

BOARD MEETING OF
JANUARY 17, 2012

PUBLIC TESTIMONY
HANDOUTS



3333 Lee Parkway, Tenth Floor
Dallas, Texas 75219
Telephone 214.780.1400
Facsimile 214.780.1401
www.shacklaw.net

John C. Shackelford
Also Admitted in Florida and
Georgia
Direct 214.780.1414
jshack@shacklaw.net

January 12, 2012

VIA E-MAIL

Mr. J. Paul Oxer, PE, Chair
Mr. Tom Gann, Vice-Chair
Ms. Leslie Bingham Escareño, Member
Dr. Juan Muñoz, Member
Mr. Lowell Keig, Member
c/o Tim Irvine, Esq.
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Champion Homes at Copperridge; TDHCA No. 11139/Approval of Waiver Requests;
Our File No.: 50678.3

Dear Chairman Oxer and Members of the Board:

This law firm represents Chicory Court IX, LP ("Chicory Court"), and I have been requested by Saleem A. Jafar, President of the general partner of Chicory Court, to provide you with information and materials which Mr. Jafar and I think justify the business and legal merits of the Board approving the waiver of (i) the minimum percentages for the number of bedrooms per units provided for in the 2011 Qualified Action Plan ("QAP") and (ii) the QAP provision applying the \$2,000,000 cap on the amount of tax credits issued to Chicory Court to 2011 (the year in which the forward commitment was awarded) and instead for such tax credits to be applied to the 2012 credit cap as requested in Chicory Court's Application.

It is incumbent upon me to emphasize that the action requested by Chicory Court comports with the provisions of Section 49.16(a) of the QAP which provides, "The Board in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code (the "Code"), or for other good cause, as determined by the Board." In this instance, as I will below explain, the basis for the waivers requested is clearly appropriate to fulfill the purposes and policies of Chapter 2306 by, among other things, significantly increasing the amount of affordable housing in a High Opportunity Area. As provided in Chapter 2306 of the Code, the purposes of the Department is to, in part, assist local governments in providing essential public services for their residents; provide for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income; and, contribute to the preservation, development and redevelopment of neighborhoods and communities. The proposed development

of Champion Homes at Copperridge (the "Project") fulfills these purposes! The Project is a 252 unit, true transit-oriented development, located directly adjacent to a major DART park and ride station, mixed income, affordable and market rate community in the heart of the Dallas Medical District. It is comprised of 60% affordable units and 40% market rate units located in a High Opportunity Area. The Project substantially benefits the State of Texas and the Texas Department of Housing and Community Affairs ("THDCA") by being a development in a High Opportunity Area, which promotes needed affordable housing outside of high minority, low income areas and addresses the fair housing issues raised in the *ICP v. TDHCA* litigation and in a recently filed case, *Lockey & Mackenzie v. City of Dallas*, involving the City of Dallas' (the "City") use of CDBG and Section 108 funds.

It is also my opinion that the Project clearly satisfies the requirements of the good cause exception set forth in Section 49.16(a) of the QAP for the reasons stated above regarding the characteristics of the Project, its location and the noteworthiness of its ability to advance Fair Housing initiatives in the City. I refer you to the transcript from the October 4, 2011 Board meeting at which the forward commitments were approved and specifically cite to you on Page 163 of such transcript the basis upon which Kent Conine stated was the reason for including the Project on the list. He said, "Project #11139, the Champion Homes at Copperridge is the absolute largest in gross dollars in third party financing, it's a transportation DART deal there in Dallas, in a good school district, so I'd like to see that one." Page 163 of the October Board meeting transcript is attached hereto as Exhibit "A".

Having satisfied the requirements of Section 49.16(a) of the QAP, I now turn your attention to the history of the Application for the Project and the arguments supporting the merits for approving the waiver requests. As you read below, please keep in mind that Chicory Court was advised by the Department on November 4, 2011 that it had resolved all threshold deficiency items. Please see a copy of the e-mail from Kent Bedell dated November 4, 2011 attached hereto as Exhibit "B".

I apologize in advance about the length and detail of this letter, but due to egregious misstatements made by another party last November about Chicory Court's Application and the Project and the discussion at last month's Board meeting regarding application deficiencies and specifically the references made by staff about Chicory Court's Application, although staff did not identify Chicory Court by name, I am compelled to present Chicory Court's arguments as fully as I do below because if you fail to approve these waivers, then Chicory Court loses its forward commitment previously approved by the Board on October 4, 2011 and Chicory Court loses an enormous amount of money it has tied up in this Project.

The first waiver request argument is for the unit mix issue.

I. Unit Mix. At the Board meeting on Tuesday, January 17, 2012, Mr. Jafar will address the business reasons supporting Chicory Court's initial request for the waiver of the unit mix requirements of the QAP. Suffice it to say that the market study obtained by Chicory Court shows that the likely tenant for a development like the Project at this location is predominantly single persons, couples and single parents with one or two children, and relatively few families

needing three bedrooms. As the 2012 QAP reflects, the number of bedroom units for a development in a Central Business District may not be the same as the number of bedrooms that would otherwise be financially prudent in a less urban or more suburban location. Although the Project is not located in a Central Business District, it is, however, located in an urban High Opportunity Area and the demographics of the likely tenants must be considered in determining the financial viability of the Project.

When Chicory Court filed its Pre-Application with the Department, it was accompanied by a cover letter dated January 7, 2011, addressed to Robbye Meyer, Director of Multifamily at the time, and the letter stated, "The property is mixed income, 52% market rate and 48% affordable and has a nonconforming income and unit mix. We understand this was to be noted with the submission of any application in this round." This letter is attached as Exhibit "C". Subsequent to the filing of the full Application, Chicory Court pursued addressing the unit mix issue by requesting to be put on the Board agenda to seek a waiver early in the application process. Bill Fisher, who was employed by Chicory Court at the time, sent an e-mail to Ms. Meyer and Raquel Morales on Saturday, February 26, 2011, in which he noted the Pre-Application was accompanied by a cover letter that expressed the nonconforming unit mix due to this being a mid-rise, urban development and that it was his understanding from the Board that it would consider individual waivers of issues prior to the final applications. Mr. Fisher further went on to ask Ms. Meyer and Ms. Morales, "What do we need to do, if anything at this point, to get this approved?" Mr. Fisher received no response to his e-mail. A copy of Mr. Fisher's e-mail is attached as Exhibit "D".

Then on May 26, 2011, the Department issued a Deficiency Notice for the Project which stated, "That there are too many one bedroom units to be eligible for the Tax Credit Program. Please revise rent schedule accordingly." Chicory Court responded on June 3, 2011, and with respect to the unit mix issue stated, "One, we are asking for a urban infill, TOD unit mix that needs Board approval...We are asking the Board to waive that requirement for the TOD and allow us the 10 points as our costs are within HUD guidelines for this type of development." A copy of this letter is attached as Exhibit "E". Then on Monday, June 20, 2011, Mr. Fisher sent an e-mail to Ms. Meyer and Ms. Morales asking "Are we going to the Board on the 30th on our TOD unit mix, or is it to approved administratively?" Ms. Meyer responded, "Which development are you referring to Bill?" Mr. Fisher then responded, "Champion Homes at Copperridge #11-139." Later that same day, in a subsequent e-mail from Mr. Fisher to Ms. Meyer and Ms. Morales, Mr. Fisher states, "The reason I ask about the timing is I would prefer a date in July versus June 30. If it can be done administratively that is the request. If not, see if we can get on the agenda for the first meeting in July, I think that is the 18th." A copy of the e-mail exchanges on Monday, June 20, 2011 is attached hereto as Exhibit "F".

