

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

July 28, 2016  
9:08 a.m.

BOARD MEMBERS PRESENT:

J. PAUL OXER, Chair  
LESLIE BINGHAM ESCAREÑO, Member  
T. TOLBERT CHISUM, Member  
TOM H. GANN, Member

TIMOTHY K. IRVINE, Executive Director

I N D E X

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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED  
IN THE BOARD MATERIALS:

LEGAL

- a) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Cullen Park Apartments (HTC 01410 / CMTS 420)
- b) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Avalon Apartments (HTC 91036 / CMTS 954)

RULES

- c) Presentation, Discussion, and Possible Action on an order proposing amendments to 10 TAC §1.204 Reasonable Accommodations, and directing that they be published in the Texas Register
- d) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Community Affairs Program, Subchapter H, Section 8 Housing Choice Voucher Program, §5.802, Local Operator ("LO") for the Housing Choice Voucher Program ("HCVP"), and directing that they be published in the Texas Register

ASSET MANAGEMENT

- e) Presentation, Discussion and Possible Action regarding Material Amendments to the Housing Tax Credit Application 02483 Cypress View Villas Weatherford
- f) Presentation, Discussion and Possible Action regarding Ownership Transfer and Material Amendments to the Housing Tax Credit Land Use Restriction Agreement 97089 Prado, Ltd. El Paso

98091 NCDO Housing, Ltd. El Paso  
04028 Heritage Park Denison

MULTIFAMILY FINANCE

- g) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer  
16411 Charles E Graham Apartments El Paso  
16412 Rio Grande Apartments El Paso  
16413 Judson Williams Apartments El Paso  
16414 Father Carlos Pinto Memorial Apartments El Paso
- h) Presentation, Discussion, and Possible Action of Qualified Trustee Services for Multifamily Bond Transactions

HOUSING RESOURCE CENTER

- I) Presentation, Discussion, and Possible Action on the 2017 Regional Allocation Formula Methodology

COMMUNITY AFFAIRS

- j) Presentation, Discussion, and Possible Action on Awards for Federal Fiscal Year ("FFY") 2016 Community Services Block Grant ("CSBG") Discretionary Funds for Services to Native American and Migrant Seasonal Farm Worker Population and 2016 CSBG Network Operational Investments and Intensive Community Action Agency Support Assessments
- k) Presentation, Discussion, and Possible Action on Approval of the Federal Fiscal Year 2017 Low Income Home Energy Assistance Program ("LIHEAP") Application and State Plan for submission to the U.S. Department of Health and Human Services ("USHHS") and Approval of the Associated 2017 LIHEAP Awards
- l) Presentation, Discussion, and Possible Action on the selection of Subrecipients to administer the U.S. Department of Energy ("DOE") and Low Income Home Energy Assistance Program ("LIHEAP") Weatherization Assistance Program ("WAP") to provide services in Anderson, Collin, Denton, Ellis, Henderson, Hood, Hunt, Kaufman, Johnson, Navarro, Palo Pinto, Parker, Rockwall, Smith, and Van Zandt counties
- m) Presentation, Discussion, and Possible

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- n) Presentation, Discussion, and Possible Action adopting Resolution No. 16-019 authorizing application to the Texas Bond Review Board ("BRB") for reservation of 2016 single family private activity bond authority
- o) Presentation, Discussion, and Possible Action on Resolution No. 16-021 authorizing Publication of Public Notice for Mortgage Credit Certificate Program (MCC) ("Program 86")

SINGLE FAMILY OPERATIONS & SERVICES

- p) Presentation, Discussion, and Possible Action on Colonia Self Help Center ("Colonia SHC") Program Awards to Webb County and Hidalgo County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant ("CDBG") Funding
- q) Presentation, Discussion, and Possible Action on extensions to Neighborhood Stabilization Program 1 ("NSP1") Contracts and Program Income ("NSP1-PI") Reservation Agreements and Neighborhood Stabilization Program 3 ("NSP3") Contracts and Program Income ("NSP3-PI") Reservation Agreements
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  - 77090000164 Frazier Revitalization, Inc.  
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  - 77090000108 Affordable Homes of South  
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CONSENT AGENDA REPORT ITEMS

## ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Report on Department's Fair Housing Activities
- b) Report on the Department's 3rd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
- c) Report on the Department's 3rd Quarter Investment Report relating to funds held under Bond Trust Indentures
- d) Executive Report of Multifamily Program Amendments, Extensions and Ownership Transfers
- e) Status Report on Compilation of Agency Legislative Appropriations Request for SFY 2018-19

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P R O C E E D I N G S

1  
2 MR. OXER: Good morning everyone. I'd like to  
3 welcome you to the July 28 meeting of the Texas Department  
4 of Housing and Community Affairs Governing Board. We will  
5 begin with roll call. Ms. Bingham?

6 MS. BINGHAM ESCAREÑO: Here.

7 MR. OXER: Mr. Chisum?

8 MR. CHISUM: Here.

9 MR. OXER: And we'd like to welcome Mr. Chisum  
10 back after a little extended tour of duty to deal with  
11 some trauma, so I was glad to see you up here.

12 MR. CHISUM: Thank you.

13 MR. OXER: He's got his dancing shoes on today,  
14 so. All right. Mr. Gann?

15 MR. GANN: Here.

16 MR. OXER: Mr. Goodwin is not with us. Dr.  
17 Muñoz is not with us. I'm here. That gives us four. We  
18 have a quorum, so we're in business.

19 Tim, lead us in the pledge.

20 (The pledges of allegiance to the U.S. flag and  
21 the Texas flag were recited.)

22 MR. OXER: All right. We'll -- let's see, we  
23 don't have any guests. Is Mike -- is Bobby here today?  
24 Bobby's not here today, is he?

25 Well, welcome to everybody watching it at home,

1 so. All right. Let's get down to work. With respect to  
2 the consent agenda, I understand we have some  
3 modifications on it. Michael?

4 MR. DeYOUNG: Yes. Michael DeYoung, Community  
5 Affairs Division. Chairman Oxer and members of the Board,  
6 Item 1(k) in your consent agenda, which is -- deals with  
7 the LIHEAP awards and the LIHEAP Plan, there is a  
8 correction to the table found on page 292 in your  
9 electronic board book on your computers.

10 Page 292 and 293 is a table. You've been given  
11 a handout which has a revised table. It's also available  
12 outside at the sign-up area. Staff inadvertently got some  
13 counties displayed on the book -- the version in your  
14 book. We corrected that, and this page, the revised page,  
15 is the funding recommendation with the LIHEAP awards. And  
16 we will make the change and submit that plan. It is due  
17 to HHS at the end of August.

18 MR. OXER: So this is just a clarification to  
19 make sure nobody here who has interest in this gets  
20 confused. This is straightening all that out?

21 MR. DeYOUNG: Correct, administrative --

22 MR. OXER: Details are available out front.

23 Right?

24 MR. DeYOUNG: Yes.

25 MR. OXER: Okay. All right. That's 1(k).

1 MR. DeYOUNG: And then Item 1(m), we have some  
2 individuals here who would like to speak on that item. So  
3 if we can pull that item --

4 MR. OXER: Okay. We can pull 1(m).

5 MR. DeYOUNG: -- we also have a letter to read  
6 into the record.

7 MR. OXER: Okay.

8 MR. DeYOUNG: And that's the ESG awards.

9 MR. OXER: Okay. We'll take that up in a -- as  
10 an action item when we get to that point.

11 Jeff, did you have a -- yes, you do, don't you?

12 MR. PENDER: Yes, I do.

13 MR. OXER: Good. Good thing you're up to it.

14 MR. PENDER: Yeah.

15 MR. OXER: Good thinking.

16 MR. PENDER: Good morning everyone. Jeff  
17 Pender, deputy general counsel. I've got one correction  
18 to make on Item 1(b) in your book. 1(b) is an agreed  
19 final order with Avalon Apartments. It's one of our more  
20 complicated agreed final orders. And it involves both the  
21 respondent and a new buyer who has applied for a transfer  
22 of ownership.

23 And in particular, on page 7 of 25, the only  
24 correction we have is in Item -- paragraph number 8 on --  
25 in that -- on that page. It originally says -- it says in

1 your book now, "if respondent fails to satisfy any  
2 conditions," et cetera, et cetera. It should say, "if  
3 respondent or buyer fails to satisfy any conditions."

4 That's the change that we'd like to make. And  
5 in the next sentence, the word "order" needs to be  
6 capitalized as well.

7 If you have any questions?

8 MR. OXER: So we're just making sure that the  
9 new owner for this remains bound to what the repairing of  
10 the insufficiencies that exist that created the AFO?

11 MR. PENDER: That's correct.

12 MR. OXER: Okay. I assume that we don't have  
13 any complex in that, Counselor? It's just --

14 MR. PENDER: No.

15 MR. OXER: Okay. All right. With those  
16 modifications with respect to Items 1(b), 1(k), and  
17 1(m) -- 1(m) to be pulled and considered, with the  
18 corrections to Item 1(b) and 1(k) -- do I hear a motion to  
19 consider on the consent agenda?

20 MS. BINGHAM ESCAREÑO: I move approval of the  
21 consent agenda with the recommendation by staff.

22 MR. OXER: Okay.

23 MR. GANN: Second.

24 MR. OXER: And second by Mr. Gann. Is there a  
25 request for public comment?

1 (No response.)

2 MR. OXER: Okay. With respect to consent  
3 agenda, motion by Ms. Bingham, second by Mr. Gann to  
4 approve the consent agenda as modified, those in favor.

5 (A chorus of ayes.)

6 MR. OXER: And those opposed?

7 (No response.)

8 MR. OXER: There are none. It's unanimous.  
9 Okay. Michael, let's take 1(m).

10 MR. DeYOUNG: Michael DeYoung, Community  
11 Affairs Division. Members of the Board, Item 1(m) is the  
12 Presentation of the Conditional Program Year 2016 awards  
13 for ESG. The Department expects to receive approximately  
14 \$8.8 million for the ESG Program for Program Year 2016.

15 And with your approval, the Department released  
16 a NOFA back in February to identify successful  
17 applications, and the federal program rules require that  
18 we have a very tight timeline to award these funds. We  
19 have not yet received a letter from HUD granting us the  
20 funds, but the process moved forward in anticipation of  
21 receiving that letter.

22 The item in front of you, Item 1(m) is asking  
23 you for the approval for the proposed awards, conditioned  
24 on the receipt of the letter from HUD. Normally that  
25 letter would have arrived by now. We just have haven't

1 received the letter yet, but as soon as that letter  
2 arrives, we will quickly turn around, make these awards.  
3 We have 60 days from the receipt of that letter to  
4 complete the awards.

5 We have an organization here today that wants  
6 to speak on this item, and we also received a letter I  
7 believe yesterday from Senator Nelson's office that Mr.  
8 Lyttle would like to read into the record at the request  
9 of the senator.

10 MR. OXER: Okay. And just as a clarification  
11 on this, we're saying we're giving you the authority to  
12 make this distribution, spend this money in this fashion  
13 with a certain amount set aside for state administration  
14 of the program --

15 MR. DeYOUNG: Correct.

16 MR. OXER: -- assuming we get it?

17 MR. DeYOUNG: Assuming we get that letter.

18 MR. OXER: Do we have any sense of why we  
19 haven't had the letter yet, or is that one of those things  
20 that's just --

21 MR. DeYOUNG: It's a process with HUD, and it  
22 ties in with a lot of federal funds, HUD federal funds.

23 Brooke.

24 MR. OXER: Tell us hi, Brooke.

25 MS. BOSTON: Thank you. Hi, Brooke Boston.

1 Because we're in the process of doing an amendment  
2 relating to the National Housing Trust Fund, it's part of  
3 the funding -- the batch of funding we get from HUD, and  
4 so they're holding out the other stuff while we go through  
5 that process.

6 MR. OXER: So --

7 MS. BOSTON: I know that's not a great  
8 explanation, but that's what --

9 MR. OXER: Well, it's a good explanation; it's  
10 not necessarily a good reason. So what we're saying is we  
11 still have some stuff to do before they'll approve what  
12 the money they give us -- give us back in a batch?

13 MS. BOSTON: Correct.

14 MR. OXER: More or less?

15 (General laughter.)

16 MR. OXER: It's -- okay. I pulled that little  
17 federal thread on the sweater. This is unraveling far  
18 more than I expected.

19 (General laughter.)

20 MS. SYLVESTER: Sorry. Megan Sylvester, Legal  
21 Division. What Brooke said is in part correct but sort of  
22 incomplete. There has been a longer-than-usual review  
23 process of our action plan this year, in part due to  
24 setting up some new systems and things for the Housing  
25 Trust Fund.



1 HUD two years ago changed the process of the  
2 action plan, in that we cannot now submit our action plan  
3 to them until we get final budgetary figures. And so --  
4 and because, you know, the budget wasn't ready until  
5 January, we didn't get those numbers until March, we  
6 probably -- this is probably the new normal that we're not  
7 going to get our letter until July or August unless  
8 something changes and we get budgets passed federally  
9 earlier.

10 MR. OXER: So this is shifting gears from how  
11 things were to how things are probably going to be, and  
12 we're basically saying that -- which I think everybody --  
13 I wouldn't speak for the Board but certainly from my  
14 part --

15 MS. SYLVESTER: Yeah.

16 MR. OXER: -- that we trust the staff to be  
17 able to manage this appropriately.

18 MS. SYLVESTER: Right.

19 MR. OXER: Okay.

20 MS. SYLVESTER: My understanding is that HUD --  
21 we had a period where we -- where our action plan was  
22 pending and now it is -- the ball is back in HUD's court  
23 and is not waiting for the Housing Trust Fund amendments,  
24 though if we submit the amendment to our action plan  
25 because of the Housing Trust Fund and HUD hasn't reviewed

1 it yet, then it may review it all together. But I don't  
2 anticipate that happening.

3 MR. OXER: A lot of little dominoes you got to  
4 pile together.

5 MS. SYLVESTER: A lot of different pieces.

6 MR. OXER: Got it. Okay.

7 MR. DeYOUNG: Any more pulling on the yarn?  
8 (General laughter.)

9 MR. OXER: Could we stuff that back in that  
10 hole? All right. So with respect to Item 1(m), let's --  
11 now I understand Michael's got a letter to read to dial  
12 into this, but we have to have a motion to consider  
13 before --

14 MR. DeYOUNG: Right.

15 MR. OXER: -- we take public comment, which  
16 includes a letter from a legislator.

17 MS. BINGHAM ESCAREÑO: So moved.

18 MR. OXER: Okay, motion by Ms. Bingham to  
19 approve staff recommendation on Item 1(m).

20 MR. Chisum: Second.

21 MR. OXER: Second by Mr. Chisum. And we have  
22 some folks that want to speak on this I understand. Okay.  
23 We'd like to --

24 MR. LYTTLE: After --

25 MR. OXER: After Michael. Michael, it's your

1 turn.

