



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry
GOVERNOR

Edwina P. Carrington
EXECUTIVE DIRECTOR

February 11, 2003

BOARD MEMBERS
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Elizabeth Anderson
Shadrick Bogany
C. Kent Conine
Vidal Gonzalez
Norberto Salinas

Honorable Ken Mercer
House of Representatives
State of Texas
P. O. Box 2910
Austin, Texas 78768-2910

Dear Representative Mercer:

The Texas Department of Housing and Community Affairs ("TDHCA") requests a meeting to discuss your January 22, 2003 letter, with enclosures, to Jason Johnson at the Office of the Attorney General. TDHCA is concerned that the Summary of the Heatherwilde Estates development and following Chronology contain material inaccuracies. Our goal for the meeting will be discuss the tax credit allocation process and the consideration given to public input throughout the process.

Integrity, professionalism, and commitment to service are fundamental principles which guide my public service and the service of my staff. We continue to follow these principles as we work to fulfill the purpose of the Department to provide decent, safe, and affordable housing for the people of Texas.

I will call your office to arrange a time to meet and discuss your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Edwina P. Carrington".

Edwina P. Carrington,
Executive Director



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Norberto Salinas

February 11, 2003

Honorable Greg Abbott
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711

Re: State Representative Mercer's Request for Review and Opinion -
Heatherwilde Estates Apartment Development

Dear General Abbott:

On February 6, I received a copy from your office of a letter dated January 22, 2003, from State Representative Ken Mercer requesting that you review matters concerning the Heatherwilde apartment development in San Antonio. The proposed Heatherwilde development was the highest scoring development in its region in the Texas Department of Housing and Community Affairs' 2002 low-income housing tax credit application cycle. On July 29, 2002, the Department's Governing Board allocated tax credits to Heatherwilde. Representative Mercer raises complaints concerning several organizations and people, including this Department. His complaints concerning this Department are entirely unfounded.

Representative Mercer wrote me on January 2, 2003, asking several questions about the Heatherwilde development. I answered his questions by letter dated January 7, 2003. He replied in a short e-mail saying, "My sincere thanks for your timely and professional response." After this exchange, we were surprised to learn of his complaints.

From my prior reviews of this Department's actions in this matter, I am confident that both the spirit and letter of all requirements that govern this Department have been followed. I shall also review the matter further. I will call your office to arrange a time to meet and discuss this matter. I can assist your office in understanding the complicated tax credit allocation process and the Heatherwilde matter.

Sincerely,


Edwina P. Carrington
Executive Director

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MEMORANDUM

February 11, 2003

TO: CHAIRMAN JONES AND MEMBERS OF THE BOARD

**FROM: Edwina Carrington 
Executive Director**

**SUBJECT: Heatherwilde Estates Apartments, San Antonio;
LIHTC No. 02-075 – State Representative Ken Mercer’s Request for
Attorney General Review and Opinion**

Attached for your review is a letter we received on February 6, with enclosures, in which State Representative Ken Mercer requests that the State Attorney General review concerns about the Heatherwilde development in San Antonio. The Board allocated credits to the proposed development on July 29, 2002. The development was the highest scoring application in its region.

Representative Mercer raises several complaints directed at various organizations and people, including TDHCA. Considerable neighborhood and school district opposition has arisen against the development since the Board’s approval. He states, “I agree with my constituents, this [Heatherwilde] situation does not pass the ‘smell test.’”

On January 2, 2003, I received a letter from Representative Mercer in which he asked several questions about the Department’s processing of Heatherwilde’s tax credit application. I provided answers to his questions on January 7. He replied in a brief e-mail saying, “My sincere thanks for your timely and professional response.”

On January 24, it was reported in the San Antonio Express-News that Representative Mercer had asked the Attorney General to review the Heatherwilde development. When we learned this, we called the Attorney General’s office to offer our assistance and request information about the matter. As advised by the Attorney General’s office, we followed-up with a Public Information Act request for documentation on this subject. We received the attached response and documentation from the Attorney General’s office on February 6.

My prior reviews of this matter, and of the Department’s and Board’s actions, have shown that our actions have been fully in accord with both the spirit and letter of all requirements. Be assured that I will further review this matter and report to the Board. I will also be requesting to meet with the Attorney General’s office and Representative Mercer.

Integrity, professionalism, and commitment to service are fundamental principles which guide my public service and the service of my staff. We will continue to follow these principles as we work to provide decent, safe, and affordable housing for the people of Texas.



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

original.

February 6, 2003

Mr. Chris Wittmayer
General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Public Information Request No. 03-10524

Dear Mr. Wittmayer:

This letter is in response to your public information request to the Office of the Attorney General ("OAG"), received in our office on January 31, 2003. You requested "...all public information in the possession, custody or control of the Attorney General's office concerning the proposed Heatherwilde apartment development in the San Antonio area, including any correspondence or other communication from State Representative Ken Mercer (including any enclosures)."

The OAG has reviewed its files and has located the enclosed documents which are responsive to your request. Although the Public Information Act allows a governmental body to charge for copying documents, the documents are being provided to you at no charge.

If you have any questions or wish to discuss this further, you may contact me at 512-475-4558 or via e-mail at amanda.crawford@oag.state.tx.us.

Sincerely,

AMANDA CRAWFORD
Assistant Attorney General
Public Information Coordinator

AEC/sw
Enclosures



DISTRICT OFFICE
SECURITY TOWER, SUITE 200
7323 HIGHWAY 90 WEST
SAN ANTONIO, TEXAS 78227
210-673-3236



CAPITOL OFFICE
P.O. Box 2910
AUSTIN, TEXAS 78768-2910
(512) 463-0269
KEN.MERCER@HOUSE.STATE.TX.US

Texas House of Representatives
District 117
Ken Mercer

January 24, 2003

Jason Johnson
Special Assistant to the Attorney General

Dear Mr. Johnson,

Enclosed is two additional documents concerning the Heatherwilde Apartment Complex. Thank you for your efforts in this matter.

Sincerely,

Representative Ken Mercer

Jeff Busby
RECEIVED
JAN 27 2003
DEPUTY ATTORNEY GENERAL FOR LITIGATION
OFFICE OF ATTORNEY GENERAL



People Active In Community Effort

January 17, 2003

Mr. Mike Frazier
President
Board of Trustees
Southwest Independent School Dist.

Dear Mr. Frazier:

We spoke recently concerning the "Heatherwilde" Apartment Complex to be built in your School District. You stated that you had never received anything in writing about the Ad Valorem Taxes to be paid to the School District.

Attached please find a copy of a draft agreement between the Bexar County Appraisal District and Builder (Partnership).

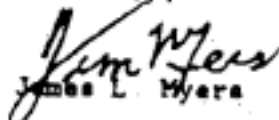
The most recent tax certificate indicates that at present the property in question (15.00 acres) pays \$2,152.00 to SICD, which is a pro rata share of the 65.236 acres being sub-divided.

It is my understanding that the Builder is required to pay "Zero" Taxes. However, under the terms of this agreement they are willing to pay a substantial amount.

Mr. Frazier, once the emotion is filtered out of this issue and we do the math, in my opinion the School District should be instructed to at least assume a neutral position in this matter.

Thank you.

Sincerely,


James L. Myers

Ph. 673-0831

CC Dr Anthony

SOUTHWEST INDEPENDENT SCHOOL DISTRICT

11914 Dragon Lane • San Antonio, Texas 78252-2647
(210) 622-3488 • Fax (210) 622-5428

January 22, 2003

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SUPERINTENDENT OF SCHOOLS
Pete Anthony, Ed. D.

Mr. James L. Myers
5539 Cool Valley
San Antonio, Texas 78227

Dear Mr. Myers:

This is to acknowledge receipt of your letter of January 17, 2003 to Mr. Mike Frazier, President of the Southwest Independent School District Board of Trustees.

Although you presented the same information during the "citizens' to be heard" part of the meeting of the Southwest School Board last night, Mr. Frazier has asked me to review the letter and respond to your concerns.

It is unclear whether you represent the developer or P.A.C.E. or both in regard to your stated position in this matter. Since the letter came on P.A.C.E. letterhead, I am assuming you are not speaking as an individual.

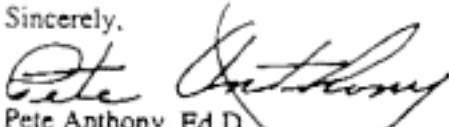
I have examined the letter and the included incomplete copy of the **AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES** between the County of Bexar and Heatherwilde Estates Housing. It is indeed a fact that such documentation has never been made available to the Southwest Independent School District. We thank the P.A.C.E. organization for bringing its existence to our attention.

It would be proper for discussions of such projects to be held between the developer and the Southwest Independent School District. The Southwest School District does not acknowledge the five-minute presentation at the School Board Meeting of January 21, 2003 to constitute "discussions with the District". Information regarding this project needs to be on a timely basis. It would have been advantageous to have development information when the project began, one or two years ago. As the Superintendent of Schools, I am the representative of the District with whom discussions should be held.

The Southwest Independent School District makes its decisions based on accurate, complete and timely information. In this instance, community members and residents of the impacted area have serious concerns and questions about the proposed project and the methodology used to convey or not convey information regarding the proposal.

We continue to support the position of the Southwest Homeowners' Association. We believe that "overnight" projects such as this negatively impact our ability to deliver education services to the children of this community.

Sincerely,


Pete Anthony, Ed.D.
Superintendent of Schools

cc: P.A.C.E.

- Southwest High School
- McNair 6th Grade School
- McAuliffe Junior High School
- Scobee Junior High School
- Southwest Enrichment Center

- Southwest Elementary School
- Sun Valley Elementary School
- Indian Creek Elementary School
- Bob Hope Elementary School

- Sky Harbour Elementary School
- Hidden Cove Elementary School
- Big Country Elementary School
- Elm Creek Elementary School
- Knowl Road Elementary School

An Equal Opportunity Employer

**State Representative Ken Mercer
District 117, NW and SW Bexar County
Capitol Office E2.812**

Mr. Jason Johnson
Office of the Attorney General
209 W. th Street 78701

22 January 2003

Reference: Our Friday the 17th of January conversation regarding my constituent concerns of the Heatherwilde Estates project of Southwest Bexar County.

Dear Mr. Johnson,

As promised, I am providing a file and analysis from my staff regarding the Heatherwilde Estates project in Southwest Bexar County. I am requesting a State Attorney General review and opinion of this situation.

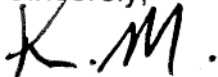
Please note, the citizens are not against affordable housing, and no one disputes the quality of product offered by the developer. However we will take a stand against any elected official that might attempt to abuse or corrupt the process.

In August, it came to my attention that the impacted Southwest ISD first became aware of the project. As you will find in the documentation, the impacted School District (August), along with the impacted homeowner's association (September) clearly oppose the project. In October, the Zoning Commission sided with the District and Homeowners in unanimously voting against a request for rezoning. Yet, somehow the project still will continue.

I agree with my constituents, this situation does not pass th "smell test".

Please review the documents provided that my office has collected over the past few months, and feel free to contact my office with any questions or concerns 463-0269.

Sincerely,

A handwritten signature in black ink, consisting of the initials 'K.M.' followed by a period.

Representative Ken Mercer

SUMMARY
Heatherwilde Estates Housing Project

BACKGROUND: Heatherwilde Estates is an affordable housing project being proposed for 15 acres of land at Old Pearsall Road and SW Loop 410 in San Antonio. Project is being developed under the Texas Low Income Housing Tax Credit Program (LIHTC) as established under SB 322. Developer is the for-profit Southwest Housing Development Corporation of Dallas under the subsidiary name of B&L Housing Development Corp. The listed non profit entity is Housing Authority of Bexar County. On completion the plan calls for 176 units of mixed (mean to very low) income housing.

In addition to the principals listed on the application (TAB D) the following entities have a direct connection with the project by virtue of location within the city limits of San Antonio:

- City of San Antonio-zoning interest under Unified Development Code. Also affected due to tax exempt status in terms of ad valorem taxes.
- Southwest Independent School District-responsible for education of children that the project will presumably move in to community. Tax exempt status for development currently includes school property taxes.
- Southwest Community Association- chartered coalition of the four subdivisions immediately surrounding the project (Sky Harbor, Indian Creek, Hidden Cove and Hillside Acres).
- Bexar County-specifically through the Bexar County Housing Authority as co-participants in the project and due to tax-exempt status of the development as proposed.

Although the developer had been planning and coordinating the project for several months with city, county and state agencies, beginning in 2001, the community association and school district were not appraised of the project until August 2002. There is very strong opposition by the Southwest Community Association and the Southwest Independent School District. This opposition is based on two critical issues: the unplanned, un-funded increase in student population on the school system. The tax-exempt nature of the project exacerbates the school issue and has not been resolved as implied by the developer. Second is the addition of more subsidized housing in an area already heavily saturated with low income projects that directly affect property values and increase the tax burden on residents. The community and the school district have asked elected officials at every level to reject this project and have gathered over 1200 signatures on a petition to support their objections.