I have attached the correspondence and e-mail exchanges to show that at no time did Chicory Court attempt to confuse, hide or obfuscate the fact that the unit mix requested in its Pre-Application and Application did not comply with the particular percentages for the number of bedrooms in a project as mandated by Section 49.4(c)(8) of the QAP. Moreover, Chicory Court flagged the issue for the Department in its cover letter accompanying its Pre-Application on January 7, 2011. Further, Mr. Fisher, even before filing the full Application due on March 1,

2011, advised Ms. Meyer of the issue on February 26, 2011 and asked what does Chicory Court need to do at that time to get approval of the proposed unit mix for the Project. Chicory Court continued to seek Board approval throughout the application process prior to the Board voting on the tax credit allocations on July 28, 2011. This waiver issue is before you now because, for whatever reason, Chicory Court's repeated requests to be put on the Board agenda throughout the application process were not addressed.

The next issue discussed is the \$2 million cap issue.

I. \$2 Million Cap. To be clear, Chicory Court is asking for your approval of a waiver of the provisions of Section 49.5(b) of the QAP which provides that "forward commitments from the 2012 Credit Ceiling, are applied to the credit cap limitation for the 2011 Application Round," and for you to approve to have the tax credits allocated in the forward commitment awarded to the Project at the October 4, 2011 Board meeting to be applied to the credit cap limitation for the 2012 Application Round. Chicory Court is not asking for a waiver of the amount of credits that may be allocated to it for the 2011 Application Round.

This is a distinction that must be understood because Chicory Court is merely requesting a waiver consistent with the prior two years in which the Board waived the same rule and permitted an affiliate of Mr. Jafar ("Odyssey") to have the tax credits awarded in forward commitments in the 2009 and 2010 Application Rounds, respectively, be applied to the credit cap for the respective succeeding years. I repeat, Chicory Court is asking the Board to do only that which it has done the preceding two years.

This issue first arose for Odyssey when it exceeded the credit cap in 2009. When Odyssey was granted a forward commitment for the Marina Landing project in 2009, the combined tax credits for Baywalk Apartments (another development in which an affiliate of Odyssey had obtained tax credits for in 2009) and Marina Landing exceeded Odyssey's \$2 million cap for 2009. To cure the problem, the Board applied the Marina Landing tax credits to the \$2 million cap ceiling for the 2010 Application Round by waiving the applicable provision of the 2009 QAP. Then in 2010, Odyssey filed an application for a project known as Canyon Creek at Champion Homes located in Brownsville on the condition that the tax credits would be applied against the \$2 million cap ceiling for the 2011 Application Round. The Board approved the request by waiving the applicable provision of the 2010 QAP. So, in the last two years, the Board has awarded Odyssey a forward commitment and approved a waiver to allow the tax credits allocated to Odyssey be applied against Odyssey's (or its affiliate's) \$2 million cap ceiling for the succeeding year's Application Round.

Odyssey went into the 2011 Application Round knowing that it already had tax credits allocated to it for the 2011 Application Round due to the Canyon Creek at Champion Homes project and that tax credits for the Project would cause it to exceed the 2011 credit cap, so when it filed its Pre-Application, Chicory Court had a cover letter accompany it dated January 7, 2011 (the same letter referenced above) which is set forth as Exhibit "C". In such letter, Chicory Court expressly acknowledges that Odyssey already had a forward allocation for Champion Homes at Canyon Creek for 2011 and that the Pre-Application was being "submitted for consideration as a forward

commitment only to insure we do not violate the \$2.0 Million cap rule for any reason. This is one of two such pre-applications for our company". When Chicory Court filed the full Application, the Application was accompanied by a letter dated February 28, 2011 and such letter provides as follows: "The 9% housing tax credit application for Champion Homes at Copperridge at 5522 Maple, Dallas Texas 75235, is intended to be considered for a 2012 forward commitment, as part of the 2012 credit ceiling. We are *ineligible* for credits this year due to our forward allocation for Champion Homes at Canyon Creek #10135 [Emphasis added]." A copy of this letter is attached hereto as Exhibit "G".

On April 13, 2011, Ms. Meyer, on behalf of the Department, sent a letter advising Chicory Court that its application for the Project was being terminated on the basis that it would be a violation of the \$2 million cap. A copy of this letter is attached as Exhibit "H". In response, on April 22, 2011, I sent a letter to Michael Gerber and Ms. Meyer appealing the decision of the Department. A copy of my letter dated April 22, 2011 is attached hereto as Exhibit "I". Mr. Gerber responded with a letter on May 18, 2011 in which he granted Chicory Court's appeal. Mr. Gerber's letter states, "It [the Board] does have some latitude to waive limited aspects of its QAP in determining which round applies to given transactions or, more specifically in which rounds those transactions are deemed to have occurred." Mr. Gerber's letter further states,

"You appeal that the application for Champion Homes at Copperridge is justifiable based on the fact that the Department and the Board on two prior occasions allowed a related applicant's applications to remain viable throughout the application process and to remain eligible for a forward commitment out of a succeeding year's credit ceiling. I agree that the QAP does not require the termination of the 2011 application and am granting your appeal...You should also know that staff will advise the Board that this application is not eligible for a forward commitment pursuant to the 2011 QAP, should the discussion arise."

A copy of Mr. Gerber's letter dated May 18, 2011 is attached as Exhibit "J". Then, there were an exchange of e-mails between Ms. Meyer and Mr. Fisher on Monday, June 27, 2011 in which Ms. Meyer advises Mr. Fisher that "staff will advise the Board that the application is not eligible for a forward commitment." A copy of the e-mail exchanges between Mr. Fisher and Ms. Meyer on Monday, June 27, 2011 is attached hereto as Exhibit "K".

Again, I submit to you that Chicory Court has in no way attempted to confuse, hide or obfuscate the fact that at the time of filing its Application and throughout the application process during all of 2011 that Chicory Court knew it was ineligible to obtain tax credits for the Project out of the 2011 Credit Ceiling. Due to Chicory Court being over the 2011 credit cap, it requested that its Application be treated on the same basis as Odyssey (or its affiliates) had been the prior two years and for the Board to grant a waiver to allow the tax credits to be applied to Chicory Court out of the 2012 Application Round. Chicory Court did everything reasonably possible to comply with the provisions of the QAP.

Although Mr. Gerber states in his letter dated May 18, 2011 that the Department will notify the Board that “this application is not eligible for a forward commitment” and that Ms. Meyer on two occasions in e-mail exchanges with Mr. Fisher on Monday, June 27, 2011, states that the staff will notify the Board that the application is not eligible for a forward commitment, the Board was not informed of this before or during the October 4, 2011 Board meeting when the Application for the Project was on the eligible list for a forward commitment and when the Board approved a forward commitment for the Project.

III. Waivers Approved/October Board Meeting. I am hopeful you agree that at the outset of this letter I provided a sufficient basis for the Board to exercise its discretion under Section 49.16(a) of the QAP to grant the waivers requested, for the Board to determine that good cause exists to allow the Project to proceed, and that an equitable resolution of the waiver issues is for the Board to approve these waivers for the reasons set forth above in Sections I. and II. Notwithstanding the foregoing, I submit to you that the Board, by operation of law, approved these waivers when it approved the forward commitments at the October 4, 2011 Board meeting. This legal position is based upon the following reasons.