2 MR. LYTTLE: Letter is addressed to you, Mr.  
3 Chairman.

4 "Dear Chairman Oxer, I am writing to express my  
5 support for the City of Denton's application to the Texas  
6 Department of Housing and Community Affairs for Emergency  
7 Solutions Grant funding.

8 "ESG funds have been a crucial tool to end  
9 homelessness for many in our community. In fact, the City  
10 has been receiving these funds for over 20 years with much  
11 success. It would be disappointing to halt those efforts  
12 at this point. I am particularly concerned about the  
13 potential loss of funding to provide domestic violence  
14 services to some of our most vulnerable residents.

15 "I urge the Department to give Denton's  
16 application full consideration and stand ready to assist  
17 you with any questions you may have. Thank you for your  
18 service to our communities.

19 "Yours very truly, Senator Jane Nelson, Senate  
20 District 12."

21 MR. OXER: Great. Okay. And we have public  
22 comment for this? Okay, please.

23 A little housekeeping item as she's coming to  
24 there. As everybody here knows, step up. You need to  
25 state who you are and who you represent and make sure that

1 you sign in so that Nancy can identify you on the  
2 transcript.

3 MS. CLAY: Thank you. Good morning.

4 MR. OXER: Good morning.

5 MS. CLAY: My name is Sherrell Clay, and I am  
6 the program manager for Giving Hope, Incorporated in  
7 Denton, Texas. I have been a part of the staff for ten  
8 years, and I have been a part of the ESG Grant case  
9 manager.

10 With this sudden change in the grant for our  
11 agency obviously has certainly --

12 MR. OXER: hold on just for a second.

13 MS. CLAY: -- made a different.

14 MR. OXER: Hold on just -- I'm sorry to  
15 interrupt.

16 MS. CLAY: That's okay.

17 MR. OXER: Nancy, do you got this? Is it  
18 picking up on the mike? Are we getting this?

19 THE REPORTER: Yes.

20 MR. OXER: Can you folks in the back hear this?

21 Okay. I was just -- we're making sure you were close  
22 enough to the mike so we're getting all of this.

23 MS. CLAY: Okay, no problem.

24 MR. OXER: Please continue.

25 MS. CLAY: I am here today just simply to ask.

1 We are understanding that the '16-'17 Grant for our  
2 agency and for our county at this point has been denied.  
3 So with that being the case, we are trying to still  
4 continue to go on with our homeless situation in our  
5 county as part of the state of Texas.

6 So if anything can be done for our county with  
7 the loss of \$600,000, we are hoping to at least request if  
8 there are any funds from previous ESG years, as we did  
9 receive last year when I worked with the '15-'16, there  
10 were extra funds from 2014, and they were given to our  
11 agency to spend as well.

12 So that's one of our biggest things, and we  
13 want to know if there are any previous funds left over  
14 from other years; we would love to have them. There will  
15 be no questions asked. We would just love to have them so  
16 that we can continue doing what we do in our community.

17 This is one of our success stories. This is  
18 Ms. Kathy Reece, and she just simply wanted to come today  
19 and just let you know just how wonderful ESG has been to  
20 her.

21 MR. OXER: Okay. Ms. Reece, good morning and  
22 welcome. Please --

23 MS. REECE: Good morning. Thank you. I'm  
24 Kathy Reece. I'm from Denton, Texas, and I am a recipient  
25 of the ESG. Without it, I would be dead on the side of

1 the road. I had a stroke; I couldn't work for a while. I  
2 was living under inhumane conditions; no electricity.  
3 Thank God I had a water leak, so I had water.

4 And I ended up losing my house because the City  
5 found out that I was living that way. And I didn't have  
6 money to pay back taxes. I had had a stroke, so my son  
7 called me to live with him for a couple of years. Then  
8 some things happened, and my son left and I was there by  
9 myself.

10 I was living in a Walmart parking lot in my  
11 car, and I was told by a Salvation bell ringer --  
12 Salvation Army Bell ringer, You cannot stay here because  
13 it's going to get down to 17 degrees. You can't stay  
14 here.

15 So I ended up going to the Salvation Army,  
16 which gets ESG funds as well. They helped me pay for my  
17 medications. They helped clothe me; they fed me. And I  
18 had four surgeries in three months while I was staying  
19 there. Four surgeries because -- and I still couldn't  
20 work, but I collect blood clots.

21 Once I couldn't work anymore, I had to leave  
22 the Salvation Army and go back to my car, so I was  
23 desperate for help. And then in came Giving Hope. I did  
24 not know what it was taking a survey for, no clue. But in  
25 January of last year, they called me in and they said that

1 I was going to be in an apartment for 12 months. Gave me  
2 time to get a job, get my health back in order, and get my  
3 life back, become a human being again.

4 And that's what I did. And now I am unemployed  
5 again due to circumstances that I could not control. And  
6 the ESG funds has been covering my rent until I can get  
7 back on my feet again.

8 And I'm begging you, please do not take the ESG  
9 funds away from Denton, because I know a 65-year-old woman  
10 right now that is living in her van because she had a  
11 stroke and her daughter's husband would not let her live  
12 with them. She's been this way for three years. She  
13 can't work because she gets tired too easily.

14 And my work is limited because I'm going to  
15 have another stroke. I mean it runs in my family. I'm  
16 still collecting blood clots. I still walk around with a  
17 leg swollen this big around sometimes, but there's nothing  
18 I can do about it.

19 And I -- when I go to work, I have to work jobs  
20 that I don't have to stand up too long or there's not much  
21 walking, because I can't do it, so I'm limited. And right  
22 now I still need help, and I'm asking you, please God, do  
23 not take these funds away from Denton. I've seen the  
24 people in Denton. I can spot them all over that town, and  
25 they need help. And Giving Hope, the Salvation Army,

1 Friends of the Family, they all keep us alive. They all  
2 keep us alive.

3 So I thank God for them because I'm still here.

4 MR. OXER: We appreciate your comments.

5 MS. REECE: Thank you.

6 MR. OXER: Uh-huh. Any more to add, Michael?

7 MR. DeYOUNG: No, just a couple of items for  
8 the Board. This ties -- this comment ties to the appeal  
9 you heard last month at the Board.

10 MR. OXER: Uh-huh.

11 MR. DeYOUNG: You denied the appeal. I will  
12 remind you that this is a competitive process similar to  
13 the tax credits. We are oversubscribed in the ESG. The  
14 money is divided up into areas around the state. This is  
15 the continuum of care, the balance of state that you heard  
16 at the last meeting, and this application did not score  
17 high enough.

18 And they appealed last time at the board  
19 meeting. you denied the appeal, and this is -- this  
20 process is fairly regimented, as you -- if you read your  
21 Board Item 1(m), it describes that the processes that,  
22 should we find extra money or should we be allocated  
23 additional money from HUD, we will go to the application  
24 that we did not fully fund, the one that received the  
25 reduction in their award. We would move to that, and then



1 we would go down the list of the next-highest-scoring  
2 application. So we have a process in place to continue to  
3 fund, should the award end up differently than we expect.

4 MR. OXER: Not unlike the Tax Credit Program.

5 MR. DeYOUNG: Not unlike the Tax Credit, yes,  
6 sir.

7 MR. OXER: Right. Okay, is that clear to the  
8 Board?

9 (No response.)

10 MR. OXER: Okay. That's regarding Item 1(m).  
11 There's been a motion by Ms. Bingham, second by Mr. Chisum  
12 to approve staff recommendation. Those in favor?

13 (A chorus of ayes.)

14 MR. OXER: And opposed?

15 (No response.)

16 MR. OXER: There are none.

17 MR. DeYOUNG: Thank you.

18 MR. OXER: Okay. And just for the record, I  
19 think Bobby Wilkinson walked in. Bobby, you're here.  
20 Hey, good morning. Glad to see the Governor's Office  
21 taking a little interest in what we're doing, particularly  
22 today.

23 MR. WILKINSON: I'm here.

24 MR. OXER: For some reason this meeting every  
25 year attracts attention, you know.

1           Okay. So we've had the reports on the consent  
2 agenda so we're in the action Item Number 3. Mark?

3           MR. SCOTT: Good morning. I'm Mark Scott,  
4 director of Internal Audit. And we had an Audit Committee  
5 meeting this morning. I spoke about the Sources and Uses  
6 Audit.

7           In this report we had discussion and analysis  
8 of the Agency's funding and expenditures and  
9 reconciliations of various external reports of Agency  
10 financial information.

11           One reason I like to do this audit once per  
12 biennium is that there are different financial numbers  
13 quoted in different context in different places. So this  
14 audit report kind of explains and reconciles the various  
15 financial amounts reported internally and externally.

16           And in addition to analytical procedures, we  
17 conducted audit tests mainly with respect to the Agency's  
18 indirect cost rate. And we found that they were correctly  
19 applied.

20           I also spoke about the status of the Audit  
21 Plan. I'm in the process of hiring a new auditor to fill  
22 a vacancy. We have two audits in progress that will be  
23 presented at the October Audit Committee. Those are the  
24 Fair Housing audit and the Compliance Division audit.

25           And the other two audits on the plan, the

1 Federal Tax Credit audit and the audit of Multifamily  
2 Finance, may have to be carried over, but I will try to  
3 get them done this year.

4 And at the upcoming October Audit Committee,  
5 I'll present a 2017 Audit Plan for approval. The Texas  
6 Internal Auditing Act requires a period peer review of  
7 Internal Audit. And the Internal Auditing Standards or  
8 Red Book define the period as at least once every five  
9 years.

10 The last peer review of Internal Audit was  
11 completed in January of 2013, so we are in compliance with  
12 the Red Book requirement. We are going to put a peer  
13 review on the Audit Plan, and we're also going to budget  
14 for it.

15 And I also spoke about the current -- or recent  
16 External Audit Activities. The State Auditor's Office is  
17 getting ready to start their Financial Statement Audit of  
18 TDHCA. And KPMG has finished the field work of their  
19 audit of the Energy Assistance Program, and that's why  
20 they have not notified us of any finding.

21 And also something I report on are the reviews  
22 that the federal agency monitoring staff that conducts at  
23 TDHCA. And these are not technically considered audits,  
24 but we do provide them to KPMG and SAO. And HUD just did  
25 a review of the Community Development Block Grant Program,

1 and they issued a very favorable report.

2 That concludes my presentation. I'll be happy  
3 to answer any questions there may be.

4 MR. OXER: You said you're looking to add  
5 staff. We've just -- we've got a lot going on, so we need  
6 some more horsepower. Come on, I'll do it for you, Tom.  
7 We need some more horsepower on our tractor here.

8 MR. SCOTT: Well, it's not really more staff.  
9 One staff left, so I'm just replacing that staff for --

10 MR. OXER: So you're filling a hole so we're  
11 not --

12 MR. SCOTT: Yes.

13 MR. OXER: -- we're not slowing down. So in  
14 delaying -- not delaying, but with an audit that extends  
15 into next year, for example, that doesn't change the Audit  
16 Plan. It just says it took a little longer than we  
17 thought to get it done.

18 MR. SCOTT: It just takes a little longer. And  
19 the reporting requirement I have to issue the report on  
20 the annual audits done November 1. So chances are we'll  
21 have all of them done by then. But we're on a state  
22 fiscal year audit plan cycle.

23 MR. OXER: Right. And in listening in to your  
24 presentation, though it's an annual audit, annual doesn't  
25 mean -- necessarily mean calendar year.

1           MR. SCOTT: That is correct. And to -- as long  
2 as you get the audits on the Audit Plan done, you're in  
3 pretty good shape.

4           MR. OXER: Yeah. Ms. Bingham, as chair of the  
5 Audit Committee, would you care to comment on the results  
6 and adventures here this morning?

7           MS. BINGHAM ESCAREÑO: The Committee meeting  
8 was very productive. Are you going to do Sources and Uses  
9 separate, or was that pretty much it?

10          MR. SCOTT: Yeah, that was pretty much it.

11          MS. BINGHAM ESCAREÑO: Okay.

12          MR. SCOTT: I'll answer questions about it.

13          MS. BINGHAM ESCAREÑO: That's great. No, I  
14 just was going to mention and I didn't want to be  
15 premature. And we had a good discussion on the Sources  
16 and Uses, so this was the first time that we did a Sources  
17 and Uses Audit.

18                   And just in case anybody missed it, there  
19 really weren't any material findings. There were a couple  
20 of what Mark called minor observations, but it produced a  
21 really valuable document just in terms when you think  
22 about how diverse our funding sources are and our uses are  
23 within the Agency, it's a really valuable audit that I  
24 think has multiple uses moving forward.

25                   I don't think that Committee -- Mr. Gann and

1 Mr. Chisum were on the Committee -- we didn't have any  
2 other major questions. Just echoing your question about  
3 being able to wrap up the deliverables on this year's plan  
4 versus having to move into next year's plan. But the  
5 Committee's supportive of filling the vacancy that's in  
6 the department.

7 MR. OXER: And so essentially the comments that  
8 we got from our internal work like this is what we always  
9 hoped that an internal auditor would do is give us some  
10 guidance on how to get better at what we're doing.

11 MR. SCOTT: Yes --

12 MR. OXER: There being a considerable  
13 complexity in the number of sources of funds and the way  
14 those funds are sometimes intermingled on individual  
15 products.

16 MR. SCOTT: Yes, and even -- even I as a CPA  
17 will read some of the financial reports that are done of  
18 the Agency by the State Audit's Office, the LBB, and I'll  
19 kind of read them and be curious about some of the  
20 numbers. So I want to make sure that all the numbers that  
21 are reported externally can be explained and the --

22 MR. OXER: That's always a good defense to  
23 have.

24 MR. SCOTT: Right.

25 MR. OXER: Mr. ED, do you have any thoughts?

1 MR. IRVINE: Well, I mean --

2 MR. OXER: I know you report to us, but I'm  
3 offering everybody a chance up here to speak.

4 MR. IRVINE: Yeah, it's just -- it's a great  
5 relationship with Internal Audit. I look forward to you  
6 augmenting your staff by filling that vacancy.

7 And, you know, I think that the Sources and  
8 Uses type of -- I was just sitting here counting the  
9 number of sources of funds that you've already touched  
10 upon this morning, and it is so important that we keep  
11 those straight; very valuable.

12 MR. OXER: A lot of federal programs are funded  
13 for a single silo of programs, and we sort of get stuff  
14 sprayed across things.

15 MR. SCOTT: That's correct. Yeah, it's -- and  
16 the magnitude of the activities that we finance is huge.  
17 And as I discussed this morning, the actual money we spend  
18 on staff is really very small considering the amount of  
19 activity that we generate.

20 MR. OXER: What's your schedule of filling the  
21 vacancy?

22 MR. SCOTT: I've already started interviewing,  
23 and I'm continuing to interview, so I'm hoping to get a  
24 lot of good applicants.

25 MR. OXER: Well, my perspective on the whole

1 thing is you can leave it open until you find the right  
2 one. Don't get in a hurry.

3 MR. SCOTT: That's probably great advice.

4 MR. OXER: All right. And with that, I guess  
5 there's no -- I think we have -- is this -- this is a  
6 report item? It's the only report item, so do we need to  
7 authorize anything?