In spite of numerous failures on the part of the developer to satisfy mandated deadlines for qualification under this tax credit project, TDHCA has acquiesced in every instance, to the demands of Southwest Housing Development and has granted the allocation. There have been several inquiries directed to the Executive Director of TDHCA by elected officials that raise the issues of community support, tax exemption authority under state laws, and the failure of the developer to receive TDHCA mandated zoning changes. In every instance TDHCA has sided with the developer in excusing or mitigating these issues. As a result, at least one other similar type affordable housing project, that had

been thoroughly planned and coordinated with both governmental and community agencies, and which is both needed and desired in another part of the city, has been lost to San Antonio.

Clearly, the circumstances, procedures and determinations by TDHCA are cause for concern. Affordable housing programs is an essential part of the economic development of many areas of the state and should be supported fully when they are properly implemented. Heatherwilde Estates does not appear to meet that standard in many respects. Before this project is allowed to proceed, a thorough examination of the process is essential. Additionally, there is serious concern about potential conflict of interest concerning the relationship of the lobbyists representing the developer and the Bexar County Housing Authority. Specifically the status of Mr. Ken Brown of Earl & Brown who, until on or about October 9, 2002, was a commissioner of the Housing Agency and is now the principal lobbyist for the developer.

The following pages are a chronological sequence of events that outline the project. This is by no means a complete file of documentation but is sufficiently in-depth to establish that there have been numerous misrepresentations, questionable actions and deviations from established criteria. There appears to be ample evidence that inappropriate actions were permitted that have allowed this project to continue in spite of the obvious shortcomings in the application.

CHRONOLOGY: in some cases dates identified below are approximations. These will be highlighted with an *.

- October-November 2001*-initial planning/feasibility by developer begun.
- January-February 2002*-developer in touch with City of San Antonio Planning Commission to examine zoning/UDC issues.
- February 4, 2002-current property zoning of C3R approved by San Antonio council.
- March 2002*-developer submits site plan and application to TDHCA
- June 5, 2002 State Representative Jose Menendez submits letter to TDHCA (TAB A) concerning the legal issues involving tax credits for LIHTCP projects. Not specifically addressed to Heatherwilde Estates but applicable non-the-less. Representative Menendez specifically addresses the local support and zoning issues that apply to Heatherwilde Estates.
- June 11, 2002- TDHCA Underwriting Analysis is issued for the Heatherwilde Project (TAB B). Underwriter's recommendation was for approval SUBJECT TO 3 specific conditions, the most contentious being the receipt of zoning approval by the City of San Antonio to MF-25/Multifamily.
- July 19, 2002-Executive Director Edwina Carrington letter (TAB C) in response to Representative Menendez's inquiries. Of note she does not assert that the local assessor had granted tax-exempt status on any specific project, nor does she address the local support issue raised by Rep. Menendez. She does emphasize that the board must detail exceptions in the event that zoning is not clearly authorized. Essentially she appears to mix existing mandates of SB322 with previous procedures, none of which address the essential question of approval without zoning authorization.

Also July 19, 2002- City Councilman Kike Martin submits letter (TAB D) to TDHCA in which he notes earlier correspondence concerning Heatherwilde Estates, cites high density factors of low-income housing in the area and states his specific opposition to the Heatherwilde Estates project.

- July 20, 2002- Councilman Martin submits letter (TAB E) to Bexar County Tax Assessor in which he challenges the granting of tax exemptions for Heatherwilde on the very same issue that Representative Menendez had raised concerning non-profit/for-profit participation. Though not specifically stated, Mr. Martin implies he is in opposition to the project on the basis that the project improperly mixes these categories of participation. He also seems to be seeking some method by which the conflict can be resolved. It is unclear who the "we" pertains to in his question "how would we prove that there would be no profits distributed to the for-profit entity" at the end of his letter. He appears at that point to be concerned with the complexities of the financing and not the issues of tax exemption impact or community opposition.

•July 29, 2002-John Delgado, testifying on behalf of City Councilman Kike Martin at the TDHCA hearing to award tax credit status to the Heatherwilde Estates project (TAB F). Restates the councilman's opposition to the project. Dario Chapa, Chairman of the Bexar County Housing Authority also testifies, falsely claiming community association support for the project. Mr. Chapa later claimed he had misunderstood the information, which is curious, in that the community was virtually unaware of the project until mid-August.

•August 15, 2002-TDHCA letter of Tax Credit Notification (TAB G) to the developer as a result of the TDHCA Board decision July 29, 2002. The significant element is that this notice establishes an October 11, 2002 deadline for the applicant to have completed certain steps, most important of which is securing of the necessary MF-25 zoning for the project from the city of San Antonio. Furthermore conclusive documentation from the taxing authority (Bexar County Tax Assessor) was to be provided by this same deadline. The developer met neither condition. NOTE: there is no provision made for extension of this deadline in the basic letter of notification.

•August 2002*-SWISD first became aware of Heatherwilde Estates in follow-up to developer initiatives at another district school where they were proposing a similar project. Inquiries lead SWISD to contact the Southwest Community Association who finally received a formal presentation by the developer on September 23, 2002.

•September 12, 2002- Letter from developer spokesperson, David Marquez, to County Commissioner Robert Tejeda (TAB H). Establishes Mr. Marquez's bona fides to be addressed subsequently.

•September 23, 2002 SWCA membership unanimously voted against the Heatherwilde Estates project at their general membership meeting (TAB I). Their opposition was supported by a representative of the SWISD Superintendent's staff and fully supported by the remarks of City Councilman Martin during the meeting. It should also be noted that the developer was present as represented by David Marquez, Bobby Leopold and Ken Brown (Mr. Brown spoke for the developer even as he maintained his position of Commissioner on the Bexar Housing Authority Board.)

•September 30, 2002- Southwest Independent School District letter (TAB J) to the zoning commission outlining the district's opposition to the Heatherwilde Estates project.

•October 1, 2002- three significant incidents this date were:

- 1). Bexar County Commissioner Robert Tejeda informs Councilman Martin that he opposes the Heatherwilde Project and requests that the councilman do the same. (TAB K)
- 2). San Antonio Zoning Commission unanimously rejects the MF-25 zoning application for the project. (TAB L).
- 3). Councilman Martin tenders a letter to TDHCA (TAB M) that is contradictory and misleading. On one hand he claims little involvement in the evolution of the project, in spite of previous correspondence, testimony and public statements to the contrary. At the same time he appears to advocate the project based on knowledge of the developers other

projects. He clearly advises TDHCA that he intends to support a council decision to approve the zoning change, in spite of his previous opposition to the project.

- October 4, 2002- at a meeting called by Councilman Martin at his district field office in Valley Hi, Mr. Martin informed representatives of the Southwest Community Association that he was coming out in support of the Heatherwilde Project. He indicated that he had received misinformation from Mr. David Marquez, a spokesman for the developer. Councilman Martin informed the community representatives that Mr. Marquez was no longer working for the developer and that he felt his change of position was justified. This is significant for two reasons: first, it was the first Mr. Martin had notified the community of his reversal, in spite of his letter to TDHCA on October 1, 2002 and secondly the reasoning he cited. Mr. Marquez, as will be noted elsewhere, did in fact continue to represent the developer at public hearings and meetings, thus making the councilman's rationale disingenuous at best.

- October 22, 2002- TDHCA letter (TAB N) to developer granting an extension of the earlier established deadline for compliance with zoning requirements. TDHCA apparently exercised executive discretion in granting this extension although the rationale is not specified and it is not clear whether such authority is vested in the agency. Two conditions were again established. One, by November 1, 2002, the submission of a letter by the city that a FINAL zoning decision would be made NLT November 14, 2002 and secondly that proof of zoning approval be provided TDHCA NLT than November 15, 2002. Failure to comply with either deadline would terminate the project application. NOTE: there is no evidence of a letter from the city indicating a zoning decision by the specified deadline and it is even more significant that at the November 14, 2002 city council meeting, THE DEVELOPER requested a continuance of 30 days.

- October 31, 2002- in response to an apparent request by the lobbyists for the developer, Earl & Brown, Mr. Pete Gomez wrote a letter (TAB O) that states that the city Unified Development Code does permit multi-family housing under C3R zoning. Mr. Gomez DID NOT specify that this included the plan as submitted by the developer for Heatherwilde Estates, nor did he elaborate on criteria that was later addressed by Mr. Gomez's superiors. The significance of Mr. Gomez letter will be obvious in subsequent events.

Also on October 31st Bexar Appraisal District (the authorized taxing authority with jurisdiction over the project) issued a letter (TAB P) that conditionally established that Bexar Housing Authority would qualify for tax exemption status. To date it is unknown if the conditions specified (especially property ownership) was satisfactorily established in such a way as to meet TDHCA criteria previously addressed. The October 31, 2002 date of this conditional tax exemption authority is 20 days past the deadline established by TDHCA for this criteria to have been met as found in TAB . There was NO extension of deadline granted to the developer for this point and according to the TDHCA criteria, the allocation should have been terminated for this omission on October 11, 2002 at 5PM CST. TDHCA failed to explain why termination did not occur in view of the fact that no extension of deadline was requested or granted for these criteria.

- November 1, 2002-this date is significant in that no evidence exists that the developer had complied with TDHCA criteria to submit a letter from the city confirming that a final zoning determination would be made on or before November 14, 2002. This failure, by TDHCA notice of October 22, 2002 to the developer, should have resulted in termination of the tax credit allocations. TDHCA has failed to address this point in subsequent inquiries.

- November 6, 2002-Representative-elect Ken Mercer (District 117) was asked by Dr. Pete Anthony, Superintendent of Southwest Independent School District and Carole Abitz, Vice President of the Southwest Community Association to assist them in their efforts to stop the Heatherwilde Estates Project based on opposition previously stated.

- November 7, 2002-SWISD Board President, Mike Frazier letter (TAB Q) to Mayor Ed Garza, citing concerns over the proliferation of affordable, tax exempt housing projects in the SWISD tax boundaries. Not specific to Heatherwilde Estates, the letter outlines the concerns of the district in terms of impact on education services, recent bond issues and future development in the area.

- November 10,11 &13, 2002- letters from the SWCA to Councilman Martin, County Judge Nelson Wolff and TDHCA Executive Director Edwina Carrington outlining continued concerns and opposition to the Heatherwilde Estates project. (TAB R).

- November 14, 2002- Rep.-elect Mercer telephone call to San Antonio Mayor Ed Garza urging that the council not grant the zoning request scheduled to be considered on that day. Basis for this request were the lack of community inclusion in the planning, impact on the SWISD in terms of education and the already high density of subsidized housing in this area.

- November 14, 2002-San Antonio City Council meeting addressed Agenda item 4-F request for rezoning of the property designated for Heatherwilde Estates. Before discussion or vote, the developer lobbyist, Mr. Ken Brown, requested that the issue be continued for 30 days (this in spite of the TDHCA deadline, as extended, of November 15, 2002). Mr. Brown cited unresolved issues that required additional time. Councilman Martin chose to comment, falsely stating that the project had support from a number of community organizations, knowing full well that as the only directly affected association, SWCA was in unanimous opposition as was the school district. Given the extended deadline of November 15, 2002 by TDHCA for the developer to secure MF-25 zoning for the project, as specified by TDHCA allocation criteria, this should have resulted in the immediate termination of the allocation by TDHCA. No further extension had been requested nor granted.

- November 15, 2002-per telephone conversation Mr. Ben Sheppard, TDHCA, advised Rep.-elect Mercer staff member (Don Jones) that the project had not been terminated as stipulated by TDHCA criteria due to developer claim that MF-25 zoning was NOT

required, based on October 31, 2002 letter from San Antonio Planning representative to lobbyists Earl & Brown discussing C3R criteria (TAB S). Mr. Sheppard advised he would discuss with city authorities and provide a response.

•November 18, 2002- Mr. Sheppard advised D. Jones that based on his understanding of the multi-family criteria defined in the San Antonio Unified Development Code (UDC) he did not think the proposed site plan would allow sufficient space for the housing units and the non-residential use square footage specified under C3R zoning. He had emailed his inquiry to John Jacks, Senior Planner for the (and incidentally Mr. Pete Gomez superior). Mr. Sheppard's email and Mr. Jacks response, as written by Mr. Ray Sanchez, are at TAB . As seen, Mr. Jacks states clearly that C3R may be used if specified residential to commercial use ratios is maintained. The site plan as submitted for the Heatherwilde Project would not meet this criteria, thus terminating the allocation based on the expiration of the TDHCA extended deadline, as a direct result of the developer's own request. Clearly, the developer feared a denial of the November 14, 2002 zoning case before city council and sought to find a loophole. With the compliance of TDHCA, they appear to have succeeded.