First, in the Board Book posted with the Agenda for the September 15, 2011 Board meeting and the Board Book posted for the October 4, 2011 Board meeting, the Board Action Request prepared by staff provides, “However, if the Board determines forwards are warranted, staff recommends that the Board identify the good cause for each possible forward commitment and gives staff a proposed list of such potential forward commitments so that those on the list can be fully evaluated prior to any formal forward allocation:” This language is important because at no time prior to Chairman Oxer asking for a motion on the forward commitments or after Mr. Conine made the motion and went through the list of projects he wished to have voted on did anyone from staff advise the Board of any issues with any of the applications on the list or advise the Board that a particular application or project was ineligible for a forward commitment.

Second, in support of my legal position, I submit to you the comments made by Mr. Conine at the last Board meeting on December 15, 2011 with respect to the intent of his motion. On Page 28 of the transcript from the December 15, 2011 Board meeting (the “December Transcript”), Mr. Conine states the following:

“Mr. Chairman, you know, I’d make at least this observation that---is that at the time we as a Board elected to make the decision on the forward commitments our assumption as a Board---at least this Board Member and historically has been this way---has been that if there were any issues related to the project just being on the list that those were accepted by the Board at that time. And that was the intent of my motion that I made at that time.”

As I am sure you recall, there was a discussion between Mr. Conine and Chairman Oxer about Mr. Conine's intent underlying his motion and from the December Transcript Mr. Conine made it clear that it was his intent that if an application was on the list for a forward commitment that it qualified for a forward commitment subject only to, or contingent only upon, underwriting. All other issues were waived, except underwriting. In response to a question asked by Tom Irvine, Mr. Conine stated that he thought it was staff's responsibility "to make sure the Board's fully informed at the time we make any decision. But second bites at the apple so to speak...have not historically happened on forward commitments. These guys go out and spend hundreds of thousands of dollars from October until now preparing to get done." I refer you to Page 29 of the December Transcript. On Page 30 of the December Transcript, Mr. Conine again says, "I don't want to put the developers in the anxiety bucket, you know, of having to wait through a second bite at the apple so to speak. These guys are spending money. If there were issues, you know, we should have been notified to come back after the fact and find an issue other than underwriting." On Page 31 of the December Transcript, Mr. Conine further states that unless it was something "just wild and crazy it should have been---you know, I don't want to throw staff under the bus by any stretch of the imagination, but---because they are busy doing a thousand things. But we should have been aware of it at the time." And then Mr. Conine states, "And unless it's something, you know, that's just outright crazy then---and if it's some little nuance we need to make sure their---at least the intent of my motion back in October that those projects were on the waiting list, they were eligible for forward commitments, and we chose them." Chairman Oxer then responded, "Because if they were on the waiting list that means they were eligible which to my mind would say that they satisfied these criteria." To which Mr. Conine responded, "That's correct." Pages 28-31 of the December Transcript are attached as Exhibit "K".

Further on in the discussion amongst the Board Members, Tom Gouris states:

"We have, in fact, brought things back and had to address things and have gotten waivers things for forwards and for regular awards after the fact. So it does happen...And, you know we always strive to address, you know, threshold issues and other issues at the front end if we can. But, you know, sometimes it happens when we don't have all the information. There's some particularly peculiar---or interesting issues with some of the awards that we had this year. The \$2 million one is a good example of that in that there is some questions of eligibility that were pulled back and decided to deal with all at one time if they were to get a forward. And that was a known issue for the applicant. It wasn't something we brought in front of the Board when the waiting list was presented because there may be a whole bunch of listings." See Page 34 of the December Transcript attached hereto as Exhibit "M".

It is absolutely clear Mr. Conine intended by the motion he made, upon which the Project was awarded a forward commitment, that any issues applicable to the Project were approved and resolved in favor of the applicant and that the only contingency affecting such forward commitment was that the Project must satisfy underwriting. As Mr. Conine correctly points out, developers spend a great deal of money on these sites prior to knowing whether they have successfully obtained an allocation, and incur further costs after the Board approves a forward commitment award. That is certainly the case for Chicory Court. Chicory Court has incurred or paid a considerable amount in third party costs and expenses and to extend the contract of sale on the site upon which the Project will be located. All of the significant earnest money spent so far, for example, is non-refundable; and the amounts spent hereafter to extend the property contract are neither applicable to the purchase price nor refundable to Chicory Court. I point this out to substantiate Mr. Conine's position that developers spend a considerable amount on these projects and to have developers subjected to a "second bite of the apple" is grossly unreasonable.

Additionally, it is important to note one other comment made by Mr. Gouris at the December Board meeting. Mr. Gouris advised the Board in response to comments by Chairman Oxer that "additional" information may come to staff's attention that is "in conflict and that if something happens we say, Hey, wait a minute, did they really originally meet the threshold requirement?" See Page 33 of the December Transcript attached hereto as Exhibit "N". In this instance, neither issue before the Board today with respect to the unit mix or the \$2 million credit cap was new or additional information. As stated above, the letter Chicory Court attached to its Pre-Application expressly noted both issues and in the letter it sent with its full Application it expressly stated it was not seeking credits out of the 2011 cap but out of the 2012 cap.

It is therefore Chicory Court's position that the Project was awarded a forward commitment at the October 4, 2011 Board meeting with all issues regarding it having been approved by the Board at that time and that no further action is required to be taken by the Board at this meeting. If it is determined by the Board that it chooses to specifically vote on these waivers, then I respectfully request that you approve the waivers to clarify what the Board approved at its October 4, 2011 meeting.

Again, I apologize for the length of this letter and the attachment of so many exhibits, but it is necessary to provide each of you with a full understanding of the history of Chicory Court's Application for the Project and the basis upon which Chicory Court is requesting the Department to proceed to issue a Commitment Notice for the Project.

I will end this letter with where I began. The Project warrants approval because it satisfies the requirements of Section 49.16(a) of the QAP. The Project emphatically meets the purposes and policies of Chapter 2306 of the Code and there is good cause for the Project to be completed. It is a 252 unit, transit-oriented, mixed income, affordable housing and market rate, mixed income community in the Dallas Medical District. 60% of the units will be affordable and 40% will be

market rate. This Project is in a High Opportunity Area and it clearly advances the public policy goals of fair housing and addresses the issues raised in the *ICP v. TDHCA* litigation. This Project further satisfies the City's goal of prioritizing transit-oriented developments with affordable housing. This is a true transit-oriented development by being directly adjacent to the newly operational Maple/Inwood DART station.

Accordingly, Chicory Court requests the Board either (i) to declare that its vote on the forward commitments list on October 4, 2011 approved all issues pertaining to those projects, subject only to satisfying underwriting or, alternatively, (ii) to approve the waiver of the unit mix as requested by Chicory Court and approve that the tax credits awarded to Chicory Court in the forward commitment for the Project be applied to the \$3 million 2012 credit cap and not to the 2011 credit cap.

Very truly yours,



John C. Shackelford, Esq.

