore.

MS. MURPHY: Correct.

MR. BRADEN: Thank you.

MS. MURPHY: Any other questions?

(No response.)

MR. GOODWIN: Go ahead and proceed.

MS. MURPHY: Okay. So in this agenda item 6 there are nine impacted applications. Seven of the nine are applying for 9 percent housing tax credits and two of them are applying for 4 percent credits. The nine
applications are from five different applicant groups, so 
although there's nine, that's five different people 
applying.

Staff is recommending that the Board approve 
the applicant dispute for four of the applicant groups, 
which affects five applications. Those are all 9 percent 
applications, and the application numbers are 19094, 
19095, 19179, 19228, and 19232. Although these 
applications are classified as a Category 3, these 
applicants have previously been approved by EARAC and the 
Board with the exact same, or in some cases worse, 
compliance history. The three years has come and their 
stuff has dropped off. Since the time these people were 
last approved, they have met all the conditions that the 
Board and EARAC placed on them, and they have had no new 
events of noncompliance.

So I think the Board could take action on these 
as a group, or if you'd like more specific information or 
if you'd like to hear from the owner representative, we 
could go into detail about those.

MR. GOODWIN: What's the pleasure of the Board?

Do you want to make a motion to take these as a grouping?

MS. BINGHAM ESCAREÑO: I'll move to accept 
staff's recommendation for the five that staff listed for 
approval. I just actually will amend my own motion.
MR. GOODWIN: Okay.

MS. BINGHAM ESCAREÑO: Any conditions?

MS. MURPHY: No.

MS. BINGHAM ESCAREÑO: No conditions. Okay.

MR. GOODWIN: No conditions. Second?

MR. VASQUEZ: Second.

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

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. It passes.

Moving on to 19414, -15, -340 and -344.

Correct?

MS. MURPHY: Yes. The last group is the Housing Authority of the City of El Paso, or HACEP. HACEP partnered with Miller Valentine for 4 percent tax credit applications of the DeWetter Apartments 19414, and Kathy White Apartments 19415. HACEP partnered with Hunt Companies for 9 percent tax credit applications for Nuestra Sonora, which is 19340, and Patriot Place 19344, HACEP has 43 events of noncompliance, and unlike the other Category 3 applicants, seven of the 43
events are new events since their last approval which was just in January of this year. As described in the Board writeup, HACEP has requested that five of those seven new findings be considered corrected during the corrective action period and therefore disregarded.

Staff doesn't agree that those events should be disregarded, and it should be noted that even if the Board does say, okay, we won't consider those, they're still a Category 3, and there are still two other times that they failed to respond at all to a notice of noncompliance since January of 2019.

The Board writeup also indicates that HACEP has not satisfied past conditions, and I want to clarify that. It's not that they have violated a past condition, it's that they were to meet some requirements and they needed an extension until June 30 of 2019, and so it's just the deadline has not come up yet, and I believe last night they did submit the materials that were due June 30, and we'll take a look at that and see if that satisfies their submission.

HACEP has acknowledged that they are experiencing growing pains. It appears that this is impacting their abilities to be in compliance on the day of the monitoring visits, they're out of compliance when we show up, and it's impacting their ability to correct
issues and respond in a timely manner in accordance with statutes and rules.

Twenty-three of HACEP's past awards have been conditions because of their compliance history. The intention of those past conditions was to improve their compliance, like it did for other people I've described; however, the past conditions that they have suggested have not produced the intended desired outcome.

Their most recent response indicates that they've issued some requests for proposals so they're going to get some help with compliance and asset management, and we're certainly hopeful that this will help them get into compliance and stay compliant, but given that their past conditions that they suggested didn't work, we're not confident that this is going to do the trick and get them in compliance.

Staff recommends that the Board affirm the Category 3 assessment and the compliance recommendations of EARAC for denial of application numbers 19414, 19415, 19340, and 19344.

MR. GOODWIN: Questions?

I want to make sure I'm clear on this: 43 events of noncompliance over their entire portfolio, which includes how many properties?

SPEAKER FROM AUDIENCE: Forty-five complexes,
6,400 units.

MR. GOODWIN: Forty-five complexes with 43 noncompliance events? And of those 43, Patricia, how many have been cured?

MS. MURPHY: They're all corrected, everything is now corrected.

MR. GOODWIN: Okay.

MS. MURPHY: But even since this past January, they've missed three deadlines, which has given them seven new events of noncompliance.

MR. GOODWIN: Okay. And can you talk about those seven new events? Are any of those material or are they forgot to dot an i or cross a t?

MS. MURPHY: In your Board writeup I wrote some about the findings at Saul Kleinfield, I think is the name of the property. And so when we went out to monitor that property in 2018, one of the files that we selected and said, Can we see the file for this household, they didn't even have a file.

At minimum, before you move someone in you've got to get an application and verify their income, have a lease. They had nothing for this household to present for us to review, which is really pretty egregious, that's not a little paperwork problem. So they had a corrective action period to get a file together, and when they did
they discovered they found that they were not able to
prove that this household was indeed low income, so they
moved in a household without regard for the procedures and
when they weren't eligible, I guess, they just said we
can't approve them.

And so that's why they requested an extension
to do this, which we granted. And then they did move a
household in in November of 2018 which solved the problem,
and their extension was until February 25, 2019. So they
solved the problem -- well, they sort of solved it.

They moved someone in in November, they didn't
actually execute the paperwork until January of 2019,
which shows there's still a problem there, but they had
everything done in January of 2019 and they just didn't
upload it. It's like preparing your tax return and not
filing it, like it was all done, they just needed to
upload it. So that's one of the things that I thought was
fairly significant.

The other two things were UPCS inspections, and
they actually scored pretty well, and we are pleased with
the condition of the rehab. They just did not respond in
time to get the paperwork to us.

MR. GOODWIN: Okay. Other questions?

MR. BRADEN: Again, I'm sure this is the case,
but everything has been corrected now?
MS. MURPHY: Absolutely. No uncorrected issues at this time.

Any other questions?

MR. GOODWIN: Any other questions

(No response.)

MS. MURPHY: I think there's a few people who might like to talk to you.

MR. GOODWIN: I think there are. Do we need to take these individually is the pleasure of the Board or take them collectively?

MR. BRADEN: Collectively is fine.

MR. GOODWIN: Collectively. It's all one ownership group.

Is there anyone in the audience that wants to speak in favor of staff's recommendation? Everybody is opposed to staff's recommendation that plans to speak?

Okay. Since it appears that the front rows -- we're going to put the hard three-minute rule on you, and I'm going to ask that you not stand up here and repeat what the person before you said, if you've got something new. Having 20 people talking isn't going to impact any more, only new information.

Mr. Hance.

MR. HANCE: I'm Kent Hance, and I proudly represent HACEP, the Housing Authority of the City of El
Paso, and I'm signing as fast as I can write.

We have the largest public housing authority in the state of Texas, one of the largest in the nation. We're making adjustments and we have 6,200 units that are in public housing that are being switched over to tax credits. They're being remodeled, they're being updated and improving the living conditions that the people that live there will have.

We had 53 deadlines that we had to make, and we met 50 of them, we missed three so we're about 95 percent complete, and the three missed, one was on the uploading did not got through, and it was like on a Monday and the next day we caught that, so it was one day. This was not anything that was egregious.

The only one that would be of any significance had to do with egress, and that's the one that would fall under safety and health, and in each apartment unit -- I'm sure you know this -- in each apartment unit you have to have two methods to get out, and usually in most apartments it's a door and a window, and sometimes residents will move a bed over in front of a window, you'll have a headboard blocking it. We solved those within 24 hours.

And then we had some others that came in and we were trying to get everything approved. We have a penalty
if we don't get the people in and out within a year with HUD, and HUD's been very supportive of what we're doing, and they're using this as an example around the country. But with what happened timewise, they were going through the punch list and we had things like sink stoppers were not available and things like that, and the people wanted to move back in. I will point out this, we have 100 percent of the people that we give them temporary housing, they move back in, they're proud, they love the housing.

The person that was in charge of this has been terminated. We hired Novagradac, a national firm, to help us with this. We're making big changes you'll hear in a minute.

But I think the significant thing, under the old rules you probably would not have heard this, it would go to EARAC, but it's the new rules and you're hearing this. The significant thing is not the process -- process is important and we've addressed that and we're in compliance. The important thing is the housing for the people, and that's what this whole program is about, and we feel like that we're in good shape. If you do not take our recommendation, we think the effect of this will be the death penalty for us, and that will be addressed a little later.

But this is very serious, we know it's serious,
we're in compliance now, and we feel like we have a good method going forward.

    Thank you very much.

    MR. GOODWIN: Thank you.

    In light of our previous vote --

    MR. VASQUEZ: I have a question. Do we have any kind of probationary status for a group, or is that just part of that three-year wait period? I mean, putting an organization like this on --

    MR. GOODWIN: A short leash?

    MR. VASQUEZ: A short leash. I mean, is that acceptable or not?

    MR. ECCLES: I have to say that -- and staff out there, feel free to chime in on this -- but generally speaking, you're looking at each application on its merits, and statutorily there needs to be a report to the Board on the compliance history of the applicant to the Board. It's done through a couple of methods.

    Compliance has reported compliance history, it does that through the categorization process that's spelled out in the rules. It then flows through EARAC, which is a statutorily created committee, that makes its recommendation on awards to the Board. So those sort of merge, there are conditions that are presented through that process, but obviously, if the conditions aren't met,
you'll hear about it, if there's worse compliance history, you'll hear about it on the next one.

There's not really a probationary status per se, it's either with the compliance history, with EARAC's recommendation or denial. The Board either accepts it or says, you know, it's not good enough.

MR. VASQUEZ: And I guess we have that three-year look-back period. If we know they've been in Level 3 in the past three years, I guess that is effectively they're high on the radar at that point.

MS. MURPHY: So it's 2306.057 that requires the compliance assessment. So you've received the report and the statute does give you discretion to approve despite the report but you have to fully document and disclose any instances in which the Board approves the project application despite the noncompliance. So they may present something that would help you document and disclose why you would do it.

MR. GOODWIN: Are you saying the Board has to disclose we voted against your recommendation and in favor of HACEP, what and why?

MS. MURPHY: Correct. You would document and disclose.

MR. ECCLES: That is correct. This is the process of documenting and disclosing HACEP's compliance
history so that the Board may utilize its discretion.

MR. GOODWIN: Okay.

MS. THOMASON: I have a question for Patricia.

If the rule had not been changed, what would have been the outcome? If we wouldn't be hearing it, what would have happened under the old rule?

MS. MURPHY: It would have gone to EARAC -- and I'm not a member of EARAC; I police them. So both under this new rule and the old rule there was the idea about conditions, and the new rule has conditions kind of written in, and HACEP has kind of already run through all of the conditions that are in the rule and they still have this position. So I'm not sure.

MR. CERVANTES: Patricia, would you just clarify for the Board the distinction with these four items in the sense of the response within the corrective action period and new events of noncompliance and how that has factored into a bit of a distinguishing characteristic for these four, even though the Board will have its discretion to document and possibly reach a point of documentation that would be acceptable to allow these to move forward into the EARAC component.

MS. MURPHY: So the seven new events, one of them is at Saul Kleinfield, where they didn't respond during the corrective action, they just missed it by one
day, but it brings in five new events. I think ineligible households --

    MR. GOODWIN: Brings in what? I'm sorry, I couldn't understand you.

    MS. MURPHY: So one of the properties was Saul Kleinfield, and they missed the corrective action deadline by just one day, but they missed it, and so that ends up on their track record. So they have a utility allowance finding, an affirmative fair housing marketing finding, tenant selection criteria finding, noncompliance with lease requirements, and an ineligible household. So missing that by one day, that brings five new events into their history.

    The other two are Sherman Plaza, which scored a 95 on a CPCS inspection. I think that's what you were addressing, so a 95 is a really great score, we're happy with that. But the response was due March 3, and it was not submitted until March 19 and March 20.

    Another property they had an onsite in November 2018, corrective action was due February 13, it was related to their tenant selection criteria, and it was not received by the Department until March 18. So because they didn't respond, it comes into bear.

    And like the conditions that are considered in the rule about having a centralized email system, having a
point person that's responsible for things, they've sort of run through the list of things that EARAC kind of would be able to recommend a variety of conditions there on that. And the rule does contemplate that an applicant could propose something that's not in the rule. The staff can't say, well, what about if you -- you know, we make something up off the cuff, but the applicant or perhaps the Board could, but the staff can't.

MR. GOODWIN: Okay.

MR. VASQUEZ: But we have the ability to say we're going to fine you $500 for being late, for each occurrence of being late, something -- I don't know, obviously, the Board hasn't talked about this -- but in the big scheme of things, I personally am fine with approving -- giving them a bye on the noncompliance, but at the same time it's really irritating to hear y'all continuing to miss all these deadlines when everyone else here -- well, most everyone else here in this room is meeting those deadlines.

So I just hate to not give some slap on the wrist, but at the same time, this doesn't sound like an egregious -- they're obviously communicating with staff, they're obviously trying to get it fixed.

MS. MURPHY: And they do have a good product.

Their rehabs, the staff has been very impressed with them.
They're a good rehab and the units -- I asked my staff specifically, you know, are these a quality rehab, and the answer is yes. They are experiencing growing pains with other concerns.

MR. VASQUEZ: I just wish there was some mechanism whereby we could have some sort of reprimand beyond making them all come here and run up their legal fees.

MS. RESÉNDIZ: Mr. Chairman, if I may make a comment and a question just tying into Leo's.

Mr. Hance, you mentioned earlier that it would be detrimental to the project, it would be like the death penalty.

MR. HANCE: It would. We have applications in the pipeline, and what it would do, it would kill these and sort of put us off another year, and then that would cause problems with HUD and everything. There are violations, and I understand what you're saying, but these were pretty insignificant.

One thing I would point out, there are other developers in here that don't have that many, but look, we're the largest in the state, we're huge. There's very few that have this many. And we've done everything: we fired the person that was in charge, we brought in an outside firm, and I think that the CEO will address some
of that.

But we really hope that you approve this because we are in compliance now. We feel like we've got guidelines so it won't happen again.

Thank you.

MS. RESÉNDIZ: And I'd like to remind the Board, the RAD program is new, you know, and there is a large investment that's made to this new program, it's a redevelopment, if I'm not mistaken, it's being built out in three phases, and I don't know how many people it would put out. I don't want to look at it in the sense of re-gentrification, but it's re-gentrification just for a year, and there's a plan and there's a process in place, so I don't know exactly what that looks like. I mean, there's corrective action that's been brought to all of the issues that staff has had. I just wanted to make that point.

MR. GOODWIN: Any other questions or comments?

MS. BINGHAM ESCAREÑO: I heard Patricia say that the applicant can bring forth like recommendations, not necessarily what Mr. Vasquez was talking about in terms of some kind of consequence or punitive action or whatever -- which I like that idea also -- but it sounds like the applicant has already and has begun to articulate that they've hired a third party, you know, subject matter
expert company to handle compliance issues moving forward, that they've made some leadership changes within their organization, so it sounds like some of those things are already in place. But if the Board were so inclined to document reasons or mitigation to ensure future compliance, that the housing authority is putting things in place already to do that. That's what it sounds like to me.

MR. GOODWIN: It sure sounds to me like you have the favor of this Board to not want to put the El Paso Housing Authority in the penalty box, so I'm going to ask, before you speak, Mr. Palmer, if there's anybody on the Board that would like to make a motion to do that, and that won't stop discussion but it will at least give you a feel for how this Board is leaning and feeling about this issue at this point.

MR. BRADEN: Mr. Chair, I'd be willing to take a stab at a motion.

MR. GOODWIN: Okay.

(General talking and laughter.)

MR. BRADEN: I just want to make sure that the record correctly reflects what we've heard and reviewed in the backup to this item.

MR. ECCLES: Well, and let me just throw in that if the direction is to take this applicant and their
applications in the same direction as the previous five, it would follow the resolution very differently.

MR. BRADEN: So I'd make a motion, since the Board has considered the compliance history of the applicant to date, including that all incidents of noncompliance have been addressed, and that the applicant has demonstrated that corrective action processes have been taken, including replacement of personnel and hiring of a national firm, and the good work that this local housing authority is doing in terms of reshaping the El Paso community in terms of housing -- I'd make a motion that the compliance history of the applicant to date is acceptable and that Board determined for the four properties listed, 19414, 19415, 19340, and 19344, that the applicant's compliance history, as documented and disclosed at this meeting should not preclude a positive recommendation to EARAC and the application is authorized to proceed through its remaining evaluation and scoring and proceed to EARAC for review and consideration of recommendation and possible conditions without being precluded from a positive recommendation by EARAC because of its compliance history.

MR. GOODWIN: Second?

MR. VASQUEZ: I would second that contingent upon the applicant not having their representatives that
are still here talk more about this.

(General talking and laughter.)

MR. GOODWIN: We have a motion made and seconded. Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Moving on to item number 7.

MS. HOLLOWAY: Good morning.

BOARD MEMBERS: Good morning.

MS. HOLLOWAY: Chairman Goodwin, members of the Board, I'm Marni Holloway. I'm the director of the Multifamily Finance Division. Today we're taking up a number of items, so let's just try to get through them swiftly and concisely.

Item 7(a) is report of a third party request for administrative deficiency under 10 TAC 11.10 of the 2019 Qualified Allocation Plan for 19315 Hammack Creek Apartment. This item was presented to the Board on May 23, and as a result of public comment, the Board directed staff to review its determination to ensure that the applicant had provided sufficient evidence that it maintained proper and unbroken site control.
The RFAD request stated that the site control documents did not show continuous control from pre-application through to full application. Staff had identified this question prior to the receipt of the RFAD, and we had issued a deficiency notice on April 23, the response was received on the 29th, so just two days before the RFAD deadline. Staff accepted the applicant's response, which included documentation that both option agreements had been extended so there was not a lapse in site control.

MR. GOODWIN: Any recommendation?

MS. HOLLOWAY: That's just a report item.

MR. GOODWIN: Oh, just a report item. Sorry. Do I hear a motion to accept the report?

MS. RESÉNDIZ: So moved.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: 7(b).

MS. HOLLOWAY: Item 7(b) is presentation,
discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC 11.65 related to credit returns resulting from force majeure events for application 18269 2400 Bryan.

This development was awarded $1.5 million in 9 percent credits in 2018, and we have received a request from the development owner to return and reallocate the tax credits as the result of force majeure events.

The Department does not have authority to extend federal deadlines for placement in service other than with this force majeure. The rule allows a development owner to return credits within three years of award and have those credits reallocated to the development if the requirements of the rule are met.

Force majeure events are sudden and unforeseen circumstances outside the control of the development owner, including changes in law, rules and regulations. The rule requires force majeure events must make construction activity impossible or materially impede its progress.

This application was originally submitted and found to be feasible with $9.3 million of tax increment financing funds from the City of Dallas. On May 9 -- so after the application had been submitted to us -- the City of Dallas passed a resolution adopting a new housing
policy, which took effect immediately, with no provision for previous awards or commitments. The city issued a NOFA on August 30, and the applicant for 2400 Bryan was told that they would have to reapply under this new policy.

The TIF funds originally committed by the city carried very few restrictions. When the city made their award -- their re-award to 2400 Bryan on February 9 of 2019, the development received HOME and CDBG funds which carry multiple federal restrictions and requirements. The applicant claims that Davis-Bacon requirements alone added a million dollars to the development budget.

The new fund source also required changes to the units, bedroom mix and set-asides originally presented in the 9 percent application. In addition, the Texas Department of Transportation denied an anticipated fire lane easement, which triggered changes to the architectural plans. You approved a material amendment encompassing all the requirement changes at the April 25 meeting.

This development will have 217 units in a single 15-story building with parking on the first six floors. Construction will be far more complicated than our typical three-story garden walk-up design, and it's further impacted by its location in downtown Dallas.
The applicant's request for force majeure relief has been submitted at this time so they have assurance that they will be able to complete construction prior to the placement-in-service deadline. The confirmed construction schedule is 19 months, and while there would seem to be sufficient time to meet the December 31, 2020 deadline, any delay would put the development's credits at risk.

Staff recommends that the request for treatment of application 18269 for 2400 Bryan under application of the force majeure rule, and that except where otherwise prohibited, the applicant must continue to follow the 2018 QAP except the 2019 program calendar will apply.

MR. GOODWIN: Any questions?

MR. VASQUEZ: Marni, so the additional one million to the development budget, they're not asking for more money.

MS. HOLLOWAY: No, they're not asking for more money, they're asking for more time to make sure they can complete their construction.

MR. VASQUEZ: Thanks.

MR. GOODWIN: Do I hear a motion?

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

MR. GOODWIN: Second?
MR. VASQUEZ: Second.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Item 7(c).

MS. HOLLOWAY: You know, this time of year when I'm doing all this talking is when my allergies go crazy, every time.

(General laughter.)

MS. HOLLOWAY: Okay. Our next item is presentation, discussion, and possible action on timely filed appeals of material deficiencies and scoring of housing tax credit applications.

This is 19013, Our Lady of Charity Apartments. Staff determined that the application should be terminated because the unit floor plans include three unit types that fail to meet the minimum square footage per unit threshold requirements and that the application does not qualify for points related to unit sizes because ten unit types do not meet the minimum square footage per unit requirements to meet this rule.

We received an RFAD requesting that staff
review the unit plans and determine if the application qualified for points related to unit sizes and whether the application met the unit size threshold.

It is important to note that the application proposes the adaptive reuse of an existing historic structure. Our definition of adaptive reuse requires that the development be considered as new construction and therefore must satisfy the requirements for a new construction application.

Upon review of the issues raised by the RFAD, staff determined that the unit floor plans include at least three unit types that fail to meet the minimum square footage. There are three efficiency units, and each is smaller than the minimum 500 square feet.

Staff sent a deficiency notice, and in response the applicant provided documentation from the project architect that stated square footage was measured from the load-bearing masonry walls. This measurement would include the thickness of masonry walls for this historic building all the way out to the exterior of the building, so that's how they're measuring their units. Our definition of net rentable area says that it is to be measured to the outside of the studs of a unit or to the middle of walls in common with other units.

Staff also determined that the application does
not qualify for six points related to unit sizes because of even larger number of unit types do not meet the minimum square footage required for the scoring item. The loss of six points means that the application will also lose six points for pre-application participation, because the application final score varies by more than four points from what was reflected in the pre-app.

The applicant's response to the deficiency notice included unit plans with a non-structural furr-out for some of the units and changed the location of walls in others. The appeal states that this information may have been misinterpreted due to technical and design elements presented in the drawings. It further states that because the units will have no structural studs, the net rentable area is measured in the floor plans to the existing wall. The furr-out in this adaptive reuse takes the place of studs. It's a different method of construction due to the historic nature of the building.

MR. VASQUEZ: Marni, before you go past that, they're saying the net rentable area gets measured -- they're trying to measure it on the outside of the masonry wall?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: The exterior or the interior of the room?
MS. HOLLOWAY: So say this side is the drywall or whatever in the building, and then there's a furr-out wall, and then there's the masonry that is the exterior structure of the building. They're measuring from this side all the way over here.

MR. VASQUEZ: They're not measuring the floor from this wall to that wall and this wall to that wall?

MS. HOLLOWAY: Right. They're measuring from --

MR. VASQUEZ: From the outside of the building.

MS. HOLLOWAY: Yes.

MR. VASQUEZ: I just wanted to clarify.

MS. HOLLOWAY: The appeal asserts that there is a gap in the rules and that the QAP and multifamily rules do not provide clear language or guidance in determining net rental area for historic buildings, nor do they provide for necessary preservation of existing load-bearing walls in historic properties.

Staff does not agree that there is a gap in the rules which clearly explain how net rental area is to be uniformly measured and makes no exception for historic projects. That walls will not have structural studs, as the appeal claims, does not mean that the development is absolved from having to comply with the calculation for
Indeed, the definition of net rental area specifically excludes other areas not actually available to the tenants for their furnishings and does not include the enclosing of walls for such areas. This clearly disallows the inclusion of the exterior masonry wall.

The third set of plans submitted with the applicant's appeal showed the units including the net rental area, the furr-out walls, as well as the space behind them, and the entire width of the masonry to the exterior of the structure. The furr-out walls, regardless of whether they are structural, would clearly define the limits of the area that's available to a tenant for their furnishings.

During the design phase of the development, it could be that the interior adjoining walls of the units could have been located so that the plans met the minimums. Instead, the appeal asks the Department to allow for a measurement that would deprive residents of over 50 square feet of net rentable area.

The appeal cites staff treatment of a previous historical project as an example of staff accepting this kind of net rentable area calculation in the past. We viewed the referenced application and found that the plans did include this note: "Square foot measured outside
existing wall and new wall." And we missed it at the
time. The net rentable area may have been measured to the
outside of the existing wall. We observed that the units
were much larger than in this application so that the
measurement did not deprive the resident of that minimum
space. It's important to note that staff not catching a
mistake in a previous application does not mean that the
threshold and scoring rules no longer apply in the future.

Staff recommends that the threshold and scoring
appeals for 19013 Our Lady of Charity be denied.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: We obviously have some folks that
want to speak. Is there anybody here speaking in favor of
staff's recommendation who wants to speak? One that wants
to speak in favor? The rest of you want to speak against
staff's recommendation -- three that want to speak in
favor. Okay.

We will start. Mr. Palmer, did you want to go
first?

Someone opposed to staff's recommendation --
we're going to start with someone opposed to staff's
recommendation. Who wants to be first? And again, we're
going to stick to the three minutes because we obviously
have a number of people that want to speak.
MR. WILSON: Yes, sir. And I'll sign in right
now as we're talking here. Thank you.

My name is Ryan Wilson. I'm with Franklin
Companies, and we're representing the co-developer, the
San Antonio Housing Authority, as well.

And I think we did bring some visual aids that
were contained in your Board packet so I'm going to refer
to those, if it's okay, during the presentation real quick
because it's easier to point at stuff. Okay?

And in all due respect to the staff, what they
told you earlier, I think essentially that's exactly
right. I think what it boils down to is two issues:
first, what the team intended when we submitted our
application, and second, how we handled the deficiency.
Both these issues clearly center around the definition of
net rentable.