•November 19, 2002-in a separate action, the Texas Attorney General's office issued Opinion NO. JC-0576 (TAB T) addressing a request by Senator Frank Madla. The opinion addressed the issue of tax exempt qualifications for projects similar to Heatherwilde Estates, specifically the scope of non-profit versus for-profit participation. This is the same subject raised by Representative Menendez to TDHCA in his letter (TAB A). Based on the description of the Heatherwilde Estates application in terms of participation by the Bexar County Housing Authority and the developer, this issue should have been addressed when TDHCA considered the application. It does not appear that this was the case.

•November 21, 2002-the lobbyist for the developer submitted a letter (TAB U) directly to TDHCA general counsel, Mr. Chris Wittmayer, challenging the zoning determination issued by the senior planner for San Antonio, Mr. John Jacks. Mr. Brown's challenge cites the letter by Mr. Gomez of October 31st as authority and dismisses the position of Mr. Jacks. In subsequent conversations over several days, Mr. Wittmayer advised Rep. Mercer's staff assistant that he was seeking clarification from either Mr. Jacks or Mr. Sanchez on the City of San Antonio's position. He refused to address the issue of allocation termination based on expired deadlines and lack of a MF-25 zoning as specified by TDHCA, thus aiding the developer's effort to circumvent the provisions for proper continuation of the project.

•November 27, 2002-lobbyist for the developer, Earl & Brown, submitted a letter (TAB V) to Andrew Martin, City Attorney for San Antonio, in which a lawsuit was threatened against the city unless the developer was permitted to proceed with the project based on the contents of the October 31st letter by Pete Gomez concerning C3R criteria. At this point, TDHCA (Mr. Wittmayer) advised Rep. Mercer's staff member that until this issue was determined by the city, TDHCA would not act further on the allocation of tax credits. This inaction also included not terminating the allocation for failure to meet other

specified deadlines established by TDHCA. Should be noted that the developer took no action to withdraw the MF-25 zoning application continued at the developer's request until the December 12, 2002 city council meeting. The presumption by the developer that a valid zoning existed in C3R would make mute the zoning change request on the surface but no withdrawal was made until council convened on 12/12/02. By this lack of action, TDHCA, acting in the overall best interests of the state, could have, with due diligence, enforced the termination based on the developers failure to meet established, and once extended deadlines. Again TDHCA's lack of action, aided the developer's efforts to circumvent established rules and procedures.

- December 11, 2002-Representative-elect Mercer letter to San Antonio Mayor Ed Garza (TAB W) again emphasizing opposition to the Heatherwilde Project in support of community concerns. Rep-elect Mercer also makes note of the sudden, unexplained reversal demonstrated by Councilman Martin in October whereby he was endorsing a project he had demonstrably opposed earlier.
- December 12, 2002-San Antonio City Council meeting (TAB X) in which the zoning change requests for MF-25 was scheduled to be decided. Prior to the agenda item being presented, the developer's lobbyist, Mr. Ken Brown, submitted paperwork to the City Clerk withdrawing the zoning application. With the exception of citizens to be heard speaking out against the project, no action was taken by council.
- December 13, 2002-email response (TAB Y) from Mr. Wittmayer, TDHCA to Mr. Ray Sanchez, San Antonio Planning department. Three points of note: First, Mr. Wittmayer implies that he knew nothing of the developer's action to withdraw the zoning request on December 12th when he references a letter pending council action from that date. Yet he suddenly makes reference to the Gomez letter of October 31st as if that were his first awareness of this document. Secondly, he makes reference to the high stakes involved, apparently in an effort to lend emphasis to the importance of awarding the final approval allocation to this applicant before time runs out. Finally he addresses the deadlines looming at the end of the year, even though time still remained to award the allocation to the next qualified applicant in San Antonio were TDHCA to adhere to their own previously established timeline for the Heatherwilde Estates application. This is another example of TDHCA doing everything to aid this specific developer, in spite of the application shortfalls.
- December 17, 2002- City Attorney Andrew Martin letter (TAB Z) to TDHCA advising that as a result of decisions reached on December 12th in executive session, the City Council had agreed to place a resolution directing city staff to reinstate the zoning case for change to MF-25 as a council initiative for the December 19th meeting. This letter DOES NOT state that the developer's project meets the criteria for development under C3R but merely sidesteps the threat of legal action by the developer. The letter does agree that the UDC permits multi-family housing under C3R, but the fact that the city feels compelled to proceed with a zoning change process would otherwise suggest that the Heatherwilde Project will only receive building permits under MF-25. The very nature of the city's letter clearly does not meet the criteria for continuation by TDHCA under the

terms specified by the Commitment Notice of August 15, 2002 (TAB G) which specifies MF-25 zoning.

- December 20, 2002-Representative-elect Mercer's staff was advised that the developer had begun clearing the project site. Upon determining that clearing work had indeed begun that day, an inquiry was placed with City Attorney Martin. He indicated that it was possible, although undetermined, that the developer had obtained an "at own risk" permit that allowed limited preliminary work. This work continued during the holidays according to neighborhood reports and became so extensive that city inspectors attempted to halt the work on the basis of exceeding preliminary work and was in fact ignoring city ordinances. Point is worth noting as another example of the methodology employed throughout the application process by the developer, abetted by TDHCA's seemingly relaxed standards of performance and compliance.

- December 15-28, 2002-the Southwest Community Association continued to implore County Commissioners Court and the TDHCA to terminate the Heatherwilde Estate Project (TAB AA). Numerous questions were raised concerning misrepresentation by government and developer spokespersons. Lack of public notice violations were cited and substantiated as were other instances whereby the state and county had either exceeded or ignored statutory requirements and limitations. The number of allegations alone would appear to be sufficient grounds for a thorough investigation by TDHCA before the final determination to grant the allocation was made. Not only is there no evidence of investigation at either the state or county level, but the project proceeded unimpeded.

- December 20, 2002-a rather unusual public meeting of the Bexar County Housing Authority at 4:30 PM on the Friday before Christmas holidays. (TAB BB). In the first place insufficient public notice was provided as required by law. Ten-day notice is required yet the meeting was not posted until December 16th. More significantly, as noted in the agenda, Mr. David Marquez is listed as spokesperson for the Heatherwilde Estates. Note that part of the misinformation disseminated by Council Martin earlier included the fact that Mr. Marquez was no longer associated with the developer because he had provided inaccurate information about the project in the past. Attached to the Agenda is an unofficial transcript of a recording, made by Carole Abitz of SWCA at the meeting. One interesting fact is the apparent reference by Mr. Marquez to the issue of MF-25 zoning approval. Further comments attributed to Mr. Marquez indicates that the developer, even at this date well past the TDHCA extended deadline for compliance, still had not completed necessary documentation on the project. A complete transcript and outcome of the meeting is presumably available. The significance of this event lies in the procedural abuses, the veracity of the developer spokespersons and the still unsettled issue of zoning that TDHCA chose to ignore.

An additional note should be made of the name Kenneth Brown, Commissioner in the agenda letterhead. While it is presumed that Mr. Brown had in fact resigned from this position as reported in October of 2002, his name still appearing on official stationary in that capacity strongly suggests that too close a tie exists for him to be acting as a lobbyist for this project. Again, another fact ignored by TDHCA.

•January 2, 2003- Representative-elect Mercer letter (TAB CC) to TDHCA Executive Director, Edwina Carrington. Rep. Mercer asked for specific answers dealing with statutory authority concerning deadline extensions, failure to comply with application specifics, and the latitude to interpret or impose zoning matters reserved to city agencies.

•January 7, 2003-Executive Director Carrington response to Rep-elect Mercer inquiries (TAB DD). These responses merely restated the actions taken by TDHCA concerning the zoning issue and did not address other shortfalls of attainment by specified deadlines such as the tax exemption authority criteria discussed previously. Nor did TDHCA choose to address the overriding issue of community opposition. Letters of intent sent to elected officials months before and public notices published in newspapers (typically on obscure, seldom read pages) does not obviate the essence of the legislation's intent: strong community support. TDHCA has consistently demonstrated support to the developer in this process and ignored or dismissed the objections of the taxpayers.

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TAB A: Representative Jose Menendez letter, June 05, 2002, to Edwina Carrington, Executive Director, Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, subject LIHTC Program Underwriting Issues.

TAB B: TDHCA Multifamily Credit Underwriting Analysis, June 11, 2002 for Heatherwilde Estates

TAB C: TDHCA Executive Director, Edwina Carrington letter, July 12, 2002 in response to Representative Menendez request (TAB C).

TAB D: City Councilman Enrique Martin letter, July 19, 2002 to Executive Director Edwina Carrington, TDHCA stating opposition to Heatherwilde Estates housing project.

TAB E: City Councilman Enrique Martin letter, July 20, 2002 to Tax Assessor Sylvia Romo, Bexar County Tx, requesting tax exempt clarification for Heatherwilde Estates project.

TAB F: July 29, 2002 TDHCA Board Hearing Testimony excerpts for John Delgado and Dario Chapa remarks.

TAB G: TDHCA 2002 Low Income Housing Tax Credit Commitment Notice to Heatherwilde Estates, August 15, 2002.

TAB H: David Marquez letter to Commissioner Tejeda September 12, 2002.

TAB I: Southwest Community Association General Membership Meeting Minutes, September 23, 2002.

TAB J: SWISD Letter to Zoning Commission Letter September 30, 2002 opposing Heatherwilde Estates.

TAB K: Commissioner Robert Tejeda letter, October 1, 2002 to Councilman Enrique Martin stating his opposition to Heatherwilde Estates project.

TAB L: San Antonio Zoning Commission Minutes of October 1, 2002.

TAB M: City Councilman Enrique Martin letter, October 1, 2002 to Executive Director Edwina Carrington, TDHCA changing his opposition to Heatherwilde Estates to support for the project and stating intent to seek MF 25 zoning approval.

TAB N: TDHCA Letter October 22, 2002 granting extension of documentation deadline for Heatherwilde Estates project.

- TAB O: City of San Antonio Planner 1 (Gomez) letter of October 31, 2002.
- TAB P: Bexar Appraisal District Tax Exemption status letter, October 31, 2002.
- TAB Q: President Mike Frazier, Southwest Independent School District, letter, November 7, 2002 to Mayor Ed Garza expressing concern over proliferation of affordable housing projects within boundaries of SWISD and impact on tax base.
- TAB R: Southwest Community Association letters, November 10-13, 2002 to Council, County Judge and TDHCA reiterating the association's objections to Heatherwilde Estates. (3 enclosures)
- TAB S: November 19-20, 2002 emails between TDHCA Ben Sheppard and City of San Antonio Senior Planners Jacks and Sanchez. (3 enclosures)
- TAB T: Texas Attorney General's Opinion #JC-0576, November 19, 2002 in response to an inquiry (not attached) into the legal requirements that must be met to qualify an affordable housing project for tax exempt credits under Texas law. Not specific to Heatherwilde Estates but the applicability is the same.
- TAB U: Earl & Brown lobbyist letter November 21, 2002 to TDHCA subject Zoning Issues.
- TAB V: Earl & Brown lobbyist letter November 27, 2002 posing lawsuit threat over zoning issues for Heatherwilde Estates.
- TAB W: Representative Elect Ken Mercer letter Dec 11, 2002 to San Antonio Mayor Ed Garza.
- TAB X: San Antonio City Council Meeting Agenda for December 12, 2002.
- TAB Y: TDHCA Wittmayer emails to San Antonio Senior Planner Sanchez December 13, 2002, subject Heatherwilde zoning.
- TAB Z: City of San Antonio Attorney (Martin) letters to TDHCA December 17, 2002 subject Zoning status for Heatherwilde Estates.
- TAB AA: SWCA Letters December 15-28, 2002 to County and State officials addressing Heatherwilde Estates. (8 enclosures)
- TAB BB: Housing Authority of Bexar County agenda made public December 16, 2002 for a public hearing set for December 20, 2002. On the agenda was status of Heatherwilde Estates. Attached is an informal transcription of the discussion concerning the agenda item, prepared by Carole Abitz of Southwest Community Association who also prepared an audiotape of this portion of the meeting.

TAB CC: Representative-elect Ken Mercer letter (via email) Ja
Executive Director Carrington subject Heatherwilde Estates.

TAB DD: TDHCA Executive Director Carrington letter (via en
response to Representative-elect Mercer letter.

TEXAS HOUSE OF REPRESENTATIVES

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JOSÉ MENÉNDEZ

STATE REPRESENTATIVE
DISTRICT 124

June 05, 2002

Edwina Carrington, Executive Director
Low Income Housing Tax Credit Program
Texas Department of Housing and Community Affairs
507 Sabine, Suite 300
Austin, Texas 78701

Re: LIHTC Program Underwriting Issues

Dear Ms. Carrington:

It was a pleasure meeting you yesterday and I thank you for your valuable and insightful testimony before the financial institutions committee.