JCS/sd

cc: Jeffrey Pender, Esq. (via e-mail)
Barbara Deane, Esq. (via e-mail)
Tom Gouris (via e-mail)
Cameron Dorsey (via e-mail)
Saleem A. Jafar (via e-mail)
Bill Fisher (via e-mail)
Dewey Stevens (via e-mail)
Robert Onion (via e-mail)
Robert Voelker, Esq. (via e-mail)
Ben Halpern, Esq. (via e-mail)
Michelle Snedden, Esq. (via e-mail)

Attachments

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Thirdly, I made a list, or asked staff to make me a list, and I'm very appreciative of the list, for all the projects and looking at their local or third party mechanisms, and we have some projects, at least in my mind, that have done a fantastic job in that area. That's a piece of this business that's pretty difficult to do. Project 11090, Sutton Oaks, got a pretty high score, it's a Phase II of one we've already done there before, and they've got a considerable amount of third party financing. Project 11139, the Champion Homes at Copperidge is the absolute largest in gross dollars in third party financing, it's a transportation DART deal there in Dallas, in a good school district, so I'd like to see that one. And then project 11114, the Greenhouse on Santa Fe Trail, that's the largest percentage of total costs covered in the entire application cycle.

MR. OXER: What was the number on that one?

MR. CONINE: 11114. And it's a rather small deal and won't affect that area going forward.

And then I have a couple of other projects, project 11080, Parkstone Seniors in Wichita Falls. It's a senior project, a Phase II again of one that's been successful there, and also has some third party financing attached to it.

And one down in the Valley that I think -- or a couple down in the Valley, excuse me -- that need our attention. Again, Region 11 was fairly under-funded, I believe. Project 11105, Aster Villas, got a lot of local support, it's a rural deal in that particular region, Region 11. And also 11031, La Hacienda Casitas which is an urban deal in Region 11. As we heard

Exhibit "B"

From: Kent Bedell [<mailto:kent.bedell@tdhca.state.tx.us>]
Sent: Friday, November 04, 2011 8:58 AM
To: Melissa Adami; Kent Bedell
Cc: Saleem Jafar; Bill Fisher
Subject: RE: Additional Threshold Deficiency Request for TDHCA #11139

You have satisfactorily resolved all additional Threshold deficiency items for TDHCA #11139. Have a great weekend.

Regards,

Kent Bedell
Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3882
Fax: 512.475.1895

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

Exhibit "C"

ODYSSEY RESIDENTIAL HOLDINGS, L.P.

Ms. Robbye Meyer
Director of Multifamily
Texas Dept of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

January 7, 2011

RE: PRE-APPLICATION, CHAMPION HOMES AT COPPERRIDGE, 2011 HTC APPLICATION
ROUND

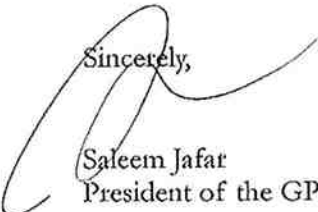
Robbye:

In accordance with wishes of the board and the new rules, we are hereby advising the department that the site is an urban infill, transit oriented development, TOD. The property is located within 300 feet of an active light railroad tract but as a TOD should be compliant with the eligibility rules. It is located at the new DART rail green line station near UT Southwestern Medical Center. The property is mixed income, 52% market rate and 48% affordable and has a non conforming income and unit mix. We understand this was to be noted with the submission of any application in this round.

In addition, Odyssey has a 2011 forward allocation for Champion Homes at Canyon Creek, Brownsville, TX. This application is submitted for consideration as a forward commitment to insure we do not violate the \$2.0 million cap rule for any reason. This is one of two such pre applications for our company.

This letter is submitted with our pre application CD. Please note this in the file.

Sincerely,



Saleem Jafar
President of the GP of the applicant

Exhibit "D"

From: Bill Fisher
Sent: Saturday, February 26, 2011 4:39 PM
To: Robbye Meyer; Raquel Morales
Cc: Robert Onion; Melissa Adami
Subject: Transit oriented development

Our application is adjacent to the DART rail station at UT Southwestern medical center in Dallas. In our pre application we noted in our cover letter that we had a non conforming unit mix due to the nature of this type of high rise development. I understood the board would consider individual waivers of issues prior to the final applications.

What do we need to do, if anything at this point, to get this approved? This application is in region 3 and the only deals that will get funded in the urban set aside will be forward commitments. Time is not of the essence as long as we can address the issues once the regular cycle is completed.


Thank you

Bill

James R. (Bill) Fisher
Odyssey Residential Holdings, L.P.
5420 LBJ Freeway, Suite 1355
Two Lincoln Centre
Dallas, TX 75240
972-701-5551
972-701-5562 FAX
214-608-7201 Cell
bfisher@orhlp.com
bfisher8@airmail.net
www.odysseyresidentialholdings.com

Exhibit "E"

ODYSSEY RESIDENTIAL HOLDINGS, L.P.

 June 3, 2011

Texas Dept of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: APPLICATION #11-139, CHAMPION HOMES AT COPPERIDGE

TDHCA:

Please see our responses and supporting documentation to your letter of administrative deficiency dated May 26, 2011, below:

Eligibility:

1. Volume 1, Tab 2, Part A: We have noted the special needs units and insured the proper number to meet the minimum requirement is shown.
2. Volume 1, Tab 2, Part B: This is a Transit Oriented Development, TOD, and the board allowed developers for these Urban infill communities to apply for a waiver on the units mix. When scheduled for the board consideration our application was terminated and we were advised the appeal was postponed until the termination was dealt with first. We prevailed and our appeal to the Executive Director was granted. Our TOD appeal to the Board is two fold. One, we are asking for a urban infill, TOD unit mix that needs board approval. Two, the cost of a mid-rise urban infill is above the cost per SF allowance for the points. We are asking the board to waive that requirement for the TOD and allow us the 10 points as our costs are within HUD guidelines for this type of development
3. ESA Statement required: The statement from the ESA provider is enclosed as requested in your letter

Selection:

1. Volume 4, Tab 1: A revised and updated letter from Dougherty Mortgage is attached. It reflects the changes generated by the targeting corrections made to the application as well as the statement requested on the review of the borrower's financial capacity, See section 17 of the updated letter.
2. Volume 4, Tab 3: We have revised the schedules to meet the targeting necessary to support our point request. All affected exhibits have been update to reflect the changes including but not limited to updated debt and equity letters.
3. Volume 4, Tab 7: We have not done any additional targeting beyond the targeting needed for our 22 points in Volume 4, Tab 3 above.
4. Volume 4, Tab 8: As detailed in our response to Item 2 above in Eligibility, we are asking as allowed by the board, for approval of the TOD Urban infill units mix along with a waiver and award of points for the costs associated with a TOD in a major metropolitan market. We exceed the \$85 per SF in the QAP for the points but our cost for a mid-rise at \$114 per NRA SF is well within HUD guidelines for this type of project in this location. We are appealing this issue to the board as allowed by the rules and statements made at the time the QAP was approved in late 2010.
5. Volume 4, Tab 11: We understand that although the Stemmons Corridor Association is 80% property owners and should be considered for the 24 QCP points, you are declining those points.

June 3, 2011

Regardless of QCP, they are a community organization. We are asking for the points for their letter as "Other than QCP" points. Your characterization of Stemmons Corridor Association as a business owner's organization is not a proper characterization in our opinion.

Please note the targeting corrections, as allowed by the administrative deficiency process, has rippled changes throughout the financing section of the application. All the required exhibits were updated to reflect those changes. We are only asking for the maximum amount of HTC allowed by the QAP and our application even though we have excess eligible basis. Because that cell is an auto calculation, we have simply noted that here, on the credit request page and development cost schedule. The self-scoring sheet was also updated to reflected the changes generated from this administrative notice.