8 VOICE: No.

9 MR. OXER: Okay. Well, the Board accepts the  
10 report.

11 MR. SCOTT: All right. Thank you very much.

12 MR. OXER: All right. Thanks, Mark. Monica,  
13 you're up.

14 MS. GALUSKI: Good morning all. I'm Monica  
15 Galuski, your director of bond finance. This will be a  
16 brief update on the Selection of the Master Servicer for  
17 the Single Family Homeownership Programs.

18 The Master Servicer Request for Proposal, or  
19 RFP, was published April 1 and had a submission deadline  
20 of April 29. And we received two proposals. A team of  
21 department staff has revised those proposals.

22 But due to some unique aspects related to the  
23 structure of one proposal, we've been working very closely  
24 with the Department's bond counsel and financial advisor  
25 to examine, from loan origination through MBS settlement,



1 basically every aspect of both proposals to ensure the  
2 economic and legal viability for the Department.

3 We had hoped to report to you today the Master  
4 Servicer that we had -- that had been selected.  
5 Unfortunately, the analysis is not complete. It's taking  
6 a little longer than we expected, and we've committed to  
7 both respondents that we will select by August 15. So we  
8 should be able to report that selection to the Board at  
9 the August 25 meeting.

10 It was just an update. It's been a while.  
11 Again, we had hoped to come to you with the selection, but  
12 we're not quite there yet.

13 MR. OXER: Okay. So this is essentially a  
14 report item, so it's ongoing --

15 MS. GALUSKI: It's a report item, no action.

16 MR. OXER: Things are working. Okay.

17 MS. GALUSKI: Yeah.

18 MR. OXER: But we're getting interest and we  
19 have capable respondents?

20 MS. GALUSKI: We have capable respondents and  
21 are looking at both very closely.

22 MR. OXER: Great. Any questions from the  
23 Board?

24 (No response.)

25 MR. OXER: Okay, thanks.

1 MS. GALUSKI: Thank you.

2 MR. OXER: Brent?

3 MR. STEWART: Good morning.

4 MR. OXER: Good morning.

5 MR. STEWART: Brent Stewart, Real Estate  
6 Analysis. Both of the appeal items for 16057 Silverleaf  
7 at Mason and 16274 Rockview Manor will not be heard at  
8 this meeting today.

9 MR. OXER: So they're being pulled?

10 MR. STEWART: Pulled today.

11 MR OXER: Completely?

12 MR. STEWART: Today.

13 MR. OXER: And these are underwriting, so  
14 they're continuing. It's not like -- they're not related  
15 to the tax credit round?

16 MR. STEWART: They're related to the tax credit  
17 round, but these are appeals related to the underwriting.

18 MR. OXER: Okay. All right. So we'll get out  
19 of -- that's a nice way to handle that one, by the way.

20 (General laughter.)

21 MR. OXER: Okay, this is going -- and owing to  
22 the fact that there's a lot of attention, I think we're  
23 going to go -- you got your spot coming, so relax, okay.  
24 So I want to exercise the Chair's discretion here. We're  
25 going to take these in a different order.

1           Come on, Marni. We'll take up -- we're going  
2 to surpass Item 1(a) -- or 6(a), (b), and (c). We're  
3 going to take Item 6(d) first because these are bond  
4 issues, so, Marni.

5           MS. HOLLOWAY: Good morning, Chairman Oxer,  
6 members of the Board. My name is Marni Holloway. I'm the  
7 Director of the Multifamily Finance Division. Item 6(d)  
8 is Presentation, Discussion, and Possible Action Regarding  
9 the Issuance of Multifamily Housing Revenue Bonds for the  
10 Gateway at Hutchins Apartments and a Determination Notice  
11 of Housing Tax Credits.

12           Gateway at Hutchins Apartments involves a new  
13 construction of 336 units proposed to be located at 805  
14 North Denton Street in Hutchins, which is in Dallas  
15 County. The development will serve the general population  
16 with all of the units' income and rent restricted to 60  
17 percent of AMI.

18           The applicant disclosed the presence of certain  
19 undesirable neighborhood characteristics under Section  
20 10.01(a)(4)(b), specifically one of the schools in the  
21 attendance zone for this development, Wilmer-Hutchins  
22 Elementary, did not achieve the met standard rating for  
23 2015.

24           The 2015 accountability rating indicated the  
25 school failed to achieve met standard by one point on

1 Performance Index 3 relating to closing performance gaps  
2 and showed improvement on the other performance index  
3 indicators over the previous years.

4 A letter addressing the school's rating was  
5 submitted by Dallas ISD School Board Trustee and Second  
6 Vice-President Lew Blackburn. He expressed his strong  
7 belief that Wilmer-Hutchins Elementary is headed in the  
8 right direction. They have a new principal, and they've  
9 demonstrated the necessary steps to meet and exceed the  
10 met standard rating by the time Gateway at Hutchins is  
11 placed into service.

12 The applicant is considered a Small Category 1  
13 portfolio, and the previous participation was deemed  
14 acceptable by EARAC without further review or discussion.

15 EARAC also reviewed the proposed finance and underwriting  
16 report and recommends issuance of multifamily housing  
17 revenue bonds and a determination notice subject to  
18 conditions contained in the report. A copy of the summary  
19 is in your board book.

20 A public hearing was conducted on April 2 of  
21 2016. There was no one in attendance. The Department  
22 received letters of support from Dallas County Judge Clay  
23 Lewis Jenkins, Mayor Mario Vasquez, and Dallas ISD Board  
24 of Trustee Lew Blackburn. No letter of opposition have  
25 been received.

1                   Staff believes that based on the information  
2 provide regarding Wilmer-Hutchins Elementary School, the  
3 proposed development should not be considered ineligible  
4 under the rule and further recommends approval of  
5 \$29 million in tax-exempt multifamily housing revenue  
6 bonds and a 4 percent housing tax credit determination in  
7 the amount of \$1,586,539 with the conditions noted in your  
8 write-up.

9                   MR. OXER: Any questions from the Board?

10                  MS. HOLLOWAY: And I can take any questions.

11                  MR. OXER: So we're exercising the 4 percent  
12 pot?

13                  MS. HOLLOWAY: We are. Teresa's been working  
14 really hard.

15                  MR. OXER: Good job. Any questions?

16                               (No response.)

17                  MR. OXER: All right. Motion to consider.

18                  MR. CHISUM: So moved.

19                  MR. OXER: Okay, a motion by Mr. Chisum to  
20 approve staff recommendation on Item 6(d).

21                  MR. GANN: Second.

22                  MR. OXER: Second by Mr. Gann. Claire, you  
23 want to speak?

24                  MS. PALMER: No, thank you.

25                  MR. OXER: Okay.

1 (General laughter.)

2 MR. OXER: You understand you're in the seat  
3 where people want to speak, okay.

4 MS. PALMER: I'm just here just in case.

5 MR. OXER: Okay. So, all right. Motion by Mr.  
6 Chisum, second by Mr. Gann to approve staff recommendation  
7 on Item 6(d). Those in favor?

8 (A chorus of ayes.)

9 MR. OXER: And opposed?

10 (No response.)

11 MR. OXER: There are none.

12 MS. HOLLOWAY: Okay, Item 6(e) is Presentation,  
13 Discussion, and Possible Action Regarding the Issuance of  
14 Multifamily Housing Revenue Bonds for Mercantile  
15 Apartments along with a Determination Notice for Housing  
16 Tax Credits.

17 Mercantile Apartments involves a new  
18 construction of 324 units located at Northern Cross  
19 Boulevard and Endicott Avenue in Fort Worth.

20 The development will serve the general  
21 population and will include 12 units restricted at 50  
22 percent of area median income, 299 units at 60 percent of  
23 area median income, and 13 units that will be at market  
24 rate with no rent or income restrictions.

25 EARAC reviewed the applicant's previous

1 participation history along with the underwriting report  
2 and recommends issuance of the Multifamily Housing Revenue  
3 bonds and a determination notice subject to the conditions  
4 described in your board book related to communication and  
5 training requirements from the previous participation  
6 review.

7 A public hearing was conducted on June 7th of  
8 2016. There was no one in attendance. The Department  
9 received an opposition letter from the Eagle Mountain-  
10 Saginaw Independent School District at the time of  
11 preapplication and another this past May. A letter from  
12 City Council member Cary Moon expressed the merits of the  
13 Mercantile Apartments development, and no other letters  
14 have been received.

15 Your Board action request indicates that the  
16 recommended tax credit amount is \$1,552,255. That is  
17 actually a typo. The amount recommended by the Real  
18 Estate Analysis Report is actually \$1,522,255, so a  
19 \$30,000 difference.

20 Staff recommends approval of \$29,500,000 in  
21 tax-exempt multifamily housing revenue bonds and 4 percent  
22 housing tax credits in the amount of \$1,522,255, subject  
23 to the conditions contained in your request.

24 Any questions?

25 MR. OXER: I have a question. You said the

1 conditions were essentially with respect to communication  
2 and training. Can you summarize those quickly?

3 MS. HOLLOWAY: Certainly.

4 MR. OXER: And we've read those, of course, but  
5 just so we have that on the record.

6 MS. HOLLOWAY: So out of our previous  
7 participation review, this is a Category 3 Extra Large  
8 Portfolio applicant. There were a number of concerns  
9 regarding communication between the owner and their  
10 partners. They provided terms to EARAC, saying this is  
11 what we will do in order to prevent these problems in  
12 future developments.

13 So one of them is listing the appropriate party  
14 in our contract management tracking system, regular  
15 meetings amongst the partners, some training using all of  
16 the webinars on our website for everybody who's  
17 responsible for compliance. And then on request, you  
18 know, we will ask them to provide certification that  
19 they're accomplished these things.

20 Of course, in any future awards to these  
21 parties, if these problems have continued, we may have  
22 different conditions, but we feel confident that this  
23 should resolve their issues.

24 MR. OXER: And the compliance was Chief Murphy  
25 who's sitting in here this morning.



1 MS. HOLLOWAY: Chief Murphy, yes.

2 MR. OXER: Good morning, Patricia. Chief  
3 Murphy is -- understands these and willing to make sure  
4 these are being complied with?

5 MS. HOLLOWAY: Absolutely. With EARAC, the --  
6 Patricia and her staff are heavily involved in EARAC, and  
7 we all work through what are acceptable terms and  
8 conditions.

9 MR. OXER: What's the timing on the -- because  
10 this is -- we're initiating this. We're --

11 MS. HOLLOWAY: Yes.

12 MR. OXER: -- making the grant, making the --  
13 and so do we go three years on this before we get the  
14 first compliance audit, or do we look at this like okay --

15 MS. HOLLOWAY: It's really a rolling review,  
16 depending on new applications that come from these  
17 parties. So --

18 MR. OXER: Well, if a new applications comes --  
19 what if they don't issue a new application from this  
20 party?

21 MS. HOLLOWAY: If there isn't a new  
22 application, say, next year, then we wouldn't have a  
23 reason -- EARAC wouldn't have a reason to take up the  
24 matter.

25 MR. OXER: Uh-huh.

1 MS. HOLLOWAY: If there is a new application,  
2 then we would have that three-year look-back period and we  
3 would consider whether or not the applicant has met  
4 previously imposed terms.

5 MR. IRVINE: That is, we monitor properties in  
6 that portfolio. We would look to make sure --

7 MS. HOLLOWAY: Yes.

8 MR. IRVINE: -- that they're carrying those  
9 things out.

10 MR. OXER: And those -- and that's every three  
11 years --

12 MS. HOLLOWAY: Uh-huh.

13 MR. IRVINE: For an extra large.

14 MR. OXER: -- more or less.

15 MR. IRVINE: It'll be --

16 MR. OXER: Okay.

17 MR. IRVINE: -- all the time.

18 MS. HOLLOWAY: Yeah.

19 MR. OXER: It's a constant review for the extra  
20 large portfolios. Right?

21 MS. HOLLOWAY: Right.

22 MR. OXER: Okay. All right. 6(e), motion to  
23 consider?

24 MR. GANN: I move that we accept the  
25 recommendation of staff with the correction.

1 MR. OXER: Okay. Motion by Mr. Gann.

2 MS. BINGHAM ESCAREÑO: I'll second.

3 MR. OXER: And second by Ms. Bingham. Do you  
4 wish to speak?

5 MS. GUERRERO: Now I do. Chairman Oxer, my  
6 name is Debra Guerrero. I'm with the NRP Group, and I  
7 want to assure you that we will be meeting the conditions.  
8 And not only --

9 MR. OXER: With Chief Murphy, I'm pretty  
10 confident that you will, believe me.

11 MS. GUERRERO: I know. Chief Murphy will keep  
12 us -- Sarge Murphy will keep us straight. But I do want  
13 to assure you that there will be other applications, so  
14 you will be able to see that continuing compliance.

15 But I do want to assure you we've addressed  
16 issues. We have a number of people working within our  
17 organizations as well as a number of partners. And so we  
18 continue to refine our own internal communications so that  
19 we can meet all of the compliance requirements.

20 MR. OXER: Thanks for your comment.

21 MS. GUERRERO: So thank you, Chairman. Thank  
22 you, Board.

23 MR. OXER: Debra, don't forget to sign in.

24 MS. GUERRERO: Oh, sorry.

25 MR. OXER: Okay, any other questions from the

1 Board?

2 (No response.)

3 MR. OXER: Okay. A motion by Mr. Gann, second  
4 by Ms. Bingham to approve staff recommendation on Item  
5 6(e). Those in favor?

6 (A chorus of ayes.)

7 MR. OXER: And opposed?

8 (No response.)

9 MR. OXER: There are none. Marni, you want to  
10 get 6(f) out of the way?

11 MS. HOLLOWAY: We can go ahead and do that,  
12 absolutely.

13 MR. OXER: Let'S just do it.

14 MS. HOLLOWAY: Item 6(f) is Presentation,  
15 Discussion, and Possible Action regarding the Award of  
16 Direct Loan Funds from the 2016-1 --

17 MR. OXER: All right. Hold on. We're going to  
18 have to change that.

19 MS. HOLLOWAY: Yeah.

20 MR. OXER: We've got appeals we need to deal  
21 with on this, so --

22 MS. HOLLOWAY: Yeah. So we do --

23 MR. OXER: All right. Let me --

24 MS. HOLLOWAY: -- do the appeals first and then  
25 we can take that one later.

1 MR. OXER: Right. Get (d) and (e) out of the  
2 way and then we go back. All right.

3 MS. HOLLOWAY: Okay.

4 MR. OXER: All right. We'll take 1(a). So  
5 Sharon, welcome to the spot.

6 MS. GAMBLE: Good morning, Mr. Chair, Board.  
7 My name is Sharon Gamble. I'm the administrator for the  
8 Competitive Housing Tax Credit Program. Today I'm  
9 bringing the Presentation, Discussion, and Possible Action  
10 on Timely Filed Scoring Appeals on the Department's  
11 Multifamily Rules.