I hope this letter provides you with clarification of the issues I am concerned about. Recently I had the opportunity to review your list of recommended developments for underwriting and potential allocation of housing tax credits. It is my understanding that in accordance with SB 322, the TDHCA Sunset Bill, developments that fail underwriting for reasons of not being financially feasible will be removed from consideration and other developments will then move into consideration. In light of the fact that there are less than three weeks to complete this process prior to your submission of final recommendations to the TDHCA Board, I would like to point out several areas of concern that I think your underwriting staff should thoroughly explore. This bill clearly prioritizes the selection of developments which meet goals like income targeting and are financially feasible. Strong local support and local funding that leverages state resources are also priorities of legislative intent. (Texas Government Code, Section 2306.10(b)(1) and Section 2306.6725(a)(3).

Here are some of the issues to consider:

I. Property Tax Exemptions

Several properties claims a property tax exemption by being PHA owned. Under Texas law, the PHA exemption is only for the use of solely PHA owned property, not those in joint venture with a for-profit entity. Proof of exemption should have been provided if this law applied. It is not the intent of the law for a for-profit entity, like the limited partnership owning the transaction, with a for profit co-general partner to benefit from the exemption, nor is it likely that the assessor will agree to the exemption. With taxes in the operating budget, would a project defer more than 50% of its' developer fee? Does a project claiming an exemption that is not allowable under law meet threshold and merit underwriting?

II. Unit Mix Selections

Mixing market-rate units and very low income units must be done with careful consideration. At high percentages of market rate units and low percentages of extremely low income units, we know success is achievable. Your QAP allows for a wide variety of unit mixes. Some projects have selected high percentages of market and high percentages of extremely low units. Are these mixes leasable? TDHCA underwriters should not allow "checking the box" unless its is financially feasible, nor rely solely on developer purchased market studies without utilizing historic data and common sense. Although, the purpose may be noble, financial feasibility is a paramount concern of SB 322.

III. Financing of 30% AMI or Extremely Low Income Units

Some projects appear to finance 30% AMI units with a "firm" commitment from a 501 (c)(3). Do these 501 (c)(3) corporations have sources of funds for their commitments? The intent of SB 322 in including non profit funds was so that non profits can pass through funds like HOME and CDBG that they have already received, so it is important to identify the source of their funds. We should know if any development team member contributed to a 501 (c)(3) to back its loan commitment. (Clearly not the intent of SB322) Are these corporations in the regular and continuous business of making low-interest loans? Can anyone apply to them for such a loan? How will you review the financial backing of these commitments?

IV. Second Phases

How are the addition of second phase developments evaluated in your concentration policy in comparison to neighborhoods that currently have no affordable housing? Is geographic dispersion taken into consideration and how?

V. Zoning

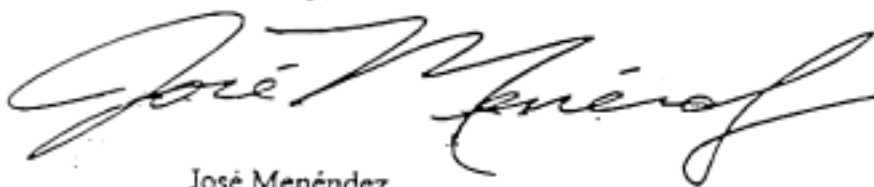
How is the feasibility of achieving correct zoning evaluated and ultimately determined? Local government opposition to a rezoning is unlikely to change because of an LIHTC allocation and may cause feasible projects to slip away while a predictable zoning battle ensues.

SB 322 did not intend that developments be recommended for underwriting when fatally flawed. It is my hope that your underwriting team's experience will allow them to uncover these types of issues and not allow projects that "check the box" and are not truly feasible to go forward. In the same regard, I ask that you give serious consideration to the intent of SB322 with regard to the financing of 30% AMI units. HOME and CDBG funds go through a tremendous grass roots local support and approval process and are "real". This is what SB322 hoped to foster. If this process is being circumvented through project members indirectly funding loans, this practice should not be condoned.

Under SB 322, TDHCA has the ability to utilize discretion and tough underwriting so that LIHTC housing is allocated in accordance with financial feasibility and geographic need and has done so in the past allowing many developments with great merit to be built throughout Texas.

Your consideration of these important issues in your underwriting process is greatly appreciated.

Sincerely,



José Menéndez
State Representative
District 124-Bexar County

cc: Elizabeth Anderson
Shadrick Bogany
C. Kent Conine
Vidal Gonzalez
Michael E. Jones
Norberto Salinas

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS
MULTIFAMILY CREDIT UNDERWRITING ANALYSIS**

DATE: June 11, 2002 PROGRAM: 9% LIHTC FILE NUMBER: 02075

DEVELOPMENT NAME

Heatherwilde Estates

APPLICANT

Name: Heatherwilde Estates Housing, L.P. Type: For Profit Non-Profit Municipal Other
 Address: 5839 Sandhurst, Suite B City: Dallas State: TX
 Zip: 75206 Contact: Bobby Leopold Phone: (214) 232-5445 Fax: (214) 987-9294

PRINCIPALS of the APPLICANT

Name: <u>Heatherwilde Estates Development, LLC</u>	(%): <u>0.01</u>	Title: <u>Managing General Partner</u>
Name: <u>Hudson Housing Capital</u>	(%): <u>99.99</u>	Title: <u>Limited Partner</u>
Name: <u>Housing Authority of Bexar County</u>		<u>99.99% Owner of MGP</u>
Name: <u>B&L Housing Development Corp.</u> <i>Bobby Leopold</i>		<u>0.01% Owner of MGP</u>
Name: <u>Leroy Leopold</u>		<u>100% Owner of B&L</u>

GENERAL PARTNER

Name: Heatherwilde Estates Development Type: For Profit Non-Profit Municipal Other
 Address: 5839 Sandhurst, Suite B City: Dallas State: TX
 Zip: 75206 Contact: Bobby Leopold Phone: (214) 232-5445 Fax: (214) 987-9294

PROPERTY LOCATION

Location: 6300 Block of Old Pearsall Road QCT DDA
 City: San Antonio County: Bexar Zip: 78242

REQUEST

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
<u>\$1,140,628</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Other Requested Terms: <u>Annual ten-year allocation of low-income housing tax credits</u>			
Proposed Use of Funds: <u>New Construction</u> Set-Aside: <input checked="" type="checkbox"/> General <input type="checkbox"/> Rural <input type="checkbox"/> Non-Profit			

SITE DESCRIPTION

Size: 15 acres 653,400 square feet Zoning/ Permitted Uses: I-1/Light Industrial*
 Flood Zone Designation: Zone X Status of Off-Sites: Partially Improved

* Application for a zoning change to MF-25/Multifamily has been accepted and a tentative Zoning Commission public hearing was to be held on February 19, 2002

PROPOSAL and DEVELOPMENT PLAN DESCRIPTION

Description: Heatherwilde Estates is a proposed new construction development of 176 units of mixed income housing located in southwest San Antonio. The development is comprised of ten residential buildings as follows:

- (6) Building Type A with twelve two-bedroom units and eight three-bedroom units;
- (1) Building Type B with twenty-four two-bedroom units;
- (1) Building Type C with fifteen two-bedroom units and one three-bedroom units;
- (1) Building Type D with eight four-bedroom units; and
- (1) Building Type E with three three-bedroom units and five four-bedroom units.

Based on the site plan the apartment buildings are distributed evenly throughout the site separated by parking lots, with the community building and swimming pool located near the entrance to the site. The 6,000-square foot community building plan includes the management office, an activity center, business center, restrooms, and laundry facilities.

Supportive Services: The Applicant has contracted with Housing Services of Texas to provide the following supportive services to tenants: after school program in conjunction with local schools, adult education programs, health screening and immunizations, family counseling/domestic crisis intervention, computer education, emergency assistance and relief, community outreach programs, vocational guidance, social/recreational activities and state workforce development and welfare program assistance. These services will be provided at no cost to tenants. The contract requires the Applicant to provide, furnish, and maintain facilities in the community building for provision of the services. The Applicant has agreed to pay \$1,500 per month for these support services. *= \$8.50/mo per apt.*

Schedule: The Applicant anticipates construction to begin in March of 2003, to be completed in March of 2004, to be placed in service in June of 2004, and to be substantially leased-up in May of 2004.

POPULATIONS TARGETED

Income Set-Aside: The Applicant has elected the 40% at 60% or less of area median gross income (AMGI) set-aside. One-hundred and forty of the units (80% of the total) will be reserved for low-income tenants. Twenty-eight of the units (16%) will be reserved for households earning 30% or less of AMGI, 56 units (32%) will be reserved for households earning 40% or less of AMGI, 56 of the units (32%) will be reserved for households earning 50% or less of AMGI and the remaining 36 units will be offered at market rents.

Special Needs Set-Asides: Thirteen units (7%) will be handicapped-accessible.

Compliance Period Extension: The Applicant has elected to extend the compliance period an additional 25 years.

MARKET HIGHLIGHTS

A market feasibility study dated February 27, 2002 was prepared by Butler • Burgher, LLC and highlighted the following findings:

Definition of Submarket: "The subject property is located in the S1 submarket. The S1 submarket, as delineated by SAAA essentially represents the area between US 90 and IH 35 extending southwest from downtown San Antonio. This submarket is the one of the largest geographic submarkets but on of the smallest in terms of total inventory." (p. 28)

ANNUAL INCOME-ELIGIBLE SUBMARKET DEMAND SUMMARY				
Type of Demand	Market Analyst		Underwriter	
	Units of Demand	% of Total Demand	Units of Demand	% of Total Demand
Household Growth	336*	33%	102	1%
Resident Turnover	0	0%	6,632	97%
Other Sources: 10 yrs pent-up demand	670	67%	112	2%
TOTAL ANNUAL DEMAND	1,006	100%	6,846	100%

Ref: p. 51

*2 years growth

Capture Rate: The Market Analyst concluded a concentration capture rate of 24.7% based on the demand of 1,006 and 108 additional new unstabilized units in the submarket. The Underwriter calculated a concentration capture rate of 5% based upon a revised supply of unstabilized comparable affordable units of 320 (all of Hunters Glen's 144 units plus all 176 in the subject) divided by a revised demand of 6,846.

Market Rent Comparables: The market analyst surveyed eight comparable apartment projects totaling 1,875 units in the area though most of the comparables came from just north of the market area. (p. 61)

RENT ANALYSIS (net tenant-paid rents)					
Unit Type (% AMI)	Proposed	Program Max	Differential	Market	Differential
2-Bedroom (30%)	\$264	\$264	\$0	\$650	-\$386
2-Bedroom (40%)	\$369	\$369	\$0	\$650	-\$281
2-Bedroom (50%)	\$473	\$473	\$0	\$650	-\$177
2-Bedroom (MR)	\$606	N/A	N/A	\$650	-\$44
3-Bedroom (30%)	\$305	\$305	\$0	\$725	-\$420
3-Bedroom (40%)	\$425	\$425	\$0	\$725	-\$300
3-Bedroom (50%)	\$545	\$545	\$0	\$725	-\$180
3-Bedroom (MR)	\$699	N/A	N/A	\$725	-\$26
4-Bedroom (30%)	\$329	\$330	-\$1	\$752	-\$423
4-Bedroom (40%)	\$463	\$464	-\$1	\$752	-\$289
4-Bedroom (50%)	\$597	\$598	-\$1	\$752	-\$155
4-Bedroom (MR)	\$768	N/A	N/A	\$752	+\$16

(NOTE: Differentials are amount of difference between proposed rents and program limits and average market rents, e.g., proposed rent = \$500, program max = \$600, differential = -\$100)

While the Market Analyst offered the market rents listed as acceptable rents it would appear that they were driven by the Applicant's projected rents. Moreover the three-bedroom average rent listed in the Analyst's report is \$762 or \$10 higher than their four-bedroom rent conclusion. The Market Analyst offered no comparable four-bedroom units but since the market rent proposed by the Applicant for the four-bedroom unit is so close to the three-bedroom rent average, it is likely to be achievable.

Submarket Vacancy Rates: "Occupancy in the S1 submarket increased steadily from 86% in 1997 to 96.3% in 2000. Like the overall market, occupancies in the subject's submarket decreased slightly in 2001 but still remained above the market as a whole." (p. 28)

Absorption Projections: "The developer has projected a 7-month absorption period for the subject based on an average absorption rate of 20-25 units/month. Absorption of affordable units has been strong in new projects in the subject's local market." (p. 52)

Known Planned Development: "Hunter's Glen a new mixed rate LIHTC property located just east of the subject will be completed and begin lease-up within the next several months, however, management has not yet established final rental rates for this property and would not divulge their preliminary rate structure." (p. 60)

The Underwriter found the market study provided sufficient information on which to base a funding recommendation.