Your consideration of our responses to your notice is appreciated. Please call us with any questions.

Sincerely,



Saleem Jafar
President of the GP
sjafar@orhlp.com
972-701-5550

5420 LBJ FREEWAY, SUITE 1355 • DALLAS, TX • 75240
PHONE: 972-701-5558 OR 5551 OR 5550 • FAX: 972-701-5562

Exhibit "F"

From: Bill Fisher
Sent: Monday, June 20, 2011 3:41 PM
To: 'Robbye Meyer'; 'Raquel Morales'
Cc: Melissa Adami
Subject: TOD unit mix Champion Homes 11-139

The reason I asked about the timing is I would prefer a date in July versus June 30. If it can be done administratively that is the request. If not, see if we can get on the agenda for the first meeting in July, I think that is the 18th.

Thanks,

Bill

James R. (Bill) Fisher
Odyssey Residential Holdings, L.P.
5420 LBJ Freeway, Suite 1355
Dallas, TX 75230
972-701-5551
972-701-5562 Fax
214-608-7201 Cell
www.odysseyresidentialholdings.com

From: Bill Fisher
Sent: Monday, June 20, 2011 10:25 AM
To: 'Robbye Meyer'; Raquel Morales
Cc: Robert Onion; Melissa Adami
Subject: RE: Transit oriented development

Champion Homes at Copperridge #11-139

Bill

James R. (Bill) Fisher
Odyssey Residential Holdings, L.P.
5420 LBJ Freeway, Suite 1355
Dallas, TX 75230
972-701-5551
972-701-5562 Fax
214-608-7201 Cell
www.odysseyresidentialholdings.com

From: Robbye Meyer [<mailto:robbye.meyer@tdhca.state.tx.us>]
Sent: Monday, June 20, 2011 10:24 AM
To: Bill Fisher; Robbye Meyer; Raquel Morales
Cc: Robert Onion; Melissa Adami
Subject: RE: Transit oriented development

Which development are you referring to Bill?

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.2213
Fax: 512.475.0764



About TDHCA

The Texas Department of Housing and Community Affairs is the state agency responsible for affordable housing, community services, energy assistance, colônia housing programs, and disaster recovery housing programs. It currently administers over \$3 billion through for-profit, nonprofit, and local government partnerships to deliver local housing and community-based opportunities and assistance to Texans in need. For more information please visit www.tdhca.state.tx.us.

From: Bill Fisher [<mailto:bfisher@orhlp.com>]
Sent: Monday, June 20, 2011 9:47 AM
To: 'Robbye Meyer'; 'Raquel Morales'
Cc: Robert Onion; Melissa Adami
Subject: RE: Transit oriented development

Are we going to the board on the 30th on our TOD unit mix, or is it to approved administratively?

Please let know so I can prepare and have the design team there for the presentation.

Thanks

Bill

James R. (Bill) Fisher

Odyssey Residential Holdings, L.P.

5420 LBJ Freeway, Suite 1355

Dallas, TX 75230

972-701-5551

972-701-5562 Fax

214-608-7201 Cell

www.odysseyresidentialholdings.com

From: Bill Fisher

Sent: Saturday, February 26, 2011 4:39 PM

To: Robbye Meyer; Raquel Morales

Cc: Robert Onion; Melissa Adami

Subject: Transit oriented development

Our application is adjacent to the DART rail station at UT Southwestern medical center in Dallas. In our pre application we noted in our cover letter that we had a non conforming unit mix due to the nature of this type of high rise development. I understood the board would consider individual waivers of issues prior to the final applications.

What do we need to do, if anything at this point, to get this approved? This application is in region 3 and the only deals that will get funded in the urban set aside will be forward commitments. Time is not of the essence as long as we can address the issues once the regular cycle is completed.

Thank you

Bill

James R. (Bill) Fisher

Odyssey Residential Holdings, L.P.

5420 LBJ Freeway, Suite 1355

Two Lincoln Centre

Dallas, TX 75240

972-701-5551

972-701-5562 FAX

214-608-7201 Cell

bfisher@orhlp.com

bfisher8@airmail.net

www.odysseyresidentialholdings.com

Exhibit "G"

CHICORY COURT IX, L.P.

February 28, 2011

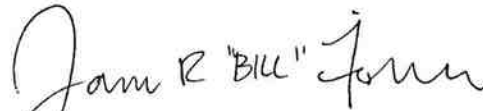
TDHCA
221 E. 11th Street
Austin, TX 78701

RE: Champion Homes at Copperridge #11139

To Whom It May Concern:

The 9% housing tax credit application for Champion Homes at Copperridge at 5522 Maple, Dallas 75235, is intended to be considered for a 2012 forward commitment, as part of the 2012 credit ceiling. We are ineligible for credits this year due to our forward allocation for Champion homes at Canyon Creek #10135.

Sincerely,

A handwritten signature in black ink that reads "James R. Fisher". The signature is written in a cursive style with a large, stylized "J" and "F".

James R. Fisher
Vice President of the General Partner
Chicory Court IX GP, LLC
Bfisher@orhlp.com
972.701.5551



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Lowell A. Keig
Juan S. Muñoz, Ph.D.
J. Paul Oxer

April 13, 2011

Saleem Jafar
Chicory Court IX, LP
5420 LBJ Freeway, Suite 1355
Dallas, TX 75240
Email: Sjafar@orhlp.com

Re: Application #11139, Champion Homes at Copperidge

Dear Mr. Jafar:

The Texas Department of Housing and Community Affairs (the "Department") appreciates your participation in the 2011 Housing Tax Credit program. Staff reviews every application thoroughly to ensure eligibility and compliance to Department and program rules. In accordance with the Department's governing statute §2306.6711(b) Texas Government Code and §49.5(b) of the 2011 Qualified Allocation Plan and Rules (QAP), your application for the above referenced development is not eligible for consideration for credits in the 2011 competitive round because it would be in violation of the \$2M cap, as indicated in *Volume 1, Tab 1, Part C. Funding Request* of your application.

Your 2010 application for Champion Homes at Canyon Creek, #10135 in Brownsville was awarded a forward commitment of 2011 tax credits with the condition that the cap be applied in 2011. The tax credit amount to be applied towards your cap in 2011 is \$1,348,738. Therefore, your request for tax credits in association with the application referenced above would exceed the \$2M cap allowed per Applicant. While your application contemplates consideration of a 2012 forward commitment, the Department prioritizes and reviews only those applications that are eligible for a tax credit award in the year it is submitted. Therefore the above referenced application will not be reviewed further at this time.

Additionally, in view of the fact that this application is not eligible for consideration during 2011 due to the \$2M cap violation, the Department will not address at this time your disclosure of potential ineligibility issues for this application as reflected in *Volume 1, Tab 5, Part E. Certification of Principal or Development Owner* at the May 5, 2011 Board meeting.

An Appeals Policy exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §49.10(d) of the 2011 QAP. If you choose to appeal this determination, you must first submit an appeal to the Executive Director no later than

5:00 pm on **April 22, 2011**. In the event an appeal is denied by the Executive Director, you may appeal directly in writing to the Board, provided that an appeal filed with the Board is received by **April 25, 2011**.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or raquel.morales@tdhca.state.tx.us.