And I think Marni said perfectly, NRA is
measured to the outside of the studs of a unit. So that
was written clearly for a regular garden style walk-in
apartment where you have a drywall, wall, a stud and the
exterior wall. The stud is acting as the structural
component of that structure. Okay?

Chip, do you have a visual edition of the furr-
out wall?

Which gets me back to my point one, the
application always assumed this calculation was to the
outside of the wall because the applicant doesn't have the
choice to pick an arbitrary place within this masonry
wall.

So if you look at the little reference here,
exhibit 2, this is what we're calling the fur-out. So
the fur-out was simply an attachment on the existing CMU
wall to be able to finish that space off. It has no
useful use other than to provide a drywall surface, as
opposed to a stud wall, as referenced in the QAP, that
does serve a purpose which is structural.

Which brings me to my point number two in the
deficiency. When we clarified that -- and staff is
exactly right, we didn't come back and change all the
floor plans, we still contend and we intended that we're
not allowed by the rules of the QAP to dictate where that
measurement is.

Where the stud wall is 3-1/2 inches, in our
case we don't have a stud wall, we have a masonry wall,
that is the only structural component we have. We can't
decide if it's 2 inches or 19 inches. In our case it's
larger. So we tried to be consistent in the manner in
which we approached it; right, wrong, or indifferent,
we're trying to be consistent in what our plan was to
begin with. And I think the precedent was established
earlier, which may or may not be correct, and I think Chip will talk about that.

And I wanted you to know, and all due respect to staff's interpretation, we never intended these furr-outs -- as you see is a channel on top of dry wall -- to be a stud wall because we don't need a stud wall, we already have a structural component. The QAP forces us to take, in the words of the QAP, the studs, in our case is not studs, it's a CMU wall.

And finally, we've never changed how we measured net rentable as it was and continues to be taken from the outside of the CMU wall. So to wrap up my main point here, the only way the application doesn't meet scoring and threshold is if we take the measurement to the inside of that CMU wall, not the outside, as we think the QAP clearly defines it.

MR. GOODWIN: Thank you.

Michael, we have a couple of letters that you want to read into the record?

MR. LYTTLE: The microphones over there aren't working so I'll read from the podium here.

The first letter is addressed to David. It reads as follows:

"Please accept this letter of support for San Antonio Housing Authority's proposed renovation of the Our
Lady of Charity convent on San Antonio’s east side. The east side neighborhood has a longstanding of needing both safe and affordable housing, and the proposed conversion into a 72-unit multifamily development would go a long way toward meeting these needs.

“As I understand it, SAHA has obtained a resolution from city council and submitted an application for the 9 percent low income housing tax credits offered by the Texas Department of Housing and Community Affairs. SAHA has indicated that their application has been met with some resistance in its approval due to certain program qualification requirements as applied to this historic building. In defense of their argument, SAHA referenced an historic adaptive reuse facility that reportedly used similar methods of measurement for determining qualification where TDHCA granted the application.

“To be clear, I am not advocating that a special exception be made, only that this project be given the same consideration that similarly situated projects have received. My office is appreciative of TDHCA’s diligence in upholding the program standards to ensure that these scarce resources are appropriated towards projects that legitimately meet the qualifications.

“SAHA has submitted an architectural opinion
that offers plenty to consider in regard to their argument, that the referenced units actually do meet threshold requirements. I trust that the Department will take into consideration these and all other contributing factors in making their application decision.

"I look forward to hearing how this process turns out and appreciate all the time and effort that both parties have put into considering this worthwhile development.

"Sincerely, Senator Peter P. Flores, Senate District 19."

The second letter is from State Representative Barbara Gervin-Hawkins, addressed to Chairman Goodwin. It reads as follows:

"I write in support of the San Antonio Housing Authority and request the Texas Department of Housing and Community Affairs reconsider staff recommendation determining SAHA's application for Texas historic tax credits and 9 percent low income housing tax credits for a proposed 72-unit multifamily development on San Antonio's east side.

"The monastery of our Lady of Charity was built in 1899 and was added to the National Register of Historic Places in 1999. It was designed by James Murphy. Together with Alfred Giles and Jules Poincaré, Murphy was
one of the city's earliest trained practicing architects
and designed many of the oldest and historically
significant buildings in San Antonio.

"The monastery was built to house the Sisters
of Our Lady of Charity, who arrived in San Antonio from
Canada in 1897 to establish a facility to care for and
educate young unwed mothers. Over the years it has
changed owners but it has always served the community.
SAHA is now repurposing this structure to continue to
provide for those in need by providing housing with
supportive services.

"SAHA firmly believes in the importance of
respecting the historical value of this property and
preserving the landmark. To honor the historic structure,
SAHA's application indicates furr-out walls are intended
to be nonstructural walls with channels and drywall that
will not serve as a stud wall. SAHA clarified this
specification in their application and outlined the
historic structure of this property by presenting the
existence of masonry walls in replacement of stud walls.

"In addition, I would like to remind the TDHCA
Board of the Conrad Lofts application, where similar
circumstances were present and TDHCA staff used the same
methodology of calculating the net rentable area. The
application for Conrad Lofts used the typical efficiency
one-bedroom unit in their response as evidence of consistent application of the Qualified Allocation Plan rules. Their application clearly defined the unit was 573 square feet measured outside of existing and new wall. TDHCA staff recommended the Conrad Lofts application meet the scoring criteria.

"Given the parallels between our Lady of Charity and Conrad Lofts, I am requesting the Board of Directors use consistent calculation of NRA to reinstate SAHA's application for our Lady of Charity.

"Lastly, I want to highlight that the existing buildings incorporated into this adaptive reuse project currently services 25 public housing units. The convent not only serves as a landmark for the community but also a tenant-occupied property in dire need of rehabilitation.

"We know the City of San Antonio's east side neighborhood is in dire need of reinvestment with modern, safe facilities to address the affordable housing needs in the area, and the proposed Our Lady of Charity development is an important stepping stone to achieve these housing needs.

"I look forward to the Board giving its full and fair consideration to this development and to bring affordable housing to a growing and vibrant community in San Antonio.
"Sincerely, Representative Barbara Gervin-Hawkins, House District 120."

MR. GOODWIN: Thank you. You went over your three minutes.

(General laughter.)

MR. GOODWIN: We have someone that wants to speak that is in favor of staff's recommendation?

MS. BAST: Good morning. Cynthia Bast of Locke Lord. We represent Legacy at Piedmont, which is an applicant in this same region, competitive to Our Lady of Charity.

I think that the rule really gives you everything that you need here. We don't have to talk about measurements, because the rule says the unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system.

That is your guidance on what this rule about net rentable area requires, and to take the wall out all of these additional inches to meet a threshold requirement is not consistent with this definition. And that's what we just heard in these letters from these legislators, is that they want you to be consistent.

There is no precedent here. Your staff was very clear, and they are correct that there is no precedent on this issue because in the prior case the
square footage, the way it was calculated didn't matter. So we believe that in order to grant this appeal you would actually need to waive your rule about net rentable area and the square feet that are required, and you don't need to waive that rule when there's another application in east San Antonio, less than two miles away, that would also serve the community.

So for those reasons, we support staff's recommendation and I'd appreciate your consideration.

MR. GOODWIN: Thank you.

Anyone that is opposed want to speak? And I would ask that those of you start speaking -- I mean, we've defined two issues and we don't have to hear about measuring over and over again and your way of measuring versus how somebody else ought to measure and this other that staff recommends is a mistake that you say set precedent. I think those two issues have been -- if you've got something new, I would encourage you to come up and speak.

MR. COLLINS: My name is Chip Collins with Alamo Architects.

So the definition in the QAP regarding calculation new construction is to the outside of the stud wall, so you're within your unit, the drywall is attached, and you're calculating to the other side of the stud wall,
and so that is how the QAP defines the calculation.

So in our situation there is no stud wall, and in many historic buildings subject to adaptive reuse, there are no stud walls, so it's impossible to calculate the net rentable square footage through a strictly literal reading of outside of the studs.

We understand in a standard wood frame construction it would be to the outside of your foundation and to the outside of the stud. And in our situation we've got a multi-width, load-bearing brick masonry wall that serves as our stud.

As an example, the Conrad Lofts, you can see that their calculation went to the outside of the existing masonry load-bearing wall, and at 573 square feet, if you were to reduce that and take out the existing masonry wall, that would fall under the threshold for scoring.

So I think that's the main sticking point is without a stud wall, there's no clear direction on how to calculate this. And in the instance of when there is a stud wall, you know, that area is not heated and cooled, it is outside the sheetrock, and yet you're still calculating outside a stud as part of the net rentable area.

Thank you.

MR. GOODWIN: Any questions?
MS. THOMASON: I had a question. So what is the size of a stud wall as opposed to your -- was it 19 inches?

MR. COLLINS: Eighteen inches. A stud wall can be 3-1/2, 5-1/2 inches typically.

MS. BINGHAM ESCAREÑO: I have a question for Marni. Just a couple of things just for my clarification. You know, on Conrad did we miss it or did we expressly approve it?

MS. HOLLOWAY: We missed it.

MS. BINGHAM ESCAREÑO: Okay. And so the last speaker just said that even if you used Conrad as an example that if you measured using the same kind of expectation that we are with the Sisters of Charity, that they would have missed the square footage minimum, which I thought in your report you said that they wouldn't have missed it.

MS. HOLLOWAY: Right. So that part of my presentation was really about -- wasn't about going back and looking at the plans, it was looking at the square footages listed for the units, which was measured incorrectly, but it seemed big enough that still with those walls would still have that minimum net rentable area.

MR. BRADEN: To the Chair?
MR. GOODWIN: Yes.

MR. BRADEN: So if furring strips were not used, like they just put plaster on the masonry wall and did whatever, how would we measure that?

MS. HOLLOWAY: Considering the definition that talks about space that's available to the tenant, we probably in that instance would measure to the plaster or maybe just behind the plaster on the inside of the masonry wall.

MR. BRADEN: How is the definition of available to tenant consistent with the measure for stud walls where we're measuring to the outside of that wall?

MS. HOLLOWAY: I am not able to answer that question.

MR. BRADEN: I mean, I agree, if you think about net rentable space you would think what's inside the unit, but everybody seems to agree that on regular wood construction we're measuring to the outside.

MS. HOLLOWAY: Yes.

MR. GOODWIN: Brent.

MR. STEWART: Brent Stewart, Real Estate Analysis.

So the history of that definition has morphed over time. At one point in time it was the inside, at another point in time it was to the middle of the stud
which is still in place as it relates to walls between units. There's a collision of two different rules here: one is net rentable area available to the resident, and the other one is a measurement of how you get to net rentable area available to the resident. So that's kind of some history of that based on public comment over the years, working with the development community, how that has morphed.

MR. GOODWIN: Further questions?

MS. BINGHAM ESCAREÑO: Are there any federal, like HUD guidelines? Since our rules have kind of morphed over time on this, are they in concert or conflict with -- are we are of any other rules that would kind of supersede ours?

MR. STEWART: No.

MR. GOODWIN: So if we measured these units, Brent, from the plaster or the inside of this furred wall, would they meet the minimums?

MR. STEWART: I'm aware --

MR. GOODWIN: Or do you have to go to the outside of the exterior wall for them to meet the minimums?

MR. STEWART: So there are unit types that are on the ends of some protrusions that come out from the building, which those units have three of these walls that
are thick. There are other units that are interior of that that have two walls because the wall in between those units are there. I don't believe we've measured those walls, and I'm not sure that that square footage meets the rule simply because if you have three big walls, that would add to that net rentable area calculation. So I don't know the answer to that. But when we measure the unit that has the three thick walls, that would meet the square footage definition of net rentable area, the minimum required to score.

MR. GOODWIN: How did you measure it that way, those three walls?

MR. STEWART: From the outside of the three walls.

MR. GOODWIN: The outside --

MR. STEWART: Yes, sir.

MR. GOODWIN: -- of the exterior wall, not the inside of the exterior wall.

MR. STEWART: We measured it in multiple ways.

MR. GOODWIN: But you have to go to the outside of the exterior wall to get to the minimum?

MR. STEWART: I don't recall what the measurement is from the outside of the furring wall, the non-structural furring. I can't answer that.

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

MR. GOODWIN: Do we have anybody that wants to add anything new that is in favor of staff recommendation? Do you have something new you want to add?

MR. FLORES: Yes, sir, just a few comments.

MR. GOODWIN: Or are you going to educate us again on measurement?

MR. FLORES: No, sir. I'm not going to deal with measurements. My name is Henry Flores, and Mr. Chairman and members, I appreciate the opportunity to speak briefly on the subject.

As some of you know, I had the honor of being the first executive director of this agency, appointed by Governor Richards when the agency was created. I continued to serve in Governor Bush's administration, the only Democrat in his administration, and I worked for Clinton and Bush at the national level, but I've been a developer for 23 years.

This is not necessarily about measurement, this is about the space. And I appear very reluctantly, because before I moved to Austin I was in my hometown of Corpus Christi in housing and community development 15 years, seven years as the director of the housing authority.

I'm reluctant to speak today because the
developer of this transaction is a housing authority, one of my first clients, SAHA. But this is not about SAHA, this is about a developer who made a mistake. They had a footprint of a building, they put too many units in there. If you had a few less units, you wouldn't be having this conversation.

These standards, minimum square foot standards are there for a reason, they've been there for 20 years and they've vacillated a little bit over time but they've always been there. We talk about 50 square feet being critical. Right now we have a minimum square footage, say for the efficiencies, of 500 square feet. Why? Because staff sat down and said this is reasonable bedroom, this is a reasonable living area, this is a reasonable bathroom, blah-blah-blah, and they came to 500. Then they said this is a decent amount of space for any family, but we want to enhance their living environment and give you points if you add 50 square feet, so 550.

What they're asking you to do, because they made a mistake, is to count those walls. Their calculation suggests that is 573 if you count the exterior walls. It's only 495 feet interiorly. That means they're sacrificing 81 feet of space as well. That family is not going to have 81 feet, it's a bedroom.

In the E6 is more egregious. In the E6 which
is a one-bedroom, the calculation is 132 square feet less, 132 square feet less. That means a bedroom and a bath that that family is going to pay for that's not going to exist because they're paying for that wall.

And as Mr. Stewart said, in some cases on those E-1s, if you include all three walls, they meet the qualification, and they provided documentation to that effect. The E-1s in the inner corridor, they didn't provide any documentation, and those only have two walls and they failed to meet the standard, even applying the wrong definition that they're trying to suggest is correct.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MR. FLORES: Thank you, sir.

MR. VASQUEZ: I don't know who can answer this best. We had a chart in here on page 673 showing the units that are missing the mark, so there's ten different types, I think, unit types?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: And there's 72 units total in the development.

MS. HOLLOWAY: I believe so, yes.

MR. VASQUEZ: So how many of those 72 -- how
MS. HOLLOWAY: I don't know that we have that. Do you have that information?

MR. VASQUEZ: These ones that come up short, does it represent 10 percent of the units or does it represent 80 percent of the units?

MR. ECCLES: And as she's looking for that information, I think it's important to note that those are just the ones that staff identified as being clearly under because there's not enough information on anything that's not a length times width assessment. Any sort of odd shaping where they don't include what would be an interior measurement versus an exterior measurement, and then the notches for a cutout couldn't really be calculated of the plans submitted. So it was just to show these are under threshold, these are under the additional square footage required to get the additional points.

MR. VASQUEZ: And again, I'm just trying to understand, we have E-1 here. Is there also an A-1, B-1, C-1, and D-1 that are the same size?

MR. COLLINS: No. And of the E-1 there are two units total on the project.

MR. VASQUEZ: Okay. So again, there's only ten out of the -- or eleven out of the 72 total units?

MR. COLLINS: Two.
MR. VASQUEZ: We have ten. We have E-1, E-3, E-4, six, seven, eight, ten, eleven, and then C-1 and C-2. Are there multiple copies of these units in the overall development?

MR. COLLINS: Yes. There are, let's see, 16 -- 17 unit types.

MR. GOODWIN: I think what's he's asking you on our chart on page 673 it shows unit type E-1 shown on your plan at 550, and I believe we've calculated it shows 495. Are there five of those units?

MR. COLLINS: Two E-1s.

MR. GOODWIN: There are two. And the next one is E-3, is there one?

MR. COLLINS: Six.

MR. GOODWIN: Six E-3 units.

MR. COLLINS: Yes.

MR. GOODWIN: E-4?

MR. COLLINS: There are three.

MR. GOODWIN: E-6?

MR. COLLINS: Four.

MR. GOODWIN: E-7?

MR. COLLINS: Three.

MR. GOODWIN: E-8?

MR. COLLINS: Three.

MR. GOODWIN: E-10?
MR. COLLINS: One.

MR. GOODWIN: E-11?

MR. COLLINS: One.

MR. GOODWIN: C-1?

MR. COLLINS: Two.

MR. GOODWIN: And C-2?

MR. COLLINS: Four.

MR. GOODWIN: Does that answer your question, Leo?

MR. VASQUEZ: Yes.

SPEAKER: We're counting 29.

MR. GOODWIN: Twenty-nine total? Twenty-nine out of 72.

MR. VASQUEZ: That's what I was trying to get at.

MR. GOODWIN: Sharon.

MS. THOMASON: And those are on the units that were easily calculated. That doesn't mean that there aren't 50 more of them.

MR. GOODWIN: Others. Yeah.

MR. WILSON: Ms. Thomason, can I address that? Because I think everyone is confused about what's going on here.

I think the application of the net rentable calculation was applied evenly through every unit in this
project, so I think it's incorrect to say it wasn't caught on several. The application of these were caught -- or staff focused on several, but the application of how we calculated was all the same throughout the units. So whether or not you agree with that, that's a different story, but I think that's important to know.

Thank you.

MS. BINGHAM ESCAREÑO: Mr. Chair?

MR. GOODWIN: Yes.

MS. BINGHAM ESCAREÑO: I have a question for Marni. So what's in front of us is points. Right?

MS. HOLLOWAY: Yes. Points and threshold.

MS. BINGHAM ESCAREÑO: I know. Right. So remind the Board of the points that are for consideration, and then so threshold consideration, my guess is the Board can approve or not approve staff's recommendation on the points. And then if we decided it wasn't a threshold issue, then we would have to be able to articulate why it wasn't a threshold issue? I mean, threshold is kind of non-negotiable.

MS. HOLLOWAY: Correct. So if the Board were to decide that the applicant has met that threshold requirement, then your next action would be whether or not they get the points for the unit sizes. One would have to follow the other.
MS. BINGHAM ESCAREÑO: And then on the -- what do we call it again, the pre-participation or the --

MS. HOLLOWAY: Pre-application?

MS. BINGHAM ESCAREÑO: So there's six points?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: So there's six points that are under consideration for the actual unit size, and then there's an additional six points that are at risk because of?

MS. HOLLOWAY: Because the variance between the score at pre-application and at application is more than four.

MS. BINGHAM ESCAREÑO: Gotcha. And that's an additional six, so that's twelve?

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: And if the Board ever were to consider that the application did not meet the requirement to earn the six points for the unit size, does the Board have any discretion to instruct not removing the six points for the delta between the pre-application points and the actual award?

MS. HOLLOWAY: That would be a Beau question.

MS. BINGHAM ESCAREÑO: I'm just trying to figure out. I don't even know if this is the way that we would go. I'm just trying to -- you know, what it sounds
like to me is -- and this happens, you know, regularly -- that if there's a significant material difference of more than four points between pre-application and the actual award that you're dinged those six points.

I'm just trying to figure out if we said the Board decided that they don't get the points for the unit size but we hate to ding them again for being off on their pre-application, do we have the discretion to not hit them with the six-point penalty for the difference in the pre-app points and what's actually being awarded.

MR. ECCLES: I will say only that that is what the rule requires, is if there is that difference between those points sought and the points awarded, then they're supposed to lose their pre-app points.

MS. BINGHAM ESCAREÑO: Okay.

MR. GOODWIN: Any additional questions?

MR. ECCLES: I have a quick clarification, because the definition of net rentable area was represented a couple of different phrasings about a stud wall. The definition, as it relates to studs, is -- and this is out of 10 TAC Section 11.1(d)(82), the second sentence: "Net rentable area is measured to the outside to the studs of a unit or to the middle of the walls in common with other units." So it's not talking about a stud wall or a structural wall necessarily, it's talking
about the studs that to which a wall is adhered.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Anybody have anything they want
to add that's new?

MR. PALMER: Barry Palmer with Coats Rose,
speaking on behalf of the developer and oppose the staff's
recommendation.

So we have a situation here where the QAP
defines how you measure net rentable area to the studs.
In this case we don't have any studs, we've got a masonry
historic building, and so how do you measure the net
rentable area?

So what the developer did is looked to
precedent as to what had been done in the past, and in the
Conrad Lofts deal that was approved just three years ago,
it had been measured from the outside of the masonry
walls, so that's what they did.

And so because of that, it seems to me that
there is an ambiguity here. Staff is viewing Conrad Lofts
as a mistake, we viewed it as precedent. We had no idea
until today that they considered that it was a mistake.
But because of the ambiguity in the QAP as to how you
would measure a masonry building and the existence of this
precedent, I'd like to ask the Board to direct staff to
allow this to be treated as an administrative deficiency
and allow the developer to revise the site plan, the unit
plans to meet the minimum square footage as staff
recommend that it be measured.

MR. GOODWIN: Thank you.

Any questions?

MR. VASQUEZ: Can we do that?

MR. ECCLES: Well, let me just first respond to
the concept of precedent versus rules. An action taken by
the Board that happens to encompass that you have done in
a previous application does not create binding precedent
for the Board or staff on any action. Every applicant is
held to the rules in place at the time of the application.
That's what you have to follow.

MR. PALMER: I understand that. And here we
have a rule that's ambiguous when you're looking at
historic buildings, when it says measure it to the studs
and there are no studs.

So you've got to come up with something else to
measure it to, and so it's reasonable to look back at what
has been approved by the Department before. Even though
it's not binding, it certainly is a reasonable basis to
come up with something to measure it from when you have no
studs.

MR. ECCLES: Yes, but the Board didn't take any
action on Conrad Lofts about net rentable area. A project
was approved, but this is the first time the Board is
addressing what outside of the studs means.

And respectfully, you say there are no studs
but the wall is adhered to something, and you talked about
a furr-out wall, which I believe the discussion was MEP,
mechanical, electrical and plumbing is passing through
this wall space. What is the drywall adhered to? Why
wouldn't it be just as reasonable a conclusion to say it's
the back side of whatever the wall is adhered to, the
drywall before that space? That's another interpretation
that could be made off of this rule when it's talking
about the stud. It's anything that the drywall is adhered
to as opposed to presuming it's a structural member.

MR. PALMER: That's reasonable. Another
reasonable interpretation is that the stud serves the
function of load-bearing support and in concrete masonry
it is the masonry that's providing that support, the
structural support, as opposed to the studs, and so that's
the reasonable interpretation that the development team --
and the fact that there are two or three reasonable
interpretations of the rule as to how you would measure
it, points out that it's not clear, and that it was
reasonable for the developer to rely on how it had been
done before.
And how it was done in Conrad was measuring from the outside of the masonry wall, staff accepted that, recommended to the Board for approval, it was approved. I'm sure it wasn't discussed or considered, but the Board approved it, the staff recommended it, and so it was reasonable for the development team to rely on that interpretation. And so if that's not the right interpretation of it, then allow them to change their floor plans to meet the interpretation that the staff is suggesting.

MS. THOMASON: Is that an option for the project if they went back and didn't measure from the outside of the masonry wall but whatever the typical stud size or the furr wall or whatever it would be? Is that an option for them at this point to redo their floor plan?

MR. GOODWIN: That would be a material --

MR. ECCLES: I can't really think of anything more material than that.

(General laughter.)

MR. WILSON: Yeah. Practically, in all reality, that would be tough for certain. It would be definitely a material revision to what we've submitted to date, and we agree.

MR. GOODWIN: I think we've pretty well hashed this over. If everybody is comfortable, I think it's time
for us to get to a motion, and I'm inclined to accept one, But I'd also would make comment that I agree with our original executive director, having been in this game a long time, this was trying to cram a little too much into a little too little, and I hope that you'll come back in the next round, if this doesn't pass, with maybe 70 units instead of the 72, or 65 units if that's the way it measures out.

But I think it's time for a motion from the Board.

MS. BINGHAM ESCAREÑO: I'll move to approve staff's recommendation.

MR. GOODWIN: A second?

MR. BRADEN: I'll second.

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

Any other discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Moving on to item 19126.

MR. VASQUEZ: Mr. Chairman, if I could just make a comment, I guess to Marni, on the QAP and the rules. This sounds to me like something that we need to
clarify.

MS. HOLLOWAY: Absolutely.

MR. VASQUEZ: Although, just from my personal opinion, I just think it's ludicrous that we're not taking a commonsense approach that from interior wall to interior wall, whether you put in a four-inch stud or a six-inch stud -- that outside those interior walls is not the way we should calculate actual rentable space.

MS. HOLLOWAY: Understood.

MR. VASQUEZ: Whatever space you can stand on or put a piece of furniture on, that interior wall to wall is how we should clarify the rules, which, again, it's just amazing to me that we would consider any other calculation.

MS. HOLLOWAY: Understood.

Our next item is presentation, discussion, and possible action on timely filed appeals scoring on housing tax credit application 19126. This is for 3104 Division Lofts.

Our rules for the deficiency process for 9 percent applications require that unless an extension has been timely requested and granted, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency, then five points will be deducted for each
day that the deficiency remains unresolved. After the seventh business day, the application is subject to termination.

Staff determined that because the applicant failed to respond to a deficiency notice until the seventh business day following the date of the deficiency notice, ten points should be deducted from the selection criteria score.

In their appeal the applicant states that the reason why their response was late is that the deficiency notice was not received. They note that the email form that we use to issue deficiencies has a standard end note that says, "Please respond to this email as confirmation of receipt" and that the subject line contains the same instruction, "Please reply immediately acknowledging receipt." A staff person who does not receive an acknowledgment from an application may call or email the applicant to make sure that they received the notice. This is a courtesy and it's not required by rule.

They also say in their appeal that none of the items in the notice technically warrant a formal deficiency notice, as the information was submitted with the application. There was no lack of clarity or omission of information in the application and all four questions asked by staff can be answered from information in the
application as submitted.