SITE and NEIGHBORHOOD CHARACTERISTICS

Location: The subject property is located in southwest San Antonio bounded by US 90 on the north and IH 410 on the west, and IH 35 on the south and east in Bexar County. The site is an irregularly-shaped parcel located approximately ten miles from the central business district. The site is located along the east side of Old Pearshall Road, approximately 1,000 feet northeast of the Old Pearshall road/IH 410 interchange.

Population: The estimated 2002 population of the market area "S1" as described earlier is 220,310 and is expected to increase by 5% to approximately 231,515 by 2007. Within the primary market area there were estimated to be 60,593 households in 2002. (p. Ex 7)

Adjacent Land Uses: The area immediately surrounding the subject tract is rapidly developing with a mix of retail uses. Adjacent land uses include:

- **North:** Vacant land zoned commercial
- **South:** Proposed 145,000 SF retail center and retail pad sites
- **East:** BBQ Restaurant and several retail pad site developments
- **West:** Vacant land zoned commercial

Site Access: Access to the property is from the northeast or southwest along Old Pearshall Road. The development is to have one main entry. Access to Interstate Highway 410 is approximately 1,000 feet southwest, which provides connections to all other major roads serving the San Antonio area.

Public Transportation: Public transportation to the area is provided by VIA, San Antonio's public transportation.

Shopping & Services: Retail support services are located along Old Pearshall Road between the subject and Kelly AFB. In addition, although support services are currently somewhat limited in the area immediately surrounding subject property and areas to the southwest of IH 410, it appears the general area immediately surrounding the subject is rapidly developing supportive services in anticipation of continued growth in this area over the foreseeable future.

Adverse Site Characteristics: The site is currently zoned LI/Light Industrial. Application for a zoning change to MF-25/Multifamily has been accepted and a tentative Zoning Commission public hearing was to be held on February 19, 2002. Receipt, review and acceptance of documentation evidencing approval of the zoning change is a condition of this report.

Site Inspection Findings: TDHCA staff performed a site inspection on May 16, 2002 and found the location to be acceptable for the proposed development.

HIGHLIGHTS OF SOILS & HAZARDOUS MATERIALS REPORT(S)

A Phase I Environmental Site Assessment report dated February 26, 2002 was prepared by Butler Burgher, Inc. and contained the following findings and recommendations:

Findings:

- Based on existing conditions observed at the Subject property on the day of inspection, there was no evidence of recognized environmental conditions, as defined in ASTM 1527-00 Standard Practice for Environmental site Assessments;
- The results of the historical research and environmental records review indicate that the off-site facilities or sites within the radii suggested in ASTM 1527-00 that the off-site facilities or sites within the radii suggested in ASTM 1527-00 Standard Practice for Environmental site Assessments listed by TNRCC or the EPA pose a low risk of impact to the Subject property; and
- Butler Burgher's site reconnaissance did not identify adjacent or off-site recognized environmental conditions in the immediate vicinity of the Subject property.

Recommendations: Based on the above findings and conclusions, Butler Burgher does not recommend further environmental investigation of the Subject Property be undertaken at this time.

OPERATING PROFORMA ANALYSIS

Income: The 2002 rent limits were used by the Applicant in setting the rents. Estimates of secondary income and vacancy and collection losses are also in line with TDHCA underwriting guidelines.

Expenses: The Applicant's total expense estimate of \$2,762 per unit is 8% less than the TDHCA database-derived estimate of \$2,988 per unit for comparably-sized developments. The Applicant's budget shows several line item estimates that also deviate significantly when compared to the database averages, particularly general and administrative (\$22.9K lower), management (\$9.4K lower), payroll (\$97K lower), repairs and maintenance (\$7.5K lower), utilities (\$87.6K higher), water, sewer, and trash (\$14.6K higher) and insurance (\$5K lower). The Applicant did not include property taxes as an expense because the controlling member of the general partner is the county housing authority. The Underwriter contacted the Bexar County Appraisal District on June 10, 2002 to ascertain the potential for such an exemption. Mr. Frank Timmeran from that office indicated that the entity structure as proposed could be eligible for an exemption so long as the for profit partners do not participate in the profits of the property and that the city's public housing authority has been successful in obtaining such an exemption in the past. There is a high likelihood that the housing authority will also be able to qualify for a property tax exemption; therefore, property tax expense was not included in the Underwriter's total operating expense estimate. However, receipt, review and

TEXAS DEPARTMENT OF HOUSING and COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS

acceptance of conclusive written documentation evidencing the development's property tax exemption is a condition of this report.

Conclusion: The Applicant's total estimated operating expense is inconsistent with the Underwriter's expectations and the Applicant's net operating income (NOI) is not within 5% of the Underwriter's estimate. Therefore, the Underwriter's NOI will be used to evaluate debt service capacity. Due primarily to the difference in operating expenses, the Underwriter's estimated debt coverage ratio (DCR) of 1.05 is slightly less than the program minimum standard of 1.10. Therefore, the maximum debt service for this project should be limited to \$369,420.

CONSTRUCTION COST ESTIMATE EVALUATION

Land Value: The Applicant significantly overstated the site acquisition cost by using a price of \$662,500. The original sale from Mohammed Al Rafati to Southwest Housing Development, Inc. for \$412,000 was on December 27, 2001, with an assignment the next day to Heatherwilde Estates Housing, L.P. The assignment indicates that Heatherwilde Estates Housing, L.P. will be responsible for any closing costs incurred by Southwest Housing Development of up to \$250,000 for a total acquisition cost to the Applicant of \$662,500. Because evidence of closing costs of \$250,000 is not currently available, the Underwriter has included only the original sales price of \$412,000 in the TDHCA total development cost estimate.

Sitework Cost: The Applicant's claimed sitework costs of \$6,500 per unit are considered reasonable compared to historical sitework costs for multifamily projects.

Direct Construction Cost: The Applicant's costs are more than 5% different than the Underwriter's Marshall & Swift Residential Cost Handbook-derived estimate after all of the Applicant's additional justifications were considered. This would suggest that the Applicant's direct construction costs are overstated.

Fees: The Applicant's contractor's fees for general requirements, general and administrative expenses, and profit the maximums allowed by TDHCA guidelines based on their own costs by \$8,008. Similarly the developer fees exceed the 15% TDHCA limit by \$1,201. These excesses were reduced from eligible basis but were only exacerbated when compared to the Underwriter's lower direct costs.

Conclusion: Due to the Applicant's higher direct construction cost and the subsequently overstated developer's and contractor's fees compared to the Underwriter's estimates, the Applicant's total development cost is more than 5% higher than the Underwriter's costs. Therefore, the Underwriter's cost estimate is used to calculate eligible basis and determine the LIHTC allocation. As a result, an eligible basis of \$12,243,525 is used to determine a credit allocation of \$1,068,403 from this method. This is \$72,225 (6%) less than requested.

FINANCING STRUCTURE ANALYSIS

The Applicant intends to finance the development with five types of financing from four sources: a conventional interim to permanent loan, private loan, syndicated LIHTC equity, and deferred developer's fees.

Conventional Interim to Permanent Loan: There is a commitment for interim to permanent financing through American Mortgage Acceptance Company in the amount of up to \$7,400,000 during the interim period and \$4,399,000 at conversion to permanent. The commitment letter indicated a term of 24 months for the construction portion and 18 years for the permanent at a fixed interest rate. The interest rate will be 285 basis points over the ten-year U.S. Treasury rate. The Underwriter has used a calculated rate of 8.0% which is the maximum Underwriting rate for this application cycle.

Other Permanent Financing: Housing Services of Texas, Inc. 99.99% owner of the General Partner, will also provide \$250,000 in funds at a rate of interest set by the AFR (Applicable Federal Rate). All interest and principal payments will be accrued and payable at the final maturity of the loan term, which is 18 years. This loan is conditioned upon a set-aside of 28 units with rents restricted to those affordable at the 30% of AMGI level. This development is structured to meet this requirement and appears to be capable to repaying this loan.

LIHTC Syndication: JER Hudson Housing Capital has offered terms for syndication of the tax credits. The commitment letter shows net proceeds are anticipated to be \$9,122,850 based on a syndication factor of 80%. The funds would be disbursed in a four-phased pay-in schedule:

1. 75% upon admission and through construction;
2. 12.5% upon completion of construction;
3. 6.25% upon final closing of the permanent mortgage loan;
4. 6.25% upon issuance of 8609s.

Deferred Developer's Fees: The Applicant's proposed deferred developer's fees of \$499,017 amount to 29% of the total proposed fees.

Financing Conclusions: Based on the Underwriter's lower costs and estimate of eligible basis, the LIHTC allocation should not exceed \$1,068,903 annually for ten years, resulting in syndication proceeds of approximately \$8,546,369. The Underwriter's estimated debt coverage ratio (DCR) of 1.05 is less than the program minimum standard of 1.10 and, therefore, the maximum debt service for this development should be limited to \$369,420. The current financing terms result in a reduced loan amount of \$4,195,483. Based on the underwriting analysis, the Applicant's deferred developer fee will be reduced to \$218,073, which appear to be repayable from stabilize cash flow within four years. Should the Applicant's final direct construction cost exceed the cost estimate used to determine credits in this analysis, additional deferred developer's fee may be available to fund those development cost overruns. However, should the Applicant's cost mirror the budget provided in the application the recommended credit amount would result in a deferred developer fee well in excess of 50% and only marginally repayable in 15 years with no remaining capacity to repay the Housing services second lien. Thus the terms of this second lien may need to be renegotiated and/or cost control measures put in place to reduce the Applicant's proposed budget.

REVIEW OF ARCHITECTURAL DESIGN

The exterior elevations are attractive with varied rooflines and architectural elements such as stone accents. All units are of average size for market rate and LIHTC units, and have covered patios with small outdoor storage closets. Each unit has a semi-private exterior entry that is shared with another unit off an interior breezeway that is shared with two other units. The units are in two and three-story walk-up structures with mixed stone and stucco exterior finish and hipped roofs.

IDENTITIES OF INTEREST

The General Contractor is also the cost estimator, this is a common identity of interest for LIHTC-dfunded developments. The General Contractor, Affordable Housing Construction, is controlled by Brian Potashnik. The non-profit supportive services provider, Housing Services of Texas, Inc., is also providing the second lien loan to subsidize the 30% AMI units, and this non-profit is chaired by Cheryl Potashnik, wife of Brian Potashnik. The Potashniks are also listed as the managers of the LLC General Partner in that entities articles of organization. Finally, the original acquisition contract was executed by Southwest Housing Development, an entity owned by Mr. Potashnik. This contract was assigned to the General Partner by James (Bill) Fisher an employee and officer of Southwest Housing, and Mr. Fisher signed on behalf of both the Assignee and Assignor up to \$250K in additional unspecified costs to close the transaction. These costs were removed from the Underwriter's costs due to the identity of interest concerns.

APPLICANT'S/PRINCIPALS' FINANCIAL HIGHLIGHTS, BACKGROUND, and EXPERIENCE

Financial Highlights:

- The Applicant and General Partner are single-purpose entities created for the purpose of receiving assistance from TDHCA and therefore have no material financial statements.
- The 99.99% Owner of the General Partner, Housing Authority of Bexar County, submitted an unaudited financial statement as of June 30, 2001 reporting total assets of \$7.1M and consisting of \$738K in cash, \$288K in receivables, \$1.1M in stocks and securities and \$5.0M in real property. Liabilities totaled \$3.6M, resulting in a net worth of \$3.5M.
- The 0.01% Owner of the General Partner, B&L Development, Inc., submitted an unaudited financial statement as of February 28, 2002 reporting total assets of \$301K and consisting of \$1K in cash and \$300K in business interests. No liabilities were listed, resulting in a net worth of \$301K.

Background & Experience:

- The Applicant and General Partner are new entities formed for the purpose of developing the project
- B&L Development, Inc. had one LIHTC housing development approved in 2001 with 100 units.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CREDIT UNDERWRITING ANALYSIS

- The General Contractor, Affordable Housing Construction, has completed 21 affordable housing developments totaling 3,804 units since 1994.

SUMMARY OF SALIENT RISKS AND ISSUES

- The Applicant's operating expenses and operating proforma are more than 5% outside of the Underwriter's verifiable ranges.
- The Applicant's development costs differ from the Underwriter's verifiable estimate by more than 5%.
- The significant financing structure changes being proposed have not been reviewed/accepted by the Applicant, lenders, and syndicators, and acceptable alternative structures may exist.

RECOMMENDATION

- RECOMMEND APPROVAL OF AN LIHTC ALLOCATION NOT TO EXCEED \$1,068,403 ANNUALLY FOR TEN YEARS, SUBJECT TO CONDITIONS.