Sincerely,



Robbye G. Meyer
Director of Multifamily Finance

MFF/rbm

cc: Bill Fisher
Email: bfisher8@airmail.net



Shackelford
Melton
McKinley

Exhibit "I"

3333 Lee Parkway, Tenth Floor
Dallas, Texas 75219
Telephone 214.780.1400
Facsimile 214.780.1401
www.shacklaw.net

John C. Shackelford
Also Admitted in Florida and
Georgia
Direct 214.780.1414
jshack@shacklaw.net

April 22, 2011

VIA E-MAIL

Mr. Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

VIA E-MAIL

Ms. Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Application #11139, Champion Homes at Copperridge (the "Development");
Our File No.: 50678.1

Dear Mr. Gerber and Ms. Meyer:

This law firm represents Chicory Court IX, LP ("Owner"), and I have been requested by Saleem Jafar to appeal the decision of the Texas Department of Housing and Community Affairs (the "Department") to terminate the application (the "Application") filed by Owner for an allocation of affordable housing tax credits for the Development.

On April 13, 2011, Owner was advised in writing (the "Termination Letter") by the Department of the decision to terminate the Application on the basis that the Application "is not eligible for consideration for credits in the 2011 competitive round because it would be in violation of the \$2M cap, as indicated in Volume 1, Tab 1, Part C. Funding Request of your application."

The primary basis for this appeal is based on precedents set by the Board in both the 2009 and 2010 application cycles, in which Mr. Jafar through affiliate entities filed applications in each of those rounds that were not terminated on the basis cited in the Termination Letter and, on the contrary, the Department allowed them to be considered for a forward commitment. Owner is merely asking for the Department to afford the Application the same opportunity for consideration for a forward commitment on the same basis as in the two prior application cycles.

Mr. Michael Gerber
Ms. Robbye G. Meyer
April 22, 2011
Page 2

In 2009, the application by an affiliate entity of Mr. Jafar's was for the project known as Marina Landing. The applicant was in the same position regarding the \$2M cap and yet the applicant was given a forward commitment for 2010 out of the 2010 tax credit ceiling. Similarly, in 2010 the project known as Champion Homes at Canyon Creek, #10135, in Brownsville, Texas was awarded a forward commitment of 2011 tax credits on the condition that the \$2M cap be applied in 2011. Owner justifies the basis for the Application on the fact that the Department and the Board have on two prior occasions allowed a related applicant's application to remain viable throughout the application process and to remain eligible for a forward commitment out of a succeeding year's credit ceiling. It is my opinion that this Application should be reviewed and considered consistent with the prior action of the Department and the Board.

The basis cited in the Termination Letter for the Application is due to an alleged violation of the \$2M cap. The Termination Letter cites the Department's governing statute Section 2306.6711(b) of the Texas Government Code and Section 49.5(b) of the 2011 Qualified Action Plan and Rules (the "QAP"). I would agree with this analysis if Owner was requesting more than the \$2M cap in annual tax credits in this Application Round (as defined in the QAP). That is not the case. The Application clearly states that it is seeking a forward commitment for an allocation of credits out of the 2012 ceiling, which is noted in the Termination Letter. The Termination Letter further states that "the Department prioritizes and reviews only those applications that are eligible for a tax credit award in the year it is submitted. Therefore, the above-referenced Application will not be reviewed further at this time." I do not see in the QAP a basis for this statement, especially in light of the fact as pointed out above that the Department and the Board have on two prior occasions allowed an application by an affiliate of Mr. Jafar's to proceed through the application round and be given an allocation of tax credits out of a succeeding year.

It is also important to note that Region 3 has virtually no credits available in the urban set aside from the 2011 state credit ceiling due to the number of forward commitments awarded by the Board last year. I submit that it is evident to all who are veterans of the Texas tax credit program that for projects in Region 3 to be funded it will have to be done so through forward commitments out of the 2012 state credit ceiling. If you recall, this has occurred before in regions in which Austin and San Antonio are located where there were virtually no credits available but people applied nevertheless in those regions with only the mere hope of being given a forward commitment out of the following year's credit ceiling. It is our position that the Department and the Board will do as it always does and act in the best interest of the citizens of Texas by allocating credits to worthy developments throughout the state and will do so in Region 3 this year with forward commitments.

We understand the Department and the Board's position that every applicant genuinely believes that its project merits an allocation. With that being said, realistically, we know that some projects are more worthy than others due to the need in the area, the location of the proposed development and a myriad of other attendant circumstances related to the development. With respect to this Development, it is a unique transit oriented development ("TOD") in an exceptional location near UT Southwestern Medical Center and it is a mixed income project, with 50% of the units being "affordable" and 50% of the units being "market rate." We certainly

Mr. Michael Gerber
Ms. Robbye G. Meyer
April 22, 2011
Page 3

understand the competitive nature of the application process as Mr. Jafar has been involved in the affordable housing tax credit industry for nearly two decades, so it is from an experienced perspective of knowing that only the most worthy projects will be allocated tax credits through forward commitments out of the 2012 state credit ceiling that Owner sincerely thinks the Development merits consideration by the Board.

The Termination Letter made note that if you do not grant the appeal and reinstate the Application, then Owner must file an appeal with the Board by Monday, April 25, 2011. I do not believe that is correct and think under Section 49.10(d)(4) that an appeal to the Board would be for consideration at the June Board Meeting.

On behalf of Owner, I respectfully request you grant the appeal and allow the Application to remain under consideration throughout the Application Round for a determination by the Board for a forward commitment out of the 2012 state credit ceiling.

Thank you for your consideration.

Very truly yours,



John C. Shackelford, Esq.

JCS/sd

cc: Tim Irvine, Esq. (*via e-mail*)
Saleem Jafar (*via e-mail*)
Bill Fisher (*via e-mail*)



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Leslie Bingham Escareño
Lowell A. Keig
Juan S. Muñoz, Ph.D.
J. Paul Oxer

May 18, 2011

Mr. John C. Shackelford
Sharckelford Melton McKinley
3333 Lee Parkway, Tenth Floor
Dallas, TX 75219
Email: jshack@shacklaw.net

Re: Appeal for Termination of Application #11139, Champion Homes at Copperidge

Dear Mr. Shackelford:

Appeal Review

I have carefully reviewed the appeal received on April 22, 2011 regarding your appeal of the decision by this Department to terminate the application for 11139, Champion Homes at Copperidge.

At the heart of this is the fact that the Board does not have authority to waive the application of the statutory requirements of the \$2 million cap. It does have some latitude to waive limited aspects of its qualified allocation plan in determining which round applies to given transactions or, more specifically in which rounds those transactions are deemed to have occurred. However, there is not basis for simply putting off application of the cap year after year through the forwarding mechanism.

The Qualified Allocation Plan (QAP) requires that issuance of any forward commitment be applied to the credit cap limitation during the year in which the award is made by the Board. However when this issue arose last year the applicant's 2010 application would have been ineligible due to its exceeding of the cap in that year. In fact the excess occurred last year because of a forward from 2009 which exceed the cap in 2009 and the Board specifically said then that the excess should be applied in 2010. The Board repeated that position in for the 2010 application which received a forward for 2011 though it is not clear that the Board understood this to be a reoccurring issue as a result of the prior year forward. Moreover, the language of the QAP is clear and the waiver of this portion of the QAP two years in a row should have resulted in a change to the QAP rather than a second year waiver if the expectation is that the Board does not believe that this rule should continue to apply. I believe staff terminated the application this year to make clear that it is ineligible under the QAP and frankly to discourage efforts toward another forward commitment in conflict with the QAP.