We have verified through our Information Services Division that the message left our servers, and we either received a notification of successful delivery, or more likely, simply did not receive any notification of a bounce-back or error message from their mail server.

The evidence submitted with the appeal that the applicant did not receive the deficiency is a spreadsheet maintained by the applicant. It is not a report of traffic from their email server or similar technical evidence. It is important to note that based on the applicant's deficiency tracking log submitted with its response, other deficiency email notices from the Department were successfully received before and after the notice on May 13 was sent.

As to the issue of whether the administrative deficiency should have been issued at all, staff is clearly within the rules to request clarification of matters expressed in the application. In fact, the best response we can receive to a deficiency is explanation of how the application meets the questioned requirement through the original submission.

Staff recommends that the appeal for 19126 3194 Division Lofts be denied. I'll be happy to take any questions.
MR. GOODWIN: Any questions?

MR. VASQUEZ: Marni, you said there were four deficiencies that we notified them of, and it appears that three were sufficiently responded to? Am I looking at the right one?

MS. HOLLOWAY: This one we just did not receive a response at all.

MR. VASQUEZ: On page 762 I see in this case the following deficiencies were noticed, and one, two and three staff determined the response was sufficient to clear the deficiency. The one about title commitment legal description, one on --

MS. HOLLOWAY: I don't have the Board item right in front of me.

MR. VASQUEZ: The only one that wasn't, according to these notes, right before you say, "Staff recommends the Board deny the appeal."

MS. HOLLOWAY: So on all four items?

MR. VASQUEZ: Except for the accessible carports.

MS. HOLLOWAY: It says, "The number of accessible carports indicated on the site plan did match the number on the calculation form." So yes, we accepted it.

MR. VASQUEZ: So again, in the background
information the applicant's response was that their
original application, the data was there that answered the
questions.

MS. HOLLOWAY: Right, and with their response
they revised the calculation form to account for the two
additional amenities, so we accepted that response.

MR. VASQUEZ: So the bottom line, what the
Board is considering is just the timing on that response?

MS. HOLLOWAY: Correct.

MR. VASQUEZ: Okay. That clarifies my
questions.

MR. GOODWIN: And refresh me on we sent it out,
they were supposed to respond by what date and what date
did they respond by?

MS. HOLLOWAY: By 5:00 p.m. on the fifth
business day following the date of the deficiency, and
it's actually the matter has to be resolved. It's not
just send us the information, it has to be resolved under
our rule. So in general, we get the information before
that deadline and are able to respond that, yes, this is
sufficient.

MR. GOODWIN: Resolves it.

And when did they respond?

MS. HOLLOWAY: On the seventh business day.

MR. GOODWIN: The seventh business day.
MR. ECCLES: And have we gone into the discussion of the emails? Because there was an email notification, they hadn't responded and it was already two days late, one day late?

MS. HOLLOWAY: Staff realized that the deficiency response had not been received and reached out to the applicant, and at that point they responded.

MR. ECCLES: Yes. And they claimed they had never actually received it.

MS. HOLLOWAY: They claimed they had never received the original email.

MR. GOODWIN: And their staff member communicated with the applicant the fifth day, the sixth day, the seventh day?

MS. HOLLOWAY: I think it was the sixth day. Was it the seventh?

MR. GOODWIN: Seventh day. Okay.

MR. BRADEN: And they responded that same day that we called them?

MS. HOLLOWAY: Uh-huh.

MR. BRADEN: Substantively?

MS. HOLLOWAY: They provided a response that cleared all the deficiencies.

MR. GOODWIN: So this really gets down to the issue of timeliness and did they receive this or not.
MS. HOLLOWAY: Yes.

MR. GOODWIN: And we have no evidence that they
didn't receive it, but we don't have any hard evidence
that they did receive it.

MS. HOLLOWAY: Correct.

MR. GOODWIN: Any other questions?

MR. VASQUEZ: And all the deficiencies were
addressed?

MS. HOLLOWAY: Yes, they were.

MR. GOODWIN: I assume we have someone here
that wants to speak against staff's recommendation. Would
you like to speak first?

MS. ANDRÉ: Yes, sir. Good morning. My name
is Sarah André. I'm the applicant for Division Lofts.
I'm here to ask for your favor in granting our appeal
regarding the points that were deducted from our
application based on the timing.

I believe we've reviewed this, but just
briefly, the crux of what happened here is that TDHCA sent
a deficiency, we did not receive it and, therefore, did
not answer it. I didn't know that it existed.

Only when the deficiency was two days past due
and the application as about to be terminated did TDHCA
staff reach out again. I think we had about five hours at
that point before termination. We answered them quickly,
and the application was docked ten points. We then appealed that decision. Mr. Cervantes denied our appeal because he said it lacked technical documentation of the fact that the email was not received.

So then I reached out to almost everybody I know to try to find someone qualified to look at that situation. I did find two IT people who looked through our folders and then they also looked through something called log files, which I have barely any concept of what that is. Neither of them found that email, and you have a letter in your packet from one of the experts explaining that the email was rejected by our system.

I've since learned that that's actually not uncommon. Gmail apparently can work perfectly for most people and thousands of other people can be experiencing a complete outage at the same time. And there's a lot of evidence about that on the internet, specifically on a website called downdetector.com.

We're a really small company, there are only four of us. I don't have a dedicated IT person; I'm dependent on, for better or worse, the Genius Bar or Computer Nerds when something is not working, and until now I've really never seen a need for that kind of service, but I've learned a lot in the past weeks.

In your packet you have an explanation of how
we track and respond to deficiency and a log showing how we've implemented this system over the past three years. I believe that that demonstrates our good track record with the Department and our acute awareness that there's a severe penalty for missing a deadline.

It also illustrates the fact that we're cognizant of unless TDHCA receives our communication, our communication didn't happen. And in fact, if TDHCA does not acknowledge receipt from us, we reach out to them to make sure they received our correspondence.

This is really a simple issue of something that got lost in the mail, it happens all the time. You know, UPS swears through their tracking system that a package is at my doorstep and yet it's not. Just last week a title company sent out a check; it never came. That just happens.

I've been working on this project for almost a year, I've dedicated a lot of resources to the project, and there is no way I would knowingly avoid answering a deficiency request.

Finally, all deficiency requests do ask the recipient to acknowledge receipt, and I know that staff cannot babysit applicants, but communication is a two-way street, and I just think in this case the loss of ten points is an outsized consequence for the crime of not
responding to something that I did not know existed.

MR. GOODWIN: Thank you.

MS. ANDRÉ: Thank you so much for listening.

MR. GOODWIN: Any questions or comments from Board members?

(No response.)

MR. GOODWIN: It seems to me we're going to have speakers on both sides say we didn't know and we can't prove that you did know or we didn't know. Is there a feeling of a Board member here to make a motion? It doesn't have to stop discussion.

MR. VASQUEZ: I'd be comfortable with making a motion. And again, being the Board member who most distastes "gotcha" from our organization, again, based on the information provided and the responses given and the staff determination that responses were sufficient to clear the deficiencies, I would recommend that we go against the staff recommendation and approve the appeal.

MR. GOODWIN: Do I have a second for that?

MR. BRADEN: Second.

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

Any further discussion?

(No response.)

MR. GOODWIN: Are you speaking in favor of staff's recommendation or opposed to staff's
recommendation?

SPEAKER:  Opposed.

MR. GOODWIN:  Opposed to staff's recommendation?

SPEAKER:  Yes.

MR. GOODWIN:  Is there someone who wants to speak in favor of staff's recommendation?

MS. BROWN:  Good morning. My name is Linda Brown with Casa Linda Development Corporation based in Dallas, and I'm here representing applicants a little further down in the list. I just wanted to make a few points about this situation.

You know, in today's environment we have to rely on our email system as a primary method of communication in so many different ways and for so many different reasons. Particularly in this competitive application process with TDHCA it's vitally important.

We've been receiving email appeals or requests for information from TDHCA, deficiency notifications, you name it, for years, and it seems to me that if the Board sends a signal to the staff that that system is not reliable, it really begs the question about -- and I'm not disputing whether the applicant actually received it or not, it's not about that, it's about the system itself. And in this particular round the staff was actively
reviewing at least 65 applications, sending deficiency notifications out just as business as usual and as the guidebook and rules describe.

So there's so many of us that it seems odd that this is the first time that we have a situation like this, and if there is any system in your office -- we're a small office too, we have two people in our office -- if there's any system that you want to be working, it would be your computer system and particularly your email system.

I want to also point out that in this case the City of Arlington actually has three priority applications that are set to be awarded within this same city. That's kind of more of a side note, but I think that this vote is more about a vote for reliance on the methodology and system that's in place that is working for everybody else up to now.

And so with that, I respectfully request your due consideration to support the staff in this regard and not set a new direction in forms of communication that will even more troubling as we go down the road.

Thank you.

MR. GOODWIN: Questions?

MS. RESÉNDIZ: Mr. Chairman, I have a question for staff.

What about read receipts, is that something
that's possible to make sure that this doesn't happen again? Or is that too simple?

MS. HOLLOWAY: It is if whoever we are sending the email to authorizes read receipts. My email, my personal email and my work email do not authorize read receipts.

MS. RESÉNDIZ: Could that be something we include, the application must have an email that --

MR. GOODWIN: I think what you're talking about in that situation is a rule, and that would be something that would come in the future.

MS. HOLLOWAY: Yes, that would be a change.

MR. GOODWIN: Do you agree with that, Beau?

MR. ECCLES: Completely. I think the issue here -- and I'll stress that whatever the Board votes on does not become precedent -- but there was a letter submitted by the applicant that said that "The email initiated by Nicole Fisher on May 13, 2019, to both Sarah André and Rebecca Broadbent at the @structuretexas.com domain was rejected by the mail server, and as such, never successfully delivered and received."

So the question here is the rejection by the recipient's email server, whose fault is that, is there responsibility for that in this instance only under the current rules.
MR. VASQUEZ: And I'm sorry. Allow me to clarify that. My motion to approve the appeal is not based on whether the email went through or when it went through, it's that as soon as we notified the applicant on the phone, spoke to them, in a rapid response time they responded to staff.

These aren't major deficiencies, these are all, I think, kind of minor administrative deficiencies which were approved. So it's not like, oh, we didn't really own the property or something major like that, this is, well, you didn't read the site plan right and the number of accessible carports, well, it was okay on that.

These are minor issues. To me it has nothing to do with the email. We're not setting precedent -- the intent is not to set precedent about everyone saying, oh, I didn't receive the email. It's more these are minor deficiencies which the staff determined were cleared.

MS. HOLLOWAY: Were cleared with the response.

MR. ECCLES: So just as clarification, under these unique circumstances you're saying that the phone call constituted the notice of administrative deficiency?

MR. VASQUEZ: That the intent of the applicant and the response time shows the good faith and the intent --

MR. ECCLES: I'm trying to --
MR. VASQUEZ: --I'm trying to use whatever satisfies your --

MR. BRADEN: The speed of the response indicates they really didn't receive the email. I mean provided third-party evidence that said they didn't receive it and the speed in which they responded substantively to the questions seems to indicate that's the case.

I mean, if you actually got this email, why would you sit on it for so many days. Plus, our process which we typically have says acknowledgment requested, and it says that typically when we don't get an acknowledgment we call them. Not required to do so, right, but we do.

MS. HOLLOWAY: We may, depending on where we are. As Linda mentioned, we're reviewing 65 applications twice, so staff was going through and sending out their deficiencies. It would be difficult to track whether or not we received a receipt -- or whether or not we received a response through that process. If we're reaching out to someone saying, hey, did you get this, that's really a courtesy.

MR. BRADEN: Because we never got a response back by email. However, we wait -- if people email you back saying message received, then you know you don't have to worry about it. But at some point in time you realize
that some people we never got anything back one way or the
other so you make a phone call.

    MS. HOLLOWAY: Because it was after the
deadline. Yes.

    MR. BRADEN: After the deadline.

    MS. HOLLOWAY: We also did not receive --
generally if an email is rejected, you get an email back
that says your email was rejected for whatever reason, and
we did not receive that notice.

    MR. GOODWIN: Any other questions?

(No response.)

    MR. GOODWIN: If not, we have a motion and a
second. All those in favor say aye.

(A chorus of ayes.)

    MR. GOODWIN: Opposed?

(No response.)

    MR. GOODWIN: Okay. 19158. Are you going to
take -158 and -215 together?

    MS. HOLLOWAY: Yes.

    MR. ECCLES: Mr. Chair, I think there's been a
request for a bathroom break.

    MR. GOODWIN: Oh, okay. Let's take a ten-
minute restroom break. We'll come back at ten o'clock.

(Whereupon, at 9:50 a.m., a brief recess was
taken.)
MR. GOODWIN: We will reconvene and start with item 19158.

MS. HOLLOWAY: This item is presentation, discussion, and possible action on a timely filed appeal --

MR. GOODWIN: Can we get quiet in the room, please.

MS. HOLLOWAY: -- on a timely filed appeal for tax credit application 19158 Pendleton Square. Because the circumstances and request for this application and for 19215 West Ridge Apartments are identical, I would suggest that we take them as one item, and the applicant has agreed to that.

MR. GOODWIN: Okay.

MS. HOLLOWAY: All right. On the posted application log dated April 26, 2019, both applications were indicated as priority applications in Subregion 11 Urban. On the posted application log on May 29, the application was not listed as a priority application. This change is due to successful appeals by two other applicants in the subregion.

The applicant acknowledges that they are statutorily precluded from appealing the scoring of another application. Our statute states: "An applicant may not appeal a decision made under Section 2306.6710
regarding an application filed by another applicant." The issue under appeal here is only the designation of priority for Pendleton and West Ridge, that's the only item that we're discussing right now.

Given that priority status is an internal staff designation that is non-determinative of an award, it's unclear that this is an appealable matter. Out of an abundance of caution, we have continued to treat it as such so that the applicant is provided all possible due process.

Priority status in the log signals that the application is under some stage of active review. Not having a priority label means that the application either has a lower score or is ineligible for some reason. The label is not an assurance of an award, it's nothing more than a signal of review status.

One reason that it can be important for applicants to know that they have a priority label is if they have claimed readiness to proceed points as these applications have. Because of the tight deadline to close for the readiness to proceed applications, a provision was added to the rule that extends the closing deadline for any application that is not in priority status for however many days they didn't carry that label. This means that for these applications their deadline to close, without
the potential readiness to proceed penalty if they go past
the deadline, is extended by the number of days that we've
had logs posted, minus the 33 days that they were in
priority status, should they receive an award.

So because granting the appeal and adding a
label of priority to these applications on the log
potentially damages the applicant, and because staff has
taken no action that lessens the applications' likelihood
to receive an award, staff recommends that the appeal be
denied.

MR. GOODWIN: So let me make sure I understand
and that the entire Board does. If we should -- we're
going to hear comments, I suspect, opposed to your
recommendation -- and should we come back and reclassify
these as priority, give them that label, we actually
lessen the number of days they have to be ready --

MS. HOLLOWAY: After the deadline.

MR. GOODWIN: -- after the deadline to close.

MS. HOLLOWAY: Yes.

MR. GOODWIN: So it seems that their
application, from a common sense perspective, would be
better off to not have the priority label than to have it.

MS. HOLLOWAY: Well, and I would add if the
appeal is granted and the Board directs us to put that
priority label on the log, it doesn't necessarily mean
that we're going to pick up those applications and review them.

MR. GOODWIN: Okay.

MR. VASQUEZ: Are there priority points?

MS. HOLLOWAY: No.

MR. GOODWIN: Priority is just an internal mechanism used to communicate with the people that are on the list. Correct?

MS. HOLLOWAY: Right. To communicate to whoever is looking at the log: These are the applications that are at some stage of active review.

MR. GOODWIN: Okay. So now, I assume, John, are we going to hear from you opposed to staff's recommendation?

MR. SHACKELFORD: Yes, sir.

MR. GOODWIN: To lessen your number of days to close? I'm sure you're going to explain to us why you want this priority status.

MR. SHACKELFORD: Yes.

MR. GOODWIN: I will say, and I hope you can understand we're not going to listen to any information as it relates to the applications that were approved through the appeal process that have moved you down the list.

MR. SHACKELFORD: I would ask your indulgence if I can explain why I think that is extremely important
to our position, and also ask that since we've got these two applications together that I be given six minutes as opposed to the three minutes, because in order to explain all the facts, I cannot do that in the three minutes.

MR. GOODWIN: Okay. Let me seek the advice of legal counsel. I think we have to keep the comments to the appealable aspect of this, not to the non-appealable aspects of it. Is that correct?

MR. ECCLES: Well, time management is obviously left up to your discretion. I will note that this action item, as it's listed on the agenda, does not allow for any other action but for the discussion of the priority status on the applications, so any argument beyond that is not going to be able to be voted on by the Board.

MR. SHACKELFORD: Well, in my opinion, I do believe I have standing to speak about that to give more background and context to the Board as to why we're seeking what we're seeking because I'm not appealing the substantive decision by the executive director to grant the appeals of these other two applicants when he did of the decision that turned and put those two applications from being ineligible back into a priority status. That's irrelevant to me. I'm not here to argue that. Okay?

I'm also not here to appeal what I think is what the statute says is you cannot appeal a decision made
under Section 2306.6710. I don't believe I'm appealing a
decision made under 2306.6710. What I'm appealing is the
authority of the executive director, in my opinion, to
overreach to an extent that it violated the state statute,
and I think I have standing, as every citizen in this
room, that when they think a statute has been violated
that they have an opportunity to redress that to this
Board. So that's why I'm here today and why I think I do
have standing to give some background information as to
where I'm coming from.

MR. GOODWIN: It sounds to me from your
comments like you are not wanting to appeal the priority
label other than to give an opportunity to appeal this
other authority of the executive director and the decision
that he's made to grant an appeal to someone else.

Quite honestly, when we discussed this, one of
the discussions between Beau and I and Mr. Cervantes, as
the acting executive director, was is this an appealable
situation, should this even be on here.

And in all fairness, everybody wanted to give
you the due process and put it on here. I was kind of in
favor of saying if the priority status is not appealable
and this other is not appealable, maybe it should be
brought up in the form of the rules in the future, not
necessarily in this appeal format.
So, Beau, give me a little guidance and
counsel, or do we need to move into executive session, in
your opinion?

MR. ECCLES: Well, I will note that the appeal
letter to Mr. Cervantes was phrased as it being an appeal
of the removal of the priority designation of the project
owner's application.

MR. SHACKELFORD: And that is correct. That's
the outcome that we're seeking because if there was a
state statute violated, the appeals never should have been
taken up. They were ineligible, they were time-barred, is
my point. And so the state statute, in my opinion, was
violated in two different respects. By losing our
priority designation, we're out of the money, these two
clients are out of the money in these instances, so
they're fatalistic.

So I think what you're telling me is I don't
have an opportunity for redress to the Board if the
executive director or staff violates state statute. I
don't think that's correct. I think there has to be an
opportunity, if a statute is violated, to come to the
Board and seek an opportunity to correct that mistake, as
opposed to using the other statute 6715(b) is essentially
foreclosing an opportunity for any person to come before
the Board to correct a violation of state statute.
MR. ECCLES: Well, respectfully, I think you may be leaving out one step, and that is the Board has spoken through its rules as to how this situation is to be addressed, and that's through its rules it's discussed what is appealable, and it discusses the timing and what constitutes a notice, there's a scoring notice, and all of that was discussed in Mr. Cervantes's letter.

MR. SHACKELFORD: Which I would like to discuss.

MR. ECCLES: But that's not what is before this Board.

MR. SHACKELFORD: Well, in my opinion it is before the Board through the priority designation. We lost the priority designation because of what Mr. Cervantes set out in his letter. That's where I'm coming from.

And essentially what you're telling me is there's no opportunity to anybody if you see that a statute is violated, nobody even has an opportunity to come before the Board and say, hey, I think staff may have overstepped its bounds here in its interpretation of rules, where I think statute takes precedent over an administrative rule.

MR. ECCLES: And that is your opinion, and this Board is dealing with its rules and its interpretation of
the rules.

MR. SHACKELFORD: Which I would like to discuss.

MR. GOODWIN: And by the way, I guess it comes to my mind of why that you wanted to discuss wasn't submitted as an appeal: I want to discuss that I feel that the executive director has overstepped his statutory authority. Why it's labeled as this priority kind of seems like a backdoor way of having this discussion.

MR. SHACKELFORD: It was in our letter, in our appeal letter. It was in there.

MR. GOODWIN: It was?

MS. HOLLOWAY: Yes.

MR. SHACKELFORD: All this was covered as the basis for how we ended up being where we lost our priority status and now we're seeking it back.

MR. GOODWIN: Okay. Six minutes.

MR. SHACKELFORD: Thank you very much.

Mr. Chairman, members of the Board, Mr. Cervantes and Mr. Eccles.

Let me say at the outset that I think staff does a great job, I enjoy working with them, I rely on them a lot, they're wonderful, so nothing here is personal by any means at all.

So here's my point, and I'll try to be as
succinct as I can, because I know you've had some long
discussions up here. I think the statute that we're
talking about is 2306.6715 that says, "An applicant must
file a written appeal authorized by the section with the
Department not later than the seventh day after the date
the Department publishes the results of an application
evaluation process." Right? It doesn't say the later of,
it says not later than. That's consistent in the QAP in
11.902(c) uses the same identical language, "not later
than the seventh day." All right?

To give you the background, Mr. Cervantes
granted two appeals. The decision of whether the two
applicants violated the 1,000 foot rule or not, that's
irrelevant to me, I don't have any qualm about that,
that's irrelevant to the discussion.

But one appeal was given a scoring notice on
April 22 and in that scoring notice staff told them your
appeal date is April 29. Okay? Log comes out showing new
scoring, mentioned by Ms. Holloway, on April 26. On May 1
LISTSERV notice goes out, an email on an electronic
mailing list that's a subscriber-based system, totally
voluntary for people to be on it, and it says
essentially -- I can read it to you -- but essentially it
just says to the subscribers: Hey, a new log has been
posted. That's essentially what it says. It didn't give
a decision about any particular application, it doesn't
give a decision about any scoring.

So one appeal that had April 29, and the letter
that came from the Department said that was their appeal
date, filed their appeal on May 6, not even close. The
other application filed their appeal on May 8, seven days
after the LISTSERV notice. That's not what statute says,
that's not what 11.902(c) says. It says not later than
the seventh day.

In order to harmonize, as Mr. Cervantes put in
his letter, the statute with the QAP rules, you have to
read 902(c) as saying the earlier of. It's seven days
from when the applicant receives notice, receives notice
by the log, receives notice on the scoring notice. That's
it, it's seven days from the earlier.

The Department had it right when it sent out
its scoring notice on one of these applications saying you
had until the 29th of April because we're giving you
notice here on the 22nd, you've got seven days. I don't
understand how it slid from the 29th all the way to May 6.
Okay? The scoring notice and also Mr. Cervantes's letter
says scoring notice is an undefined term. That's true.
I've got something better. It's a prescribed form by the
Department that they send to the applicants advising of a
scoring change, giving them notice.
In the scoring notice itself there's two references to under an appeal that comes under 11.902(c); it says that in two places. So to me, the basis upon which the applicant had the time to file the appeal, you have to harmonize 11.902(c) with the statute. In order to do that, it's not later than the seventh day, it's not the later of. In Mr. Cervantes's letter, he went to 11.1(b) of the QAP and said essentially it's been interpreted under 11.1(b) that it's the later of either the filing of the log, the posting of the log on the website, or it's the receipt of the scoring notice. Well, that's not what statute says, that's not what 11.902(c) says. It's not the later of, it's later than. Fundamental difference in the timing.

Plus, in the scoring notice also there's no reference to -- I'll concede 11.1(b) for a moment and say but there it's limited to publication of the log on the website and it's limited to the scoring notice.

Nowhere in the QAP, nowhere in the rules, nowhere in statute does it reference LISTSERV. Again, the LISTSERV is merely an electronic mailing list that's a subscriber-based system, not everybody is on it, nobody is compelled to be on it. So that date was the wrong date for the applicants to key off of.

And I don't understand because the scoring
notice doesn't tell the applicant here's your date, in this particular instance, April 29, oh, but however, that can be extended if we file a new log, post a new log on the website, oh, and it can be extended further if we turn around then and send it out a new email on LISTSERV that advises people who are subscribers to it that there's a new log posted on the website.

The scoring notice doesn't tell anybody that. The scoring notice is correct. Staff did what it was supposed to do. They said here's what's happened to your application, here's your time period to key off of.

So that's where I'm coming from is, and so there's two violations, to me. One is the seven-day period, that window, it's not the later of -- I mean, it's not later than as opposed to not the later of. And then the second argument is the LISTSERV does not constitute notice under the QAP.

So I would ask that you, respectfully, overturn staff recommendation and restore us being on a priority basis, and I'll be glad to answer any questions.

MR. GOODWIN: Hearing none, you're welcome to be seated.

Is there anybody in favor of staff's recommendation?

MS. BAST: Good morning. Cynthia Bast of Locke
Lord. We represent one of the applicants that is now in the priority position, and want to give a little bit of color here ourselves.

The staff indicates in their writeup that they're not even sure that this priority designation is capable of an appeal, and that's correct. This is something that's in Subchapter A.

Section 11.902 as it relates to appeals says that you can appeal Subchapter B and Subchapter C, it doesn't specifically call out appealing Subchapter A. But the fact is once it became clear that this priority system had changed, the designations had changed due to some sort of change in interpretation, we felt like we had to talk to the staff about how did this interpretation change and why did it change.

We didn't receive a scoring notice. This isn't about scoring. We didn't receive a termination for threshold. This is not about threshold. This is about a process, an internal process the staff uses. And when it changed and when we became aware of that, we wanted to talk to staff about their interpretation of that because we felt like their interpretation was incorrect.

So yes, it was styled as an appeal because that's what we typically do, if we disagree with staff, we style something as an appeal. But we submitted it in that
light that we felt like there was a problem with the way
they were interpreting the rule and we wanted to
communicate that with them.

Once we engaged in that communication, they did
advise us that an appeal was a good way to do this, and
they advised us on the dates and the deadlines that we
should utilize in communicating with them, and so that is
what we did.