CONDITIONS

1. Receipt, review, and acceptance of conclusive written documentation from the taxing authority evidencing the claimed tax exemption.
2. Receipt, review, and acceptance of documentation evidencing approval of rezoning to MF-25/Multifamily;
3. Receipt, review, and acceptance of evidence of permanent loan commitments resulting in a total annual debt service of not more than \$369,420. Should the terms of the loans or syndication change the recommendations and conditions in this report should be re-evaluated.

Underwriter:

Carl Hoover

Date: June 11, 2002

Credit Underwriting Supervisor:

Lisa Vecchiotti

Date: June 11, 2002

Director of Credit Underwriting:

Tom Gouris

Date: June 11, 2002



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Vidal Gonzalez
Narberto Salinas

July 12, 2002

The Honorable Jose Menendez
Texas House of Representatives -- District 124
7121 US HWY 90W, Suite 240
San Antonio, TX 78227

Dear Representative Menendez:

Thank you for your letter dated June 5, 2002, which details your questions and concerns regarding the Low Income Housing Tax Credit Program (LIHTC). In the following paragraphs, I have addressed your concerns regarding the underwriting process currently being used by the Texas Department of Housing and Community Affairs (TDHCA) to evaluate projects in the LIHTC program.

I. Property Tax Exemptions

In accordance with Section 392.005 of the Texas Local Government Code, local Public Housing Authorities (PHAs) receive an exemption from property taxes for any property they own outright. However, unlike the CHDO exemption passed by the legislature last year (HB 3383), PHAs do not have a right to an exemption if they are only a part of the partnership with a for-profit entity. When such an exemption is claimed, however, Department staff will review the claim and determine if the claim is justified via documentation of acceptance by the local taxing jurisdiction. In evaluating the transactions in Bexar County, our chief underwriter spoke with the County Assessor's office and received confirmation that an exemption for such an entity would be allowed and has been allowed in the past for other PHA partnerships as long as the for-profit entities of the partnership do not participate in the profits of the operation of the property. In both Bexar County cases evaluated by our underwriting staff this year, the tax exemption appears to be justified based on information received from the County Assessor's office.

Without the property tax exemption it is likely that the property would not be capable of servicing as much debt and therefore the amount of developer fee deferred would increase or a soft source of financing would have to be provided. With regard to the two properties that will request a PHA-derived property tax exemption (#02075 & #02086), both would be projected to exceed 50% of their

developer fee needed to be deferred if the property tax exemption is not granted. Moreover, both developments would be projected to no longer be feasible without the exemption.

II. Unit Mix Selections

Financial feasibility is of paramount concern for the Department as well. Underwriting staff reviews the market study of each of the proposed developments and reduces the market rent and/or the maximum tax credit rent when the evidence in the market study and/or the market studies and operating performance of other developments indicate it is warranted. The Department is aware of the financial feasibility concerns with mixing the lowest income tenant rents with market rent tenants. It is important to note, however, that such a mix can and has worked in many cases.

III. Financing of 30% AMI or Extremely Low Income Units

The Department's governing rules in the QAP define the documentation that an applicant must provide for additional subsidy for extremely low income units. The Texas Administrative Code Section 49.7 (f)(7)(C)(i) states the following: "To qualify for points for Units set aside at or below 30% of AMGI, an Applicant must provide evidence of a commitment of funds that specifies the amount of funds committed, terms of the commitment and the number of Units targeted at the AMGI level." The QAP does not require that this subsidy be only from non-profits passing through HOME or CDBG funds. There are also no requirements in the QAP that the subsidy provider be in the continuous business of making such loans nor are they required to make loans available to any other applicant. The requirement for an additional subsidy to support extremely low income units was included as a result of input provided during the hearings on the QAP; SB 322 did not address this issue. Applying a stricter standard that includes that the support provider be in the continuous business of providing such loans to any applicant would also discourage local financial support for these developments and disadvantage an application that is able to leverage local non-profit financial support that helps address a specific local need.

Our underwriting staff will review the commitments provided for such financing and assess their feasibility with regard to capacity in assessing the risk associated with the continued feasibility of the project if these funds do not materialize. As you might imagine, it is very difficult to prove up that a contribution was or was not being passed through from a development team member without significant oversight of the non-profit's bank records and the records of its donors and a high level of staff resources to investigate such issues. In general, the larger the amount of funds associated with this type of financing, the more dependent the development will be on these funds and the higher the risk will be if they do not materialize. In some cases, a few extremely low income units can be feasible with very limited or no additional subsidy and thus the risk to the overall feasibility of the development if the subsidy does not

materialize is low. In fact in the case of such an economically strong development, an excessive subsidy layering concern could arise if the applicant is forced to use limited HOME, CDBG or HTF funds when they are not needed only in order to gain access to the Low Income Housing Tax Credit. The effective use of the Department's limited resources extends to each development and our underwriting attempts to ensure that their government and non-profit resources are used effectively as well.

IV. Second Phases

The Department's QAP addresses second phase developments in two ways. First, there is the concentration policy that restricts the number of units that have not yet been absorbed in any particular neighborhood or submarket. Second, there is a prohibition on the number of units in a particular development if, when there is an adjacent Low Income Housing Tax Credit development, the applicant has not produced evidence of the need for additional units. The adjacent development must have been at least 90% leased for the previous six months in this instance if the total units of both the subject and the adjacent development exceed 250 units. The QAP is also heavily influenced by regional allocation requirements established by the legislature (Section 2306.111 of the Texas Government Code) to provide for geographic dispersion state wide. Prior subjective evaluation factors regarding geographic dispersion were removed from the QAP this year in order to comply with SB 322 and to ensure a more equitable process focusing on points and reducing the perception of subjectivity.

V. Zoning

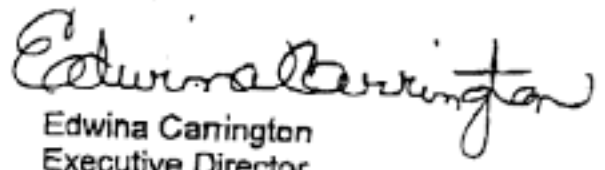
The QAP and SB 322 spell out that a property must either have proper zoning at application or the applicant must provide evidence that the rezoning process has been initiated. Local government has the opportunity to indicate opposition to a proposed development without having to wait for a zoning request. In the past, letters of opposition from local government would have been subjectively evaluated and may have been used by staff to terminate an application or prioritize a lower scoring application with no opposition over a higher scoring application with opposition. In complying with SB 322, this discretion is no longer available since the score is the major determining factor in the recommendations made to our Board. Should the Board choose to use discretionary factors in making their award of tax credit allocations they are required by SB 322 to document such factors and the reasons that any decisions conflict with the recommendations of department staff based on scores.

The risk of the zoning not being achieved can be taken into account during the underwriting process but it would likely take an outright statement from the local zoning authority that rezoning will not be approved for a development to not be recommended due to underwriting infeasibility.

I hope that this answers the questions you raised. Please know that TDHCA is dedicated to making the scoring and underwriting process of the Low Income Housing Tax Credit Program as thorough and transparent as possible.

If you should have any additional questions, please contact me or my chief underwriter Tom Gouris at (512) 475-1470.

Sincerely,


Edwina Carrington
Executive Director

EC/ml



CITY OF SAN ANTONIO

ENRIQUE "KIKE" MARTIN
COUNCIL MEMBER
DISTRICT 4

July 19, 2002

Edwina Carrington
Executive Director
Texas Department of
Housing and Community Affairs
P.O. Box 13941
Austin, Tx. 78711-3941

Dear Ms. Carrington,

Early this year my office sent correspondence to you regarding Heatherwilde Estates Housing, L.P. project number 02075. Although there is a great need for affordable housing in San Antonio, I at this time cannot support an increase in low-income housing in this area. There currently is a tremendous amount of low-income housing and absentee landlords in this area and residents have expressed to my office that they are against any new development that may further increase this type of housing.

In order for this project to be implemented a zoning change from I-1/Light Industrial to MF-25/Multifamily must be granted. All zoning requests must receive City Council approval and at this time two neighborhood associations have voiced their opposition, P.A.C.E. and Southwest Community Association. As the representative of this area, I am ready to deny the applicants' request. I wish to have this noted on the Heatherwilde application and at the board meeting to be held July 29, 2002.

If you should have any further questions, please feel free to contact my office, 207-7281.

Respectfully,

Enrique "Kike" Martin
Councilmember, District 4

CITY HALL MAILING ADDRESS:
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 207-7281
FAX (210) 207-7027
EMAIL: edistrict4@ci.san.tx.us

HUNT LANE FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 678-0044
FAX (210) 678-0099

SOUTHPARK MALL FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 922-3874
FAX (210) 922-3907



CITY OF SAN ANTONIO

ENRIQUE "KÍKE" MARTÍNEZ
COUNCIL MEMBER
DISTRICT 4

July 20, 2002

Sylvia S. Romo
Tax Assessor Collector
P.O. Box 839950
San Antonio, Tx. 78283

Dear Ms. Romo,

In late June, the Texas Department of Housing and Community Affairs released its list of recommended developments for housing credit awards to its Board.

The top scoring development project #02075 is Heald Herwilde Estates. Its underwriting report is attached for your review. Please note that on page 9 of the report one condition of funding is listed as "receipt, review and acceptance of conclusive written documentation from the taxing authority evidencing the claimed tax exemption."

The underwriter at TDHCA states that he "contacted the Bexar County Appraisal District on June 10, 2002 to ascertain the potential for such an exemption. Mr. Frank Timmeran from that office indicated the structure COULD be eligible for an exemption, "so long as the for profit partners do not participate in the profits of the property and that the city's public housing authority has been successful in obtaining such an exemption in the past."

We understand the intent of the statutory exemptions is to aid Public Housing Authorities who are quasi-governmental and do not make a profit. Clearly there was no intent to benefit for profit companies in any way with this legislation, especially at the expense of school taxes and our educational system.

Please also refer to page one that discloses the general partner is a joint venture between the Bexar County PHA and B&L Development, a for-profit developer from Dallas. We find it difficult to believe that a for-profit co-general partner will not benefit from the profits of the transaction. As you are aware, these limited partnership transactions are complex with numerous levels at which profit can be distributed. Cash flow can be utilized to borrow more debt or paid out in the form of fees to affiliated parties in lieu of standard distributions.

Also, please look at the identities of interest section of page 8. It is both complex and disturbing, as well as illustrative of how monies move through the transaction, among related parties.

Please let us know how this transaction qualifies for a tax exemption with the for-profit co-general partner. If so, how would we prove that there would be no profits

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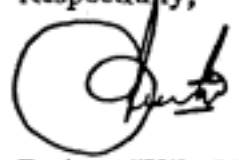
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FAX (210) 922-3907

distributed to the for-profit entity through any layers of the transaction, either directly or indirectly?

Thank you for your prompt assistance in this matter as the TDHCA board meets in less than two weeks.

If you have any questions please feel free to call my office at 207-7281.

Respectfully,

A handwritten signature in black ink, appearing to read 'Enrique Martin', written over a large, stylized circular mark.

Enrique "Kike" Martin
Councilmember, District 4

P R O C E E D I N G S

1
2 CHAIRMAN JONES: I call to order the board
3 meeting of the Texas Department of Housing and Community
4 Affairs for July 29, 2002. And our first order of
5 business will be the determination of the quorum. Ms.
6 Anderson?

7 MS. ANDERSON: Here.

8 CHAIRMAN JONES: Mr. Bogany is absent. Mr.
9 Conine?

10 MR. CONINE: Here.

11 CHAIRMAN JONES: Mr. Gonzalez?

12 MR. GONZALEZ: Here.

13 CHAIRMAN JONES: Mayor Salinas?

14 MR. SALINAS: Here.

15 CHAIRMAN JONES: And Mr. Jones is here. We do
16 have a quorum. Our next order of business will be to ask
17 for public comment. If you haven't already done so, we
18 would request that you fill out a witness affirmation form
19 and give it to Delores. And she is right in here -- over
20 here on the right side of the stage.

21 You have, pursuant to our rules, the
22 opportunity to either talk now, if you would care to do
23 so. Or you will have an opportunity to talk at the time
24 the agenda item is presented by the staff members.
25 And can everybody hear? I think they can. Good.

1 some time, and have seen a major decline in the
2 neighborhood over the years. We have seen major retail
3 establishments close down over the years and needless to
4 say, we are concerned.

5 "It is time for our part of town to be
6 revitalized. And we feel that this development will
7 enhance the area and be a good start. Please let this
8 letter and the signatures below represent our expression
9 of support for the Madison Point Apartment development."

10 Again, there are 30 signatures with the
11 addresses attached to this letter. We did have several
12 meetings and correspondence with the local homeowners in
13 this area to ensure that they were kept up to date on what
14 our proposed development was. We answered their
15 questions, and we feel like we've done a good job of
16 giving information to them. Thank you.