12 10 TAC Section 10.201 number 5 describes the  
13 evaluation process staff uses to determine which  
14 applications are likely to be competitive. As described  
15 in the rule, each application receives an initial  
16 assessment where staff considers the applicant's self-  
17 score as well as the applicant's potential for scoring  
18 points for items not included in the self-score,  
19 particularly items under QAP Subsection 11.9(d)(2), Local  
20 Government Support, 11.9(d)(4) Quantifiable Community  
21 Participation, 11.9(d)(5) Community Support from State  
22 Representative, and 11.9(d)(6) Input from Community  
23 Organizations.

24 After this initial assessment, staff ranks the  
25 applications by score within the set-aside or subregion.

1 For each application that is determined to be competitive,  
2 staff completes a review of the application and a scoring  
3 notice is sent to the applicant.

4 Applicants may appeal any loss of points  
5 indicated on the scoring notice. For applications that  
6 are determined to be noncompetitive based on this initial  
7 assessment, a letter is sent to the applicant advising  
8 them that based on staff's assessment, the application  
9 does not have a competitive score and inviting them to  
10 provide in an appeal any information that might lead staff  
11 to reconsider its determined score for the items not  
12 included in the self-score.

13 The first appeal is for an application that did  
14 receive a scoring notice, and the last two appeals are  
15 from applicants that are appealing the assessed score.

16 Item 6(a) is an appeal of scoring for  
17 application for 16011 Homestead Prairie Senior Apartments.

18 The application proposes the new construction of 53  
19 elderly limitation units in Ponder, which is in Region 3  
20 Rural.

21 The application was determined to be  
22 competitive and was reviewed by staff. After review,  
23 staff determined that the application did not qualify for  
24 one point under Subsection 11.9(d)(2), Commitment of  
25 Funding By Local Political Subdivision. And the applicant

1 was issued a scoring notice and invited to appeal staff's  
2 determination. The applicant appealed, and the Executive  
3 Director denied the appeal.

4 The application included a letter provided by  
5 the City of Ponder, indicating a commitment to loan books  
6 from the Town of Ponder Library Department to the  
7 development for the use of its residents as well as a  
8 quarterly visit from library staff to the development to  
9 encourage memberships and discuss other library services  
10 and upcoming events.

11 And in denying this point, staff determined  
12 that while the book loan is a great support of service for  
13 the residents of the development, it does not represent a  
14 contribution of a loan, grant, reduced fees, or  
15 contribution of other value for the benefit of the  
16 development by the City of Ponder, as the rule requires.

17 The appeal asserts that the book loan is an  
18 in-kind contribution to the development valued at \$40 per  
19 year which is attributable to salary of the visiting  
20 library staff and the value of the books that will be  
21 rotated at the property. The appeal included a revised  
22 annual operating expense form, which indicates an expense  
23 of \$40 under supportive services and a reduction of \$40 to  
24 indicate the City's contribution.

25 That the cost is indicated in this way on this

1 form supports staff's determination that this is in fact a  
2 donation of a supportive service to benefit the residents  
3 and not one of a loan, grant, reduced fees, or  
4 contribution of other value for the benefit of the  
5 development.

6 Based on this determination, staff recommends  
7 that the Board deny the appeal. I will note that this  
8 application is currently in second place in its region and  
9 is not recommended for an award today, but it is on the  
10 waiting list.

11 Should the Board grant the applicant's appeal,  
12 the application will be awarded one additional point and  
13 would remain in second place in the region and on the  
14 waiting list.

15 I can answer any questions you have.

16 MR. OXER: Any questions from the Board?

17 MR. CHISUM: No, sir.

18 MR. OXER: So when we're in the QAP and in the  
19 rule, when we're looking for a material contribution from  
20 a community, what's the minimum value that we're expecting  
21 out of that?

22 MS. GAMBLE: There is no minimum. This year  
23 the statute changed to say that the local political  
24 subdivision funding can be a de minimis amount. And so  
25 the amount of the contribution is not at all in question.



1 We've seen contributions from \$10 to \$10,000.

2 MR. OXER: Okay. Do you have a comment, Tim?

3 MR. IRVINE: No, just an issue of whether the  
4 contribution was to the development or really to the  
5 tenants.

6 MS. GAMBLE: Right.

7 MR. OXER: Okay. And as you pointed out, it's  
8 fairly explicit in the rule.

9 MS. GAMBLE: It is. Yes, it is.

10 MR. OXER: Okay. With respect to Item 6(a), a  
11 motion to consider?

12 MS. BINGHAM ESCAREÑO: I'll move staff's  
13 recommendation.

14 MR. OXER: Okay. Motion by Ms. Bingham to  
15 approve staff recommendation on Item 6(a).

16 MR. CHISUM: Second.

17 MR. OXER: Second by Mr. Chisum. Would you  
18 like to speak?

19 MS. BURCHETT: Yes, sir. Good morning. My  
20 name is Sallie Burchett with Structure Development. I'm  
21 here on behalf of our client Harmon Killough Properties.

22 As we've just discussed and on page 534 of your  
23 original board book, the issue is not that the program of  
24 value because reading is a wonderful service that helps  
25 provide cognitive function and better mental health. It's

1 particular important for a senior project, those that  
2 might have mobility functions, bringing the books to the  
3 residents versus going to the library.

4 But the matter is whether the contribution  
5 benefits the development, and I'd like to read the  
6 definition of development. It's in the second paragraph  
7 of Mr. Irvine's letter right below the underlying of  
8 development.

9 It's a residential rental housing project that  
10 consists of one or more buildings under a common  
11 ownership, and it goes on. And it is clear that  
12 explicitly the definition of development includes  
13 residents who rent and are housed.

14 And so our argument is that the contribution  
15 benefits the residents of the development and we're --  
16 this letters says that they believe it benefits the  
17 residents of the development too, but the question is  
18 whether that meets the definition of development. And in  
19 reading the definition of development, it's explicit in  
20 the use of the words "residential rental housing."

21 That's why we're here today using your time.

22 Thank you.

23 MR. OXER: Okay. Is there any questions of Ms.  
24 Burchett?

25 (No response.)

1 MR. OXER: Can we have a clarification on that,  
2 Counsel?

3 MR. ECCLES: Well, the definition of  
4 development -- and just for citation purposes, that is 10  
5 TAC 10.3(a)(38) -- is a residential rental housing project  
6 that consists of one or more buildings under common  
7 ownership and financed under a common plan which has  
8 applied for department funds.

9 This includes a project consisting of multiple  
10 buildings that are located on scattered sides and contain  
11 only rent-restricted units. Development is relating to  
12 the buildings themselves.

13 MR. OXER: The infrastructure and not the  
14 residents?

15 MR. ECCLES: That is -- residents are not  
16 mentioned in this definition of development, and the QAP  
17 references this definition as indicated by the capitalized  
18 D in development.

19 MR. OXER: Okay, thank you.

20 All right. Any other questions?

21 (No response.)

22 MR. OXER: No other public comment. With  
23 respect to Item 6(a), it's motion by Ms. Bingham, second  
24 by Mr. Chisum to approve staff recommendation. Those in  
25 favor?

1 (A chorus of ayes.)

2 MR. OXER: And opposed?

3 (No response.)

4 MR. OXER: There are none. The appeal's  
5 denied.

6 Okay, Sharon.

7 MS. GAMBLE: These next two are appeals of the  
8 assess score. There were applications that were found  
9 not -- to be noncompetitive in the region. 6(b) is an  
10 appeal of the assessed score for Application 16218 Sphinx  
11 at Sims Bayou Villas. The application proposes the new  
12 construction of 126 supportive housing units in Houston,  
13 which is in Region 6 Urban.

14 The initial assessment resulted in a score of  
15 128, and the application was determined to be  
16 noncompetitive in the region and was not reviewed by  
17 staff.

18 The appeal submitted by the applicant included  
19 no direct information regarding the four items not  
20 included in the self-score: government support,  
21 quantifiable community participation, community support  
22 from state representative, and input from community  
23 organizations for the Department to consider.

24 In the appeal the applicant states that the  
25 application was not intended to be considered based on

1 score but on set-aside self-score, received date, or other  
2 ranking factors. The appeal cites Texas Government Code  
3 Section 2306.111(d)(1) -- (d-1), which describes when  
4 credits are not required to be allocated according to the  
5 regional allocation formula, asserting that this rule  
6 creates a persons-with-disabilities set-aside and that the  
7 application submitted is in a set-aside without any  
8 competition and should be reviewed and awarded before any  
9 applications.

10 To be clear, the statute requires that if the  
11 Department allocates funds of credits primarily to serve  
12 persons with disabilities, those funds or credits are not  
13 required to be allocated according to the regional  
14 allocation formula. It does not require that the  
15 Department make such an allocation.

16 The Department does not make such an allocation  
17 of competitive housing tax credits primarily to serve  
18 persons with disabilities. Allocations are made to  
19 eligible developments whose populations may include  
20 persons with disabilities.

21 The appeal also cites the 2015 State of Texas  
22 Consolidated Annual Performance and Evaluation Report, the  
23 CAPER, which applies to the State's use of funds received  
24 from the U.S. Department of Housing and Urban Development  
25 to establish that there is a disability set-aside.

1           The CAPER discusses the State's use of HUD  
2 funds to serve persons with disabilities as a distinct and  
3 prioritized population. The Department is required to  
4 utilize 5 percent of its HOME funds to serve persons with  
5 disabilities, and this required use is often referred to  
6 as the Persons-with-Disabilities Set-aside.

7           However, this requirement doesn't -- is not  
8 applicable to the Competitive Housing Tax Credit Program,  
9 only to the HOME Program. Because the applicant provided  
10 no direct information or documentation in the application  
11 or otherwise that affects the scoring of these items,  
12 staff recommends denial of the appeal.

13           This application is currently in eleventh place  
14 in the region. It's not recommended for an award, but is  
15 on the waiting list. Should the Board grant one or more  
16 facets of the applicant's appeal, staff will follow the  
17 Board's determination in calculating the applicant's place  
18 in the region.

19           I will note that an award for this application  
20 may result in the loss of an award for one of the  
21 recommended applications in the region.

22           MR. OXER: Okay. So this is number 11 in the  
23 region, and we don't expect to go down that deep?

24           MS. GAMBLE: Correct, sir.

25           MR. OXER: Okay. Any questions from the Board?

1 (No response.)

2 MR. OXER: Okay, motion to consider?

3 MS. BINGHAM ESCAREÑO: So moved.

4 MR. CHISUM: Second.

5 MR. OXER: Motion by Ms. Bingham, second by Mr.  
6 Chisum to approve staff recommendation to Item 6(b).

7 We have a request for public comment. Don't  
8 forget to sign in and tell us who you are.

9 DR. SIMS: Good morning. It's Dr. Rick Sims.  
10 First of all --

11 MR. OXER: And, yes, it's a wonderful morning.  
12 I have to tell you.

13 DR. SIMS: First of all, according to the  
14 Appeal Rules, they're coming to you under appeal under  
15 10.02, number 2 score. But my answer is a number 4 where  
16 I can appeal a procedural error that can cause this.

17 Now, Mr. Oxer, just a continuation of last time  
18 I saw you. I submitted my application based upon you, in  
19 November 2013, requested from the Attorney General about  
20 set-asides. He gave you an opinion May 20, 2014. I  
21 submitted my application according to that definition of a  
22 set-aside.

23 The reason that I did mention (c)(12), which is  
24 the set-aside in the HOME Program, is that in between when  
25 you wrote for that letter and when you received it, there

1 was a change, and they changed the application when they  
2 changed the division. And they just worded out mandated  
3 set-asides for person with disabilities.

4 Now, I understand anytime I see a HOME -- a  
5 set-aside for CHDO anywhere United States, that says 15  
6 percent of a HOME money. But in the state of Texas if you  
7 see a set-aside for CHDO, it's a mandatory 5 percent for  
8 persons with disabilities. Even though today you have  
9 other types -- you call it direct loan, but they will you,  
10 but it's still governed under the HOME Program, but you  
11 have no person-with-disabilities set-aside.

12 Then, sir, taking the same context of the  
13 letter -- and I like to be fair -- taking that same letter  
14 under (d)(12) is I don't agree with what she says. Yeah,  
15 you can do what you want to do, but basically that's the  
16 only set-aside mentioned. It is in between a mandatory  
17 minimum at-risk statutory maximum conversion in between a  
18 mandatory minimum at rule.

19 And that's the only one that says, Now, look,  
20 here is a protected characteristic. You look at that  
21 protected characteristic before you start dealing with the  
22 region. That's the only one. They took that money from  
23 us in 2005 when they tried to do it with score. That's  
24 the only that says you have no power to eliminate the  
25 set-aside but you got all power to set the amount that we



1 have.

2                   They can't keep doing that. That's it. That's  
3 why I submitted that application. Now, you should be  
4 fair. If I'm wrong, get the opinion from the Attorney  
5 General, the same way you did for the at-risk. That's it.

6                   MR. OXER: Thank you for your comments, Mr.  
7 Sims. Any other questions?

8                   (No response.)

9                   MR. OXER: All right. With respect to Item  
10 6(b), there's been a motion by Ms. Bingham, second by Mr.  
11 Chisum to approve staff recommendation. Those in favor?

12                   (A chorus of ayes.)

13                   MR. OXER: And opposed?

14                   (No response.)

15                   MR. OXER: There are none. The appeal's  
16 denied.

17                   MS. GAMBLE: Item 6(c) is an appeal of the  
18 assessed score for Application Number 16319 The Residence  
19 at Coulter. The application proposes the new construction  
20 of a 119 elderly limitation units in Amarillo, which is in  
21 Region 1 Urban.

22                   This appeal relates to eight points requested  
23 under Subsection 11.9(d)(5) Community Support from State  
24 Representative. The issues surrounding this appeal were  
25 previously heard by this Board on March 31, 2016. At that

1 time staff presented a report and possible action item  
2 regarding the eligibility of two letters submitted by  
3 Representative John Smithy, one dated February 15, 2016,  
4 and one dated March 1, 2016.

5 At that Board meeting, the Board approved a  
6 motion that directed staff to reduce the points by eight  
7 and not accept the letter as amended but to recognize the  
8 letter of February 15 as the Representative letter for  
9 this applicant. This determination resulted in a score of  
10 149 points, and the application was determined to be  
11 noncompetitive in the region and was not reviewed by  
12 staff.

13 The appeal expresses a belief that there is a  
14 fundamental and irreconcilable conflict between Texas  
15 Government Code Subsection 2306.6710(b)(1)(J) and  
16 2306.6725(a)(2), specifically that the former section  
17 requires that in order for the application to receive  
18 points under the letter from State Representative scoring  
19 item, the representative must only state the level of  
20 community support, while the latter only applies to  
21 demonstration of community support without regard to a  
22 state representative.

23 To read subsection 2306.6710(b)(1)(J) this way  
24 would essentially mean that an application would score  
25 eight points for a letter from a representative that only

1 highlights information about local support that is already  
2 included in the application for points under another  
3 scoring item.