At the end of the day, this is going to get
down to the substance of the rule. Right? And we believe
that staff has interpreted it correctly and we appreciate
them. We're sorry for all this trouble, but we appreciate
them looking at our concern and addressing it. And as you
know, and as staff has said, one applicant cannot appeal
a result for another applicant, and so we think that
things need to just lay where they are.

Thank you.

MR. GOODWIN: Anyone else that is opposed to
staff's recommendation? Anyone else that's in favor of
staff's recommendation?

MR. SHACKELFORD: I'd like to make a rejoinder
to Ms. Bast.

MR. GOODWIN: We're not going to have a debate.

MR. SHACKELFORD: Okay.

MR. GOODWIN: If somebody else wants to speak,
they're welcome to speak.

MS. MYRICK: This is against staff recommendation.

Good morning, my name is Lora Myrick, and I am with BETCO Consulting, and I am the consultant for application 19158, and I would kind of like to go over some of the things that Mr. Shackelford went over.

The fact that there was a decision that was already made on two other applications, how that determination came about, whether we agree with that or not, is irrelevant. It's not, frankly, an important issue for us.

What is an important issue for us, when we first looked at this, we asked the question about the 1,000-foot rule, we were told that they were looking into it. We saw a log posted on April 26 that showed that there was a 1,000-foot rule violation by two other applicants. I understand what Ms. Cynthia Bast said. She called staff, she wanted to get clarification, how do we do this, you file an appeal. We're okay with that and we understand that.

What I started looking at, sir, was that it is April 26 that is the log. I looked back at statute, and statute clearly says that it is seven days from the publication. That is a log.
And so when I started counting, I started thinking about, okay, seven days, April 26, that's May 3. You need to have your appeal in to the Department in writing by May 3. The evidence is in your Board books on page 830 and on page 843. Those are the appeals that were submitted, and they are clearly after the May 3 date.

So what I wanted to kind of go over is that our stance here is that the Department violated statute when they accepted those appeals after the May 3 date, as required by statute. The law requires that those appeals be submitted on the seventh day.

The Department claims that the applicants met the appeal deadline because the Department sent out an email to the Department's LISTSERV subscribers on May 1. The LISTSERV email does not fit the statutory requirements or the statutory language or the language in the QAP as to what event is going to trigger that seven-day clock, it just doesn't.

2306 says, again, the written appeal. The log published on 4/26 is the result of an application evaluation process. A LISTSERV email does not constitute a publication of the result of the applications status. The QAP specifically outlines what items constitute a result of an application evaluation process that starts that seven-day clock, because that's what we're talking
about at the end of the day, the timing of the appeals and
what triggers that seven-day clock.

So what you have is, number one, the
publication of the results of any stage of the application
evaluation process, and that's in 11.902, that's your log;
notification to applicant or development owner or a
decision subject to appeal .902 --

MR. GOODWIN: Your three minutes are up.

MS. MYRICK: I'm almost there -- or number
three, publication on the Department's website of scoring
log is 11.1, and transmittal of a scoring notice. A
LISTSERV is not on there.

So I would say that the filings of these
applications that were appealed, although they may have
good arguments, were ineligible because they came in after
the seventh day as prescribed by statute.

Thank you very much, and if you have any
questions, I'm happy to answer.

MR. GOODWIN: Okay. So Marni, let me make sure
I understand one thing correctly. If we grant this appeal
and give them priority status on the list, that doesn't
mean any money, that doesn't mean they get any extra
points.

MS. HOLLOWAY: Correct.

MR. GOODWIN: That doesn't mean you're
necessarily going to review their applications as it
relates.

    MS. HOLLOWAY: Correct.

    MR. GOODWIN: But it grants them what they've
asked for, which is the status of priority status and that
they've appealed for it. Is that correct?

    MS. HOLLOWAY: That's correct.

    MR. GOODWIN: Any other questions that anybody
might have of Marni?

    Beau.

    MR. ECCLES: I just want to say that I'm
concerned that given that this appeal has stretched out
into an argument about this Board's statutory authority to
interpret statute through its rules, I'm wondering if
that's expanded the scope of what it would mean to
actually grant their appeal beyond just saying priority
status on the application log.

    MR. VASQUEZ: I think a question/comment. My
understanding of this situation is that we're looking at
it from two different ways that get to the same end result
for these applicants that we're considering.

    It's that they lost their priority status and
these other two projects gained priority status, so we get
to everyone being back on equal footing if these two
applicants regain their priority status, then everyone has
priority status and all is equal, all the points are equal, and everything.

MS. HOLLOWAY: Right. There's no impact on points or anything else. Having priority status is not an assurance of an award.

MR. VASQUEZ: Correct. But in the letter that Mr. Cervantes wrote said, Where the designation of priority is relevant is in the case of --

MS. HOLLOWAY: Readiness to proceed.

MR. VASQUEZ: -- readiness-to-proceed points.

So there could be points under 10 TAC 11.9(c)(8).

MS. HOLLOWAY: There could be.

MR. VASQUEZ: There could be, but they're not yet, but when we get to that other scoring down the line.

MS. HOLLOWAY: There could be impact later on if for some reason an application further up the list in this subregion falls out, so if one of these applications winds up receiving an award, their closing deadline would not be extended as far if they go back to priority status now.

MR. VASQUEZ: And just to address, I think, Beau's biggest concern, the Board's concern, if we don't address the appeals granted to the other applicants giving them priority status, just setting that aside because we debate whether that's even appealable here, but we can
address the fact that these applicants are appealing for
their own priority status and we can address that question
here today. Correct, Counselor?

MR. ECCLES: As long as it is explicit what you
are granting is just the notation of priority status on an
application log and it's not affecting the scores of
others in the subregion.

MR. SHACKELFORD: May I, Mr. Chairman?

MR. GOODWIN: We'll hear from somebody that is
in favor.

MR. PALMER: Barry Palmer with Coats Rose, and
I represent the other developer whose appeal was granted
by the executive director and who is now in the money, and
they followed the guidelines and the deadlines that they
were given by staff on when to appeal.

Now, it's been raised by Mr. Shackelford that
the wrong date was given. I don't think that that's
right, but we shouldn't even be considering that, and all
this stuff about the dates and everything is confusing,
but what is crystal clear is what's happening here is an
attempt to violate state law by appealing the applications
of one of your competitors that was granted an appeal by
the executive director. That's what's going on here, and
we shouldn't allow that.

This would set a terrible precedent if we
allowed applicants to appeal every time something was
granted to some other application above them. I mean,
this would go on forever. You think this is long. This
is just not appropriate. It shouldn't have even been put
on the agenda, in my opinion, but here we are, so I don't
think we should be encouraging this kind of activity.

So I would recommend or ask that you support
staff on this.

MR. GOODWIN: Anyone else that's opposed?

(No response.)

MR. GOODWIN: A point of clarification, I'll
give you 30 seconds.

MR. SHACKELFORD: That's fine. I just wanted
to tell the Board, Mr. Vasquez, I appreciate you trying to
find an attempt to split the baby, I appreciate that, but
we're actually better off if you just denied the appeal on
these two applications because saying everybody is
priority doesn't do any good. So we're better off either
going back to the 4/26 log showing where everybody stands
on that date, or denying our appeal and just agreeing with
staff's recommendation.

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

MR. BRADEN: I'll make the motion to approve
staff's recommendation and deny the appeal.
MS. BINGHAM ESCAREÑO: Second.

MR. GOODWIN: Moved and seconded. Any further discussion?

MR. BRADEN: The two that we're considering.

MR. GOODWIN: Sorry, Paul. I didn't mean to step on you.

MR. BRADEN: That's all right. I just want to make sure the two that we're taking together.

MR. GOODWIN: The two that we're taking together, which are 19158 and 19215.

All those in favor say aye. 

(A chorus of ayes.)

MR. GOODWIN: Opposed? 

(No response.)

MR. GOODWIN: Moving on to 19307.

MS. HOLLOWAY: This item is presentation, discussion, and possible action on timely filed appeal for application 19307 Briarwest Apartments.

As the result of an RFAD, staff determined that the application did not disclose the development's proximity to a high-voltage transmission line as required by our rule related to undesirable site features. There is a substation across the street from the development site with high-voltage lines running along the western border of the site, and application materials called for
buildings and designated recreational areas to be located within 100 feet of the nearest line or structural element of the overhead high-voltage transmission line. The threshold requirement is everything has to be more than 100 feet.

The appeal claims that the rule does not require the applicant to disclose an undesirable site feature and that the only place this issue is raised in the application itself as part of the owner's certification.

They assert that where the application requires the development owner to certify that the development is not located in an area with undesirable site features, the development owner is actually not certifying fact but intention. This is what their appeal has said to us.

So the selection that states that the proposed development is located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the application is only applicable if the development owner intends for it to do so.

The argument concludes that the application did not disclose an inability to meet the threshold requirement of 100 feet from any high-voltage structure because the buildings were never intended to be located within that 100 feet of the high-voltage structure. This
logic departs dramatically from their response to the RFAD last month when the applicant seemed to acknowledge that the development site's close proximity to overhead power transmission lines and a substation but had concluded that they were not high-voltage and did not need to be disclosed in the application.

As to the applicant's current argument that its intention was not to develop the site within 100 feet of the high-voltage structures, we rely on the materials submitted with the application. In this case the applicant a site plan that clearly shows the development's proximity. This is the crux of the problem. The applicant submitted a site plan that would require disclosing its proximity to high-voltage lines and providing us with mitigation, and they did not. If it hadn't been for the RFAD, it seems reasonable to presume that the site would have been developed as proposed, in violation of the rule.

Some measurements in the rule are to the residential building instead of the development site boundary due to the type of feature it considers. The appeal claims that the rules inherently allow for flexibility of site design as an opportunity to avoid ineligibility. It then admits that the application as submitted did not meet the requirements of the rules, but
because a new site plan has been submitted -- which the
staff did not request -- to bring the development into
compliance, that there is no need to provide any
mitigating information or seek a Board determination of
site eligibility.

The rule requires that the Board be provided
information regarding mitigation of the applicable
undesirable site features sufficient so that you can make
a determination regarding site eligibility. None of this
information was included in the application, and the ease
with which the applicant has produced it now is
immaterial. Disclosure of the undesirable site feature,
along with a site plan that proposed mitigation for the
Board to consider should have happened on March 1.

Lastly, the development owner's certification
is not just a form in the application, as the appeal
claims. Requirements for certification are found in our
application submission rules which state: "A
certification of the information in this subchapter, as
well as Subchapter B of this chapter, must be executed by
the development owner and addresses the specific
requirements associated with the development. The person
executing the certification is responsible for ensuring
all individuals referenced therein are in compliance with
the certification and that they have given it with all
required authority and with actual knowledge of the
matters certified."

The appeal's assertion that the certification
represents the applicant's intentions rather than the
application's facts presumes flexibility in meeting this
requirement, trivializes the importance of what applicants
are certifying to the Board about the nature and details
of the application.

Staff recommends that the Board deny the
appeal.

MR. GOODWIN: Any questions? I might have one.
Did you say they changed their story three times? Is
that what I heard?

MS. HOLLOWAY: So there was the original
application, and then the response to the RFAD was they
didn't think it was high-voltage so they didn't think that
they needed to disclose or design their site
appropriately.

With the appeal, it's now talking about
intention, that they did not intend to violate the rule,
and they provided a site plan that does not violate the
rule, but that's not the site plan that was in the
application.

MR. GOODWIN: All right. I think we're ready
to hear those. Do we have people that are opposed to
staff's recommendation? Two.

What about in favor of staff's recommendation.

Do we have anybody on that second row? One? Okay.

We'll take somebody who's opposed to staff's recommendation first.

MR. BIBBS: Good morning, Chair, Vice Chair and members. I'm Ryan Bibbs with the City of Houston Housing Department.

The City of Houston is in full support of the proposed 9 percent housing tax application for Briarwest Apartments located at 12976 Westheimer Road within Houston's District G.

The development meets several of the goals and priorities the Houston Housing Community Development Department strives to meet when supporting and financing affordable housing opportunities within Houston.

HCDD prioritizes applications for new construction within areas of low poverty concentration and high-performing schools. The proposed location for the Briarwest Apartments meets these standards. The census tract reflects a lower than average poverty rate at 11.3 percent. In addition, Daily Elementary, West Briar Middle School, and Westside High School meets HCDD's standards for high-performing schools.

HCDD has continually noted a lack of financing
affordable housing opportunities in this cost-prohibitive area. In February 2019 HCDD issued a notice of funds available securing proposals to finance multifamily developments utilizing its disaster recovery funds to administer up to $100 million of CDBG disaster recovery allocation. The NOFA closed on April 12, and HCDD received 59 applications representing eleven council districts. Briarwest Apartments was the only application within District G applying for funds.

Due to the applicant meeting the Department's priorities, HCDD has issued a conditional recommendation to award the development $2.5 million of CDBG DR 17 proceeds, subject to the issuance of 9 percent housing tax credits allocated by the Texas Department of Housing and Community Affairs.

District G has experienced tremendous growth throughout the last decade and has exposed some of the highest increases to housing costs. Creating and preserving affordable housing in highly appreciating areas continues to be the priority for the Department to prevent displacement of LMI households. These efforts are part of a citywide initiative to improve the overall neighborhood quality, reduce poverty concentration, preserve affordable housing.

The city fully supports the Briarwest
Apartments application and appreciates the agency's consideration in this matter. Thanks.

MR. GOODWIN: Someone in favor? We had somebody that said they were going to speak in favor.

Are there any questions for this gentleman?

(No response.)

MS. ANDRÉ: Good morning. Once again, I'm Sarah André.

I am in favor of staff's determination regarding this application. You are supposed to disclose at the beginning of the process if your site -- not your buildings, not your playground -- if your site is within 100 feet of any of the undesirable features.

I feel that the applicant changed their plans after the fact. The argument that they've used is their intent, and I would argue that intent was evident with the first submittal in which they violate the rule by having buildings and amenities within 100 feet of a high-voltage line. Even if they didn't know it was a high-voltage line, you could have disclosed and said we don't think this is a high-voltage line but we want to keep our options open.

So in my mind, I think they've just missed an opportunity and have put us all in this position.

Thank you.
MR. GOODWIN: Thank you.

Any questions?

(No response.)

MR. GOODWIN: Another party opposed?

MR. KELLEY: Good morning, Chair, members of the Board. My name is Nathan Kelley with Blazer. I'm here to ask that you grant our appeal and direct staff to find the issue resolved during the administrative deficiency process, reinstating our application.

Our development site is the only application submitted in Houston City Council District G. The site lies between Beltway and 610 along Westheimer, obviously a dense area, highly trafficked corridor, and historically deals in this district, District G, have not been able to get the neighborhood or political support necessary to achieve a successful tax credit application, but our development has.

It's a major accomplishment, we're proud of it, and this is the same district that a couple of years ago NIMBYism resulted in the denial of a no-objection resolution that put the city into a voluntary compliance agreement with HUD.

The issue here deals with the undesirable site feature rule, under certification of the proposed site plan that was provided in the application, and our ability
to address these application consistencies through the administrative deficiency process.

I would state that it was our argument all along that it was not our intent to build these buildings within the 100-foot setback and that our application preliminary site plan laid out a four-story connected corridor building design that was centrally located in the site, keeping all of the buildings off the site perimeter.

This was done to ensure a significant buffer from the adjacent electrical substation and nearby power lines, and that our site plan met all of the applicable QAP requirements with respect to architectural drawings. And it states on its face that it is preliminary and subject to change.

As was noted in our RFAD response, we were aware of electrical facilities located; however, none of our expert reports indicated an issue with building location and the actual voltage of the lines. This is critical, because we rely on those reports for guidance.

The site investigation study was especially significant, because it shows the adjacent tracts and assists with site development and development feasibility, ensuring all applicable ordinances, building codes, local design requirements were met. And our architect relied on this who has built countless numbers of affordable housing
deals in the City of Houston.

Based on our actual knowledge at the time of the application, we believed our preliminary site plan provided adequate setback in compliance with the requirements relevant to the buildings, and our engineer is here today to attest to the fact. It's never our intention to sneak these things past the department, there's no logical reason for us to try and do so.

But after receiving the RFAD we surveyed the lines. We realized we were 15 feet too close to the power line relevant to our building, so we simply shifted the building 15 feet, shifted a recreational amenity to accommodate the requirements relevant to transmission lines.

A small edit put our site plan in compliance with the undesirable feature rule, which was always our intention to begin with. The adjusted site plan was submitted to staff in response to the RFAD, acknowledged that it had the appropriate distance requirements and the minor modification made no material changes that were barely discernible at the site plan level.

Staff states that if not for the administrative deficiency, then the issue would have gone undiscovered, but I would contend that's the entire point of the administrative deficiency process.
We respectfully ask the Board to grant our appeal and direct staff to accept the corrected site plan as is.

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

MR. GOODWIN: Is there somebody else that wants to speak in favor of staff's recommendation?

MR. NORTH: Mr. Chairman, Board, I'm Joel North with Bridge Shore Development.

We affirm support of the staff's recommendation of denial of the Briarwest Apartments on the grounds that they did not properly disclose the presence of an undesirable site feature within the statutory proximity of the development's buildings and recreational areas. I mean, the statute is clear -- disclose, disclose, disclose -- and they failed to do that.

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

MR. GOODWIN: Anybody else that wants to speak that's opposed that's got something new to say?

MS. STEEL: Andrea Steel with Coats Rose on behalf of Blazer regarding Briarwest Apartments.

Just to address a couple of things that have been mentioned just now, the rule says you measure from the boundary line of the site unless otherwise noted, and
it's clear here that when it comes to high-voltage transmission lines, you measure to the building, so you don't measure to the boundary line of the site in this instance.

Also, this is not a change in the story at all. The certification is the heavy factor in the application, that is the intent, not the site plan. You don't put the weight on the preliminary site plan that's subject to change, you put the weight on the certification, and that was our intent all along to make sure that that certification was complied with.

And then finally -- well, not finally but to the other point you just heard somebody mention this is a statutory requirement, this is not a statutory requirement, this is a Department-created rule that establishes a certain distance from undesirable features, so if you're within the stated distance you come to the Board with mitigating factors and ask the Board to deem our site eligible. Otherwise, your site is eligible.

So again, with the high-voltage transmission lines, we're talking about the boundary from the feature to the building, so this is critical because site designs are flexible, site designs can change, site designs can shift, and that happens commonly throughout the development process.
So the only reason why an applicant would disclose that there was undesirable site features if they could not comply with the rule or if they had a desire for some reason not to comply with the rule. There's no reason to intentionally conceal being closer to the distance, especially with high-voltage lines, because almost every single time that I'm aware of that that's come before the Board with mitigating information, the Board always approves it. It's not a deal killer. So the applicant couldn't have known that it was high-voltage, that had to have intended that it be far enough distance away. It doesn't make sense otherwise.

We provided in the RFAD response a site plan that makes the site eligible, it's 100 feet away, and there's no reason to provide mitigating information. If you come with the argument that we're here to provide mitigating information, that means we want the buildings to be closer to the high-voltage lines, and that's just not what the rule wants you to do, you want to be far enough away.

The 15 feet is not material in nature, it's just a shift. You want to match the certification, so your shift in the site plan, the minor shift, matches your certification. That's what you want to have your facts based on, your certification.
So the applicant here meets the threshold, and I ask that you please determine that this was already resolved at the administrative deficiency level.

Thank you.

MR. GOODWIN: Thank you.

Any questions?

(No response.)

MR. GOODWIN: Anyone else in favor? Don't be bashful, come on up.

MR. FOSTER: Mr. Chairman, my name is Claude Foster. I'm here to speak because both of these projects have an impact on the projects that we came here to speak about.

My name is Claude Foster. I'm a former city council member, and the gentleman who spoke earlier, he's right about one thing, HUD did find that the City of Houston discriminated in terms of the siting of these low-income housing tax credit developments. In fact, HUD found that 97 percent of these developments are located in majority minority census tracts.

I support this project. I'm kind of uneasy about supporting it because it's in a bad location, they could have done better.

MR. GOODWIN: So you're actually opposed to staff's recommendation.
MR. FOSTER: District G is the only district out of eleven city council districts that has no low-income tax credit developments, the only one, and so I think it needs to be built in District G, but I'm also against building it in an undesirable location that's going to be unhealthy for the residents that are going to reside there.

MR. GOODWIN: So you're in favor of staff's recommendation. I'm a C-plus student, I want you to understand that. Just trying to figure out which side of the line.

(General talking and laughter.)

MR. FOSTER: My point is District G needs affordable housing.

MR. GOODWIN: Needs a project like this.

MR. FOSTER: They need a project.

MR. GOODWIN: You're in favor of putting it in a different location.

MR. FOSTER: It's sad that the powers to be in Houston, if they really wanted this project in District G, would have been here to defend it, and they're not here, and I think that speaks volumes.

MR. VASQUEZ: Excuse me, Mr. Foster. You said you were a former city council member?

MR. FOSTER: Former city council staff member.
MR. VASQUEZ: Okay. All right. Thank you.

MR. GOODWIN: Anybody else opposed that wants 
to speak? Do you have something new to say, emphasis on 
something new?

MS. DULA: I understand. Tamea Dula with Coats 
Rose on behalf of the developer.

And I think that the point needs to be made 
that this undesirable site feature is differently drafted 
than most of the others which measure from the boundary 
lines. Instead, this site feature measures from high- 
voltage transmission lines to the buildings, not your site 
boundary.

The site plan was submitted, but the project 
had not been surveyed for that site plan, nor had they 
surveyed to the transmission wires, because that's 
somebody else's land. The project building was located on 
that site plan but it was designed intentionally to keep 
it from infringing upon any setback lines.

Now, when it was presented to the TDHCA, when 
looked at with, I guess, a micrometer or something, the 
RFAD proposer indicated that the site plan showed that the 
building was too close to the transmission lines.

In response, the applicant said, okay, you 
know, we don't intend to infringe upon this undesirable 
site feature issue, we will simply slide the building over
15 feet to the east. That's all that was needed.

Now, the Department has a past history of accommodating things like this in the administrative deficiency. 2017 was a very big year for high-voltage transmission wires, and there were three that came up during that year.

For the Villa Americana in Houston, no disclosure was made, and the staff asked them about it, and the applicant was permitted to provide evidence of an exemption. Fine and dandy, no disclosure needed. They should have provided the exemption when they turned in the application, however.

Medina Springs Ranch in San Antonio also had an issue and did not disclose it, and through an administrative deficiency, the staff permitted it to be resolved.

Finally -- and those were 4 percent deals -- in a 9 percent deal, Provision at Wilcrest had a similar situation where an RFAD, again, raised the question of whether the buildings as designed were more than 100 feet from a high-voltage transmission line, and the staff raised this question and reported to the Board that the applicant -- and I am quoting Marni's testimony in the Board book -- "claimed that the buildings were placed so that they meet the regulation and rule of being more than
100 feet from the high-voltage transmission lines."

That's what Marni presented to the Board.

MR. GOODWIN: I hate to be rude, but we've held everybody else to three minutes.

MS. DULA: I understand.

We ask that you grant the appeal.

MR. GOODWIN: Thank you.

Any questions?

(No response.)

MR. GOODWIN: Opposed? Anybody else in favor of staff's recommendation that hasn't spoken?

I can count on this to be something new, or the whole Board can count on this to be something new that hasn't been said already?

MR. FUQUA: Good morning, Chairman Goodwin and members of the Board. My name is Matt Fuqua with Blazer. I'm here to ask that you grant our appeal for the application 19370 Briarwest Apartments. With all due respect, direct staff to find that the issue was resolved during the administrative deficiency process.

I've worked with our company for 18 years with focus in construction project management and the last 12 years as one of our directors of development. I've worked on over 25 projects in Texas, most of which in Greater Houston.
And one consistent item with these developments is the site plan changes. It's modified through design, in the permitting process, and into the construction phase. This is a relevant point with our Briarwest Apartments for a couple of important reasons stated earlier.

The Board has consistently stated it does not want to support "gotchas" by terminating applications over technicalities, and instead wants to take a commonsense approach. That is exactly what we have done and are asking for here.

I respectfully ask the Board to grant our appeal and direct staff to accept the revised site plan as submitted.

Thank you.

MR. GOODWIN: Thank you.

MR. PALMER: I'm going to be very brief.

MR. GOODWIN: I'll believe it when I hear it.

(General laughter.)

MR. PALMER: Barry Palmer with Coats Rose.

I just wanted to make a point, because Tamea was starting to make this point when the buzzer went off, that previous precedent on this has been to allow the applicants to meet the rule, including the last one, the Wilcrest deal in 2017, to change their site plan to move
to be more than 100 feet. We're talking about moving 15 feet on our site plan. There are site plan changes approved administratively all the time. I mean, it happens a large percentage of the time there are changes to a site plan from the time you file an application till when you actually build it. Most of those changes are approved by staff and don't even come to the Board. They only come to the Board when it's considered a major amendment, and even then it's always on the consent agenda.

So if you look back over the last number of years, staff and the Board has approved countless numbers of site plan changes. Here we're moving a building by 15 feet to be in compliance, and this would be consistent with how the Department has treated this issue in the past.

MR. GOODWIN: Thank you. And that was brief.

MR. PALMER: Thanks.

MR. GOODWIN: Are you in favor or opposed?

MR. DUNCAN: Opposed. But I'm not going to talk about a rule, I'm going to talk about fair housing, if I could. I get where staff is coming from. I'm Charlie Duncan with Texas Housers. Good morning, everybody.

Mr. I believe it was Foster, the former council
member staff who got up here touched on this, and I want
to provide a little context here. Affirmatively
furthering housing is an obligation both of this agency
and the City of Houston, and the City of Houston is
subject to a voluntary compliance agreement being enforced
by HUD.

The genesis of that was that Houston had a
history of segregating affordable housing into racially
segregated high-poverty areas that had lower-performing
schools, infrastructure issues and the like, and when an
attempt was made to put housing in West Houston where
there are much greater opportunities, that opportunity was
thwarted by the city.

Here we've got an effort by the city and the
developers here to put something into an area that has a
great deficiency of affordable housing, and it's been very
difficult to get affordable housing in that area, and we
applaud that effort. You know, are there better sites in
District G? Yeah.

But nonetheless, this site, let me put into
context what would happen should this appeal be denied and
what would happen next. The next deal on the list is
going to add yet another affordable housing site to the
Fort Bend County area of Houston, an area that there's
been a growing concentration of affordable housing in the
area. And as I talked to a couple of I think neighborhood residents who are here, there are indeed infrastructure issues and the like that they I think they would like to see addressed in the community.