17 CHAIRMAN JONES: Thank you, sir.

18 Any questions? All right.

19 Mr. John Delgado? Mr. Delgado?

20 MR. DELGADO: Good afternoon, Chairman, members
21 of the board. My name is John Delgado. I'm a senior
22 assistant to City Councilman Enrique Martin, the City of
23 San Antonio, city council district 4.

24 We are in opposition to the Heatherwilde
25 Estates, project number 02075. We contest that this

1 project has serious flaws. Its proceedings have not been
2 consistent with our proceedings in city council district
3 4.

4 They have not contacted three neighborhood
5 associations. Those neighborhood associations are the
6 Southwest Community Association, the Pace Neighborhood
7 Association, or the Indian Creek/Hidden Cove Neighborhood
8 Associations.

9 An application was submitted for rezoning
10 January 2002. As of today, that zoning request has not
11 been heard by the zoning commission. It is our
12 contestance [sic] that once this request does come before
13 the City of San Antonio Zoning Commission, that it be
14 denied on the basis that they have not worked with the
15 neighborhood associations.

16 We are prepared at the city council to deny
17 this request as well. And lastly, we do support projects
18 in Region 8A. We do support Villas at Costa Verde. And
19 we do support in the way they have managed their request.

20 That project has worked with the developers.

21 Excuse me, the developers have worked with
22 those neighborhood associations. They have worked with
23 that city councilman for that area. They have worked with
24 the City of San Antonio, and they have worked with other
25 residents that do not fall within those boundaries.

1 So at this time, we strongly recommend that you
2 pull this project, Heatherwilde Estates. Heatherwilde
3 Estates, project number 02075. Thank you.

4 CHAIRMAN JONES: Okay. All right. I think we
5 had another person that wanted so speak. Mr. Johnson?
6 No? Okay.

7 MR. CONINE: The Heatherwilde Estates, or
8 something --

9 CHAIRMAN JONES: All right.

10 MR. CONINE: -- it's been recommended, he said,
11 before.

12 CHAIRMAN JONES: That seems to be everybody
13 that filled out a witness affirmation.

14 MR. SALINAS: On this last one, are you going
15 to pull it, or --

16 MS. CARRINGTON: No, sir. We are recommending
17 it --

18 MR. SALINAS: It's getting so it doesn't
19 have --

20 MS. CARRINGTON: Tom, do you want to address
21 that? Heatherwilde Estates?

22 MR. CONINE: Heatherwilde Estates?

23 MS. CARRINGTON: It's our highest-scoring
24 transaction in Region 8A in San Antonio.

25 MR. GOURIS: And it's subject to rezoning.

1 MS. CARRINGTON: Well, there were several we
2 talked about today.

3 MR. SALINAS: Subject to rezoning and --

4 MR. GOURIS: There are several that are subject
5 to rezoning. Yes. It's allowed in the QAP, to not have
6 the proper zoning, as long as they have applied for
7 rezoning.

8 MR. SALINAS: Okay. Thank you.

9 MR. DELGADO: Again, they have applied, but
10 they will not receive their rezoning. They are currently
11 industrial. I want to -- they will not receive the
12 multifamily -25 [phonetic] designation.

13 MR. SALINAS: So if you don't give them that,
14 then --

15 MR. DELGADO: The project is essentially dead.
16 And that's why we ask you at this moment to go ahead and
17 pull this request and fund maybe another project, instead
18 of continuing to fund this project, and go into the
19 procedure of reallocating this money at a later point in
20 time.

21 CHAIRMAN JONES: Thank you, sir.

22 All right. Yes, sir. Somebody else filled
23 out --

24 MR. CHAPA: Can I speak on behalf of the
25 project, sir? I'm the chairman of the sponsoring.

1 organization.

2 CHAIRMAN JONES: Yes, sir.

3 Go ahead. You'll be our last speaker, then.
4 And then I'd ask that you fill out a witness affirmation
5 form.

6 MR. CHAPA: I represent the Bexar County
7 Housing Authority, who is the sponsor. We are appointed
8 by the commissioners of the entire Bexar County. The
9 commissioners work very closely with the city council on
10 all of these projects. They are appraised of what's going
11 on.

12 Our representatives have talked with Hidden
13 Cove and Indian Creek Neighborhood Associations. And they
14 seem to be in agreement that this is needed -- much needed
15 out there. There has been less than 4 percent housing
16 built out there within the last ten years. It's very much
17 needed.

18 The application -- formal application for
19 zoning has been submitted. Nobody can stand here and
20 speak for ten zoning commissioners and say it will not be
21 approved, you know. I mean, he can say that maybe his
22 representative might be against it. But that
23 representative on the zoning commission is not here.

24 We have talked to him, and they said they have
25 no reservations, or they're not against this project. The

1 only thing they said is that we meet with those
2 neighborhood organizations, of which we have approached
3 them, or we have talked to them. And they have no -- from
4 our standpoint, they have no aversion towards this
5 project.

6 It's one of the highest-scoring projects. It
7 is the highest-scoring project in the region. And we urge
8 you to approve this project. Thank you very much, sir.

9 CHAIRMAN JONES: Thank you, sir. All right.
10 At this time, I believe we have called on everybody that's
11 filled out a witness affirmation form. And if you, sir,
12 would fill out yours, we'd appreciate it. And we will end
13 public comment.

14 We will then turn our attention to, I believe
15 it's Item number 4 on the agenda.

16 Ms. Carrington, does staff have its
17 recommendation?

18 MR. CONINE: Can we take a five -- ten-minute
19 break?

20 CHAIRMAN JONES: Certainly.

21 MS. ANDERSON: Yes.

22 CHAIRMAN JONES: Okay. Yes. We will take a
23 five-minute break. Thank you.

24 (Whereupon, a short recess was taken.)

25 CHAIRMAN JONES: I call the meeting back to



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Shadrick Bogany
C. Kent Conine
Vidal Gonzalez
Norberto Salinas

2002 LOW INCOME HOUSING TAX CREDIT COMMITMENT NOTICE Issued to the Development Owner: Heatherwilde Estates Housing, L.P.

Contact Person: Leroy Leopold
Contact Address: 5839 Sandhurst, Ste. B
Dallas, TX 75206
Contact Phone/Fax: (214) 232-5445 / (214) 987-9294

Development Name and TDHCA #: Heatherwilde Estates, TDHCA#02075
Development Address: 6300 Block of Old Pearsall Road
San Antonio, TX 78242
Located in Bexar County in Region 8A

Set Aside: General

Annual Housing Credit Allocation Commitment Amount: \$1,068,403

Issuance Date of Commitment Notice: August 15, 2002

Effective Date of Commitment Notice: July 29, 2002

Expiration Date of Commitment Notice: September 12, 2002

The Texas Department of Housing and Community Affairs (the "Department") has received from the applicant named above ("Development Owner") an application for an allocation by the Department, of low income housing tax credits for the housing development described above ("Development"), which allocation will permit the Development Owner to claim low income housing tax credits under Section 42 of the Internal Revenue Code as amended (the "Code").

The Department has approved the Development Owner's low income housing tax credit application, and by this Commitment Notice confirms the Department's commitment to make a housing credit allocation to the Development Owner in the Housing Credit Allocation Commitment Amount set forth above, subject to full compliance by the Development Owner with the Department's Low Income Housing Tax Credit Rules, Chapter 49 of Title 10 of the Texas Administrative Code, (the "Rules") as amended, and any other conditions set forth in Exhibit "A" of this Commitment Notice and incorporated by reference. This Commitment Notice is binding on all successors.

Heatherwide Estates, TDHCA#02075

The Housing Credit Allocation Commitment Amount is the maximum aggregate of the "housing credit allocation" within the meaning of Section 49.11(a) of the Rules that will be allocated to the building or buildings comprising the Development. If the Development contains more than one building, the Housing Credit Allocation Commitment Amount must be allocated among such buildings as required by the Rules and applicable federal income tax law. The Development Owner will be required to determine the "qualified basis" and "applicable percentage" (calculated in accordance with the requirements of the Rules) for each building in the Development (subject to the maximum set by the Department) and to seek approval from the Department of the desired allocation of the Housing Credit Allocation Commitment Amount among such buildings, as each such building is placed in service.

This Commitment Notice does not represent the making of a housing credit allocation for the Development or any building therein. Such allocations will be made only through the mailing or delivery to the Development Owner of the appropriate Internal Revenue Service forms containing certification of such housing credit allocation, in each case, upon fulfillment of all remaining conditions of the Rules and Exhibit "A".

- If this box is checked, this Commitment Notice contemplates the making of an allocation pursuant to the Department's set-aside of credit authority for "qualified nonprofit organizations" within the meaning of the Rules and the Code, and subject to the terms and conditions set forth therein.

If all conditions precedent to the making of a housing credit allocation for the Development are not met on or before 5:00 p.m. on the stated expiration date set forth above, the commitment made by this letter shall terminate automatically. The Department reserves the right to revoke this Commitment Notice if the Department discovers that the Development Owner has intentionally provided erroneous or fraudulent information to the Department in connection with the application for low income housing tax credits.

1. Failure to submit the documentation described below by the specified submission dates may result in the termination of your application for low income housing tax credits:

A. The original, signed Commitment Notice and a cashiers check for the Commitment Fee, in accordance with §49.13(e) of the Rules, must be submitted to the Department no later than 5:00 p.m. on September 12, 2002 which is the expiration date of this notice.

Commitment Fee: \$42,736

B. For only those developments being placed in service and requesting IRS Forms 8609 in 2002, all documents pursuant to the Cost Certification Manual and a Compliance Monitoring Fee in the greater amount of \$25.00 per LIHTC unit per year or \$100 must be submitted to the Department by 5:00 p.m. on November 27, 2002.

C. Each Applicant must execute and provide to the Department IRS Forms 8821 no later than August 29, 2002. The forms must be signed and executed on behalf of the Development Owner. If any issues of recapture or non-disclosure are identified by the IRS, the Board may determine if a Carryover Allocation will be made.

D. All documents outlined in the Carryover Allocation Procedures Manual relating to the 10% test pursuant to Section 42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulation, Section 1.42-6 (carryover allocation) must be submitted by 5:00 p.m. on October 11, 2002. This means that all expenditure required to meet the 10% test must be made on or prior to October 11, 2002 and evidence of such expenditure must be submitted to the Department not later than October 11, 2002. If the Development Owner is requesting an extension of the Carryover Allocation deadline, then a written request for such an extension and a cashiers check for the \$2,500 extension request fee must be submitted to the Department not later than September 27, 2002. The extension request must clearly state the reason for such a request and the date by which the Carryover documentation will be submitted to the Department if an extension is granted.

E. In accordance with Section 49.11(d)(4) of the QAP, the Development Owner shall close the Construction Loan no later than the second Friday in June of the year after the execution of the Carryover Allocation document. Evidence of the closing must be submitted to the Department within two weeks after the closing. Evidence of such closure must be provided in the form of the LIHTC Progress Report - Construction Loan Closing and supporting documentation.

F. Evidence that the General Contractor hired by the Development Owner meets the experience criteria defined in Section 49.11(c) of the QAP must be provided in the form of the Post Application - General Contractor Certification Form and supporting documentation. Such documentation must be submitted not later than the second Friday in June of the year after the execution of the Carryover Allocation Document.

G. In accordance with Section 49.11(d)(5) of the QAP, evidence that substantial construction activities (construction beyond the foundation stage) have commenced and are continuing must be provided to the Department not later than the second Friday in November of the year after the execution of the Carryover Allocation Document. Evidence of such activities must be provided in the form of the LIHTC Progress Report - Commencement of Construction and supporting documentation.

H. This Commitment is subject to the following project specific conditions. Unless otherwise stated, the documentation required to satisfy these conditions must be submitted to the Department no later than 5:00 p.m. on October 11, 2002.

i) Receipt, review, and acceptance of conclusive written documentation from the taxing authority evidencing the claimed tax exemption.

ii) Receipt, review, and acceptance of documentation evidencing approval of rezoning to MF-25/Multifamily.

iii) Receipt, review, and acceptance of evidence of permanent loan commitments resulting in a total annual debt service of not more than \$369,420. Should the terms of the loans or syndication change the recommendations and conditions in this Commitment Notice should be re-evaluated.

iv) NA

v) NA

vi) NA

vii) NA

viii) NA

ix) NA

x) NA

Heatherwide Estates, TDHCA#02075

2. Development Owner hereby agrees and acknowledges that all conditions, restrictions and obligations in addition to those applicable under Code Section 42 which the Development Owner undertook in applying for this allocation will be incorporated in a Declaration of Land Use Restrictive Covenant or other applicable document with respect to the Development. Such Declaration of Land Use Restrictive Covenants or document will also incorporate provisions requiring compliance with the Code and with Chapter 2306, Tex. Gov. Code (the "Act"), including but not limited to requirements for: annual reporting and periodic inspections; payment of the fees, charges, and expenses of the Department in connection with its monitoring and compliance activities under the Code and the Act; management, operating, maintenance and repair standards for the Development; tenant selection and income certification; limitations on rents, charges and fees payable by tenants; Development cost controls and management selection; and a minimum thirty-year affordability period, or the period stated in the Application, whichever is greater.