4           Instead, staff's understanding is that the  
5 section includes the representative as part of the  
6 community, and the representative's statement is one  
7 indicator of the level of community support for the  
8 application. Other indicators are included under other  
9 parts of the rules.

10           The appeal asserts that in preparing this  
11 letter, the representative referred only to the statutory  
12 requirements in subsection 2306.6710(b)(1)(J). While in  
13 reviewing the letter, staff referred only to the rule  
14 requirement of the QAP.

15           The appeal notes that Texas Government Code  
16 6710(b)(1)(J), where the letter from the state  
17 representative is mentioned, does not mention the QAP at  
18 all for guidance. The appeal also notes that Texas  
19 Government Code 2306.6725.082 -- getting better at that --  
20 deals with the ability of the proposed project to  
21 demonstrate community and neighborhood support as defined  
22 by the QAP, specifically mentioning the QAP.

23           There are within the statute and rules  
24 multiple, separate, and distinct scoring criteria that  
25 touch upon these issues. We've already talked about

1       them -- the representative from local -- the -- excuse  
2       me -- resolutions from local governments, the quantifiable  
3       community participation, letters from state reps, and  
4       contributions of local government financial support.

5                 On its face, 2306.6725(a) mandates that all  
6       these factors be included within the scoring and point  
7       system in allocating competitive tax credits. Thus, they  
8       must be considered in the development of the QAP scoring  
9       criteria.

10                The Department is statutorily required to  
11       publish in the QAP the details of the scoring system used  
12       by the Department to score applications. The QAP must  
13       treat all of the scoring criteria including those set  
14       forth in 6710(b)(1).

15                The appeal further asserts that even if none of  
16       the above are found to be grounds to grant the appeal, the  
17       applicant should have been issued a notice of  
18       administrative deficiency, allowing it the opportunity to  
19       respond to the February 15 letter.

20                The administrative deficiency process allows an  
21       applicant to provide clarification, correction, or  
22       nonmaterial missing information to resolve inconsistencies  
23       in the original application. This rule has to be read in  
24       conjunction with Texas Government Code 2306.6708, which  
25       refers to application changes or supplements.

1           And it states that an applicant may not change  
2 a supplemented application in any manner after filing  
3 deadline unless requested by the Department to clarify  
4 information or to correct administrative deficiencies.

5           And the distinction here -- it's very  
6 important -- between the instances cited in an appeal  
7 where an administrative deficiency process was used and  
8 the current situation is the difference between "change"  
9 and "clarify" in the statute.

10           As is evident in a discussion of this matter  
11 before the Board at its March 31 meeting, the Board  
12 concluded the statements contained the February 15 letter  
13 were best described as neutral and to have given an effect  
14 to the second letter with change as opposed to clarify in  
15 that letter.

16           Because the statutory and rule parameters  
17 require a neutral letter to be scored a zero points, staff  
18 recommends denial of the appeal. This application is  
19 currently in third place in the region and is not  
20 recommended for an award but is on the waiting list.

21           Should the Board grant the applicant's appeal,  
22 the application will be awarded eight additional points  
23 and would then be in a three-way tie for first place in  
24 that region. The application would win the second  
25 tiebreaker, as the poverty percentage for the census tract

1 is the lowest. And the other two applications would be  
2 placed on the waiting list.

3 MR. OXER: Good. Any questions from the Board?

4 (No response.)

5 MR. OXER: So at issue is whether there was a  
6 clear, unambiguous approval or indication of support for  
7 the project and the timing at which that occurred?

8 MS. GAMBLE: Yes.

9 MR. OXER: Okay. All right.

10 MR. ECCLES: Just as a point of clarification,  
11 you said this was evident in the discussion before the  
12 Board on the March 31 hearing. I think that was actually  
13 at a different Board hearing that this matter was  
14 discussed, the difference between the February 15 letter  
15 and the letter dated March 1.

16 I think that was maybe even at the last Board  
17 meeting, July 14.

18 MS. GAMBLE: No. This was the March 31 Board  
19 meeting. At that meeting staff brought what was a report  
20 item, because we made a determination that, you know, we  
21 wanted to get the Board's input on -- or we at least  
22 wanted them to know what our determination was, because  
23 it's a very important issue.

24 And so at the March 31 meeting, staff, kind of  
25 at the behest of the applicant really brought --

1 MR. ECCLES: You know, I'll stop you there.  
2 You're absolutely right. I'm getting my state  
3 representatives mixed up.

4 MS. GAMBLE: Oh, okay, thank you.  
5 (General laughter.)

6 MR. OXER: For a change, we get to quiet the  
7 counselor. Let's mark this down. Somebody put a gold  
8 star on this day. All right. Hey, we get so few there,  
9 Counselor.

10 MR. ECCLES: Yeah, you take them when you get  
11 them.

12 MR. OXER: There you go. All right. With  
13 respect to Item 6(c), is there a motion to consider?

14 MS. BINGHAM ESCAREÑO: I'll so move.

15 MR. OXER: Okay. A motion --

16 MR. GANN: Second.

17 MR. OXER: -- by Ms. Bingham to approve staff  
18 recommendation. Second by Mr. Gann. And we apparently  
19 had a little comment here, so beginning here.

20 MR. AINSA: Good morning. I'm Frank Ainsa, Jr.  
21 I am representing OPG Coulter Partners on this particular  
22 appeal.

23 Mr. OXER, I would reframe the issue here, and  
24 you'll see why in just a minute here. I think the issue  
25 is whether or not the statute that I'm going to argue to

1 the Board here actually requires anything more than just  
2 demonstrating the level of support.

3 Let me try to put this in simple terms and to  
4 take you through it, the heart of the argument here,  
5 without getting too far into the statutory interpretation.

6 Quite frankly, Mr. Irvine and I have had discussions  
7 about this and exchanged letters.

8 And on its face, this is an issue of statutory  
9 construction, but I'm not going to take you too far into  
10 that swamp, because I want you to stay awake here and  
11 listen to my presentation. So here's where we are.

12 There are two statutes involved with state  
13 representative support. One of them, as you just heard  
14 here, is 2306.6710. That is the statute that  
15 Representative John Smithy of Amarillo used when he  
16 submitted his February 15 letter.

17 There's a second statute, and it is 2306.6725,  
18 that specifically mentions the QAP and compliance with the  
19 QAP by the state representative if he submits a letter  
20 under that section.

21 The first statute that Mr. Smithy used --  
22 Representative Smithy -- does not even mention the QAP.  
23 And there's another difference that I want to illustrate  
24 before I get into the argument here, and that is the  
25 statute used by Mr. Smithy only requires him to



1 demonstrate the level of community support. It does not  
2 require him to give his personal support. It does not  
3 require him to do anything more than to demonstrate  
4 community support, the level of community support.

5 The second statute that the staff refers to  
6 incorporates the QAP, and the QAP has elaborate  
7 requirements, and the staff, in the QAP, has taken the  
8 position that the representative must give an expression  
9 of his personal support.

10 Now having said that, that's why I said this is  
11 a case of statutory construction. My view of statutory  
12 construction is really pretty simple. If I am given a  
13 case to look at and my client wants the statute to mean  
14 something other than what is on its face, there's a  
15 problem. And that problem usually is resolved by engaging  
16 in the statutory construction argument.

17 And there are well established rules in the  
18 courts how a statute that is ambiguous or unclear -- how  
19 it's supposed to be construed.

20 MR. OXER: Sixty seconds, please.

21 MR. AINSA: Pardon me?

22 MR. OXER: Sixty seconds, please.

23 MR. AINSA: Now, we cannot get into -- I cannot  
24 get into the level of debating the rules of statutory  
25 construction, but what I can tell you is this. The

1 statute that Representative Smithy used is very clear.  
2 His letter was very clear. It complied with that statute  
3 that only required him to demonstrate the level of  
4 community support. He was not required to go to the QAP.

5 Now, if you are concerned about outcomes -- and  
6 I believe this Board has always been concerned about  
7 outcomes and whether they're fair and whether they are not  
8 just arbitrary or require elaborate explanations or  
9 interpretations to get there -- you would see that  
10 Representative Smithy did exactly what the first statute  
11 required him to do, and he should not be penalized for  
12 that. And more important, the applicant shouldn't be  
13 penalized for that.

14 And that's what you have here today. You have  
15 statutory construction being used to defeat an application  
16 and -- even though the statute under which he traveled was  
17 absolutely clear, and if you read my letter, you'll see  
18 that.

19 And the final remark I want to make is I asked  
20 Representative Smithy if he had any comments to make about  
21 this particular appeal, and he submitted a letter. And I  
22 don't know if you have it in front of you.

23 MR. OXER: We'll have it.

24 MR. AINSA: Representative Smithy gave -- it  
25 wasn't through any prompting on my part -- he gave a very,

1 very good explanation of why he wrote his particular  
2 letter under the statute that he used. And he felt and  
3 expressed it very clearly that he has no discretion as a  
4 state representative to express his personal support and  
5 really that the QAP cannot force him to do that. And you  
6 ought to take that into consideration.

7           You've got a situation here where a state  
8 representative writes a letter that complies with one of  
9 the two statutes, and the staff is saying, Not good  
10 enough. You got to comply with the QAP when there's no  
11 QAP mentioned.

12           I submit to you that that is improper. It's  
13 not fair to the applicant. It's certainly not fair to the  
14 state representative, and you ought to grant the appeal  
15 and award the residents in Amarillo the eight points that  
16 it was denied.

17           MR. OXER: Great. Thanks for your comment. Is  
18 there any --

19           MR. AINSA: Thank you.

20           MR. OXER: -- questions from the Board?

21           (No response.)

22           MR. OXER: Okay. Mike, you have a letter to  
23 read in.

24           MR. LYTTLE: It is directed to -- to the Board,  
25 all the Board members from Representative Smithy.

1           "I strongly disagree with the conclusion  
2 reached by TDHCA staff and the Board on March 31, 2016,  
3 regarding my letter of February 15, 2016, as well as my  
4 letter of March 1, 2016 which were submitted in strict  
5 compliance with Texas Government Code Section  
6 2306.6710(b)(1)(J) as a written statement affirming  
7 community support for a project such as that submitted by  
8 the residents in Coulter.

9           "I understand that my letter of February 15,  
10 2016 was not considered to be a letter of support and that  
11 my letter of March 1, 2016 was considered to be a change,  
12 as opposed to a clarification, and therefore was also not  
13 considered to be a letter of support. As a result of your  
14 decision, the residents at Coulter was denied eight points  
15 and, as it stands, will not receive an award.

16           "I also understand that the developer of the  
17 Residence at Coulter appealed the scoring decision to the  
18 Executive Director, Mr. Tim Irvine, and that he denied the  
19 appeal. I've been given a copy of this letter of July 19,  
20 2016 in which he set the reasons for the denial.

21           "Finally, I also understand that the developer  
22 has appealed Mr. Irvine's decision to you and requested  
23 that eight points be reinstated to the application  
24 submitted by the Residence at Coulter.

25           "I take Article 2 of the Texas Constitution

1 along with my oath to uphold the Constitution very  
2 seriously and hope that the Board does as well. As a  
3 member of the House of Representatives, I have no powers  
4 or duties other than what I am delegated by the  
5 Constitution or by laws duly enacted thereunder.

6 "No state agency, including TDHCA, has  
7 constitutional or statutory authority to delegate any  
8 additional power or duty to me. By statute I am delegated  
9 the power and duty only to provide a written statement  
10 indicating the level of community support for an  
11 application filed with your Department. That is exactly  
12 what I did in this case.

13 "I strictly and literally complied with my duty  
14 and power under the statute. I have no constitutional nor  
15 legislative authority to express my personal preference or  
16 whim for what official action this executive agency or its  
17 governing board might take.

18 "To express such personal preference would  
19 exceed my authority. For you to ask or require me to do  
20 so as a condition to taking some official action would, in  
21 my opinion, exceed and violate your authority.

22 "Moreover, the QAP does not require that a  
23 state representative's letter express his or her personal  
24 support. It only requires that the state representative's  
25 letter 'clearly states support for or opposition to the

1 specific development.'

2 "The QAP states the following, To qualify under  
3 this paragraph, letters must be on the state  
4 representative's letterhead, be signed by the state  
5 representative, identify the specific development and  
6 clearly state support for or opposition to the specific  
7 development.

8 "My February 15, 2016. letter meets all of  
9 these requirements and expressly states my perception of  
10 the level of community support for the Residence at  
11 Coulter. To the extent that the Board has adopted rules  
12 that exceed this requirements, it has, in my opinion,  
13 exceeded its statutory authority.

14 "My letters to the Board express exactly what  
15 the statute required and met the technical requirements of  
16 the QAP. The so-called requirement that my letter had to  
17 express my personal preference or support is nonexistent.

18 "Moreover, neither this Department, its staff,  
19 nor its board has legitimate authority to make up such a  
20 requirement. Such a requirement would lend itself to  
21 unwanted consequences possibly including patronage,  
22 influence peddling, undue influence, and corruption on the  
23 part of both legislators and the board.

24 "We have seen this type of system in place in  
25 far too many other states. The result is never good.

1 This is certainly not what we want from any agency serving  
2 the people of Texas. Most importantly, it is not the kind  
3 of system envisioned by the statute.

4 "Under Article 2, as a member of the  
5 legislative branch, I have no authority to force or coerce  
6 TDHCA to comply with the law. That is up to the judicial  
7 branch. I am simply informing the Department that, in my  
8 view, a state representative's refusal to deviate from  
9 strict and literal compliance with the statute should not  
10 be used to penalize this project or any other project now  
11 or in the future.

12 "I will be happy to discuss this matter with  
13 any of you. Very truly yours, John Smithy, State  
14 Representative."

15 MR. OXER: Okay, thanks, Michael.

16 Is there any other comment?

17 MS. BAST: Good morning, Board.

18 MR. OXER: Ms. Bast, how nice to see you.

19 MS. BAST: I am Cynthia Bast of Locke Lord. We  
20 represent Application 16370, The Villas, which is the  
21 application that would be poised to receive this award if  
22 the appeal is not granted, so obviously we are requesting  
23 that you uphold your staff's recommendation.

24 I did speak to you on March 31, so I did feel  
25 compelled to speak again. Mr. Ainsa does frame the

1 question correctly. This is a statutory construction  
2 issue, and we have a strong body of law on this point. I  
3 have a small stack of it here.

4 And that body of law has been very well  
5 articulated by your staff. My favorite summary of this  
6 law comes from an Attorney General opinion, from now  
7 Governor Abbott, 0208 that says, "We must always consider  
8 the statute as a whole rather than its isolated  
9 provisions. We should not give one provision a meaning  
10 out of harmony or inconsistent with other provisions,  
11 although it might be susceptible to such a construction  
12 standing alone."

13 So we have in subchapter DD of the Government  
14 Code a body of law in multiple parts. We have a body of  
15 law that authorizes you as a Board and the staff working  
16 with you to create a QAP. That's Section 67022, which is  
17 an overlay for this entire Tax Credit Program and for all  
18 of the provisions in subchapter DD that relate to the Tax  
19 Credit Program.