Deconcentration is something that this agency has rules about in its provision of affordable housing and should be considered when exercising the discretion that the Board has in making y'all's decision.

So less about the rule but more, you know, y'all's discretion does set a pattern that others will operate upon, and I think if that precedent is furthering the obligation to further fair housing, that's a good precedent to set, so I'd ask y'all to consider that in y'all's decision.

MR. GOODWIN: Okay. Thank you.

Any questions?

MS. THOMASON: I have a question for Marni. Comments have been heard this morning that there have been previous situations where we have, through administrative deficiencies, I guess, allowed applications that were in similar situations. Can you speak to why this one was different from the staff perspective?

MS. HOLLOWAY: I frankly don't recall whatever the one was that Tamea mentioned, but I would remind you that there are actually two issues here. One is the
undesirable site feature, the transmission lines and rearranging the site plan and all that. The other issue was the certification -- was the lack of certification in the application. So it could very well be that whatever other thing you had had a different set of circumstances. And I would say on the 4 percent applications we have a lot more flexibility to make corrections because it isn't competitive.

MS. THOMASON: Okay. Thank you.

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

We're not having a debate.

SPEAKER: In response to --

MR. GOODWIN: Do I have a motion from a Board member?

We're going to be here all day if we're going to rebut everything everybody says.

MR. VASQUEZ: I'd be willing to make a motion here and see if it gets seconded.

Just to understand, right now the staff's recommendation is to deny the appeal?

MR. GOODWIN: That's correct.

Right, Marni?

MS. HOLLOWAY: Yes.

MR. VASQUEZ: Based on not accepting the
movement of shifting of 15 feet on the site plan.

MS. HOLLOWAY: Staff is recommending denial of
the appeal based on the lack of certification of the
undesirable site feature.

MR. VASQUEZ: And just to clarify, does the
staff recognize or accept that a 15-foot shift --

MS. HOLLOWAY: Could happen? Yes.

MR. VASQUEZ: And that would mitigate, that
would address the distance requirements.

MS. HOLLOWAY: Had the application been
submitted with a certification indicating that there was
an undesirable site feature, the appropriate mitigation
would have been here's our site plan that moves the
buildings outside of that 100-foot range. That would have
been the appropriate way to handle it.

MR. VASQUEZ: And they've submitted and here in
our Board book they've submitted revised plans that go
outside that 100 feet.

MS. HOLLOWAY: They sent us a revised plan; we
did not request it.

MR. BRADEN: I have a question -- and I'm
sorry, J.B., maybe it was already answered -- in these
precedents that they have cited was the undesirable
feature declared in those? Because I think your issue is
they didn't disclose it.
MS. HOLLOWAY: Right.

MR. BRADEN: These precedents they're citing, was it disclosed in these other ones?

MS. HOLLOWAY: In these other ones, so as Tamea mentioned, the first two that she mentioned were 4 percent applications, so 4 percent applications —

MR. BRADEN: Put those aside. I understand.

MS. HOLLOWAY: On that other 9 percent, I don't recall.

MR. BRADEN: Do the applicant's lawyers know or does anyone know?

MS. HOLLOWAY: Sharon is looking it up.

MR. VASQUEZ: Regardless, I'd like to make a motion to uphold the appeal so the Department is accepting the revised site plan so that the development will meet the criteria of being 100 feet from the undesirable site feature. Does anyone second that?

MR. GOODWIN: Do we have a second?

MR. BRADEN: I'll second that.

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

Any further discussion?

(No response.)

MR. GOODWIN: Did you want to speak, ma'am?

MS. ATKINSON: Good morning. My name is Isabelle Atkinson, and I just want to provide a point of
clarification that wasn't previously mentioned.

This is more than just shifting the building by 15 feet. At the time of application there was a playground that was situated along the western edge of this site, so you have your playground, a fence, and then the substation, and according to the rules, you should be more than 100 feet from any buildings or recreational areas.

And so while I appreciate the conversation about intent, I think common sense would tell you that placing a playground and recreational areas within 100 feet and, in fact, adjacent to an undesirable site feature would be a poor judgment call.

So I would advocate for upholding staff's recommendation. Thank you.

MR. GOODWIN: Thank you.

MR. VASQUEZ: Noting on the revised drawings, the playground is moved way outside the 100 feet now.

MR. GOODWIN: Okay. Is that what you were going to clarify?

SPEAKER: Yes.

MR. GOODWIN: All right. Any other discussion?

(No response.).

MR. GOODWIN: All those in favor of the motion which is to accept the appeal, deny staff's
recommendation, signify by saying aye.

(A chorus of ayes.)

MR. GOODWIN:  Opposed?

(No response.)

MR. GOODWIN:  Okay.  Moving on to 19368.

MS. HOLLOWAY:  This one is presentation, discussion, and possible action on timely filed appeal of tax credit application 19368 Sweetwater Springs.

The building site for this application as submitted is currently two blocks of single-family lots with the right of way for Coke Street running between the blocks. The street is not constructed, but there is a right of way between these lots.

The site plan submitted with the application includes the right of way as part of the development site, even though there was no documentation presented that shows the City of Sweetwater would vacate the right of way in favor of the development.

The application does include a purchase agreement for the residential lots which, of course, does not include the right of way.

In response to a deficiency regarding the Coke Street right of way, the applicant submitted a temporary use easement from the city for Coke Street. They also provided an amendment to the purchase agreement that
states that the LURA, the land use restriction agreement, can be recorded on the land underlying the easement.

The seller of the residential lots -- this is to the purchase agreement amendment -- has no authority to encumber the city's right of way. Both documents are dated after the application was submitted and clearly were created in response to the deficiency.

The applicant has submitted an alternate site plan which shows Coke Street as a completed public thoroughfare with developments on either side. While this is potentially a solution should the city not vacate the right of way, it creates a scattered-site development, and the site plan doesn't address issues created when a road is between those two developments.

For instance, the residents in the two buildings on the eastern development site would not have accessible access to the playground on the western side. Similarly, residents on the western side would not have accessible access to the community center. The application submitted for Sweetwater Springs does not contemplate this scattered-site development.

In an email responding to the deficiency, the applicant states, "We did contact the city prior to submission of the application; however, we were not able to set up an appointment to speak with them until after we..."
submitted the application. Our Realtor was aware of a recent vacated plat and was pretty sure we could get the plat vacated since there has been no activity with the property in many years." Note that the response is talking about a plat which I believe would be the single-family lots, vacating that plat.

In short, the application did not address the transfer or ownership or interest in land from the City of Sweetwater that is at the heart of the proposed development. This raises a fundamental site control issue under our rules and a related easement issue for the ingress and egress to the property via the Coke Street portion of the proposed development.

Site control is required at application by our rules. It is defined as: "Ownership or a current contract or series of contracts that meets the requirements of 11.204 of this chapter that is legally enforceable, giving the applicant the ability, not subject to any legal defense by the owner or anyone else, to develop and operate a property and subject it to a LURA reflecting the requirements of any award of any assistance it may receive from the Department." So that's how we define site control.

The definition of material deficiency includes: "Inability to provide documentation that existed prior to
submission of an application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items."

The applicant's lack of site control at application cannot be cured with documentation that did not exist when the application was submitted, including the correspondence from the city and the purchase agreement amendment.

Staff recommends denial of the appeal because the application did not include the required documentation of site control, the lack of documented site control that existed prior to application is a material deficiency, and they did not have control of the development site at application.

MR. GOODWIN: Any questions for Marni?

(No response.)

MR. GOODWIN: Do you want to speak in favor or opposed to staff's recommendation? Opposed? Okay.

Does anyone want to speak in favor of staff's recommendation? You're speaking in favor. Okay.

MS. MEYER: My name is Robbye Meyer. I'm with Arx Advantage. I represent the applicant.

First of all, I, of all people, have the greatest respect and utmost respect for staff and what
they go through in this process of reviewing these applications. Being on that side of the development process for over ten years, I know you sit out there going why can't these developers get these things done right the first time, why do you have all these deficiencies.

Now that I've been on this side of the podium and I understand all the variables that go into these things and all the movement and moving parts, there's a greater respect out here, and I know why deficiencies are caused and all the moving parts. There's great difficulty on both sides.

Real estate is inherently built on Murphy's Law, I believe. You know, if something can go wrong, it probably will. We sometimes have rules, though, that cause unintended consequences, and this year some language was put in the 29 rules for site control and that concerns ingress/egress and rights of way and easements.

And they're unreasonable to have those things actually resolved by the time you're going through contract negotiations and application submission. Those things are normally worked out through due diligence, and that's not worked out by the time you submit an application. There's other applicants doing this process that have had similar issues, and those things just aren't worked out through the contract process, and I think
Chairman Goodwin can probably attest that those things aren't worked out when you're drawing up a contract.

When we designed this site plan, as Marni stated, there was a street, a plat that is in the middle of our property, and we designed the best use of the property and what we thought we would bring forth through this development and put our site design with that street in place -- well, on top of that place, knowing and expecting, every expectation, that we would have that plat vacated, because the city had just a few months prior to this a few blocks from our site vacated a similar plat for another landowner, so we had every expectation that they would do the same here.

That proposed street had been with the city for many years, they had no intention of putting in that street in the foreseeable future, so we had no expectation that they wouldn't approve that, so therefore, we designed our site to do exactly what we had there. We could go back and use the second ingress that we had as a plan B if we had to do it that way, but that wasn't our intention, and that's not what we wanted to do.

MR. GOODWIN: Thank you.

MS. MEYER: Anyway, we're asking you to grant our appeal and allow us to move forward.

MR. GOODWIN: Okay.
Mr. Shackelford, you wanted to speak in favor of staff's recommendation?

MR. SHACKELFORD: I will.

Mr. Chairman, John Shackelford, representing another applicant in connection with this year's round.

And I wholeheartedly agree with staff, I think that they're brilliant, and I think they applied the rules exactly as they are written, which I appreciate. And hearing Ms. Meyer -- and she's a very accomplished consultant and does a great job, but I heard her speaking about expectation, and that would be a slippery slope if we start going down that where somebody expected, in this case a municipality, to end agreeing to doing something prior to them doing it.

We could have every developer come in here and say, I don't have site control because I expected my prospective seller to make a deal with me and put my property in the contract but I couldn't quite get it done by the date to meet threshold, and so my expectation was I was going to get it done and I ended up getting it done after that date.

(Telephone ring tone sounded; general laughter.)

MR. SHACKELFORD: House of the Rising Sun. I hope that doesn't cut into my time.
MR. GOODWIN: No, but I would say to you and everybody else, we all up here appreciate our staff, and y'all waste a lot of your three minutes complimenting them. You could just stand up and say, Same feelings about our staff, and then move on.

(General laughter.)

MR. SHACKELFORD: I think I did.

Anyway, I think the rules need to be followed here. It's just unfortunate Ms. Meyer was unable to get that agreement. But site control is site control.

Every developer knows they've got to have under control, when they submit their application, 100 percent of the property, under contract, they've already acquired it, easement, whatever they've got to have control.

In this instance the rules was not followed. And you've had some difficult situations you've had to listen to and make decisions on. I don't think this is one of those, in my opinion, for the Board in upholding staff's recommendation.

Thank you.

MR. GOODWIN: Thank you.

MS. BAST: Still morning. Good morning.

Cynthia Bast of Locke Lord, representing the applicant for this appeal.

You heard from Ms. Holloway the definition of
site control, and I really just want to condense it. It says the ability to develop and operate a property. That is what is inherent in the definition of site control. And the applicant has shown through its responses to the deficiencies that it does have site control regardless of what happens with Coke Street.

    If Coke Street is not vacated, the applicant has shown that it has a development site with ingress and egress where it can develop and operate a property. If Coke Street is vacated, the applicant has a development site with ingress and egress where it can develop and operate a property.

    And we have a letter from the city manager of Sweetwater that says, "We expect the existing plat will be vacated and the requested plat will be accepted after completing the proper procedures."

    Furthermore, we believe that this applicant should be treated consistently with another appeal that was granted recently by the executive director. In that appeal an application was terminated for lack of site control that related to ingress and egress, and the applicant showed in its contract with the seller that it was drafted to maintain flexibility for the location of the entrance and exit to accommodate the city's development requirements.
The executive director accepted an amendment to the purchase contract which was executed after the application submission deadline to clarify that. Despite the efforts of the seller and purchaser to remain as flexible as possible in the location of this ingress and egress, the parties intended to guarantee the availability of ingress and egress, so the applicant had site control.

In this situation ingress and egress is not an issue because our applicant has always shown that there is ingress and egress available, but it is similar to that successful appeal I just mentioned, because what is creating the problem here is the applicant's need to maintain flexibility as to whether Coke Street is vacated, and that's what Ms. Meyer was getting to in her remarks is that sometimes in the development process you need to have that flexibility.

But as long as the applicant has been able to show the ability to develop and operate the property, which we believe they have, then site control exists, and we believe you should grant this appeal.

Thank you.

MR. GOODWIN: Thank you.

Any questions?

(No response.)

MR. GOODWIN: I'll entertain a motion.
MS. RESÉNDIZ: Mr. Chairman, I'd like to make a motion to accept staff's recommendation and deny the appeal.

MR. GOODWIN: Second?

MS. BINGHAM ESCAREÑO: I second.

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

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

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

MS. HOLLOWAY: 7(d) is presentation, discussion, and possible action on staff determinations regarding neighborhood risk factors for 19227 Reserve at Risinger. You'll recall this item was presented to the Board initially at the May meeting, and as a result of public comment, the Board tabled the discussion of this item.

The proposed development site falls within the attendance zone of J.A. Hargrave Elementary School, which was rated Improvement Required in 2018, 2017 and 2016. Our rule regarding schools rated Improvement Required says in part, "Any school in the attendance zone that has not
achieved Met Standard for at least three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code."

The rule clearly states the site should be found ineligible if a school to which its residents are zoned has been rated Improvement Required for three consecutive years unless there is a clear trend toward a Met Standard rating by the time the development is placed in service. If there is a clear trend, evidence presented in the application may be considered in making a determination regarding sufficient mitigation for the site to be found eligible.

The application includes TEA accountability summaries for the past three years. Using the Index 1 scores for 2016 and 2017 and then the overall score for 2018, the results are 2016 at 55, 2017 at 54, 2018 at 58. The 2018 information is presented differently by TEA, but it's interesting to note that in 2018 the school is rated Improvement Required across all categories. In the previous two years they Met Standard for two other indexes even though they were rated Improvement Required overall, so they made it on a couple in previous years. The
measurements may not exactly correlate, but there clearly is an evidence across three years of an improvement trend.

The applicant included a letter from the deputy superintendent of school improvement for the Crowley Independent School District. The letter describes the district and school's commitment to moving J.A. Hargrave Elementary to a Met Standard rating using the school's campus turnaround plan.

In addition, students will receive additional support from the district. The letter states that it is intended to ensure TDHCA that the campus will receive a Met Standard rating by the time the Reserve at Risinger development is placed in service. "In addition, our applicant will be providing an education center space in the community building with programming to support the students."

Staff recommends against the eligibility of this site due to a lack of evidence supporting a clear trend indicating imminent compliance for a school that has been rated Improvement Required for the last three years. If the Board determines that there is a clear trend indicating imminent compliance, the Board should also make a determination about the sufficiency of mitigation to render the site eligible.

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

MR. GOODWIN: Opposed and in favor? Opposed, hands up. In favor of staff's recommendation. One?
Okay. We'll hear from the opposed first.

MS. DULA: I always have to stop and figure out whether I'm opposed or in favor. It's difficult with that negative.

Tamea Dula with Coats Rose, here on behalf of the developer, which is MVAH, and as Marni said, the second time we've appeared before you on this matter as to whether the Reserve at Risinger development site can be considered eligible because the elementary school was judged to need improvement in 2016, '17 and '18.

We're here to show you that there is a clear trend of improvement which can reasonably be expected to result in the imminent resolution of this matter, and therefore evidence of mitigation which was presented in the application may be considered by the Board in deciding whether or not the site should be considered eligible.

In the application the disclosure package presents as mitigating factors the campus turnaround plan, the campus improvement plan, the 21st Century Community Learning Center, the anticipated Accelerating Campus Excellences initiative, or ACE, and the education center to be located on the development site and operated at a
minimum of 15 hours per week.

If you wish to hear more about the mitigating information that was in the application, we have people here to discuss that with you and provide more information to supplement and clarify the material that was in the application, but first we need to address the clear trend.

To help demonstrate the clear trend, if you turn to pages 71 through 83 of the supplemental Board book, you will see the indications of progress made in the J.A. Hargrave Elementary School's turnaround program. They have notations there, big green circles, that show the degree of progress that has been made on a quarterly basis. And if you look at that, you will see that there has been substantial progress in meeting the goals that have been set out in the turnaround program, and this turnaround plan was provided in the application.

We have here today, also, as a speaker, Dr. Isaac Carrier, who will talk to you about the changes that have taken place at Hargrave Elementary and how they demonstrate a clear trend of improvement.

Thank you.

MR. GOODWIN: Thank you.

Somebody in favor of staff's recommendation?

MS. BAST: Cynthia Bast of Locke Lord. I represent a developer with three competing applications in
this region, and they do support the staff recommendation.

I've looked at a number of neighborhood risk factors and talked to you about neighborhood risk factors many times over the years, both in support and opposition.

I think education is perhaps one of the hardest ones for us to navigate.

So in modifications to the 2019 QAP, staff tried to give us a roadmap of the kind of things that they would expect in circumstances where an applicant chooses a site with neighborhood risk factors.

Because of the three years of improvement required, the key to this analysis really is imminence, and rules state that when mitigation documentation is provided by someone who's authorized to speak on behalf of the school district, it should include actual data from progress already made which supports a reasonable conclusion that the school will successfully meet standard.

As your staff has pointed out, the documentation provided, some of which was not in the original application, talks about programs and plans but does not adequately provide the data to back it all up. The data, we know, is this: in 2016 and 2017 when had TEA had four performance indices, the school failed two of them, or 50 percent; in 2081 when TEA had three
performance indices, it failed all of them, or 100 percent; the student achievement index in each of those years was 55, 54, and 56, respectfully. So that data does not show a significant upward trend.

In its most recent campus turnaround plan, which was part of the application, the school admitted that continual changes in personnel, including those in leadership over recent years, have resulted in inconsistency in the quality of their instruction and damaged the climate and culture of the campus.

Those are big hurdles to overcome, but indications are that the school is implementing new programs to improve its performance, but the data that would lead us to a reasonable conclusion just isn't there yet for meeting that imminent standard. So this may be one of those situations where the development site needs another year for all of this to play out.

For those reasons, our client supports the staff recommendations.

Thank you.

MR. GOODWIN: Opposed?

DR. CARRIER: Good morning. It is still morning. Right?

I'm Dr. Isaac Carrier. I've been a public school educator for the past 20 years, primarily in school
and district leadership roles. I'm currently an assistant professor at the University of Louisiana in Monroe in the College of Education, and I hold a PhD from Texas A&M University in curriculum instruction with a emphasis in urban schools.

I'm happy to be here this morning to speak with you about the encouraging progress that J.A. Hargrave has made over the past three years. If you look on page 42 in 7(d) of your document, you'll find the 2016 school report card, the service data for the first year of being Improvement Required.

In that year, Index 1 -- and the prior speaker was exactly correct, there are four indices and so it's not just one that is taken into account -- Index 1, student achievement, and Index 2, student progress, those were the two reporting categories that they did not meet standard. However, they came very, very close, a scoring 55 with a target score of 60 in Index 1, and scoring 27 with a target score of 32 in Index 2.

So as we move to the next school year, page 43 of your document, the 2017 school report card, J.A. Hargrave had significant progress in Index 2, the student progress measure. They exceeded the minimum score of 32 by accomplishing a score of 37 in that year. That's substantial improvement over the previous year where their
score was 27.

In 2018, again to the previous speaker's point, the way the reports were constructed did change. STAAR performance and college and career readiness standards were now included for the first time in the overall student achievement category when they were previously individual categories, and in that year they did score an overall scale score of 58 but the target was 60, so it's up from the previous years, so they did maintain three years of Improvement Required, however, they did make incremental and substantial trending progress towards meeting standard.

One thing to take in account that not everyone knows: It's a moving target. From '16 to '17 to '18, the passing standard increased each of those years, so it's something that isn't always talked about, but it is a relevant factor which to consider. So it's clear that the school has maintained Improvement Required, but they've also made significant incremental progress, and there's a clear trend in academic progress for this school.

A couple of other things I'd like to mention is that to Cynthia's point -- let me just say this because we've been here a long time, I would say there is a trend and although it's not been released yet so I cannot stand on this, but on my expert opinion and what my experience
has been, when the official 2019 scores come out, we will find that the school will have Met Standard based on this current year's reporting expectations, and that data can be accessed by the TEA website, there's a link there that will guide you to that point.

Any questions?

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Anybody else that wants to speak in favor of staff's recommendation?

MR. HUTH: Tom Huth. I'm the president and CEO of Palladium USA.

Last year we looked at this site. Because of the elementary school we passed on it. So we went to Crowley right down the street, and Crowley is a great ISD, but our site in Crowley has a great elementary school. Our kids need to go to schools that are great today. It's not about where they're going to be in two years. Where the schools are great today, that's where we need to be building these developments.

So I go along with staff and recommend that you follow staff's position on this and deny this application.

Thank you.

MR. GOODWIN: Any questions?

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

MR. SMITH: I'm Darren Smith with MVAH Partners.

Again, I think a lot of people debate. This school district has made a lot of changes, it's got a new superintendent, it showed incremental increase, and there's data on the TEA website that shows that it passes. Our development in itself, we've reached out to the Crowley ISD, we've worked with the superintendent, we're actually putting in an educational center that will have 15 dedicated hours, we're actually partnering with the school system to provide additional training. That's a part of your Board supplement, that was a part of what we talked about last month.

So the issue is incremental increase. This school district has made those changes, and we're actually providing additional mitigating factors. So I would say it would be great if all of our schools are great, it would be super, but if we're going to be able to help our schools, we're going to be able to provide quality housing, a good environment and give them additional assistance, that's important.

But they've made a ton of changes: new principal, new ACE program, after school program, food, rides, you name it. They're making the commitment. This
school is not under imminent capture by the TEA.

Thank you.

MR. GOODWIN: Okay. Anyone in favor of staff's recommendation?

MS. BROWN: Hi. Linda Brown, Casa Linda Development Corporation.

I'm here representing several other applications that are all further down the list, but I wanted to remind the Board that there's six applications behind this one that have schools that have all Met Standard, and the whole purpose behind this type of a neighborhood characteristic report that's due in the application at submission is to provide all relevant data, all pieces of evidence that the staff is very clear about so that that determination can be made.

We all are very hopeful -- my mother was an educator for 40 years, and so we have education that runs through our family at all different kinds of levels, and we're all very hopeful that this school will actually have Met Standard this coming August, we look forward to that. However, what if it doesn't? And now if it doesn't, you still have four years of Improvement Required at this particular site.

So just keep in mind that in order to make the best decision for applications and sites for housing,
affordable housing, that the schools are already performing or can show that there is an actual direct trend towards improvement.

Thank you.

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

MS. BINGHAM ESCAREÑO: Mr. Chair, I lost my place, but it's not under appeals. I'm going to move staff's recommendation, but I want to articulate what it is. Is it to deny a closure?

MR. GOODWIN: To find the site not eligible.

MS. HOLLOWAY: Staff is recommending that the site be found ineligible.

MS. BINGHAM ESCAREÑO: I'll move staff's recommendation to find the site ineligible.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MS. RESÉNDIZ: Second.

MR. GOODWIN: Okay. Any further discussion?

MR. PALMER: Barry Palmer with Coats Rose. I'm in favor of the developer and opposed to staff's recommendation.

We heard some speculation from lay people as to what's going to happen at the school, but the testimony that we've heard from experts, from Dr. Isaac here today
and also from the superintendent of the Crowley School District -- and her letter was included in the application -- have said that they expect the school to meet the standard rating maybe by just this coming year. So with that being imminent, we'd request that you listen to the experts on this and rule the school as eligible and deny staff's recommendation.

MR. GOODWIN: Any questions for Mr. Palmer?

MS. BINGHAM ESCAREÑO: Just a comment on mine. So to me it doesn't -- the expert that would have made a huge difference here would have been somebody from the school district. The letter does not just for me -- my motivation for making the motion, because I'm all in support of the school trending in the right direction, but I didn't have my questions answered in that letter, and even though I respect the testimony of the folks that presented, lots of lawyers, but I think for me to have a level of confidence, I would have really needed to ask questions and get specific answers from somebody in leadership at the school district.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: If not, we'll call for the vote. All those in favor say aye.

(A chorus of ayes.)
MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving on to item 7(e).

MS. HOLLOWAY: This one is presentation, discussion, and possible action on staff determinations regarding application disclosures related to undesirable site features, this is on 19180 St. Elmo Commons.

The proposed development site is located within 500 feet of two concrete batching plants. Centex Materials is located approximately 470 feet from the development site, Custom Crete is located approximately 100 feet from the development site.

There are two parts of our undesirable site features rule to be considered. First, our rule states that a development site will be found ineligible if the site is located within 500 feet of heavy industry. Staff believes that a concrete batch plant constitutes heavy industry.

Second, through previous application reviews, we know that the Texas Commission on Environmental Quality has jurisdiction over the location of concrete plants. This brings in the second part of our rule: "If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and
require the same separation."

So TCEQ requires that the central baghouse of any new concrete plant be located at least 440 yards from any residence, school, or place or worship if the area is not subject to local zoning.

This site is in Austin, and zoning for both the development site and the concrete batch plant allow those uses on those sites. Though zoning regulations may constitute a municipal ordinance, zoning regulates what purpose or use may be developed on a zoned area of land.

For instance, the zoning for the batch plant sites is one of the few uses that also allows for veterinary services, it allows art galleries and business or trade schools. Zoning does not regulate the proximity of an offsite feature to the zoned property, it is a poor proxy for specific intent on the part of the local government due to its very broad nature. It is not a local ordinance which regulates the proximity, that is allowed as mitigation under our rules, but staff believes that zoning does not qualify as that local ordinance.