You appeal that the application for Champion Homes at Copperidge is justifiable based on the fact that the Department and the Board on two prior occasions allowed a related applicant's applications to remain viable throughout the application process and to remain eligible for a forward commitment out of a succeeding year's credit ceiling. I agree that the QAP does not require the termination of the 2011 application and am granting your appeal. However, please recognize that applications that are eligible for consideration and have met the requirements of the Department will take precedent over this application. You should also know that staff will advise the Board that this application is not eligible for a forward commitment, pursuant to the 2011 QAP, should the discussion arise. Additionally, staff has indicated that there may be other eligibility issues associated with the development such as a potential non-conforming unit mix that would have to be more fully evaluated and may ultimately add other ineligibility concerns to this application.

Appeal Determination

After careful consideration and a thorough review of all the facts, your appeal is approved.

If you have any questions, please do not hesitate to contact Raquel Morales at 512.475.1676 or raquel.morales@tdhca.state.tx.us.

Sincerely,



Michael Gerber
Executive Director

cc: Saleem Jafar
Bill Fisher

Exhibit "K"

From: Bill Fisher
Sent: Monday, June 27, 2011 9:56 AM
To: 'Robbye Meyer'; Raquel Morales; JSHACKELFORD@shacklaw.net
Cc: Melissa Adami
Subject: RE: TOD unit mix Champion Homes 11-139

If your theory is correct then the allocation for Marina Landing would not be any good, yet it is good.

Can we agree that the board can do exactly what they did for Marina Landing for Copperridge? Giving Copperridge a forward in August or September 2011 and have the forward credited against the 2012 ceiling by waiving a rule in the QAP. That is how staff has advised us ORH got the credits for Marina Landing in 2009. If not, we want to see that from you so we can appeal it to the ED or the board.

Bill

James R. (Bill) Fisher
Odyssey Residential Holdings, L.P.
5420 LBJ Freeway, Suite 1355
Dallas, TX 75230
972-701-5551
972-701-5562 Fax
214-608-7201 Cell
www.odysseyresidentialholdings.com

From: Robbye Meyer [<mailto:robbye.meyer@tdhca.state.tx.us>]
Sent: Monday, June 27, 2011 9:44 AM
To: Bill Fisher; Robbye Meyer; Raquel Morales; JSHACKELFORD@shacklaw.net
Cc: Melissa Adami
Subject: RE: TOD unit mix Champion Homes 11-139

Bill,

I do not want to argue with you Bill. Your appeal was grant to allow the application to remain active. If you read the language in the last paragraph before Mike's statement of granting, it says that staff will advise the Board that the application is not eligible for a forward commitment. Mike granted the appeal because it is possible for Copperidge to be awarded IF Canyon Creek were to return credits for some reason. If that happened, there would no longer be an issue with the \$2 million cap and Copperidge could be awarded in the 2011 cycle (or as a forward in 2011 from the 2012 allocation).

I realize you disagree with staff and our general counsel on the \$2 million cap and how it is applied. However, it is very clear in the QAP and statute how it should be applied.

Robbye G. Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701
Office: 512.475.2213
Fax: 512.475.0764



About TDHCA

The Texas Department of Housing and Community Affairs is the state agency responsible for affordable housing, community services, energy assistance, colônia housing programs, and disaster recovery housing programs. It currently administers over \$3 billion through for-profit, nonprofit, and local government partnerships to deliver local housing and community-based opportunities and assistance to Texans in need. For more information please visit www.tdhca.state.tx.us.

From: Bill Fisher [<mailto:bfisher@orhlp.com>]
Sent: Monday, June 27, 2011 9:20 AM
To: Robbye Meyer; Raquel Morales; John Shackelford (JSHACKELFORD@shacklaw.net)
Cc: Melissa Adami
Subject: RE: TOD unit mix Champion Homes 11-139

Robbye,

I am missing something. The appeal on our application being ineligible was GRANTED by the Executive Director. Our application is eligible just as was Canyon Creek last year for a forward with the board crediting the project to the 2012 cap. Just like Marina Landing in 2009. The ED granted our appeal so our application is eligible as we have requested, a forward credited to the 2012 cap. Not sure how you advise anyone the application is ineligible when the ED granted our appeal on eligibility.

Thanks,

Bill

James R. (Bill) Fisher

Odyssey Residential Holdings, L.P.

5420 LBJ Freeway, Suite 1355

Dallas, TX 75230

972-701-5551

972-701-5562 Fax

214-608-7201 Cell

www.odysseyresidentialholdings.com

From: Robbye Meyer [<mailto:robbye.meyer@tdhca.state.tx.us>]

Sent: Monday, June 27, 2011 9:13 AM

To: Bill Fisher; Raquel Morales; Robbye Meyer

Cc: Melissa Adami

Subject: RE: TOD unit mix Champion Homes 11-139

Bill,

In your appeal response from Mike he explains that although the Copperidge application will remain an active application, it is not eligible for consideration because of the forward commitment. He further states that staff will review applications that are eligible as priority over the Copperidge application. He mentions there may be other ineligibility issues with the application. The staff does not intend on presenting any issues concerning the Copperidge application to the Board and if it is discussed for a forward commitment, staff will advise the Board of the ineligibility of the application.

Robbye G. Meyer

Director of Multifamily Finance

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.2213

Fax: 512.475.0764

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From: Bill Fisher [<mailto:bfisher@orhlp.com>]
Sent: Sunday, June 26, 2011 3:12 PM
To: 'Raquel Morales'; 'Robbye Meyer'
Cc: Melissa Adami
Subject: FW: TOD unit mix Champion Homes 11-139

I did not see it on the June 30 agenda, thank you.

Please confirm the 18th or whether it is being done administratively.

Thanks,

Bill

James R. (Bill) Fisher

Odyssey Residential Holdings, L.P.

5420 LBJ Freeway, Suite 1355

Dallas, TX 75230

972-701-5551

972-701-5562 Fax

214-608-7201 Cell

www.odysseyresidentialholdings.com

From: Bill Fisher
Sent: Monday, June 20, 2011 3:41 PM
To: 'Robbye Meyer'; 'Raquel Morales'
Cc: Melissa Adami
Subject: TOD unit mix Champion Homes 11-139

The reason I asked about the timing is I would prefer a date in July versus June 30. If it can be done administratively that is the request. If not, see if we can get on the agenda for the first meeting in July, I think that is the 18th.

Thanks,

Bill

James R. (Bill) Fisher

Odyssey Residential Holdings, L.P.

5420 LBJ Freeway, Suite 1355

Dallas, TX 75230

972-701-5551

972-701-5562 Fax

214-608-7201 Cell

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MR. DORSEY: That's right.

MR. OXER: Right.

MR. IRVINE: Yeah, and I would think that all of the current QAP procedures regarding waiver, et cetera, under the 2011 QAP would govern.

MR. CONINE: Mr. Chairman, you know, I'd make at least this observation that -- is that at the time we as a Board elected to make the decision on the forward commitments our assumption as a Board -- at least this Board member and historically has been this way -- has been that if there were any issues related to the project just being on the list that those were accepted by the Board at that time. And that was the intent of my motion that I made at that time.

Now, if there -- and that was always subject to underwriting. We always underwrite these things afterwards because we never have a chance. But at least on the record I view it as my intent to -- that staff had a waiting list prepared for us, they were eligible to be on the waiting list, the Board made a decision to make -- to do forward commitments. And if there are issues that come up after that then it's appropriate in my mind that staff handle that with the individual applicant.