20 We have provisions that establish a scoring  
21 system and priorities. We have provisions that  
22 specifically say that in the case of letters from  
23 legislators, we give positive points for positive support  
24 and negative points for negative support.

25 So with this entire body of law available, the



1 Board harmonized these provisions. There are multiple  
2 provisions for community support, as has been noted, from  
3 organizations, neighborhood associations, cities,  
4 counties, legislators.

5 And so with those multiple provisions for  
6 community support, the Board has taken those and created a  
7 body of rules in the QAP for this program that establishes  
8 the parameters for each so that they don't conflate.

9 And then the law says that once those rules are  
10 established as you have done, they are presumed valid, and  
11 great deference is given to the Agency once these rules  
12 are established so long as the rules are in harmony with  
13 the statute's general objectives.

14 So I think that your path has been correct and  
15 clear and that statutory construction does allow us to say  
16 that with 6710 requiring a letter from a legislator that  
17 it is within your discretion in your rules to establish  
18 that that letter indicate the legislator's individual  
19 support. Thank you.

20 MR. OXER: Good timing. All right. Are there  
21 any questions from the Board?

22 (No response.)

23 MR. OXER: Okay.

24 MR. AINSA: Mr. Ozer, can I respond for one  
25 minute?

1 MR. OXER: One minute, please.

2 MR. AINSA: Thank you. I will take only one  
3 minute. I just want to say to you in closing that Ms.  
4 Bast has made -- I think made my case. And that is that  
5 this is a case where, in order to arrive at the conclusion  
6 that staff has arrived at, you've got to engage in this  
7 very convoluted statutory interpretation to take a statute  
8 that says nothing about complying with a QAP and turn it  
9 into one that does.

10 Now, that's the heart of this case. You have  
11 always been interested in making sure that fair and  
12 equitable outcomes result from administrative actions, and  
13 that's what I am asking you to do today. Don't let that  
14 statutory construction issue divert you from the fact that  
15 the statute in question does not require compliance with  
16 the QAP.

17 MR. OXER: Thanks, Frank.

18 MR. AINSA: Thank you.

19 MR. OXER: Any other comments here? Are you --  
20 you're basically together? Everybody good there?

21 MR. IRVINE: May I?

22 MR. OXER: Yes, sir.

23 MR. IRVINE: I think that --

24 MR. OXER: Well, come on, Sharon.

25 MR. IRVINE: -- in terms of statutory

1 construction, we've talked about 6710(b)(1)(J) and we've  
2 talked about 6720 and various things. But to me the most  
3 germane provision in the statute is 6710(f). And it says  
4 unambiguously that when you are looking at how you score  
5 this particular item, you award positive points for  
6 positive statements, negative points for negative  
7 statements and zero points for neutral statements.

8 So I believe that it becomes a factual  
9 determination how do you characterize the February 15  
10 letter. If it is positive, it gets positive points. If  
11 it's neutral, it gets zero points. The additional letter  
12 can only be considered by way of clarification if it does  
13 not change the way that the letter is characterized.

14 MR. OXER: All right. Comments are there.  
15 This is unrelated to this item, but it's a procedural  
16 question I have. And I'm going to do something everybody  
17 going to be really disgruntled with here in a second.

18 So in the event that this appeal is supported  
19 by the Board, that means that the list, as shown in our  
20 board book and in the agenda, remains consistent. So  
21 we -- if we appeal this -- if we overturn this staff  
22 recommendation on the appeal, then it would change that.

23 MS. GAMBLE: That's correct.

24 MR. OXER: Okay. This is an important issue to  
25 make sure that we're clear on. And I know everybody is

1 sitting there and waiting for us to say, Here's your list.

2 We also have a need for an executive session. I'd like  
3 to have input from counsel on this.

4 We're going to take a brief recess, brief  
5 meaning, we hope, about 30 minutes to get some input from  
6 counsel. So everybody just sit still, let me get through  
7 this. You know this has got to go on the record. You got  
8 to be quiet.

9 Governing Board of the Texas Department of  
10 Housing and Community Affairs will go into closed or  
11 executive session at this time. The Board may go into  
12 executive session pursuant to Texas Government Code  
13 551.074, for the purposes of discussing personnel matters;  
14 pursuant to Texas Government Code 551.071, to seek and  
15 receive legal advice of its attorney; pursuant to Texas  
16 Government Code 551.072 to deliberate the possible  
17 purchase, sale, exchange, release of real estate; and/or  
18 pursuant to Texas Government Code 2306.039 parentheses,  
19 closed parentheses, to discuss issues related to fraud,  
20 waste or abuse of the Department's internal auditor, fraud  
21 prevention coordinator, or ethics advisor.

22 The closed session will be held in the Andy  
23 Room of this building, the John H. Reagan Building Number  
24 140, and the date is July 28, 2016. The time is 10:33.  
25 And I know everybody's waiting for this. Give us 45

1 minutes. We'll be back in our seats at 11:15.

2 (Whereupon, at 10:33 p.m., the Board met in  
3 executive session.)

4 MR. OXER: All right. Board's now reconvened  
5 in open session at 11:24. During Executive Session the  
6 Board did not adopt any policy, position, resolution,  
7 rule, regulation, or take any formal action or vote on any  
8 item. So we're back.

9 All right. There was a motion by Ms. Bingham,  
10 a second by Mr. Gann to approve staff recommendation on  
11 Item 6(c) in the agenda. And public comment -- is there  
12 any other comment from those in the front?

13 (No response.)

14 MR. OXER: Okay. With respect to this item,  
15 we've had -- we received counsel. With respect to Item  
16 6(c), motion by Ms. Bingham, second by Mr. Gann to approve  
17 staff recommendation. Those in favor?

18 (A chorus of ayes.)

19 MR. OXER: And opposed?

20 (No response.)

21 MR. OXER: There are none.

22 Okay, Marni, 6(f).

23 MS. HOLLOWAY: Marni Holloway, Director of  
24 Multifamily Finance. Item 6(f) is presentation and  
25 discussion Presentation, Discussion, and Possible Action

1 regarding Awards of Direct Loan funds from the 2016-1  
2 Multifamily Direct Loan Notice of Funding Availability to  
3 9 Percent Housing Tax Credit Layered Applications.

4           You'll recall back in November of 2015, you  
5 approved issuance of NOFA for up to \$23,109,096. To date  
6 \$4,857,698 has been awarded to five applications under the  
7 NOFA.

8           The recommended applications and award amounts  
9 are outlined in the attached log, and the underwriting  
10 summaries are included in your board book. EARAC has  
11 reviewed the applicant's previous participation history in  
12 the course of reviewing the 9 percent applications, along  
13 with the underwriting reports, and recommends approval  
14 with conditions.

15           It is important to note that these  
16 recommendations are dependent on the outcome of the  
17 associated 9 percent applications. One application,  
18 Merritt Heritage, 16185, was submitted as a CHDO  
19 application. The CHDO is still under review. If it meets  
20 all requirements, that award would come from the CHDO set-  
21 aside rather than the general pool.

22           Your Board action request has a typo in the  
23 first resolved section. There is a period in the  
24 recommended amount where there should be a comma. That  
25 amount should read \$7,321,436.

1                   Staff is recommending eight awards of  
2 multifamily direct loan funds totaling \$7,321,436 from the  
3 general set-aside as described in the Board action  
4 request. Staff is further recommending that seven  
5 applications be maintained on the waiting list pending the  
6 outcome of those 9 percent housing tax credit  
7 applications.

8                   MR. OXER: Any questions from Marni?

9                   (No response.)

10                  MR. OXER: So what we're saying is this is the  
11 precedent -- or predicate -- precedent to set for -- or  
12 the precursor I guess is the right term -- for the  
13 applications that come afterward.

14                  MS. HOLLOWAY: Right. For the 9 percent list.  
15 These are --

16                  MR. OXER: The 9 percent.

17                  MS. HOLLOWAY: -- only applications that are  
18 layered with a 9 percent awards; these awards are  
19 dependent on the 9 percent allocations.

20                  MR. OXER: So unless the 9 percent  
21 allocations -- we vote on this list here coming up --  
22 unless they're approved as they are, these don't apply?

23                  MS. HOLLOWAY: Exactly.

24                  MR. OXER: Okay. Any questions for Marni?

25                  (No response.)

1 MR. OXER: Okay. Motion to consider?

2 MS. BINGHAM ESCAREÑO: I'll move.

3 MR. OXER: Okay. A motion by Ms. Bingham.

4 MR. GANN: Second.

5 MR. OXER: Second by Mr. Gann. Any request for  
6 public comment?

7 (No response.)

8 MR. OXER: There appears to be none. Regarding  
9 Item 6(f), motion by Ms. Bingham, second by Mr. Gann to  
10 approve staff recommendation on Item 6(f). Those in  
11 favor?

12 (A chorus of ayes.)

13 MR. OXER: And opposed?

14 (No response.)

15 MR. OXER: There are none. So we gave them a  
16 running start, huh?

17 MS. HOLLOWAY: That's right.

18 MR. OXER: Okay.

19 MS. HOLLOWAY: Thank you.

20 MR. OXER: Okay. Last act in the center ring.

21

22 MS. GAMBLE: The big enchilada. Sharon Gamble,  
23 administrator for the Competitive Housing Tax Credit  
24 Program. Item 6(g) is the Presentation, Discussion, and  
25 Possible Action regarding Awards from the 2016 State



1 Competitive Housing Credit Ceiling and Approval of the  
2 Waiting List for the 2016 Competitive Housing Tax Credit  
3 Application Round.

4 Way back on January 8, 2016, we received 366  
5 eligible preapplications. We received 141 full  
6 applications requesting more than \$143 million. There are  
7 currently 127 applications eligible for consideration  
8 which are collectively requesting credits totaling more  
9 than \$125 million.

10 The applications being recommended for award  
11 are reflected in Report 1, the list that says Recommended  
12 Awards Log. These are all the recommended applications  
13 from the At-Risk USDA and nonprofit set-aside and the  
14 rural and urban subregions.

15 This report includes one application, Number  
16 16099, SEA RAD Oaks in the at-risk set-aside which is  
17 still being reviewed for previous participation, and our  
18 recommendation for that application is conditioned upon  
19 completion of that review.

20 With the final completion of underwriting  
21 reports, there may be small adjustments to the credit  
22 amounts. All final underwriting decisions or other  
23 matters subject to appeal such as EARAC or underwriting  
24 conditions will be resolved timely.

25 The removal of Item 5 from consideration at

1 this hearing necessitates some change to Reports 1 and 2.

2 As a result of that action, 16057, Silverleaf at Mason,  
3 in Region 12 rural and 16274, Rockview Manor, in Region 13  
4 rural go from "not recommended," as indicated on those  
5 reports to recommended, conditioned expressly upon the  
6 resolution of pending market study issues, particularly  
7 the opportunity for the market analysis to address any  
8 discrepancies within the rules.

9 To this end, on 16274, Tim Irvine has withdrawn  
10 his appeal letter and remanded this matter to staff for  
11 further consideration which -- and these -- this may  
12 include a right to appeal. These issues will be resolved  
13 at or by the August 12 meeting.

14 With that change, 16234, Stonebridge of Lamesa  
15 in Rural Region 12 and 16045, South Homestead Palms in  
16 Rural Region 13 will be place on the waiting list.

17 So all of the applicable -- excuse me --  
18 eligible applications are reflected in Report 2. These  
19 are all of the active applications from the at-risk USDA  
20 and nonprofit set-asides and the rural and urban regional  
21 allocations. This is a complete list of all applications  
22 recommended for an award and the waiting list of all  
23 active applications not recommended for an award.

24 Those recommended for awards are reflected in  
25 the recommended awards column of this report. Should

1 anything befall an application that is recommended today,  
2 we would award the next application in the most  
3 underserved region. As I stated earlier 16234,  
4 Stonebridge of Lamesa, and 16045, South Homestead Palms,  
5 will be placed on the waiting list.

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

12 Report 4 is a summary of conditions recommended  
13 by EARAC to be placed on certain awards as a result of  
14 previous participation reviews. Not all applications have  
15 conditions. This report includes all applications that do  
16 have conditions.

17 Report 5 includes the Real Estate Analysis  
18 Division application summaries. These are a handy two-  
19 pager that gives the gist of the full underwriting report.

20 And Report 6 includes information regarding  
21 public input received for each active application. Where  
22 possible, all of the comment received for an application  
23 is included. In some instances, representations of the  
24 kind of comment received is provided along with the number  
25 of individuals that commented, and we did that in

1 instances where the comment was voluminous.

2           And one rather large omission from this report  
3 is on application -- is 185 letters of supports that were  
4 received by the deadline for Application Number 16343,  
5 Calallen Apartments. It is on the recommended list. It's  
6 located in Corpus Christi in Region 10 urban.

7           This is a ton of information. Our dedicated  
8 review staff has worked tirelessly to complete the reviews  
9 and to gather information so that we can put it into a  
10 nifty nice format to present to you today.

11           Ben Shepard, Elizabeth Henderson, Liz  
12 Cline-Rew, Nicole Fisher, and Shannon Roth, the fab five,  
13 are the hardest working, most dedicated people I know.  
14 Jason Burr does an awesome job of keeping our data  
15 straight and otherwise making us look good. Even staff  
16 who work in other programs, Andrew Sinnott, Carolyn Kelly,  
17 and Cris Simpkins, have been there to assist.

18           Teresa Morales and Marni Holloway provided us  
19 the leadership and vision we need to get all this stuff  
20 done. And this is not just an undertaking of the  
21 Multifamily Finance Division. The Compliance Division has  
22 been indispensable to this process.

23           Chief Murphy and Jo Taylor have done an amazing  
24 job of directing the previous participation process. The  
25 underwriters and the Real Estate Analysis Division have

1 worked tirelessly to help us see the other side of the  
2 deals.

3 Brent Stewart answered so many questions for me  
4 in the last few months that he thought I had joined his  
5 staff.

6 (General laughter.)

7 MR. OXER: Or he had joined yours.

8 (General laughter.)

9 MS. GAMBLE: And then of course there's Tom  
10 Gouris. What can we say about Tom that has not already  
11 been whispered behind his back.

12 (General laughter.)

13 MS. GAMBLE: Tom is the big vegetarian on the  
14 playground. He's our leader, and he takes that  
15 responsibility very seriously, and I truly, truly  
16 appreciate him. We don't always agree, but I'm sure that  
17 after this, we'll sit down and have a nice meal and laugh  
18 about everything. He'll have the eggplant; I'll have the  
19 shawarma.

20 MR. OXER: And he'll talk about tractors.

21 MS. GAMBLE: And I can't leave out our legal  
22 team, so ably led by Beau Eccles. Beau is a godsend.  
23 He's a lawyer for the people who don't understand lawyers.