These overlapping rules and requirements leave the issue of the development site being within 500 feet of heavy industry. Heavy industry is described as facilities that require extensive use of land and machinery, produce high levels of external noise, such as manufacturing
plants, or maintain fuel storage facilities, excluding gas stations.

The applicant has responded to the description of the Custom Crete facility as heavy industry by including an aerial photograph and map of the two nearby concrete batching facilities in relation to the proposed development.

That photograph is at page 941 of your Board book. It's noted that the truck entrance for the Custom Crete site is less than 500 feet from the development. The aerial photograph shows dozens of large trucks, all of which would use at least a part of Terry-O Lane, which is also the entrance road to the development site.

The extensive use of land and machinery is compounded by the fact that there are two concrete batching plants next to each other. Lastly, there is no residential development closer to these facilities than the proposed site.

Our rules also allow staff, if they identify something that could be an undesirable site feature not listed in the rule, to bring that feature to the Board for an eligibility decision. We found this statement in the environmental site assessment: "Phase Engineering, Inc. has the opinion that based on laboratory results from the user provided Phase II report, the subject property
exhibits impact from arsenic and lead in the soils evaluated. This represents a recognized environmental condition."

They conclude that "the user provided prior Phase II ESA identified elevated minerals in the near surface soils at concentrations greater than appropriate state environmental regulatory agency reporting limits."

The elevated arsenic and lead are likely the result of surface runoff from adjacent properties. The ESA states that the testing conducted in 2014 used an incorrect standard but is not clear on the levels detected or mitigation requirements. The ESA does not state that no mitigation is necessary and recommends further testing.

There is no mention in the application or site design and feasibility report of soil contamination, further testing or potential remediation costs. We requested a copy of the ESA conducted in 2014. The applicant provided us with that report, along with an addendum from the current ESA provider, which staff did not request. The 2014 Phase II ESA confirms the information summarized in the current report that describes testing four samples taken from the site.

The applicant has stated that the testing was about groundwater and should not be a concern because the development will be served by Austin Water. While it is
clearly true that residents' water would not be impacted by the arsenic and lead in the soil, the presence of reportable levels is not addressed.

We do not know if the source has been mitigated, if more has been deposited since 2014, or the extent of the contaminated soils. Staff believes that lead and arsenic in the soil constitutes an environmental factor that may adversely affect the health and safety of residents.

Staff recommends that the site for St. Elmo Commons be determined ineligible due to the proximity to heavy industry and the potential negative impact of soil contamination.

I'll be happy to take any questions.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: We've got somebody who wants to speak. I assume you're opposed to staff's recommendation?

MR. GUTTMAN: Correct. My name is John Guttman. I'm with the developer, JES, and I'd like to use my time today to really hammer on three points that I believe demonstrate that either these actually do not rise to the level of an undesirable site feature or can be resolved through mitigation.

I'd like to first focus on the soils. The
letter that I presented from Phase Engineering that's not present in your Board materials, I do have enough copies for the Board and would like to present those to you, if allowed, but basically it was a clarification from Phase Engineering, going through the deficiencies that the staff noted with the soil. The letter provided clarification and context about the soil.

Summarizing the letter, Phase believes that the levels of arsenic and lead discovered in the 2014 limited Phase II would not present an exposure concern that has no potential to affect the health and safety of the residents. This is because the standard that they were using in the 2014 Phase I was for groundwater. So as staff mentioned, this is basically unpotable groundwater. If you were to put a well on the site and pull up the groundwater, these levels would not work.

But if you're looking at standards, the arsenic and lead levels found in the 2014 study are below TCEQ and EPA standards for residential properties, meaning there's no exposure to you if you were going to go roll around in the soil. Basically, the levels are below that. So that's what I would ask that the Board and staff look at is the correct measurement of those 2014.

The other thing, and the reason, I guess, no mitigation as staff requested, we did certify that we
would provide a Phase II upon award to look into the matter more. It's a 2014 Phase II performed. We don't know what the soil conditions are like on the site now. It's not expected for an applicant to go to a Phase II at this stage, so we agreed that upon award we would go to the Phase II and take mitigation measures that were necessary at that time. So that's, I think, our argument for mitigation, or actually because the levels don't reach TCEQ or EPA requirements, there may be no mitigation required on the site.

Regarding the concrete batch plants defined as heavy industry, you're looking at environmental concerns and noise. I'd like to start off with the noise. We did a 24-hour noise study on site that's a microphone on site. That found levels below 60 decibels, so that is below the HUD required day and night noise levels of 65 decibels. If you look at sites near highways, as noted by our sound engineer, you would find levels of 70 to 75. These types of sites have been approved by the Board before and have had mitigation matters.

Lastly, the health and safety concerns of air quality. The TCEQ, as staff said, you would go to those standards. As per the health and safety code referenced by staff, it says outside of a municipality with zoning. TCEQ standards, this permit and any other, the two permits
that provide for a concrete batch plant allow for this to be built. If you were to reverse it --

MR. GOODWIN: You had three minutes.

MR. GUTTMAN: I'll wrap up. If the apartment complex were to be there today and the batch plant would be submitting to TCEQ for a permit, that permit would be approved.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Anybody that wants to speak in favor of staff's recommendation?

(No response.)

MR. GOODWIN: I'll entertain a motion from a Board member.

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

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Moving on to 19185.
MS. HOLLOWAY: This is presentation, discussion, and possible action on staff determinations regarding application disclosure related to undesirable site features for 19185 Edgewood Villas.

The applicant has disclosed neighboring noise associated with military exercises at Fort Hood. Edgewood Villas is a proposed elderly development that would be proximate to training areas on Fort Hood. Per the ESA, the Phantom Run range is located just to the north of the subject property and impacts the property.

According to the ESA, the Army uses a different but comparable noise measure to HUD's day/night noise levels. Fort Hood has both a larger-caliber noise contour map and a noise measurement pertaining to small-caliber firing ranges, commonly referred to as small-arms PK15. Because these two military noise measures are comparable to HUD standards, we can rely on the more familiar requirements.

For HUD all sites whose environmental or community noise exposure exceeds 65 decibels are considered noise impacted areas. The normally unacceptable zone includes community noise levels that range from 65 decibels to 75.

Proposed development sites that fall within this zone must mitigate that excess noise with
construction methods or other measures. Locations with
noise levels above 75 decibels have an unacceptable noise
exposure. In unacceptable noise zones, HUD strongly
encourages conversion to land uses compatible with the
high noise levels and not to develop residential housing.

The proposed development site is outside of the
65 to 70 CDNL noise contour, so that's the large-caliber,
meaning that the proposed development site is acceptable
for housing under that measurement, but according to the
ESA, the proposed development site lies within a zone
where decibels can range from 87 to as high as 104
decibels. This is 60 percent above the acceptable HUD
noise levels.

The ESA notes that residents will hear gunfire
when military training is occurring. It states, "The
noise environment for the subject property is likely to be
considered normally unacceptable due to the proximity of
Fort Hood and would benefit from noise mitigation measures
such as an increase in sound attenuation within the
proposed building envelope."

To reduce the high estimate of possible
decibels of 104 to the acceptable level of 64, the
applicant would have to achieve a noise level reduction of
40 decibels. This may be unfeasible, given that the
applicant's ESA states that the normal permanent
construction can be expected to provide an NLR of 20
decibels.

The purpose of the Phantom Run training
facility is to replicate real world battles. Staff has
determined that the edge of the proposed development site
is approximately 1,440 feet from the first notable
structure of Phantom Run, it is approximately 1,750 feet
from the center of the training facility.

Staff is recommending that due to the risk of
excess noise associated with gunfire and explosives, the
Board determine that the site be found ineligible.

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

MR. GOODWIN: I assume you want to speak
opposed to staff's recommendation?

MR. KROCHTENGEL: Yes, sir. Zachary
Krochtengel, here representing the developer.

I think you've got to kind of look at many
different ways that noise is being measured. So when we
look at HUD noise level calculators, it's the HUD DNL, the
day/night noise level calculator, and that takes every
source of noise and it averages out over time to give a
constant of that noise. So if a train goes by twice a day
at 100 decibels, averaged out over time is very low. A
train that's 100 decibels goes by 15 times a day --
because the HUD takes in that occurrence and the amount of occurrence -- it's very high.

So there are three different contour maps that are involved with this project. There's the airport, the military airport, which we're outside of that contour, there's the large-caliber arms, and we're outside of that contour, and then there's the small-caliber arms.

Now, the small-caliber arms 87 to 104 range is called peak decibel, so that is not a weighted decibel measurement, that's a peak decibel measurement. So one gunshot, yes, at our site you might hear that at 104 decibels, but there is no information and there are no contour maps available to show how that would be at a constant, how often it's being used, how many rounds are being fired.

So when we disclosed this, we disclosed this and we used the Department of Defense guidelines for land use in proximity to these kinds of installations, and what they do is they create these contour maps, and we're in what would be called a Zone 2. Zone 3, there is no housing that's being proposed there. In Zone 2 the land use Zone 2, they do say that you can have housing there but they say that's a local decision. They say that we don't necessarily encourage housing to be there; however, that's a local decision.
And when you start looking at Killeen, Killeen borders Fort Hood, Fort Hood and Killeen work together all the time. They have a thing called the joint land use study, the JLUS, which was a years-long study of how to use land and how to work together to create land development. The land is currently zoned for residential use right now. The land is also surrounded by single-family residential homes, including homes that butt up right against the base itself.

So when we looked at that DOD guideline, we looked at that and we said, okay, DOD says this is a local decision, so what we're asking is that this site be found eligible and we work through Killeen, which works with Fort Hood all the time to discuss these matters, and see how that local decision takes place and how that will affect our development.

And we've also used certain strategies, such as putting all of our amenities in our courtyard to try and shield it from the noise for the outdoor amenities; however, we believe that when you look at the noise categories, we believe that we're in a noise category by the DOD standard that would allow us to use this and the permanent construction would allow for a 20-decibel decrease and we think that that would be sufficient.

Thank you.
MR. GOODWIN: Thank you.

Anyone that wants to speak in favor?

(No response.)

MR. GOODWIN: If not, do I hear a motion from a Board member.

MR. VASQUEZ: I'm trying to figure out how to say this politically correctly. Hearing what's been presented, it seems to me that anyone in the Killeen area would understand Fort Hood is right there and you're going to hear occasional gunfire or a tank or artillery booming off somewhere in the distance. You wouldn't move into this area if you didn't understand that Fort Hood is your neighbor.

MR. GOODWIN: Is there a motion in there? Just curious.

MR. VASQUEZ: And I just want to mention that it's an elderly development.

MR. GOODWIN: Being the elder on this Board, I take great offense.

(General laughter.)

MR. VASQUEZ: So I would like to make a motion to find the property eligible so grant the appeal.

MR. GOODWIN: And deny staff's recommendation?

MR. VASQUEZ: Deny staff's recommendation.

MR. GOODWIN: Is there a second to that?
(No response.)

MR. GOODWIN: Hearing no second, do I hear another motion?

MR. BRADEN: I'll make a motion that the Board determine that the site is ineligible in accordance with staff's recommendation.

MR. GOODWIN: Do I hear a second to that?

MS. BINGHAM ESCAREÑO: I'll second that.

MR. GOODWIN: Okay. Any further discussion?

(No response.)

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

(A chorus of ayes: Members Bingham-Escareño, Braden, Goodwin, Reséndiz, and Thomason.)

MR. GOODWIN: Opposed?

MR. VASQUEZ: Nay.

MR. GOODWIN: Okay. Moving on to item 7(f).

MR. GOODWIN: 7(f) is presentation, discussion, and possible action on staff determinations regarding application disclosures under 10 TAC 11.101 related to undesirable site features, 11.101(a)(3) related to neighborhood risk factors, and 10 TAC 1110 related to a request for administrative deficiency --

MR. GOODWIN: Let me interrupt you for just a moment and let the record reflect that Board Member
Bingham and Board Member Reséndiz are off the dais.

Go ahead.

MS. HOLLOWAY: This is for application 19301 Prince Hall.

In the original application the applicant provided disclosure that the Prince Hall site is located within two miles of refineries capable of refining more than 100,000 barrels of oil daily and requested an exemption from the undesirable site features rule because the project has a continuing project-based Section 8 contract.

An aerial photograph provided by the applicant is on page 163 of the supplemental Board book showing that the operations of both the Motiva and Valero refineries are well within the two-mile radius. They disclosed that the poverty rate for the census tract is over 40 percent. They also disclosed blighted structures in proximity to the site.

Given the recent damage to this community by Hurricane Harvey, staff is not prepared to recommend ineligibility for blight, but we're still going to discuss the refineries and the poverty.

The application does not provide any further details regarding the undesirable site features, and no mitigation was suggested by the applicant for the
refineries, likely because they're relying on the request for exemption.

We received two RFADs for this application. The first suggests that the environmental site assessment in the applicant's disclosure consists of an insufficient assessment of the development site's environmental risks, and there are undesirable site features located within unacceptable distances to the proposed development, and that the subsequent exposure to environmental factors cannot be adequately mitigated.

The second cites the proximity of the development site to the refineries, the poverty rate in excess of 40 percent, and the two-times-per-capita average concentration of units as reasons why the Department should not grant the requested exemption from the rule.

Due to the comprehensive nature of the RFADs, staff did not believe that additional information was needed from the applicant about these issues. We did not send them an administrative deficiency, as is allowed by the RFAD rule. Nonetheless, on June 10 the applicant uploaded a 229-page response to the RFADs.

In the cover letter for the RFAD response, the applicant claims that the Prince Hall site should be found eligible for multiple reasons. First, the application received support from the city and state representative.
As you are aware, these are documents that the applicant solicited from the city and the representative in order to score. They are not remarkable; they are in all applications.

Second, they claim that because this 50-year-old development is on property with zoning that allows it, the smaller distance and local ordinance part of our rule would exempt the site. We just discussed previously how zoning is not the same as a specific municipal ordinance regarding distance from the undesirable site feature.

Third, the response describes single-family housing and community resources within proximity to Prince Hall. They provide Lamar State College as providing course work that leads to jobs with local petrochemical facilities. The academic and technical programs web page for the school makes no mention of petroleum.

Regarding single-family housing, if you zoom in a bit on the aerial photo on page 163 of the supplemental Board book, the open spaces between homes are not large lots, they are vacant lots that were left when the homes weren't reconstructed.

Fourth, they describe investment by Motiva in revitalization efforts for downtown Port Arthur. The article that was included in the response to support this
point states that Motiva had purchased the building as part of its in-lieu-of-taxes agreement with the city.

The response seeks to link HUD's continuing Section 8 contract to our rule regarding deferral to a state or federal cognizant agency, saying basically that because HUD continues to fund the contract, the site should be accepted. In just a moment we'll discuss HUD action on a neighboring property that belies that assumption.

The cover letter also includes an extensive discussion of the applicant's disagreement with some of the statements in the RFADs. Unfortunately, the information provided in the applicant's response does not change staff's assessment of the development's eligibility.

Starting with neighborhood risk factors and poverty, the applicant states that in 2016 the census tract's poverty rate was 66.3 percent, in 2017 it was 59.6 percent, in 2018 it was 49.2 percent, and in 2019 it is now 44.7 percent. They claim based on this trend it is reasonable to expect that the poverty rate will be below 40 percent by the time the development is placed in service. They do not provide information about why this change has happened or why it can be expected to continue.

Staff believes that the downward trend in the
The poverty rate is likely due to the demolition in 2014 of two Port Arthur Housing Authority properties with a total of 204 units and the relocation of those low income residents out of the census tract.

The housing authority relocated many of the residents to Edison Square, a new-construction senior development in a census tract with a poverty rate of 38 percent, and Park Central, which is a general population in a census tract with a poverty rate of 21.6 percent.

The applicant for Prince Hall, for this application that we are discussing, partnered with the housing authority to develop Park Central and continues to be listed as the general contractor for that development.

Regarding undesirable site features, our rule says that rehabilitation developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs may be granted an exemption by the Board. This development has ongoing and existing federal assistance from HUD in the form of a Section 8 Housing Assistance Program contract and has requested this exemption.

The applicant did not provide information regarding mitigation relating to the refineries likely because they were relying on this exemption. The two RFADs provide an understanding of the refineries and their impact on the existing development and the neighborhood at
large.

Much of the information comes from documents related to violations assessed by federal and state environmental agencies and descriptions of the neighborhood provided in communications between HUD and the Port Arthur Housing Authority as they were demolishing Carver Terrace and Lincoln Square.

One of the RFADs documents significant violations at the Valero and Motiva sites. EPA enforcement provided with the RFADs shows that they have been out of compliance for three years, and both have been subject to multiple formal enforcement actions in the past five years.

There are also reports from TCEQ of unauthorized emissions and agreed orders for penalties. It also points to a third potential undesirable site feature that was not disclosed as the Air Products of Port Arthur plant, which shares the Valero Refinery site. This company supplies industrial and specialty gases.

The RFAD raises the following concerns. The applicant did not adequately disclose the health and safety risks of the proposed site, nor did the applicant make any mention of mitigation efforts to reduce these risks to residents.

Second, the current violations assessed against
Premcor/Valero and Motiva indicate that mitigation is not underway and that public health is at risk any time the facility is out of compliance.

The applicant's response, that 229 pages, includes extensive documentation of continuing efforts to improve air quality in the area. I've not made a side-by-side comparison of the claims in the RFAD to the claims in the response. I think it's telling that there is so much documentation out there to support either position. I think it's also telling that much of the response is about air quality continuing to get better, which implies that there is a continuing need for improvement.

Another concern raised by the RFADs are the circumstances and documentation about the Port Arthur Housing Authority's demolition of Carver Terrace and Lincoln Square. These two developments were immediately adjacent to Prince Hall, they're on either side. The housing authority initial plan was to sell the properties and use the proceeds to develop single-family housing units.

As part of its disposition application to HUD, the housing authority board passed a resolution that says, "Whereas, the Port Arthur Housing Authority desires to dispose of 240 units at Carver Terrace and Lincoln Square, consisting of approximately eight acres, more or less, due
to adverse neighborhood conditions that affect the quality of life for residents."

In its fair housing and equal opportunity checklist, the housing authority described the area: "Carver Terrace and Lincoln Square are two properties located near two oil refineries. The census tract and public housing properties are about 99 percent minority, there is a lack of employment for those with limited skills, and businesses have moved out of the area.

"There are limited retail stores and social services. There is poor air quality and safety and environmental hazards due to the petrochemical industry. There is deteriorating infrastructure, an increase in crime, decay and blight. The west side location is not conducive to a residential development."

HUD approved the disposition request, and the housing authority issued an invitation for bids to sell the property at $1,670,000. A year later they requested a modification of the terms of the agreement because they had received only one bid for $800,000 from Premcor Refining Group, which is now Valero.

In explaining the low bid, the housing authority said, "The expansion of the refineries over the years has caused process units, pipelines and storage tanks to be placed much closer to the property,"
threatening the safety and health of the residents.

"In fact, the Phase I environmental assessment for the property, dated March 17, 2014, indicates that the property has been associated with 191 upset emissions events since January of 2007, largest of those occurring in September 2013.

"The property is now located in a distressed area plagued by limited employment opportunities, a lack of major investments and commercial activity, increases in crime rates, serious health and safety concerns. For these reasons, the housing authority seeks to dispose of the property."

HUD responded: "As part of the environmental review process" -- and that's the federal environmental review process, that's not a Phase I review -- "HUD determined that due to the health and safety threats caused by the close proximity of the refineries, certain mitigation efforts must be implemented to protect the neighboring residences."

As mitigation, HUD required that the properties that were being sold, the public housing authority properties, be converted to vacant land to create an environmental buffer between refineries and adjacent residences in perpetuity, enforced as a condition of sale through a deed restriction, and that the property be
fenced off. This requirement caused Premcor to rescind its bid.

In their response, the applicant claims that Carver Terrace and Lincoln Square were demolished because of the conditions of the properties rather than the surrounding neighborhood. They have produced 15 letters written by residents of Carver Terrace that describe the poor condition of their apartments and the development to support their claim. If this were the case, it seems unlikely that HUD would impose such draconian conditions on the site.

ITEX Development completed the demolition of Carver Terrace and Lincoln Square and partnered with the housing authority to develop Park Central, where many of the residents moved. ITEX is the applicant for the current 19301 Prince Hall application. As a contractor for the housing authority, the applicant would presumably be aware of the environmental concerns that led to the demolition of Carver Terrace and Lincoln Square and relocation of those residents. Staff believes that the information in the application about the surrounding neighborhood provides an incomplete view of conditions in the area.

In the housing authority disposition application to HUD, they describe employment opportunities
at the refineries. Many west side residents worked at the plants and many workers rode their bicycles to work. At one time more than 8,000 people worked for these refineries.

These companies have invested billions in Port Arthur, but the combined permanent workforce is estimated at approximately 2,500. The engineering and technical employees of these companies are among the highest paid in America but there are no opportunities for those with limited skills or those with skills in construction or turnaround trades.

The loss of ready access to local employment and merchants such as large retailers on US 69 and increases in crime rates has caused steep declines in the population and businesses on the historic west side and downtown area. The Port Arthur Housing Authority's Carver Terrace/Lincoln Square housing developments are now located in a dilapidated and declining area of Port Arthur with no job opportunities, limited retail stores, and social services.

In addition, the petroleum industry seeks to expand in the area. Per the December 2018 edition of the Beaumont Enterprise, Motiva is considering adding petrochemical to the refinery. The article quotes an official: "One of the potential locations for the new
facilities is unimproved land located within the Motiva Port Arthur Refinery complex."

Per our rule, rehabilitation developments with ongoing and existing federal assistance from HUD may be granted an exemption by the Board. Staff believes that the existing project-based Section 8 HAP contract meets the eligibility requirement for this rule for the Board to consider the exemption, but given the close proximity of the two oil refineries to the development and the documented concerns regarding the area surrounding the development site, mitigation beyond the presence of a HAP contract should be required.

Given the additional information provided by the RFADs, staff is not convinced that there is a reasonable expectation that the poverty rate will be below 40 percent by the time the development is placed in service.

Staff recommends that the Board find the development site for application 19301 Prince Hall ineligible.

Happy to take any questions?

MR. GOODWIN: Could you repeat that?

(General laughter.)

MS. HOLLOWAY: I cut this so far back.

MR. GOODWIN: Michael has a letter to read into
the record.

MR. LYTTLE: I will be much shorter than Marni.

This is a letter from State Representative Joe Deshotel to Chairman Goodwin and the Board.

"Please accept this letter as my additional statement of support for application 19301 Prince Hall Apartments and my request for the Governing Board of the Texas Department of Housing and Community Affairs to find Prince Hall eligible for an award of 9 percent housing tax credits.

"It is my understanding TDHCA staff is recommending Prince Hall be found ineligible for an award of housing tax credits. I am very concerned TDHCA would take action to prevent the revitalization of this existing housing development which was damaged by Hurricane Harvey, especially in proximity to Port Arthur's revitalizing downtown.

"During my tenure as state representative, I have worked consistently to bring resources to my district in order to redevelop Port Arthur, and this staff recommendation runs counter to these efforts. The residents of Prince Hall deserve to benefit from a rehabilitation of this existing 50-year-old development, and Port Arthur is in need of quality housing in proximity to downtown.
"Prince Hall is located in proximity to Port Arthur's downtown area which is currently benefiting from an approximately $150 million investment by Motiva. This kind of private development will bring jobs to the area and create a positive domino effect of opportunity.

"It is essential for safe, decent and affordable housing options are available in proximity to downtown. In the past five years the poverty rate in the census tract including Prince Hall has decreased approximately 33 percent, demonstrating a significant improvement in the area.

"During my term I have worked with area leaders and government and industry to successfully improve all aspects of the environment, including air quality. Air quality in Port Arthur has significantly improved over the last 20 years, and emissions from local industry have decreased significantly.

"Industry has made material investments in pollution control and laws and rules have become more stringent. The staff's assessment of environmental impacts and air quality in the vicinity of the proposed development is not correct.

"The TCEQ actually monitors air quality in Port Arthur, including by the proposed development. These monitors show the air quality is safe. In fact, all of
Jefferson County meets federal air quality standards called for by the Federal Clean Air Act.

"Moreover, any assertion that the development's proximity to the refineries should preclude development is misguided. I would point out many people live within the two-mile distance of the refineries in the cities along the Texas Gulf Coast, and it is my understanding that there has not been an offsite death due to a refinery accident in over seven years. Please do not lose sight of the fact that the standards sought to be imposed by staff would virtually preclude development in almost all of downtown Port Arthur.

"Finally, it appears that the QAP rule changes have made it much more difficult for minority cities to compete for 9 percent tax credit financing. Until this year it has been twelve years since a developer seeking to build affordable housing in Port Arthur has been able to successfully compete.

"The Prince Hall redevelopment is the high-scoring application in TDHCA's Region 5 Urban funding pool. I represent both the cities of Beaumont and Port Arthur, and it is not only a long time past for Port Arthur to receive an award but critical for the community.

"In conclusion, Prince Hall is currently and has historically been zoned for multifamily housing, and
it's in proximity to a revitalizing area of Port Arthur, it's in an area of declining poverty, and has demonstratively acceptable air quality meeting all state and federal standards.

"This existing affordable housing development needs TDHCA resources to provide the rehabilitation residents deserve. There is sufficient documented mitigation related to environmental factors, poverty and blight, and I urge you to support the redevelopment of Prince Hall and to find the development site eligible for an award of housing tax credits.

"Respectfully requested, Joe D. Deshotel, 22nd Legislative District."

MR. GOODWIN: Thank you.

Can we have people speaking opposed to staff recommendation raise your hand? Those in favor of staff's recommendation?

Okay. Three minutes.

MR. AKBARI: Mr. Chairman, Board members, I'm Chris Akbari. I'm the CEO of ITEX. We are the co-developer of Prince Hall Village, which, as staff has said, is 1209 units of Section 8 project based.

It was affected by Hurricane Harvey, has been renovated so the units are re-occupied, but we need to be able to do the substantial renovation for this project to
be put back together. Our goal is to be able to
revitalize and preserve this housing that is adjacent to
downtown Port Arthur.

There was a lot of things mentioned about the
decline of that area. What was not mentioned is that
there's been redevelopment of the West Side Center,
there's been added dentist offices and things like that
within a quarter of a mile from here.