But at the time we made -- and the intent of my motion was that that project at that point in time qualified for a forward commitment and we made that decision. So --

MR. OXER: Contingent upon underwriting.

MR. CONINE: Correct.

MR. OXER: Any other comments? Any other thoughts?

(No response.)

MR. OXER: Well, I guess we'll memorialize this as part of the record since it's in the Board document and the posting for this meeting.

Tim?

MR. IRVINE: Well, I actually -- I have a question on Mr. Conine's clarification there. So if we had, for example, an application that did not meet exactly a threshold issue or something like that and for whatever reason staff had failed to get it, you know, fully resolved and addressed and vetted, is it your position then that the Board implicitly approved the waiver of that or that the waiver needs to come back to the Board?

MR. CONINE: I think it was, of course, staff's responsibility --

MR. IRVINE: Right.

MR. CONINE: -- to make sure the Board's fully informed at the time we make any decision. But second bites at the apple, so to speak --

MR. IRVINE: Sure.

MR. CONINE: -- have not historically happened on forward commitments. These guys go out and spend hundreds of thousands of dollars from October until now preparing to get done. And if there's an underwriting issue that comes up --

MR. IRVINE: Right.

MR. CONINE: -- I'm -- we're all onboard with making sure they get underwritten appropriately. But if there are other issues that should have been taken care of or that were mentioned in the Board write-ups as a

potential problem that we, you know, selected a project and it got approved then I -- you know, in my opinion I deem it -- the intent of my motion was to make sure that all those were handled at that time with the Board approval, which only leaves underwriting from that point forward.

MR. IRVINE: Well, I take responsibility for it, but there were issues that were not presented in the Board write-ups that we believe need to be addressed that we do not believe staff has the authority to address. Specifically, at least one instance of an application that would not as filed have met one particular aspect of threshold and at least one instance I believe where the way that the \$2 million cap is applied would need to be clarified that they were coming out of the 2012 cap.

MR. KEIG: Mr. Chairman?

MR. OXER: Yes, sir, Mr. Keig.

MR. KEIG: Were either of those issues before the Board at the time we voted on the forwards?

MR. IRVINE: They were not, to the best of my recollection.

MR. OXER: So the Board had to -- I'm getting to this -- the Board accepted these on the motion for forwards -- accepted them as is. Is that what your point is, Mr. Conine?

MR. CONINE: Yeah, I -- you know, again, I don't want to put the developers in the anxiety bucket, you know, of having to wait through a second bite at the apple so to speak. These guys are spending money. If there were issues, you know, we should have been notified to come back after the fact and find an issue other than underwriting.

To me, unless it's just, you know, just something just wild and crazy it should have been -- you know, I don't want to throw staff under the bus by any stretch of the imagination, but -- because they're busy doing a thousand things. But we should have been made aware of it at the time.

And unless it's something, you know, that's just outright crazy then -- and if it's some little nuance we need to make sure that their -- at least the intent of my motion was back in October that those projects were on the waiting list, they were eligible for forward commitments, and we chose them.

MR. OXER: Because if they were on the waiting list that means they were eligible which to my mind would say that they satisfied those criteria.

MR. CONINE: That's correct.

MR. OXER: Okay. So then each of the forwards is contingent upon satisfying the underwriting requirements and that's it.

MR. CONINE: I want to make sure we get folks in Giddings take care of. Okay?

MR. OXER: I understand.

MR. CONINE: I just -- and other projects that may -- that staff may find something after the fact. I just, you know, want to make sure that we get some affordable on the ground in places that need it.

MR. OXER: I think that's the intent of the entire operation here.

Yes, sir, Mr. Keig.

MR. KEIG: Mr. Irvine, have we had situations -- let's not look

the threshold requirement?

We have, in fact, brought things back and had to address things and have gotten waivers things for forwards and for regular awards after the fact. So it does happen.

Windwood would have been a good example last year -- that we made them go through a bunch of work to meet a policy that we were evolving and creating after the forward was made. So it does happen.

And, you know, we always strive to address, you know, threshold issues and other issues at the front end if we can. But, you know, sometimes it happens where we don't have all the information.

There's some particularly peculiar -- or interesting issues with some of the forwards that we have this year. The \$2 million one is a good example of that in that there is some questions of eligibility that were pulled back and decided to deal with all at one time if they were to get a forward. And that was a known issue for the applicant. It wasn't something we brought in front of the Board when the waiting list was presented because there may be a whole bunch of listings.

Again, we don't have the opportunity to -- and the time available to do a full analysis of all of the waiting list. I wish we did because then you guys would have great information, and that's what we propose in the waiting list.

MR. CONINE: Not necessary going forward obviously. But, you know, historically it's not -- at least in my memory -- hasn't been typical that a project's on the waiting list in July when we make awards that haven't

game. In fact, you send out deficiency letters and all kinds of responses. And so if we're waiting as a staff to -- not to underwrite them but just look at threshold review at a time where the waiting list is active. And that, you know, appears to be a problem as far -- won't be a problem in the future now but it -- you know --

MR. DORSEY: Well, I mean --

MR. CONINE: -- could be an issue.

MR. DORSEY: -- yes and no. It won't be a problem in the future with respect to -- at least not next year with respect to forward commitments. But it may be a problem with respect to reassigning tax credits from the competitive round that had to be returned because they were unable to be used.

So you go to the waiting list, and if that waiting list is sitting there without the threshold analysis done on it then you may give it to somebody who can't then qualify if they're insufficient -- or deficient in their threshold.

MR. DORSEY: Right.

MR. OXER: Tom, you got --

MR. GOURIS: Yes. Tom Gouris, deputy executive director for housing programs. Mr. Conine, it's not so much a second bite at the apple. It's that some information's not readily available and it appears that it meets threshold. And then we go through an underwriting, we go through -- we find some additional information that is in conflict and then something happens we say, Hey, wait a minute, did they really originally meet

the threshold requirement?

We have, in fact, brought things back and had to address things and have gotten waivers things for forwards and for regular awards after the fact. So it does happen.

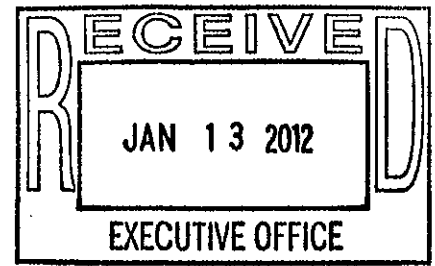
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CAROLYN R. DAVIS
COUNCILMEMBER

Mr. J. Paul Oxer, PE, Chair
Texas Department of Housing and Community Affairs
25 Baileys Place Court
Sugar Land, Texas 77479

Mr. Tom H. Gann, Vice Chair
Texas Department of Housing and Community Affairs
Gann Medford Redditt Drive
Lufkin, Texas 75904

Mr. Tim Irvine, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Gentlemen:

I am writing to let you know my strong opposition against awarding forward commitment tax credits to the Champion Homes at Copperidge project in Dallas. The project does not help increase the quality of life of a community in need. It also has individuals of questionable character involved that creates risk to the City of Dallas.

I ask for the Board of the TDHCA to reject this waiver that will permit the project to receive an allocation of credits.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn R. Davis".

The Honorable Carolyn R. Davis
City of Dallas
Councilmember, District 7

C:

C. Kent Conine
Lowell A. Keig
Leslie Bingham Escareno
Dr. Juan Sanchez Munoz