24 If you can't get Beau to see it, then it's not there and  
25 you need to do more work on it.

1                   And last but certainly not least, our Executive  
2 Director Tim Irvine and this Board: You've put the  
3 signposts out that are on the road for us, and you got us  
4 to meet the Department's mission. You hold us  
5 accountable, and you make sure that we do what we're  
6 supposed to be doing.

7                   I'm proud today to say that with this action,  
8 we -- and I do mean we -- are going to put over 5,000 more  
9 affordable units of housing on the ground for working  
10 Texans. And if you can't be happy about that, then  
11 there's something wrong with you.

12                   With that, staff recommends approval of the  
13 recommended awards and the waiting list for the 2016  
14 Competitive Housing Tax Credit Application Round.

15                   MR. OXER: Good. Thanks, Sharon. Any  
16 questions from the Board?

17                   MR. ECCLES: Subject to the conditions.

18                   MS. GAMBLE: Subject to the conditions.

19                   MR. OXER: Subject to conditions identified,  
20 and these conditions have been made known to all  
21 applicants --

22                   MS. GAMBLE: That is correct.

23                   MR. OXER: Okay.

24                   MS. GAMBLE: That is correct.

25                   MR. OXER: You know, unless I missed my guess

1 here, it sounded almost like you were having a good time  
2 doing this.

3 MS. GAMBLE: Yeah.

4 MR. OXER: Okay. I mean there's no question  
5 this is the largest program we have in the Agency, and  
6 we're happy to see something like this come around, as  
7 complex as it seems like it is at some times. You know,  
8 we're happy to see that this -- we can get these resources  
9 to work for the state of Texas.

10 MS. BINGHAM ESCAREÑO: Mr. Chair?

11 MR. OXER: Yes, Ms. Bingham.

12 MS. BINGHAM ESCAREÑO: I'd be proud to move on  
13 behalf of the entire wonderful team that Shay just went  
14 over -- I'd like to make a motion regarding the awards for  
15 the 2016 State Housing Tax Credit Ceiling and the approval  
16 of the waiting list with the additional recommendations  
17 and conditions that Sharon went over for the 2016 Housing  
18 Tax Credit Application Round.

19 MR. OXER: As a rare execution of opportunity,  
20 I will second the motion.

21 Is there any other questions from the Board?

22 (No response.)

23 MR. OXER: Is there any public comment that's  
24 requested? We have some listed. Michael, you got one to  
25 read in? All right.

1                   MR. LYTTLE: Michael Lyttle, Chief of External  
2                   Affairs, the only senior staff member not thanked by Ms.  
3                   Gamble.

4                   (General laughter.)

5                   MR. LYTTLE: I'd point that out for the record.  
6                   I apparently have been doing nothing the last six months.

7                   "Dear Chairman Oxer and members of the Board, I  
8                   write today in regard to the Housing Tax Credit  
9                   application projects located in Corpus Christi.  
10                  Constituents and community leaders have continued to  
11                  contact my office specifically regarding three proposed  
12                  projects in House district 34: the Calallen Apartments,  
13                  the Avanti at Calallen, and the Marbella Providence  
14                  Projects.

15                  "Most recently constituents have contacted my  
16                  office to express their strong support for the Avanti at  
17                  Calallen and Marbella Provident Projects. The need for  
18                  high quality senior housing in our community is evident.  
19                  I am a strong supporter of high quality affordable  
20                  housing, and either of these projects would go a long way  
21                  toward helping fill the need for senior housing in Corpus  
22                  Christi.

23                  "Furthermore, as presented in the Board of the  
24                  June 30 meeting, I would like to reiterate my comments  
25                  regarding the Calallen Apartments project. Constituents



1 and community leaders have continued to contact my office  
2 expressing their concerns with this project.

3 "I urge the Board to strongly consider  
4 neighborhood residents' concerns when making a final  
5 decision on tax credit awards. It is imperative that all  
6 input, especially community input, be given fair  
7 consideration throughout the process.

8 "I thank the Board and TDHCA staff for taking  
9 time to review the comments submitted by neighborhood  
10 residents, community leaders, and my office. Your  
11 attention to these comments ensures that community leaders  
12 and the public have every opportunity to provide  
13 meaningful input.

14 "Once again, I hope that the neighborhood  
15 residents' concerns and comments will be weighed heavily  
16 and that all of these comments will be thoughtfully  
17 considered before tax credits are awards.

18 "Sincerely, Abel Herrero, State Representative,  
19 House District 34."

20 MR. OXER: Great. Thanks. Okay, we seem to  
21 have a few more. So we'll begin here in the first chair.  
22 Sign in, tell us who you are. Three minutes, please.

23 MR. CARPENTER: Hello, I'm Matt Carpenter. I'm  
24 the president of Fall Creek HOA and speaking in opposition  
25 of Application 16118, The Standard on the Creek.

1 I don't know anything about this business. I  
2 know about rules because I'm a civil engineer, but I don't  
3 know anything about --

4 MR. OXER: Good on you, sport. Good on you.

5 MR. CARPENTER: I don't know anything about all  
6 these rules. And when I found out about this application,  
7 I started trying to understand what was going on. Eighty  
8 of us showed to a public hearing in the City of Houston  
9 with TDHCA staff, and they told us we needed to look at  
10 the rules.

11 We met with Representative Herald Dutton, 200  
12 of us in our community, to talk about the project, and he  
13 said unfortunately, he couldn't withdraw his support  
14 because of the rules. Our HOA Board met with Harris  
15 County Commissioner Jack Cagle, and he said, Unfortunately  
16 I can't withdraw my support because of the rules.

17 Thirty of us came up here to speak to you all  
18 to be heard, and we were limited to a certain period of  
19 time because of the rules. So I finally started looking  
20 at the rules; did an open records request in accordance  
21 with the rules, and we ended up getting some documents.  
22 One of those documents stood out in my mind.

23 That document was from staff all the way up  
24 through General Counsel Beau Eccles, recommending  
25 termination of that application. And in accordance with

1 the rules, it says that the applicant shouldn't even be  
2 deemed submitting an application if they don't pay their  
3 fees in time.

4 So I don't know why I've come to Austin so many  
5 times to know about an application that, according to the  
6 rules, shouldn't exist. And then when the Board decided  
7 to talk about this or a representative came in, y'all  
8 elected to go into executive session to seek legal  
9 counsel, and I understand that, but that's not  
10 transparent.

11 We have no idea how you deliberated and what  
12 information y'all used to ascertain that it's okay for  
13 some people to not follow the rules and other people to  
14 follow the rules. So that's my opposition.

15 MR. OXER: I appreciate your comments, Mr.  
16 Carpenter.

17 Cynthia?

18 MS. BAST: Cynthia of Locke Lord. Very briefly  
19 with regard to Application 16098 for Parkdale Villas, we  
20 represent that applicant, and your staff has suggested  
21 that I just put this comment on the record.

22 We are still working with the staff on the  
23 terms and conditions that are imposed on that particular  
24 application as it relates to previous participation. The  
25 situation is that this application is a partnership of A

1 and B, with B being a HUB. Well, it so happens that B has  
2 also partnered on some other developments with C, where B  
3 is the HUB and C controls the partnership.

4 Some of those properties where B and C are  
5 together have some issues. And therefore what's happening  
6 is these terms and conditions relate to more C correcting  
7 its issues. And as you can imagine, those can't be  
8 controlled by A and B. So if C fails to control its  
9 issues that are in these terms and conditions, it could  
10 impact A and B and impact A and B's ability to go forward  
11 and seek further applications.

12 And so part of the concern is that -- is the  
13 lack of their ability to address these conditions on their  
14 own, also the time frame of these conditions, because some  
15 of them appear to be perpetual. And so we have some  
16 concerns about that as it's presented in your board book  
17 today, but we'll be working with staff and hopefully won't  
18 have to come back with an appeal.

19 And we just wanted to let you know. Thank you.

20 MR. OXER: Okay. Thanks for your comment,  
21 Cynthia. Next.

22 MR. STEELE: Good morning, Chairman Oxer. My  
23 name is Stan W. Steele. I represent a group of people  
24 that live in a neighborhood that is opposed to TDHCA  
25 Number 16223 Application for Magnolia Gardens.

1 I find myself in an unenviable position  
2 opposing a group that I support but not where they're  
3 going to want to put this project.

4 According to the Office -- I'm like my friend  
5 here who started reading the rules -- and according to the  
6 Office of the Comptroller of the Currency, revised April  
7 2014, federal law requires each HCA to have a qualified  
8 allocation plan that gives preference to projects that are  
9 located in qualified census tracts, tracts with a poverty  
10 rate of 25 percent, or tracts in which 50 percent of the  
11 households have incomes below 60 percent of the area  
12 median income and contribute to the community's  
13 revitalization plan. On page 77 of this application, they  
14 state they have a 2 percent poverty rate.

15 Further, HCA considers project readiness a  
16 primary consideration in evaluating tax credit  
17 applications. Applicant has no current source of water or  
18 sewage disposal, since the local MUD 146 bylaws prohibit  
19 multifamily housing.

20 Applicant's current plan is to drill a water  
21 well and build a wastewater facility on the site. For  
22 TDHCA considerations, the site conditions, there are no  
23 sidewalks. There's a one-way ingress and egress plan for  
24 this facility. We have an open gravel pit that's less  
25 than a third of a mile away from this location. And it

1 moves approximately 100,000, 200,000 yards of gravel a  
2 year down this road.

3 The Kroger's is located 1.4 miles away, but I  
4 noticed that we have -- there's no sidewalks in this --  
5 and it would take 27 minutes, and you're going to have to  
6 negotiate a very busy road.

7 The development experience for the women's  
8 shelter is none. They've never built a apartment complex,  
9 and they've never managed an apartment complex. They've  
10 never drilled a water well, and they've never constructed  
11 a water waste facility.

12 All of the above, in our opinion, constitute a  
13 material change to the overall development plan or cost.  
14 Lastly, I would point out that we became aware of this  
15 around June 9, when she sent a letter out to the local  
16 residents. In those two months we had -- we formed a  
17 petition and over 2,000 local people have said no.

18 We've had one state representative that's  
19 showed his support. There's no one else; the HOAs, MUDs,  
20 no one is supporting this. So they don't have local  
21 support. Thank you very much.

22 MR. OXER: Okay, I appreciate your comments,  
23 Mr. Steele.

24 MR. D. LYTTLE: Hi, Dalton Lyttle and opposing  
25 Magnolia Gardens 16223 as well. Some of the things that

1 Stan had mentioned just now are things of concern to all  
2 the residents in the area. I've lived in Fort Bend County  
3 my entire life, a recent homeowner in the nearby Long  
4 Meadow Farms neighborhood.

5 I understand the TDHCA primary passthrough  
6 funding agency that collects funds from federal as well as  
7 state programs to use in a combination of resources  
8 efficiently.

9 While I'm in favor of obviously helping  
10 neighbors and not opposed to what this facility's  
11 intentions are, I'm opposing where this facility is -- the  
12 location, the size, and the usage of this facility.

13 I believe the project is not used in an  
14 efficient use of funding. Because of the location, size,  
15 and usage, the plot of the land is very unique in that it  
16 is narrow as well as limited in building design. The  
17 applicant has already stated that they will only be using  
18 a maximum of six acres of the 20-acre lot, with each acre  
19 costing over \$120,000 each. So they're only using six  
20 acres of these 20 acres.

21 There will be many additional costs such as  
22 sidewalks, roadways, other improvements, including a  
23 costly wastewater treatment plant. I've lived in the  
24 area, and I've witnessed on three separate occasions when  
25 the same road that this facility is going on -- Skinner --

1 has been under water, leaving others stranded and also the  
2 road is one way in and one way out.

3 The last flooding caused Skinner Road to be  
4 closed for over a week. Additional funds would be needed  
5 to be spent on draining as well as paying for expensive  
6 flood insurance in the area for this size of development.

7 We have other concerns that also support the  
8 proposed location of the project that do not make sense.  
9 Our schools are completely at capacity as far as the  
10 elementary school in our neighborhood, Long Meadow Farms,  
11 Adolphus Elementary.

12 Every close highway and freeway for the  
13 residents is a toll road, which will be an extra expense  
14 that most government-assisted residents would not be able  
15 to afford to get to work. Some residents also may not  
16 have a vehicle, and we do not have any kind of public  
17 transportation in the area.

18 Almost everyone in our community commutes to  
19 work. Most people commute at least 45 minutes to an hour.

20 This is concerning because of the careers for people in  
21 the future. Apartment complexes in the area are not at  
22 capacity. There's three more apartment complexes coming  
23 up in the area within a two-mile radius, and those  
24 complexes nearby are still being built, whereas apartment  
25 complexes that are already existing are having to lower



1 their rent in the area, as well as they're not at capacity  
2 because of the current economy in Houston being related so  
3 much to oil and gas.

4 In addition to the meetings, I became more  
5 concerned about the transparency of this project, that it  
6 was not well researched, and poorly planned. We weren't  
7 provided any studies on transportation, local schools,  
8 security, or any kind of success ratios provided.

9 In the town hall meeting I also asked the  
10 question as to if this project was a phase 1, and the  
11 amount of units has changed multiple times, and they  
12 couldn't answer that question.

13 And I appreciate your time. I hope that you  
14 consider the facts I have mentioned and the physical  
15 responsibility of approving this project. I truly believe  
16 that this piece of land is not a smart investment for this  
17 facility, because it's going on a two-lane road that has  
18 flooded three times in the past two years. The limited  
19 usage of the layout of the land and plenty of other tracts  
20 of similar size that could be smaller more for the use  
21 that they need close by.

22 Thank you for your time.

23 MR. OXER: Thanks for your comments, Mr.  
24 Lyttle.

25 MS. ANDROWSKI: Hi, I'm Rachelle Androwski. I

1 am also here to oppose Magnolia Gardens 16223. I am a  
2 resident and homeowner on Virginia Drive. I submitted  
3 some documents to you guys; I don't know if y'all have  
4 seen any of this. I had some photos. Have you seen any  
5 of the public documents?

6 MS. HOLLOWAY: Marni Holloway. The information  
7 is posted in the public comment section of your board  
8 book.

9 MS. ANDROWSKI: Thank you.

10 MR. OXER: Okay.

11 MS. ANDROWSKI: So I had some photos. I gave  
12 you a map for reference of where this is located, and I'm  
13 also going to show you some of -- I'm a geologist, so when  
14 I look at things, I talk about maps. And I look at  
15 topography, and I look at things like flooding. And I  
16 have seen some of that in my own land.

17 So one of the things I showed to you guys is a  
18 picture of my flooded yard. This is six inches of  
19 standing water going across an acre and a half, going  
20 completely across my whole yard. And this is not due to  
21 the Brazos River flooding. This is due to just local  
22 rain, and this happened on the Tax Day rain that we had.

23 Normally my yard is dry and full of grass, so I  
24 did submit pictures for y'all to be able to reference  
25 this. I also submitted on here three days later I still

1 had plenty of standing water. Now, if anybody goes back  
2 in the land right behind my house and starts to build  
3 anything, what's going to happen to my land? Are they  
4 going to completely inundate me?