There's also in downtown Port Arthur a major
redevelopment, and I know it was described as being only
for in lieu of taxes, but that's not the case. Motiva is
actually investing $150 million to bring engineers, to
bring staff to downtown buildings to try to revitalize
downtown and to try to create jobs for the community
members, just like those that live at Prince Hall Village.

We believe that every bit of data that was
provided relating to the previous demolition of Carver
Terrace is incorrect in nature. Part of what happened, as
ITEX was a part of those, we worked with the Port Arthur
Housing Authority who wanted to access the Community
Development Block Grant funds from Hurricane Ike.

Those funds had a voluntary compliance
agreement that was signed by TDHCA giving the Texas
Housers the ability to have a say-so in how that money
would be used. So we knew that we couldn't be able to use
that money to revitalize Carver Terrace at the existing site.

In order to get the money and to preserve the housing for Port Arthur Housing Authority, we devised a plan to work in collaboration with the housing advocates to rebuild that housing. As part of that, we used the expedited process through SAT, and that's why you have some of the information that was provided relating to that demolition.

I'd also like to say that we believe in having safe and sanitary housing. We believe that this site is acceptable, it meets the requirements for preservation of housing. We also believe that the poverty rate is declining, it is currently at 44 percent, and in previous instances this Board has actually taken action based upon excluding the low-income units that are existing at the site. If you take out the 120 units and approximately 200 or more residents, the poverty rate is actually under 30 percent.

We know that we've addressed the issues related to blight, we know that this is a very valid project and will do very well for the City of Port Arthur and also preserve this housing and the Section 8 HAP contract.

MR. GOODWIN: Someone in favor of staff's recommendation?
MR. DUNCAN: Hello again. Charlie Duncan from Texas Housers.

We submitted one of the RFADs that's before you in the supplemental Board book, and I applaud staff for putting together very well all the information about the issues with this site. Marni laid it out very well; I agree with the issues that she's brought up.

I want to focus in on something in particular. The poverty rate, according to census data, has come down, but there's two really important factors to consider here. One is the aforementioned removal of the public housing in the area.

We were party to the conciliation agreement that Mr. Akbari mentioned earlier. Part of that conciliation agreement was replacing damaged affordable public housing in a manner that complied with fair housing law. This is an area that has been subject to a history of disinvestment, of environmental issues, flooding issues.

It's been affected by Rita, by Hurricane Ike and now Hurricane Harvey, and it was important to give folks provide a better housing choice than they had there. That's a lot of low-income people contributing to that poverty rate that were removed from the area.
Opportunity Program, which was a part of that conciliation agreement. This program allowed folks who were affected by Hurricane Ike to choose whether to rebuild in place their damaged home or they could take that funding and buy a home elsewhere and remove themselves from that hazardous area or that poverty concentrated area.

And of all the areas across Texas there was no more greater participation in that program than west Port Arthur. People chose to enter into that program and leave the area because of the conditions of that community.

Now, it's a shame, you know, the state of the community on part of the effects of the refineries and such. That's stuff that's out of y'all's hands, but it is in y'all's hands to ensure that people have good housing choices, safe housing choices, and not bound people to another 30 years of living in these conditions that clearly HUD has agreed are unacceptable for their public housing and that they have found with project based developments in other cities it's not necessarily a reason to keep funding this. Those can be moved, those can be converted to housing choice vouchers where people can choose to live elsewhere.

So I would encourage all of you to agree and support the staff's recommendation.

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

MR. GOODWIN: Someone going to speak that's opposed to staff's recommendation?

MR. RICHARDSON: Good afternoon. I'm glad to be here today. My name is Raynard Richardson. I'm part of the development team. I'm the former director of multifamily housing for the Department of Housing and Urban Development, and I'm very familiar with this particular asset, it was under my jurisdiction, I used to be the asset manager for this site.

HUD has invested, since 2001, $19 million in this asset for housing assistance payments. It's projected to invest another 13 to $14 million through 2031 because of the land use restriction document it has with it.

The public housing programs are governed by a different set of rules than the multifamily housing programs because it deals with private industry. HUD has assisted this asset through what was called in the past an operating assistance grant which is no longer in the scope of the toolbox for HUD. Then HUD did a mark to market redevelopment where they took the debt and put it in a second or third position to try to extend the preservation of the housing.

The problem is there's no other funding stream.
except to come here to you to get funding to rehabilitate the asset. The department has done all it could on the private side of its business. On the public housing side they control all the funding streams. Other than that, we don't have any other place to go but to TDHCA to get the 9 percent credits. The asset is 50 years old now, it needs to be rehabilitated.

Our presenters are going to present documentation that states that the air quality in Port Arthur does not violate any type of law, rule or reg. And during the time that the transition was taking place for public housing, I was a member of the HUD staff, I remember everything that went on, and I commend the Texas Housers and the staff for what they've done.

But in essence, the reality is there's nothing else that we can do. The LURA is going to be in effect until 2031, the residents are going to be there. HUD, we have a comfort letter from them.

I contacted the HUD office in Fort Worth, the regional office. We have a comfort letter, if we get the tax credits they're going to process for the transition of this and we're going to rebuild and make it a safer place to live. If right now the environmental position of that asset violated any law, then the federal government would have moved the residents out.
So I just want to ask you to consider what's been stated. You know, I understand both sides, I'm like an earlier person who spoke, I've been with HUD, I'm on this side now, I'm an advocate for people and for residents, and now you have me on a project in Houston, two of them, as a matter of fact, because I feel like you're rational people and you'll consider both sides of this. You know, everybody is not able to live in certain places, so we appreciate your consideration.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Someone in favor of staff's recommendation?

MS. SCOTT: Good afternoon. My name is Erica Scott, and I'm a vice president of development at Herman & Kittle Properties.

In the interest of time, Mr. Chairman, since I'm trained not to repeat things that have been repeated before, but we do appreciate this opportunity to speak and would like to thank TDHCA staff for all of their hard work.

We have expressed concerns with the Prince Hall application in the areas of undesirable site features and neighborhood risk factors. TDHCA staff evaluated all of the information related to the site and these specific
I would like to introduce Natasha Martin, who is an attorney with Graves Dougherty Hearon & Moody. Natasha's area of expertise is environmental law. Given her subject matter expertise, Natasha will elaborate on the concerns associated with the site, the Prince Hall application, and describe the surrounding uses as shown on the posters, which were also included in your Board package.

MS. MARTIN: Thank you, Erica. My expertise is clearly not easels.

MR. GOODWIN: You need to state your name and sign in.

MS. MARTIN: Yes, Natasha Martin of the law firm Graves Dougherty Hearon & Moody, and I'll get signed in.

So I guess I'm not your typical lawyer. I worked at the TCEQ for about 4-1/2 years. During my time there I conducted health effects reviews on air permit applications, much like the permits that are in place for the refineries we'll talk about today.

So we want to highlight the environmental and health and safety risks at Prince Hall and why mitigation is not an option here and is outside the scope of the
developer's ability to assure mitigation.

The posters we've put up show a map of the affected area. It's slightly modified from what was in the RFAD -- and I can provide copies if you'd like -- but we've added the Prince Hall is the pink rectangle and Carver Terrace is the orange.

And I won't belabor Carver Terrace, but we want to say that we agree with staff's recommendation to deny the application. Staff says mitigation may not be possible due to the potential health and safety risks of the development being this close to this type of undesirable site feature. Staff's interpretation of the rule is spot on. This close is less than half a mile, and this type are two refineries producing more than 100,000 barrels of oil per day that have been in frequent violation.

No mitigation plan was submitted, and I guess the claim for that is that they claim to be eligible for an exemption. We would urge you to not approve the exemption because the Department's own rules state that preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Think about Carver Terrace and HUD's decision where the quality of life outweighed preserving unsafe affordable units.

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We'll quickly talk about environmental risk factors and what's coming out of these refineries. So a short list of pollutants are: volatile organic compounds that can cause liver, kidney, central nervous system damage; sulphur dioxide, respiratory issues; carbon monoxide, complications for people with heart disease.

The list goes on, nitrogen oxide is again respiratory damage; hydrogen sulfide, irritation to eyes, nose and throat. I only bring these up because these are permanent pollutants, and there's a long history of noncompliance, so I want to explain the importance of complying with these permits.

TCEQ has assessed $3.5 million of penalties for at least 56 violations. It is true that regionally the area is within federal standards, but you have to look at the impacts to the receptors closest to the property.

Can I please just one more thing?

MR. GOODWIN: Wrap it up.

MS. MARTIN: I will wrap it up.

So noncompliance continues. Just yesterday, June 26, the TCEQ considered a $32,000 fine against Motiva for a violation of nitrogen oxide limits. They're busting their permits, and I think that's important to know.

Finally, in regards to mitigation, it's not possible here. The developer can't control operations and
maintenance at these refineries, the developer cannot enforce the permits, and they can't control whether or not Motiva expands.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: Thank you.

MS. MARTIN: Thank you.

MR. GOODWIN: Opposed to staff's recommendation?

MR. PELS: Yes. Good afternoon, ladies and gentlemen of the Board. I'm Gerry Pels of Locke Lord, where I chair our firm's environmental law section.

I'm speaking today on behalf of Port Arthur PHD, who is the applicant, with regard to air quality issues specifically and environmental issues generally. Over the last 30 years I've represented clients across the country on air quality and environmental issues involving litigation, permitting and compliance. Among those clients is the City of Houston, where I represented them before the United States Fifth Circuit, and that was kind of fun.

In this case, applicant has met the requirements of the QAP, and protestors' arguments that have been embraced by the staff are not supported by the facts, and in fact, are inconsistent with the very
documents submitted by protestors.

Let me go through a few things: First, we expressly disclosed the refineries in our application, no question about that. With regard to mitigation we prepared and provided a Phase I environmental report, meeting the requirements of 11.305. The professional's opinion was that the surrounding assets, the surrounding facilities, including the refineries, are not and will not be impacted by the refineries.

Now, with regard to the air emissions issue specifically, protestors make four arguments against the application related to air emissions: one, health risks are associated with the refineries' proximity to the proposed development; two, mitigation is not ongoing; three, health risks are related to the refineries' noncompliance; and last, the compliance history suggests adverse health effects.

We would urge the Board to please consider the factual matters we included in our response to the RFADs, the over-200 pages that were mentioned by staff. Let's go through these.

With regard to proximity to the refineries representing a health risk to the residents, it's just not accurate. There are seven monitors in Port Arthur, including one within 600 feet of our proposed development,
that are maintained and monitored by the TCEQ.

In the most recent TCEQ report, it shows that all air pollutants, including the benzene, including the VOCs, including the SO2 referenced by protestors, they're all at concentrations at levels that are below the TCEQ's conservative health-based screening levels.

TCEQ's own empirical evidence shows that the local air quality at Prince Hall is safe, and as mentioned in the representative's letter, Jefferson County meets all clean air standards. That's more than I can say where I live in Houston.

Second, protestors state that mitigation is not ongoing. Wrong. In fact, over the last 20 years studies show that local industry has reduced VOC and SO2 emissions by about 60 percent and 50 percent, respectively. Total emissions from unauthorized upset events have been reduced by 95 percent over that period of time.

In addition, rules are coming into play that are very stringent -- I'll take two seconds -- the recent EPA refinery sector rule amended December 2018 imposes fence-line monitoring and redundant standards on controls for upset emissions.

I want to read a quote from the TCEQ with regard to the upset emissions cited by protestors in their documents. The TCEQ stated with regard to each of those
upset events: "Amounts of pollutants do not exceed levels that are protective of human health as a result of the violation" or words of similar import.

Finally, with regard to compliance history, the TCEQ's website and the protestors' documents say it's satisfactory and they don't consider these refineries repeat violators.

MR. GOODWIN: Any questions?

MR. PELS: Thank you very much, and I'll be happy to answer any questions.

MR. GOODWIN: I don't hear any questions.

MR. PELS: Thank you.

MR. GOODWIN: Anything new from anyone that's in favor of staff's recommendation?

(No response.)

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

MS. THOMASON: I'll make a motion to uphold staff's recommendation to find this item ineligible.

MR. GOODWIN: We have a motion to find it ineligible. Second?

MR. BRADEN: Second.

MR. GOODWIN: It's been moved and seconded. Do we have any further discussion?

MS. DULA: Yes. Tamea Dula, Coats Rose, on
behalf of the applicant with something new.

I've been charged to discuss with you the procedural irregularities with regard to this matter. We knew about the RFAD because the RFAD -- the third party that requests the RFAD has to send a copy to the applicant, and that copy was received.

Nothing was sent by staff. There was no administrative deficiency, inquiry or anything of that nature. We were never notified of any intent to terminate. The only notification we got was that in last month's Board book there was an indication in the summary of RFAD actions that Prince Hall would be dealt with at a different date before the Board.

And then the next thing was the fact that it was on the agenda, and then finally, the only information we got concerning the staff's sense with regard to this was when the Board book supplement was published on Monday, so effectively four days in advance of this meeting.

The materials published by staff on page 682 of the supplement book, staff indicates that this matter is being brought to the Board pursuant to 11.101(a)(2)(K), which requires the staff provide the applicant with written notice and an opportunity to respond and place the matter before the Board for a determination.
Since written notice was never provided, nor was the applicant advised that this was going to be under that provision until the supplement was published on Monday, the applicant, in an effort to be overwhelmingly clear about this, filed the 200-page response to the RFADs on its own notion because they knew they were going to be discussing before the Board, and we had to get something to the staff in order to published in the Board book. Otherwise, we would be standing here with nothing.

And so we wanted you to understand the circumstances. I am not quite sure what your vote today is going to entail since the administrative requirements have not been met.

Thank you.

SPEAKER: We just have one resident that would like to speak as well.

MR. GOODWIN: Somebody else would like to speak in favor of staff's recommendation or opposed to staff's recommendation.

SPEAKER: Opposed to it.

MR. GOODWIN: Opposed. Come on up.

MR. ECCLES: And actually, if I could ask Tamea.

MR. GOODWIN: Hold on just a second, sir.

MR. ECCLES: I'm looking in the Board
supplement at a June 10 letter from Locke Lord that's addressing this application and all the issues that were raised regarding ineligibility and 16 exhibits.

What is it your contention is that -- what are you seeking by bringing up a procedural irregularity? Would you like the Board to table this until the next meeting? What is it that you're seeking by bringing up that irregularity?

MS. DULA: No, I'm not requesting the Board table it, unless Chris would like to have that done. I'm bringing it up to show that this applicant is bending over backward to comply with everything, to show you that they are complying with all the rules and requirements of the QAP, and giving you information that's up to date and countering the scattershot effort of the RFADs to throw a lot of spaghetti and see what sticks -- mixed metaphors. So that's the reason it's been brought forward.

MR. ECCLES: Do you need a further opportunity to respond to everything that's been presented?

MS. DULA: No. We were proactive in that regard.

MR. ECCLES: Very good.

MR. GOODWIN: Sir.

MR. CHEVALIER: Good afternoon, Chairman Goodwin and the Board. My name is Harry Chevalier, and
I'm from Prince Hall, I'm a resident at Prince Hall Village Apartments. I've been a resident for 15 years now. I've graduated three kids, two of which is in the Army in the military and one is on their way out.

What I've listened to today, I've listened to both sides of the argument, but as a resident, what I say and what I've seen is I believe it needs improvement, but also, it's not improvement for -- it's more for the kids. As far as for me, I'm graduating again, I'm going on my second degree, and like I said, I've been there 15 years, it never held me back on anything, but for the kids that's coming up today, they need something to look forward to.

They're looking at ceramic floors, outdated walls, so you know, it knocks some of their morale down. But in my case I tries to tell them, Don't let that stop you from doing your goals, because you may not have electric stove, you might still be outdated with your gas stoves, so it don't affect your outcome.

And I also heard a lot of them say about the poverty. Poverty is all over our city, the whole of Port Arthur is in poverty. You know, I've never been sick, thank God, none of my kids have been sick through the air quality control, thank God.

And also, it's coming from a homeless guy. Prince Hall had opened its doors, when I first became a
resident, I was homeless. Thank god, 15 years later, like I said, I had a chance to raise three kids. It never affected us, it never bothered us. But for the kids that's coming up today, they do need something to look forward to.

Like for instance, I have this program that I work with the kids. We pick up cans, and the reason why we pick up the cans is to get a new playground, they've been asking for a new playground, they want new equipment. So that's the things I tell them to do.

Everything -- you don't want nothing given to you, you have to work for it, so that's another reason why we pick up the cans, that's why we go and do different things, to show them without hard work you'll never get nothing.

You know, we're not looking for handouts, we're not asking, we're just coming to just whatever that you can help us with to improve our quality and to improve our kids. That's all we're asking.

You know, like I said, I'm going to state my belief it's not for handouts, I believe if you work hard, dedication, that's how they told us. And I teach the kids the five Ps: Proper preparation prevents poor performance. If you go and do what you're supposed to do and let everything else take care of itself. Just pray
about it and put the rest in God's hands.

So I'm just speaking for all the people that can't speak that's a resident of Prince Hall, and to the Board I would just appreciate any help, any help that you would be able to do for the kids of Prince Hall would be very, very, very acceptable. And I thank y'all for having me here.

MR. GOODWIN: You need to sign in.

MR. CHEVALIER: Yes, sir.

MR. GOODWIN: Thank you.

(Applause.)

MS. RESÉNDIZ: Mr. Chairman, I'd just like to make a comment.

Sir, you inspire me, and I wish there were more people like you. And please thank your sons for their service.

MR. CHEVALIER: Thank you, ma'am, thank you very much.

(Applause.)

MR. PALMER: Barry Palmer, Coats Rose, representing the developer, in opposition to staff's recommendation.

And one important point, just one point that I want to make for you to consider is you're not being asked to put 120 units into this neighborhood. This is not a
case where we're looking to build 120 units outside
downtown Port Arthur. These units are there, they've been
there for a long time, they're going to be there for a
long time.

We have 120 units fully occupied by tenants
just like the last gentleman, and what we are talking
about here is putting a major investment to rehab this
property so that their quality of life over the next 15
years while that Section 8 contract is in place is
dramatically improved.

So that's why, to me, it makes a big difference
whether this is talking about moving new units into Port
Arthur versus just preserving units that are there and are
going to be there for a long term, they're not going
anywhere for the long-term Section 8 contract in place
there.

Thank you.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: We have a motion and a second on
the floor. Call for the vote. All those in favor say
aye.

MR. VASQUEZ: Confirming that the motion is to?

MR. GOODWIN: Is to accept staff's
recommendation and uphold.
MR. ECCLES: The site's ineligibility.

MR. GOODWIN: The site is ineligible.

So hearing no vote. Those against say aye.

(No response.)

MR. GOODWIN: Let me clarify this. The motion has been made and seconded to uphold staff's recommendation, so a vote for it would uphold staff's recommendation and find the site ineligible. A vote against it would be to not find the site ineligible, and then we could entertain a motion to find the site eligible as opposed. We could withdraw this.

MR. BRADEN: Who made the motion?

MS. THOMASON: Me.

MR. GOODWIN: Sharon made the motion.

MR. ECCLES: Who seconded?

MR. GOODWIN: I thought Paul seconded.

MR. BRADEN: Did I second it?

MR. GOODWIN: Yes. Do you want to withdraw your motion?

MR. BRADEN: I'll withdraw my second.

MR. GOODWIN: You withdraw your second, so now we have a motion with a second. Do I hear another motion now?

MR. VASQUEZ: Well, I'll second her motion.

MR. GOODWIN: You second her motion. Okay. So
the motion is to hold the site ineligible, thus agreeing with staff's recommendation. All those in favor say aye.

(A chorus of ayes: Members Goodwin, Reséndiz, Thomason, Vasquez.)

MR. GOODWIN: Opposed?

MR. BRADEN: Nay.

MR. GOODWIN: The motion passes, the site is ineligible.

MR. GOODWIN: Moving on to item 7(g), Sharon.

Are you ready, Sharon?

MS. GAMBLE: I'm ready. Good afternoon, Board.

My name is Sharon Gamble, and I'm the administrator for the Competitive Housing Tax Credit Program at the Department.

This item is the presentation, discussion, and possible action to issue a list of approved applications for 2019 competitive housing tax credits in accordance with Texas Government Code Section 2306.6724(e).

The Department's Board is required by this section to review the recommendations of Department staff regarding applications and shall issue a list of approved applications each year, in accordance with the Qualified Allocation Plan, not later than June 30.

Moreover, as required by Texas Government Code 23206.24(f), the Board shall issue final commitments for
allocations of housing tax credits each year, in accordance with the Qualified Allocation Plan, not later than July 31.

I want to make it clear that this list that we're talking about today is simply a list of applications that are eligible for an award; that is, they have not been terminated or withdrawn from the cycle. On July 25 you will consider a list of applications that are recommended by staff for award, so no award decisions are being made today, just to get that clear for everyone.

134 competitive HTC applications were submitted prior to the application deadline of March 1, 2019. Counting actions taken at this meeting, 13 applications have been withdrawn or terminated. Applications that maybe ineligible for award due to requirements of Texas Government Code Section 2306.6711(f) related to the two-mile same-year rule, and/or Texas Government Code Section 2306.6711(h) related to developments reserved for elderly persons are included in this list with their status identified.

This is the list of approved applications as required by Code. They are approved in the sense that they have not yet been identified as having any material deficiency or other defect that would cause them to be ineligible, or if such matters have been identified, they...
are still within the period where such matters may be appealed.

As provided by 10 TAC Section 11.63 of the QAP, award recommendations methodology, the Department will not perform a detailed review of all applications. It reviews priority applications that are most likely to be competitive. Priority applications are identified based on self-score, preliminary review, and other relevant factors such as outcome of awards based on class.

As staff continues the review process, applications remain subject to the identification of material and/or administrative deficiencies, revised scoring and/or applications may be found ineligible or to involve ineligible applicants.

The list includes the current score for each active application as well as relevant application information. Those applications that have received a final scoring notice are identified in the review status column with a C, and there's probably been some since this was posted so not all of those might be indicated.

The C indicates that a complete program review has been completed. Those applications that are currently under review are identified with UR, and those with N have not been prioritized for review.

At this time applications may remain subject to
underwriting, completion of any remaining program review, and a previous participation review. Further, the credit amount reflected on this list is in most cases the requested and may change to reflect the recommended credit amount and/or may have conditions placed on the amount in July if recommended for award. Information about completed underwriting reports will be found on the Real Estate Analysis web page.

In addition to applications that may be removed from the list for issues of financial infeasibility, applications may also be removed from the list of approved applications as determinations are made on appeals or as the Board determines under operation of rule of law.

Staff recommends that the Board approve the attached list of active applications for the 2019 competitive housing tax credit round, modified as follows to reflect actions taken at this meeting: application 19013 Our lady of Charity will be removed from the list; application 19180 St. Elmo Commons will be removed from the list; application 19185 Edgewood Villas will be removed from the list; application 19227 Reserve at Risinger will be removed from the list; and application 19301 Prince Hall will be removed from the list.

I believe that covers all the actions. I can answer any questions that you have.
MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: If not, do I have a motion to approve staff's list, receive their report?

MR. VASQUEZ: Move to approve the report.

MR. GOODWIN: Second?

MS. THOMASON: Second.

MR. GOODWIN: Any discussion? Did you want to speak?

MS. WINFIELD: Good afternoon, Chair and Board. My name is Janae Winfield. I'm chief of staff for Houston City Council Member Martha Castex-Tatum. I am here because she is serving with the Texas Municipal League today, and I wanted to share a letter that she's authored for you all regarding the applications that will be moving forward as it relates to our council district, if I may.

"I am Council Member Martha Castex-Tatum, council member for District K, where we are currently presented with six potential tax credit applications in a three-mile radius in our area.

"On November 16, 2018, I hosted a community meeting where Edison Lofts and Blue Ridge Villas presented their plans and sought community input. This is the second year these two developers met with District K"
residents. No other developers had reached out at that time.

"I'd like to express my complete support for Edison Lofts, that's application 19327; Blue Ridge Villas, application 19257; and Belfort Park Apartments rehab project, that's application 19076.

"I also want to take time to express my thoughts on the entire application process. It seems as if the process was previously done over months, and this year we had weeks from the community about potential applications and their opportunities for comments.

"I think it is extremely important as you deliberate and tally points for each of the projects that there be an increased point value for citizen input. As a local elected official I have worked intimately with area groups to develop long range plans and build consensus.

"Recently Fort Bend Houston was announced as a City of Houston Complete Community, which will increase our public-private partnership opportunity on the area and enhance the revitalization efforts in Fort Bend Houston. While we have identified projects we support as a community, please note we are not looking to support an overabundance of apartment complexes in this designated area. Please consider the effect of a concentration of apartment complexes in this area where targeted work is
occurring to improve our school district.

"Edison Lofts is working with Fort Bend ISD to incorporate a pre-K program near the site that would benefit young school-age children. Blue Ridge Villas would serve as a great option for seniors in the community who are looking to downsize and remain in their neighborhood. Belfort Park Apartments is an example of exactly what we like to see in our community. With over 20,000 apartment doors already"

MR. GOODWIN: I hate to interrupt you, but I'm having trouble finding the relevance in here of what it has to do with the agenda item of approving this list. I think you might be more appropriately when we get into public comment for this.

MS. WINFIELD: Are we not there yet?

MR. GOODWIN: No, we're not. We have a motion on the floor to approve the list that's been presented to us. And I'm going to kind of stop you if you don't mind.

MS. WINFIELD: That's no problem.

MR. GOODWIN: We'll see if there's anybody else that wants to speak to this, and you can start back when we get into the next section.

MS. WINFIELD: Thank you.

MR. GOODWIN: Is there anybody that wants to speak to this motion that's on the floor?
SPEAKER: What was the motion?

MR. GOODWIN: The motion is accept and approve the list as presented. It's in the Board book as amended.

MR. FOSTER: Mr. Chairman, my name is Claude Foster. Let me just get some clarification. So can we identify specific projects we would like to see removed from the list as part of the motion?

MR. GOODWIN: No.

MR. FOSTER: So we have to wait until the public section.

MR. GOODWIN: Public comment.

MR. FOSTER: Coming up next. Okay.

MR. GOODWIN: The question was just asked if it was time to bring up specific projects that you would like to see removed from the list, and I don't think this is the time to do that. Is it, Beau?

MS. WINFIELD: While there are some that we are supporting, there is a project that is on the list that is going to move forward. So I'm happy to wait till public comment just to clarify, because there are several other community residents that will come behind me.

As far as those that are moved, you guys talked about Briarwest, that will come up in my comments later as it relates to the voluntary compliance agreement that the City of Houston is under. So again, it can wait for
public comment.

MR. GOODWIN: Well, we have a process for how these applications got to this stage and phase, and if you had comments on those, I think the time to make those comments is long past.

MR. ECCLES: And I would agree with that assertion. However, to the extent that you can make sure that your comments are being addressed to projects that are on the list, I'm not sure that it's really going to be possible at this phase for the Board to exclude them -- in fact, I'm quite certain it's not; however, this would be the time to talk about that.

As I heard briefly discussion about the rules should allow more notice to people, that's not in reference to this agenda item, that would bring up when the QAP gets open. So if you could just make sure that when you're discussing things that you identify that it is actually part of this agenda item, it is something that is on this list.

Again, with those parameters, this is a time for comment, but it's not really going to be a place where there's a process in place where the Board can just say, okay, never mind, that's off the list.

MS. WINFIELD: Okay. I totally understand that and we'll wait for the public session. I will say,
because she's not here, she included all of her comments for everything just in one letter and it's not ordered specifically.

So yes, there are comments about the QAP, there are some comments about projects that were on this list that one was not removed, thankfully, but again, I can wait for the public comment after this item passes.

MR. GOODWIN: Okay.

MR. FOSTER: Mr. Chairman, the reason I keep coming back, because we've brought 65 senior residents here from the community that are affected by some of these projects on the list, because it was our understanding that the items would be on the agenda at this Board meeting, so we chartered a bus and brought those residents up here, because they care about their community and they wanted to have input about the items that are on that list, and we were told that it would be on the agenda and this was our time to come to this particular meeting. This has been in ongoing plannings for months to be here on June 27.

And so I think that's where the confusion is at. It's an agenda item we were told that we could come to this particular meeting and talk on those agenda items. And so I would argue that if they're presenting a list to you for consideration that we should be afforded the
opportunity to say whether or not we are for or against that list that's being provided to the Board.

MR. GOODWIN: Okay. I don't think we have a problem with you saying you're for or against specific item by item of what's on here, knowing that there's a procedure to take that input and that procedure is kind of long past.

I wouldn't want somebody to be under the illusion that we're going to go in here and say, well, since you said you didn't like application 19330 -- and I don't know if that's one on your list, but if it is, I'll say, well, gee, I'm sorry.

MR. FOSTER: I think the confusion is the fact that we were told that it was on the particular agenda item, it is item 7(g), and that we would have an opportunity to come here and comment, provide additional testimony as to our reasons for either supporting or not supporting a particular project.

MR. GOODWIN: And who told you that?

MR. FOSTER: That's the information we got from the staff.

MR. GOODWIN: Okay. Fine.

MS. HOLLOWAY: We have received a great deal of communication from these folks, and we've received petitions and letters, and there's actually a whole other
set of documents in the Board materials that's everything that we have received as far as public comment.

They had asked when they could talk to the Board, because this item as the list is really the only opportunity before the late July meeting for them to come and provide their comments to you regarding these applications.

So yes, I told them that they would have an opportunity to come and provide comment, just like an attorney representing an applicant. So I apologize if I misstated.

MR. GOODWIN: I don't know that you did. We've never had this situation as long as I've been on the Board, so frankly, I was just taken a little off guard that it wanted to go application by application, and when we were hearing the letter it sounded like stuff that should have been in the QAP committee or they should have been involved in rulemaking, et cetera, et cetera.

And the other is I'm a little lost as to what authority we can have as it relates to that other than to hear their comments, which we'll be more than happy to do. I don't want to not give you a voice. I just also don't want you to mislead you to think that we're going to take some of those applications off this list based on your comments.
So we'll continue. And in the brevity of time,
I'm going to ask you to keep your comments to three
minutes, and since we've gone three hours without a
restroom break, I'm sure from time to time one of us
might -- only one of us can leave at a time to still have
a quorum.

Go ahead.

MR. EVANS: Yes, sir. My name is Carl David Evans. I'm the president of Fort Bend Houston Super
Neighborhood Council 41.

I want to make it clear that there is no
NIMBYism in Fort Bend Houston Super Neighborhood. Our
board is not divided. Our strategic planning committee
has vetted all proposed developments and made the
determination, based upon our strategic plan developed by
our strategic planning committee, which consists of
designated representative from our Fort Bend Houston
communities and with our council, working with Council
Member Martha Castex-Tatum in the best interest of Fort
Bend Houston communities, we elected to support the Edison
Lofts, number 19327; and Blue Ridge Villas, application
number 19257.

And I am here to say that Fort Bend Houston --
to make it clear that there is no NIMBYism present within
Fort Bend Houston. I therefore want to ask you to support
application number 19327, the Edison Lofts, and Blue Ridge Villas, application number 19257.

We also would like to ask you to deny application 19242, The Tramonti; application number 19245, the Huntington Chimney Rock; and application number 19109, Verdin Square.

And with the Chairman's permission, I'd like to yield the rest of my time to Mr. Willie Rainwater.

MR. GOODWIN: Okay. And by the way, you've made this recommendation without each person needing to come up. You said there's 55 people. Could those people stand up if they all agree with what you're requesting.

(Mos from audience members.)

MR. GOODWIN: You want to speak?

(Mos from audience members.)

MR. GOODWIN: No, you don't want to stand up, or no, you don't want to speak.

(Audience members said they don't agree.)

MR. GOODWIN: I guess I'm confused.

MR. EVANS: I would like to say this. I'm the president of the Super Neighborhood Council. We have about 30 homeowners associations in our council representing almost 25- to 30,000. There is a few people who does not agree with the decision that is made by the board, but the board itself has voted, and they are not
divided on that.

MR. GOODWIN: On what you just stated?

MR. EVANS: Yes.

MR. GOODWIN: Okay. Who's next?

MR. RAINWATER: Good afternoon. My name is Willie Rainwater, and as he said, I am here in opposition to the project 19109 Verdin Square. And the reason that I oppose that project, the main reasons that I oppose the project is because it goes against the TAC that you guys have, and it goes against the TAC in a couple of ways.

First of all, the mileage that they state from the so-called full service grocery store, which is Family Dollar -- a Family Dollar is not a full service grocery store. And the points that were given to this development was one point for one mile. Well, from the development to the Family dollar is 1.1 mile, it's not one mile, it's one mile and two-tenths of a mile, so that's outside of what your TAC says.

Also, they tell you that there's a park. Now, the park for their outdoor recreation that they chose is in Missouri City; it's not Houston's municipality. Now, the closest Houston park would be Blue Ridge, and that would be like 2.7 miles from that development. The development is 1.2 miles from the wrong park which is in Missouri City, and that's a whole different municipality.
Now, both places, Fort Bend Houston and Fort Bend Missouri City are both in Fort Bend County.

The other thing about the Verdin Square is that the licensed daycare -- the daycare is supposed to be within two miles, so the TAC says. The daycare actually is 2.2 miles. And I have pictures of all this that I'm telling you, because I drove it, and I titled each one, I put the miles by it, so I can share this with you. But that's how I know that it's outside of what your TAC says.

Now, the thing also is that the development site is in an area where it's a four-lane highway that has no sidewalks, it's right next to an expressway, and you're putting people in a location where there's no public transportation. The closest bus stop is 2.7 miles away. They don't have a pharmacy close by, that's going to be another couple of miles. So basically --

MR. GOODWIN: I need for you to wrap it up, sir.

MR. RAINWATER: Okay. And the last I'll say is that we're not against housing, but what we are is against putting people in places that don't help them, because your mission statement says that you guys want good housing so it helps everybody. Well, this doesn't do that.

MR. GOODWIN: Thank you.
MR. FOSTER: Mr. Chairman, this is going to be real quick, but if you'll give me an opportunity to make three points.

MR. GOODWIN: Inside of three minutes.

MR. FOSTER: Inside of three minutes. Thank you very much.

As the staff indicated, we did send a letter with a lot of our arguments, so I'm not going to go over that. But there are some things I do want to bring to your attention.

The impact of the HUD investigation on the City of Houston had an impact on the way the city operates, because what HUD found was the city was arbitrary in terms of the way it approved low-income tax credit housing for letters of support.

That's why you'll notice on this round of the applications here, Houston submitted almost every application that the developers submitted to them, and a byproduct of that is it's changed the attitude of the council members because they're under the belief, because of the HUD investigation, that they can't deny -- or they can't turn down any projects that come before them. Otherwise, they will be found in violation of the HUD findings of discrimination. And so there is an attitude on council that they have to send everything to you all
and let you all sort it out.

And what does this impact do? The mayor -- I support everything that the president said about the projects that we support or don't support, but I just wanted to inform you of this.

There are two projects, The Tramonti and Huntington Chimney Rock that are going back to the City of Houston for funding. The mayor has stated to us, to this organization, to this community that he's not going to approve the $2.5 million funding for The Tramonti and the $2.6 million for the Huntington Chimney Rock.

And I think that's important for the Board to know as you deliberate on what projects you're going to approve because you don't want to approve projects where the applicant doesn't have the money to complete the project. It would be a waste. I've watched the member of the Board because I know that's a concern.

And also, these developments perpetuate segregation. These census tracts where these projects are going to be going have a black and Hispanic population --

MR. GOODWIN: You're speaking specifically to these two projects, sir?

MR. FOSTER: Yes, sir, to Huntington Chimney Rock, The Tramonti, and Verdin Square, because the neighborhood opposes those projects.
MR. FOSTER: It is the Super Neighborhood position that these projects perpetuate segregation. That census tract is 93 percent black and brown, and it continues the pattern of segregation in the City of Houston of citing these developments in low-income tax credit developments.

There are three consequences of this. The residents of these developments are likely to be black. Section 8 is one of the allowable sources of income that you use to move into affordable housing. 89 percent of the residents that are on Section 8, or the 17,000 people that are on Section 8 in Houston are African American, 4 percent are Hispanic -- I mean, 6 percent are Hispanic and 4 percent are other.

MR. GOODWIN: Thank you.

MR. FOSTER: I can leave these remarks because I did really want to bring home those three points.

MR. GOODWIN: Send them our staff and they'll distribute them to the Board. Okay?

MR. FOSTER: Okay.

MS. GARDNER: Hello. My name is Regina Gardner. I am the executive director of a grassroots community organization in the Fort Bend Houston area. I'm a social worker, community organizer, and education
We have a group of stakeholders that have come together to support the mission for resolving both academic and disciplinary disparities in our local schools. As members of this collaborative --

MR. GOODWIN: Let me interrupt you and ask which of these applications on this list your comments apply to.

MS. GARDNER: The Edison Lofts project.

MR. GOODWIN: Edison Lofts?

MS. GARDNER: Yes. So we're supporting a mission to support both academic and disciplinary disparity in local schools, to address that issue.

And so as a part of this collaborative, we want to support the Edison Lofts project because it stands out in contrast to the other applicants. Now, we don't want to be inundated with multiple projects like this, of course, but this particular project supports our local mission, and we want to ask you to approve it because of the following benefits.

It has an early childhood literacy center which is a public-private partnership that allows for more community involvement that will directly impact our poor educational outcomes that we're having.

The project includes restaurants, a dental
office, and a bank, which will boost the economic activity
in the area.

It will have onsite security that will address
the longstanding problems we've had with vagrancy and
dumping on that property. I grew up in that area, and I
know so well that particular problem with that problem.

It includes a first-class performing arts
center, green space and an amphitheater, which will
significantly improve the aesthetics and the local built
environment.

As a community social worker, I understand the
research, and I understand how the research affects the
social determinants of health in our community. In many
instances we are fighting for our very lives when it comes
to education, health care, economic stability, the built
environment, and even the social context. But what I want
to stress to you that this particular project addresses
all of those factors that impact the overall health in our
community.

The education will be impacted by the early
childhood literacy center. Our access to health care will
be impacted by the dental office. The economic stability
will be impacted by the businesses that are brought to the
community. The built environment will be impacted by the
green space and the amphitheater that will be in that
location. And the social context is even impacted because it is a testament of what community members can do when they come together to impact their destiny.

MR. GOODWIN: Thank you.

MS. GARDNER: Thank you.

MR. GOODWIN: I want to remind those speaking we're not approving anything by approving this list. We're not approving a project, we're not pulling a project off. The list, as Sharon explained it, is what will be worked on, and then final determination for approval and awards will be made in the July 25 meeting.

MS. CARTER: Good afternoon. My name is Charity Carter with the Houston Arts Foundation.

I'm here in favor of the Edison Lofts mixed-income development, application number 19327; and Blue Ridge Villas senior development, application number 19257.

I'm here specifically to speak about the process, our process. Over the last three years our organization has worked diligently with Briargate community, its board, the City of Houston, Fort Bend Houston Super Neighborhood Council 41, and other stakeholders, including the late Council Member Larry Green, Fort Bend County Commissioner Grady Prestidge, State Representative Ron Reynolds, City of Houston Mayor Sylvester Turner, and our current Council Member Martha
Castex-Tatum, the Fort Bend Houston Super Neighborhood strategic plan committee and the Fort Bend Independent School District regarding community support and master plan revitalization of a mixed use development efforts.

The process to gain support for the Edison development is a case-making project that capitalized on our local community's assets, inspiration and potential with the intention of creating public spaces that promote our community's health, happiness and well-being.

Additionally, in this process we brought Bill Rowell [phonetic], the owner representative of a 20-year blighted property, to inform Briargate board of directors of the owner's support of the sale of the property for the purpose of mixed-use development.

It is my ask that the process for support be strongly taken into consideration for the Edison Lofts, application number 19327, that has the highest priority with the greatest impact.

Local community organizations, local community leaders, government officials were engaged in this process that took time, resources, energy and effort at the developing partner to get stakeholder and community support for the success of this project.

Thank you.

MR. GOODWIN: Thank you.
We are fast losing Board members because they have flights and things, and nothing that is going to be said is going to probably change anything off of this list, so after this we're going to have public comment where you can make exactly the same comments that I've heard today.

So if no one objects -- I don't know about the other Board members as far as what their time commitment is, but I would recommend that we take a vote while we still have a quorum so we can get this list approved, and then afterwards have public comment, if that's acceptable to those of you that want to speak. Anybody object to that?

(Nos from audience.)

MR. GOODWIN: If not, we'll call for a vote on the motion, which is to approve this list.

MR. ECCLES: With the oral modifications.

MR. GOODWIN: With the modifications that Sharon delineated. All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you, Sharon.

Okay. We're now in the part where we'll still remain and take public comments as long as we have a
quorum. We're down to four; when the next person has to leave, this is over.

Start reading from your letter, if you want, where you were.

MS. WINFIELD: Actually, I put the letter aside because most of the points were made.

Again, chief of staff for the council member here on her behalf.

I hope what you see now is kind of representation of the public's understanding of your process, and so one thing our office has tried to do, though there is a state rep and a state senator that should explain the state's process and the state's business, we have tried to explain the process and got our constituency through it so they would so they would understand the appropriate time to come before the body and comment exists.

Most of our residents here today did speak at the Houston public hearing and have their comments documented for your consideration as you move along to approve or not approve the final list that you'll look at in July.

But specifically as it relates to projects -- to just not hold you here, the Belfort Park Apartments which is 19076 -- and I understand it's open comment --
the council member is very much so supportive of this project because it is a rehab. It will reduce the number of doors that are in this particular area of our council district. Right now we estimate about 20,000, and a lot of these apartments are out of date, there's much crime in these areas, and so to see a rehab where there's a reduction of the number of doors and you're making something nicer for people in this income bracket to live in is great, and she's supportive of that.

As it relates to project 19327 Edison Lofts, because this area of Fort Bend Houston has been designated a complete community, this project is in line with much of the work that the City of Houston at the local level is doing to revitalize the area.

And project 19257 Blue Ridge Villas is a senior complex that the council member believes complements, again, the work that is going on in the Fort Bend Houston area.

There are three projects that the council member is not here to support today. That is 19242, The Tramonti; 19245, Huntington at Chimney Rock; and 19109, Verdin Square.

And so getting back to the process of how an application moves from the city ultimately to the state, yes, our housing department does bring a resolution of
support before the city council.

Because of the voluntary compliance agreement, many council members were asked not to strike projects from the list because our CDBG funds are at risk. As you know, we're still recovering from Hurricane Harvey, its impact on Houston, and so CDBG funds aren't just for housing, as you know, they do go toward some infrastructure projects, and in our council district we have many infrastructure projects.

Specifically for Fort Bend Houston, the area where two of the three projects we are supporting reside, we need CDBG dollars for our infrastructure development there. So we didn't want to do anything that would put us at risk. And so I want to make it very clear on her behalf that just because she did not oppose it and it made its way here to you, it doesn't mean that the council member is supportive.

And then last, because I may not be here in July or at a later date to talk about the QAP, if I could wrap up, the council member believes that while there are points in this process for a state rep's letter, that there should be points for community input, because these are the people that have to live near what will exist for maybe 30 years in their area.

MR. GOODWIN: Thank you.
MS. HUGHES: My name is Cheryl Hughes, and I am a 30-year resident of the Briargate community.

I've listened to them talk about being on the project for the last three years or the last two years. The Briargate community has not been informed, we have never been invited, we've never received anything from our representative, and our super neighborhood does not even have us listed on their website.

We're caught in the middle of Fort Bend and Houston, and unfortunately we're in the struggle between the two. They have projects going all around us. We're currently surrounded by a 1,000-unit low-income apartment complex within five miles, built within five miles of us.

Now they want to put some additional complexes that will be within a mile of each other: The Edison Lofts, the Huntington project and The Tramonti project will all be within one mile of each other.

We do not support the Edison Lofts. The Edison Lofts, we would like to see emergency facilities, other things to come to that particular area. They want to put a sports complex, they want to put a natatorium, but we have to travel eight to ten miles out of our way to go to emergency facilities, to go to doctors, to medical center. We don't have the resources within our neighborhood to support the apartment complex.
So I just want to go on record that we do not support the Edison Lofts.

MR. GOODWIN: Thank you.

If you're going to speak, I would ask you to move up to the first two rows, which is a common practice, so we don't have to wait for you to walk from the back.

MR. ADAMS: Ladies and gentlemen, my name is Aaron Adams.

I am a resident and homeowner in Briargate subdivision for the past 17 years. In that time I've seen many changes in my subdivision. In my block alone, when I initially moved in, more than 75 percent of the folks were homeowners. Now, less than 50 percent of the residents are homeowners. Section 8 housing is steadily being increased throughout the subdivision as well. Now, with the proposed building of the Edison Lofts at 7100 West Fuqua, homeownership will decrease even more.

I am in opposition of the TDHCA development number 19327 because, number one, we don't need more affordable housing in Briargate; number two, it would negatively change the character of our neighborhood; number three, it would increase crime to the percentage of the influx of residents engaging in illegal activities; number four, it would decrease property values; number five, it would lower the quality of our local public
schools due to overcrowding; number six, it would increase traffic; number seven, it would not be well maintained; number eight, affordable housing projects for low-income residents usually become an eyesore over time due to lack of upkeep; number nine, it would remove incentives to become self-sufficient through homeownership; and number ten, its residents would not fit in with the existing community because of the homeowners in Briargate have been residents for more than 20 years and are at or near retirement age.

Thank you very much.

MR. GOODWIN: Thank you.

So if you don't mind, how many more people intend to talk, show of hands. I'm sorry, I can't see. There's some of you in the back that want to talk? Am I correct in identifying just two people that want to talk, two, three?

I'm at a crossroads of whether we decide to take an hour break for lunch, or we've been going now for 6-1/2 hours, so if there are just three more that want to talk, everybody would agree you've got three minutes, three more, and then we'll take a motion to adjourn.

If you want to speak, we don't want to cut you out, but we also are going to break for lunch if we're going to keep going and everybody in this room wants to
speak, or until another Board member leaves, and at that
time we won't have a quorum.

Yes, ma'am.

MS. TAYLOR ROSS: Is it morning or afternoon?
Thank you for listening to us today. I was a little
dismayed that we were -- I don't want to say misinformed,
because I think your staff works really hard, but it was
kind of discouraging but I am happy to know that y'all
think enough of this process and us to listen to us.
Thank you.

I come here brokenhearted because our
neighborhood is divided, as you can see. I came here to
speak against and in opposition of one project, the Edison
Lofts, project number 19326 -- 27 -- oh, my gosh -- 27.
But I have to say something because someone had the
opportunity to come up here and speak twice on this
subject.

I also was president of a Super Neighborhood
Council. Everyone here who don't know what a Super
Neighborhood Council is, it's something that they do in
Houston. It is an organization of organizations. It's an
organization of civic organizations, and the stakeholders
of those organizations are generally the presidents of the
civic clubs, civic organizations, the HOAs.

In our case we're old, so we're a CIA,
community improvement association, same thing as an HOA. But I have to say this, and I want to ask the people who are here who don't want to speak who came here to oppose this project to please stand so you can see. Because if you will just hear some of this you would think that everybody in the Super Neighborhood Council or in the Briargate community, which is inside of the Super Neighborhood Council, is in support of this one project.

I agree with the Super Neighborhood Council with the remainder of the projects that are cited to be located in our area. They did a great letter, please read it, they did some great research.

But everything that was said about those projects, those proposed projects applies to the Edison Lofts, every negative thing applies to the Edison Lofts equally. The only thing that the Edison Lofts has that they don't have is the art center, which seems like it would be wonderful, actually, the art center part.

But understand that each civic organization runs itself --

MR. GOODWIN: I need for you to wrap up.

MS. TAYLOR ROSS: Thank you. We are not -- the Super Neighborhood Council does not dictate to each civic organization, each civic organization runs itself. The stakeholders come together to do other things.
This is the Briargate Community Improvement Association. This is where the Edison Lofts is proposed to be built in the center of Briargate.

MR. GOODWIN: Yes, ma'am.

MS. TAYLOR ROSS: No other civic organization shares hardly any border with it.

MR. GOODWIN: Thank you. Thank you for your comments.

MS. TAYLOR ROSS: Can I just say one more thing, please?

MR. GOODWIN: I've held everybody else to three minutes, it's really not very fair to let you stand up here for five when everybody else has wrapped up in three. I apologize.

So by my count we have two more people wanting to speak. And after this we have one more person that wants to speak.

SPEAKER: That's correct.

MR. GOODWIN: Okay.

MS. WARNER: My name is Shirley Warner, and I'm speaking on opposition to Edison Lofts 19327.

I live in Briargate, and the reason I am opposed -- I don't want to repeat what other people have said, they've talked about all the reasons --

MR. GOODWIN: Thank you.
MS. WARNER: I just want to refer to the point that nobody talked about how many units. They're talking about 126 units. The disparity there is that it's 85 percent low-income. The rest of it is what they call market-value income. So that's a big disparity.

The community, it's already been said, it's inundated already with low income. So if it was flipped, I think the people in Briargate would not oppose, but that's too much of a burden on an already stressed community.

The other thing is a couple of weeks ago I did a crime report, extraction of a crime report. There were 77 crime incidents. I think it was 17 of them which was violent and the rest of them were like theft, robbery, some was even sexual assault.

So right in that very area that they're talking about building Edison Lofts, a lot of that crime is happening. There's only one police officer that patrols that area. That's not going to change when Edison Lofts comes along. I did hear someone talk about security, but that's yet to be seen.

So I'm just talking about what is already there. We don't have the infrastructure to take on the burden of a community with that much low income.

Thank you.
MR. GOODWIN: Thank you.
The last person.

MS. BLUE: Good afternoon, as I sign in. My name is Barbara Blue, B-L-U-E. I am a retired state employee, and I've also worked for the City of Houston.

I have lived in Briargate, I'm a homeowner there, I've lived there since 1982, coming up on my 40th year. I've seen numerous changes. Even though you have essentially allowed decay in the neighborhood, it does not mean that you want to give it away to whomever's dream they want to fulfill their dream. Their dream is not necessarily Briargate's dream.

I want to have such things as was mentioned, stores, banks, et cetera, but I also want to have my quality of living to remain status quo or even better. I am against the Edison Lofts.

I used to be the secretary for the Super Neighborhood 41. I was in that meeting when the mayor and Mr. Carter, myself, and the mayor's assistant talked about housing. The mayor is the proponent of the housing, he wants that project to have housing.

We do not necessarily need any apartments on our main thoroughfare. There's enough congestion, there's enough saturation of trash, of people -- not trash of the people but trash from the people as they throw trash along
I want to make sure that you listen to the will of the people, us in Briargate that live there. We do not want it, clearly and succinctly, we do not want it.

MR. GOODWIN: Thank you.

MS. BLUE: You're welcome.

(Applause.)

MR. GOODWIN: So my last count we show that we have all that wanted to speak have spoken.

So I would say to each and every one of you that have spoken and to those of you that have come 180 miles from Houston to be involved in this process, I would encourage you to examine the TDHCA process and see where and when you can have input that will affect these types of applications that are in your neighborhood and when you can have the most impact to prevent them if you're opposed to them or to support them if you're in favor of them.

I think the more you understand and know about this process -- there have been a lot of times for you to have input. This agency is extremely transparent. We have on our website -- you heard Sharon say we post on here the applications that are under review, the ones that have already been reviewed, those that probably won't be reviewed. There is a lot of time to have your input

And I can tell you all care about your
communities and our neighborhoods and your children and
your families, and I think all of us as Board members
share that with you, we care about your neighborhood, your
families, we care about our own families, our own
neighborhoods, and we understand exactly where you're
coming from.

So we appreciate you coming today. Thank you
very much, and we agreed that we were going to cut it
short as far as public comments. You're welcome to come
back to our next Board meeting and make other comments if
you would.

With that, I'm going to entertain a motion to
adjourn.

MR. BRADEN: So moved.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

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

(A chorus of ayes.)

MR. GOODWIN: We are adjourned.

(Whereupon, at 1:44 p.m., the meeting was
adjourned.)
CERTIFICATE

MEETING OF:  TDHCA Board
LOCATION:   Austin, Texas
DATE:      June 27, 2019

I do hereby certify that the foregoing pages, numbers 1 through 256, 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 1, 2019

(Transcriber)

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