5 The problem that I have with this is that at  
6 the very back of my property, that's where my mother  
7 lives. She has a -- my disabled mother lives with us in a  
8 mother-in-law apartment in the back of my property. And  
9 her place did take on water during this Tax Day flooding.

10 So you can imagine, even though we are outside  
11 the 500-year floodplain, I was a little bit concerned  
12 about what others things are going to -- any other future  
13 developments in this area and how it's going to impact my  
14 yard, how it's going to impact my house. My mother, how  
15 am I going to get her out? We had evacuate her out of her  
16 place.

17 Just down the street as we have mentioned, this  
18 is Skinner Road. The project is planned for this little  
19 plot of land right here. Right there in that circle, that  
20 has been under water, closed for a week. This is walking  
21 distance from the corner of the property where they're  
22 planning on building this apartment complex full of  
23 children.

24 It's not a good idea. There are snakes,  
25 alligators, snapping turtles, all kinds of great wildlife

1 right there in your backyard, which is why we like living  
2 where we live.

3 MR. OXER: Sounds like where I grew up in the  
4 Everglades.

5 MS. ANDROWSKI: Yeah, I'm -- hey, I'm from  
6 Florida, too. So this is a picture of what it looks like.  
7 Now, we do have a few little hills in Houston. It's not  
8 very, you know, as amazing as up here. But there is a  
9 little bit of a dip in the road going down towards where  
10 that area flooded. This is looking on Google Maps.

11 So the problem is that there's a blind spot,  
12 believe it or not, right where they're planning on putting  
13 their entrance to their facility. And again, if you're  
14 going to have a lot of kids on bikes and you're going to  
15 have some roads in this area, right now going down  
16 Bellfort, you have sidewalks up to the end of Long Meadow  
17 Farms.

18 Normally sidewalks are put in by developments.  
19 This is not being put in by development. You have to  
20 cross down across Virginia Road, which is where Plain Hill  
21 Ranchettes are, which is where most of our residents live.  
22 And their property's down here on the corner.

23 They're going to have to expand the road on  
24 Belfourt, cover up the culverts that are there, and then  
25 put in some kind of a sidewalk so that children can ride

1 bikes or their tenants could ride bikes and go up here to  
2 Adolphus School, which is less than a quarter mile away.

3 The problem is developers normally put those  
4 in. So that's going to be an additional cost, because the  
5 county is not in the business of creating sidewalks. So  
6 you won't have any foot traffic.

7 The other thing that was mentioned was that --  
8 again, this is their project. Right here is the sand/  
9 gravel pit, and this is where multiple trucks go by. I've  
10 provided you guys with some photos that we took of the  
11 multiple trucks driving right at the corner of Skinner and  
12 Bellfort, large trucks coming and going.

13 This is in a ten-minute period four trucks went  
14 by. Another ten-minute period, four more trucks go by.  
15 Within 30 minutes, you have 16 trucks going by, so how is  
16 that going to be good for people riding their bikes up and  
17 down Bellfort?

18 If you have any other questions, I'm a  
19 geologist, happy to talk to you about flooding. Thank  
20 you.

21 MR. OXER: Thank you, Ms. Androwski. Any other  
22 comments?

23 MR. COMBS: I'm going to repeat a little bit of  
24 what they've said, but just bear with me, please. My name  
25 is James Combs, and I own two properties on Virginia

1 directly abutting the land addressed by Application 16223.

2 And I also oppose providing the tax credits to this  
3 project.

4 Quite simply, this project is a disaster in  
5 the making, especially financially, and you've heard  
6 otherwise potentially. Although the application is very  
7 professional and polished in appearance, it contains a lot  
8 of assumptions and predictions that just don't reflect  
9 reality, the consequences of which will increase the cost  
10 beyond those presented in the application as well as delay  
11 the project completion beyond the requirements for receipt  
12 of these tax credits.

13 The Women's Center has assumed that they can be  
14 annexed by the nearby MUD. This now appears not to be the  
15 case. There's an article in the Fort Bend Star that came  
16 out yesterday confirming this, where the -- they said  
17 homeowners association has denied them.

18 They're now going to have to drill a well and  
19 construct a sewage treatment plant on site. Neither of  
20 these is cheap, and both have lengthy permitting  
21 requirements. In fact, they may not get permitted at all.

22 Drilling the well and putting sewage treatment plant for  
23 nothing but these apartments might not happen.

24 And also with the denial of the MUD services,  
25 what about fire water? They have no plans in their

1 application for a fire water tank either, so again,  
2 additional expense. Along with fire water comes a standby  
3 generator.

4 Also not addressed in the application is any  
5 outfall from their detention pond. They show a detention  
6 pond, but the pond needs to drain, but nothing is shown  
7 for it. They will likely have obtaining right-of-way  
8 acquisition to run their outfall to a public stream, and  
9 there's probably permitting requirements for the same.

10 The Women's Center hasn't considered any public  
11 outcry that is now only beginning, as you've heard. The  
12 application has support from a couple of government  
13 entities but none from actual people living in the area.  
14 The general public living in the immediate area found out  
15 about the project only a month ago but have already voiced  
16 strong opposition. You heard about the 2000-plus petition  
17 that's already started.

18 This opposition will continue and become more  
19 onerous to the Women's Center. Again, resolution of any  
20 concerns of this opposition will only result in more cost  
21 and more delay. Even if no change results from the  
22 opposition, you'll still have delay just trying to  
23 mitigate it.

24 Those are just about a few of the examples.  
25 And if only one of them comes to pass, which some of them

1 are now, it can seriously affect this project. The  
2 Women's Center has shown a complete lack of project  
3 experience. The director has admitted this to me  
4 personally as well as acknowledged it during the public  
5 meeting which they organized after becoming aware of the  
6 opposition.

7 We didn't find out about it from the Women's  
8 Center. It came elsewhere, and they called the meeting  
9 after that they knew we knew about it. They have never  
10 attempted such an operation. The director has said she is  
11 learning as she is going and not all of the answers are  
12 worked out.

13 One example is changing the number of units in  
14 the complex. They started with 84 units. In fact, the  
15 Fort Bend County Resolution, which you have a copy of --  
16 it's in the application -- in support of this project was  
17 based upon 84 units. And that was told to myself as well  
18 as others by the commissioner that wrote it, and it was  
19 acknowledged by the Women's Center and the commissioner  
20 during the public meeting that they had.

21 However, now the application is for 104 units,  
22 25 percent more. The original application showed a pool  
23 on the architectural plans. Upon questioning the need for  
24 approval, the director said none was to be provided. I  
25 don't understand that. And I believe there's an updated



1 application no longer showing the pool.

2 Just about all the questions regarding the  
3 details whether it's physical construction or the  
4 operation of the facility, the director has not provided  
5 consistent or complete information. It's just a lack of  
6 credibility, is what it's coming down to. These are just  
7 a few of the wishy-washy responses that have been provided  
8 by the Women's Center.

9 Again, I believe this project is a problem  
10 waiting to happen. I encourage the TDHCA to provide tax  
11 credits to a more-thought-out project, one that can  
12 guarantee the public's money through the use of these tax  
13 credits is not misused as I believe this project will.

14 Please do not allow the tax credits to be  
15 approved for this project. Thank you.

16 MR. OXER: Thank you for your comments, Mr.  
17 Jones -- Mr. Combs; I'm sorry for that. Are there others?

18 MR. RICHARDSON: Good morning. My name is  
19 Chris Richardson, and I am also opposing Application  
20 16223, Magnolia Gardens. I live in Long Meadow Farms.

21 And just to kind of back up what has been  
22 stated already, the lack of safety for the sidewalks in  
23 this location for the children and the tenants of this  
24 facility, the lack of transparency that has been brought  
25 forth, it's like pulling teeth to get information that is

1 conflicting back and forth between who's asking what and  
2 it just is ever-changing.

3 Like they said, that there will be no  
4 annexation from the HOA or the MUD group. Lack of  
5 knowledge on the school's zoning. We hear one from one  
6 group, one from the superintendent of the independent  
7 school district of Lamar. So we're not sure what's going  
8 on there.

9 The other stats that we have about the  
10 petitions as well. As of yesterday, we had 2,018  
11 signatures opposing, and 90.34 percent of those signatures  
12 are from the community within the 77406, 77407 zip codes,  
13 whereas the opposition has 602, and only 10.58 percent are  
14 from those zip codes stated.

15 And that's all I wanted to give the information  
16 for.

17 MR. OXER: Okay.

18 MR. RICHARDSON: Thank you.

19 MS. FRANKLIN: Good morning.

20 MR. OXER: Good morning. And may I -- Mr.  
21 Richardson, I want to make sure that you signed in.

22 MR. RICHARDSON: Yes, I did.

23 MR. OXER: Okay, thank you.

24 MS. FRANKLIN: My name's Joelle Franklin. I'm  
25 a landowner in the area since 1975. We found out about

1 this actually through the online petition. This property  
2 is literally not appropriate for the design and  
3 development of this women's center endeavor. Although  
4 honorable, we find many challenging aspects of this, and  
5 we would ask that you would deny the point structure given  
6 to this property and give it to someone else.

7           They've not taken into consideration the safety  
8 of the individuals that they are going to ask to live  
9 there. They're bringing them from an urban development  
10 area into a rural area and not understanding any of the  
11 issues of the country, whether it be wildlife, down time  
12 with your power, which we've had four outages since  
13 January 1.

14           If you're running a septic and/or water well  
15 and it's going to be used for commercial use, you are  
16 obligated to ensure good water once that well comes back  
17 up -- that system comes back. You also are going to have  
18 to have generation power, which is going to require some  
19 form of fuel tank.

20           This application on the second page has several  
21 iterations here; the what-if, if you look at it, says if  
22 they find that there's things that need to be changed in  
23 reference to the utilities and to the drainage, that they  
24 would have to go in -- both engineering and the applicants  
25 says that they would have to go in and resubmit. And to

1 me this is a waste of time for this committee and the  
2 point structure.

3 It might be viable in 2017 or maybe even 2018  
4 based on this plot. They've not done their due diligence,  
5 their feasibility on the tract. And we just -- we feel  
6 that there's going to be a major train wreck. The dollars  
7 that are represented on this application are far from what  
8 it's going to actually cost the taxpayers, and it will not  
9 give the individuals that they are so interested in  
10 serving the true needs and -- that they're wanting to be  
11 successful at.

12 I appreciate the time. Thank you very much.

13 MR. OXER: Thank you, Ms. Franklin.

14 Is there any other comment?

15 MS. ROEBER: Hi, Terri Roeber, Texas Department  
16 of Housing. I have three people, Gregory Nimick, a  
17 Rochelle Richardson, and Hader Zaydi [phonetic], who do  
18 oppose 16223.

19 MR. OXER: Okay. Opposition noted. Is there  
20 any other comments?

21 (No response.)

22 MR. OXER: Any other questions from the Board?  
23 I know you're waiting on bated breath here.

24 (No response.)

25 MR. OXER: All right. There's been a motion

1 with respect to Item 6(g) the Housing Tax Credit Awards  
2 Listing for 2016. There's been a motion by Ms. Bingham,  
3 second by the Chair to approve staff recommendation as  
4 modified and entered into the record by Ms. Gamble.

5 Is that a clear representation of the motion,  
6 Ms. Bingham?

7 MS. BINGHAM ESCAREÑO: Yes.

8 MR. OXER: Okay. Those in favor?

9 (A chorus of ayes.)

10 MR. OXER: And opposed?

11 (No response.)

12 MR. OXER: There are none. Congratulations,  
13 folks. There's your list.

14 (Applause.)

15 MR. OXER: Okay. We have reached the point in  
16 the public comment in the agenda where we'll receive  
17 public comment for items other than for which were posted  
18 agenda items.

19 Please be quiet. If you're going to -- if  
20 you're going to speak, go outside. We're continuing this  
21 hearing. We have to have our transcript also. Those of  
22 you who wish may leave, but to the extent that those of  
23 you are here who wish to add comment for the public for  
24 the next hearing or for the next agenda, we'll receive  
25 your comments now.

1           Anyone else in the audience?

2           (No response.)

3           MR. OXER: Any of the staff?

4           (No response.)

5           MR. OXER: Then let be known that we really  
6 appreciate what the staff does. you can't imagine how  
7 much we appreciate what the staff here that show up and  
8 make the presentations on these items and everybody there  
9 at 221 East Eleventh Street.

10                   And we know how hard you work, and we really  
11 appreciate that because it makes it -- although it seems  
12 difficult for us, a lot of the time, it's a whole lot  
13 easier than it would be because of the work that the staff  
14 puts in. So we appreciate that.

15           (Applause.)

16           MR. OXER: Okay. Any other comments from the  
17 Board? Mr. ED, did you have a thought?

18           MR. IRVINE: Yeah. I had actually two  
19 comments. One relates to the folks that are leaving the  
20 room that had concerns over a particular development. You  
21 know, this is just the start of the road, and it's a long  
22 hard road. It's a road with a lot of very specific  
23 requirements along the way.

24                   And, you know, this is perhaps an object lesson  
25 to anybody that really wants to get after the business of

1 developing great affordable housing. Make sure you got a  
2 good strong team and a good strong plan because those road  
3 blocks are --

4 MR. OXER: Significant.

5 MR. IRVINE: They're tough. They're tough.

6 And at the end of the day though, we're confident that  
7 once a project has completed development and placed in  
8 service, it's going to be a credit to its community.

9 I would also really like to make a shout out  
10 for our REA team. They really did an amazing job. This  
11 is -- I know that there are two issues that are still to  
12 be resolved through the appellate process or other  
13 process, but they plowed through all of these deals. They  
14 had so much very hands-on interaction with so many people.  
15 They're incredibly knowledgeable. They are really  
16 professional, and kudos to them.

17 So that's all I got.

18 (Applause.)

19 MR. OXER: Any last comments from the Board?

20 (No response.)

21 MR. OXER: Okay. Being the Chairman, I get the  
22 last word. It's a good thing we do here, people, and this  
23 is one of those things. We have 5,000 places for people  
24 to live, which could be as much as 18- to 20,000 people  
25 have homes now for what we've done, so thank you for all

1 of that.

2 We remain on summer casual for the August 25  
3 meeting, which is going to be four weeks from today. I'll  
4 entertain a motion to adjourn.

5 MR. CHISUM: So moved.

6 MR. OXER: Motion by Mr. Chisum to adjourn, and  
7 I hear a second by Mr. Gann.

8 MR. GANN: I do.

9 MR. OXER: Those in favor?

10 (A chorus of ayes.)

11 MR. OXER: See you in four weeks everybody.  
12 Congratulations to the winners.

13 (Whereupon, at 12:58 p.m., the board meeting  
14 was adjourned.)



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C E R T I F I C A T E

MEETING OF: TDHCA Board Audit Committee  
LOCATION: Austin, Texas  
DATE: July 28, 2016

I do hereby certify that the foregoing pages, numbers 1 through 113, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Teacher Retirement System of Texas.

\_\_\_\_\_  
(Transcriber) 8/3/2016  
(Date)

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