David Burrell

8-15-02

David Burrell, Director of Housing Programs

Date

I (We), Development Owner, hereby agree to abide by all terms and conditions stated in this Commitment Notice, Exhibit "A," and any referenced documentation contained herein. I (We), hereby acknowledge that failure to comply with said Commitment Notice, Exhibit "A," and any referenced documentation contained herein may result in the automatic termination of this application for low income housing tax credits.

Bobby Lupold

9-10-02

Development Owner

Date

Kerry "Bobby" Lupold

Development Owner Printed Name, Title


SOUTHWEST
HOUSING
DEVELOPMENT

COMMISSIONER
PRECINCT 1
SEP 13 2002

September 12, 2002

Honorable Robert Tejada
Commissioner Precinct 1
Bexar County Courthouse
San Antonio, Texas 78205-3036

Dear Commissioner Tejada:

My name is David Marquez and I, along with my wife, Cindy, represent Southwest Housing Development. Southwest Housing Development, which had its beginnings in Dallas, has become the largest affordable multifamily and senior housing development company in the state. Cindy and I reside in San Antonio and are looking forward to helping address the housing needs in Bexar County.

Several months ago, Southwest Housing Development received word that it had the highest scoring Low Income Housing Tax Credit (LIHTC) application in the San Antonio region by the Texas Department of Housing and Community Affairs (TDHCA) and has successfully been funded.

We made a presentation to the Housing Authority of Bexar County (HABC) on the application that consists of a 176 unit development to be built at 6300 Old Pearsall Road. The Housing Authority of Bexar County has agreed to be the sponsoring agency for the tax credit application. We are keeping the housing commissioners informed on the progress of this project. Their focus on meeting the housing needs of the county is admirable.

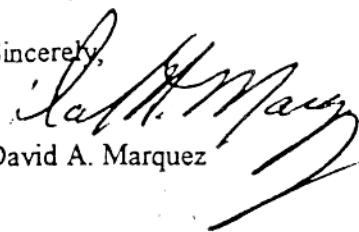
No less than 85% of the professional services and sub-contractors will be hired from the local area and we will make sure any minority businesses that would be interested in working with us to accomplish the construction of this complex gets notified through various means.

It would be our pleasure to meet with you at your convenience to discuss the progress of this venture and plans for future developments.

I may be reached at anytime at 210-978-0526 or on my cell at 281-450-9836.

Thank you in advance for this request.

Sincerely,



David A. Marquez

**Southwest Community Association
General Membership Meeting Minutes – September 23, 2002**

John Adams, President of the Association, called the meeting to order at 6:30 p.m. He then led us in the Pledge of Allegiance to the flag.

Guests in Attendance:

Ken Mercer – Candidate for State Representative District 117 (Republican)

Raul Prado – Candidate for State Representative District 117 (Democrat)

Several Individuals representing Southwest Housing Development

Ken Brown, Bobby Leopold (Managing Partner), David & Cindy Marquez (Development Coordinators),
Bill Fisher, & an attorney

Mr. Chapa – from Bexar County Housing Authority

Enrique Martin – City Councilman for District 4

John Delgado – Administrative Assistant Council District 4

Eloy Laque – Administrative Assistant Council District 4

Rick Ayala – Code Compliance Officer

Candidate Forum:

The two candidates running the positions of Texas State Representative District 117 gave brief personal introductions. The candidates were Raul Prado and Ken Mercer. The candidates addressed several questions and issues presented by the audience. The forum ended with closing remarks by each candidate.

Business Meeting:

Judy Adams, Secretary, read the August minutes. Motion to accept the minutes was made by Dale Armwood and seconded by Esteban Cruz. Motion carried by unanimous decision. Sandra Gamboa, Treasurer, reported that the fund balance was \$2,368.26. Motion to accept the treasurer's report was made by Joe Arceneaux and seconded by Esteban Cruz. Motion carried by unanimous decision.

Unfinished/Continuing Business:

Mr. Adams asked Carole Abitz to present additional information concerning the subsidized apartment complex (otherwise known as Heatherwilde Estates) proposed by Southwest Housing Development and the related zoning issues under consideration for the proposed property. Ms. Abitz asked several questions about the development, which were addressed by Mr. Ken Brown and other individuals. Following the discussion, Councilman Kike Martin indicated he would abide by the Association's decision regarding the zoning issue for the property in question. Carole Abitz made a motion which was seconded by John Adams stating, "The Southwest Community Association, whose boundaries the Heatherwilde Estates project is in, is vehemently opposed to this project and to any zoning change which would enable it." Motion carried by unanimous decision. Mr. Adams announced that we need volunteers to work on zoning issues of interest to our Association.

New Business: There was no new business.

Announcements/Comments:

Councilman Martin invited everyone to the open house of the new Multipurpose Service Center will be held on October 1 at 10 a.m. Rick Ayala, Code Compliance Officer, stated that he could be contacted about code compliance issues from 7:45 a.m. to 4:30 p.m. on his cell phone (213-4853).

John & Judy Adams provided the door prize, which was a one-day entry ticket for the Valero Texas Open Golf Tournament. Two individuals in turn won the drawing for the prize, which was then generously given to Dale Armwood.

Our next meeting is scheduled for October 28, 2002 at 6:30 p.m. at Sky Harbour Elementary School.

Motion made to adjourn meeting at 8:32 p.m. was made by Esteban Cruz and seconded by Joe Arceneaux. Motion carried by unanimous decision.

Submitted by:

Judy C. Adams, Secretary

SOUTHWEST INDEPENDENT SCHOOL DISTRICT

11914 Dragon Lane • San Antonio, Texas 78252-2647
(210) 622-4300 • Fax (210) 622-4301

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Pete Anthony, Ed. D.

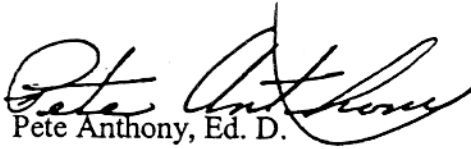
The Honorable Henry Avila
District 4
Zoning Commission, Bexar County

September 30, 2002

Dear Mr. Avila:

I am writing this letter in support of the stand by the Southwest Neighborhood Association against the building of apartments in Heatherwilde Estates, Zoning Case #Z2002-027. Increased enrollment in this area would greatly impact the Southwest School District. The elementary schools in that attendance zone are all nearing capacity at this time. Without adequate increase in tax base to support expanded enrollment, bussing of students to other campuses within the District would eliminate the "neighborhood" concept of elementary schools. In order to house the students in the teacher/student ratio acceptable to the Texas Education Agency, further study of this and other areas is necessary to prepare for future growth.

Sincerely,


Pete Anthony, Ed. D.
Superintendent of Schools

Southwest High School
McNair 6th Grade School
McAuliffe Junior High School
Scobee Junior High School
Southwest Enrichment Center

Southwest Elementary School
Sun Valley Elementary School
Indian Creek Elementary School
Bob Hope Elementary School

Sky Harbour Elementary School
Hidden Cove Elementary School
Big Country Elementary School
Elm Creek Elementary School
Kriewald Road Elementary School

An Equal Opportunity Employer



ROBERT TEJEDA
COMMISSIONER PRECINCT 1
BEXAR COUNTY COURTHOUSE
SAN ANTONIO, TEXAS 78205-3036
(210) 335-2611 - FAX (210) 335-2215

October 1, 2002

Mr. Enrique "Kike" Martin
Council Member, District 4
P.O. Box 839966
San Antonio, Texas 78283-3966


Dear Councilman Martin;

I recently spoke with you regarding my opposition to a proposed multi-family housing project in the Pearsall Road/ Loop 410 area. The developer of this project is Southwest Housing Development out of Dallas, Texas and is represented by Mr. David Marquez. This project is within the City of San Antonio jurisdiction, however, I understand they are partnering with the Housing Authority of Bexar County.

Ms. Carol Abitz represents the Southwest Community Association. The association members have some major concerns regarding this proposed development. Their primary concern is that neither the community nor the Southwest I.S.D. were contacted regarding this project. Both have concerns regarding the added burden the additional families will have on the school district population without sufficiently increasing the tax base. They have also attempted to get information on what is being proposed but they have received inaccurate information regarding this project.

I oppose this project and respectfully request that you not support what many of our mutual constituents do not favor.

Sincerely,


Robert Tejeda
Commissioner, Pct. 1

cc: Bexar County Judge, Nelson Wolff
Commissioner Paul Elizondo, Pct. 2
Commissioner Lyle Larson, Pct. 3
Commissioner Tommy Adkisson, Pct 4
Mr. Dario Chapa, Chairperson, Bexar County Housing Authority
Ms. Lupe Torres, Bexar County Housing Authority, Board Member
Texas Department of Housing and Community Affairs
Mr. Pete Anthony, Superintendent, Southwest I.S.D.
Ms. Carol Abitz, Vice-President-past President, Southwest Community Association
Henry Avila-former Councilman- Chairman, City of San Antonio Zoning Commission

SAN ANTONIO ZONING COMMISSION
OFFICIAL MINUTES
October 1, 2002

1. The Zoning Commission of the City of San Antonio met in the Council Chambers of the Municipal Plaza Building, 103 N. Main.
2. Roll Call.

PRESENT: Mehringer, Grau, Cardenas-Gamez, Kissling, McGowan, Hophan,
Sherrill, McAden, Avila, Morell, Martinez
ABSENT: None

3. Director's Report.
4. Approval of September 17, 2002 Minutes.

1:00 P.M. - Public hearings and consideration zoning cases:

5. Christine Vina, Planning Department, Briefed Commission on an ordinance amending Chapter Thirty-Five of the City Code by amending Section 35-304 pertaining to "Official Zoning Map" to establish Neighborhood Conservation District J Overlay District located along South Presa and St. Mary's Streets and to provide for a Neighborhood Conservation Plan.

6. ZONING CASE NO. Z2002027

Applicant: Mohammed Ali Rafati

Zoning Request: "C-3" R Commercial Restrictive Alcoholic Sales District to "MF-25" Multi-Family District.

Patrick Christianson, 862 W. Craig Pl., representing the owner, stated they are proposing to develop approximately 176-apartment dwelling. He further stated the amenities are perimeter fencing, access gates, lighted parking, 465 parking spaces and on site management.

FAVOR

Manuel Garza, stated he would like to submit to staff a petition with 115 signatures in favor of this development. He stated he feels this development would enhance the appearance of the neighborhood. He further stated this wooded area has been vacant for to long and it has increased vandalism and crime in the neighborhood.

Dario Chapa, 635 W. Woodlawn, Chairman of the Bexar County Housing Authority, stated they acting as sponsors of this development. He stated as sponsors they are assuring the quality and the portability of this development. He further stated their mission is to provide affordable housing. He stated this development would have a positive economic impact in this area.

October 1, 2002

John Castillo, 6010 Old Pearsall, stated he has a furniture store in the area and has been in business for approximately 5 years. He further stated he has seen the neighborhood deteriorate and feels this development would enhance the appearance of this neighborhood. He also stated this development would decrease the vandalism and crime in the neighborhood.

OPPOSE

Carole Abitz, 8903 Island View, Vice-Chair of Southwest Community Association, stated they are in opposition of this development. She stated they do not want another affordable living complex in the neighborhood. She further stated these types of complexes deteriorate the character of the neighborhood. The major of the residents in the area are tenants. This temporary-ness contributes to the instability in the community. She stated they are also concerned that this would bring increase the crime rate and vandalism.

Richard R. Whitcher, 7818 Dempsey Dr. stated has lived in the area for 35 years. He stated he is concerned that this development may increase property taxes. He further stated he is concern that this low-income housing may increase crime in the neighborhood.

REBUTTAL

Patrick Christianson, 862 W. Craig Pl., representing the owner, stated this development is designed to provide affordable housing for low-income residence. This is not Public Housing or Section 8. He further stated this complex would enhance the character of the neighborhood.

Staff stated there were 36 notices mailed out to the surrounding property owners, 8 returned in opposition and 2 returned in favor and Southwest Community Association are in opposition.

Everyone present, for and against having been heard and the results of the written notices having been received, the Chairman declared the public hearing closed.

COMMISSION ACTION

The motion was made by Commissioner Avila and seconded by Commissioner Martinez to recommend denial.

1. Property is located on 15.00 acres out of NCB 14491 at Old Pearsall Road.
2. There were 36 notices mailed, 8 returned in opposition and 2 returned in favor.
3. Staff recommends approval.

AYES: Melringer, Grau, Cardenas-Gamez, Kissling, McGowan, Hophan, Sherrill, McAden, Avila, Morell, Martinez

NAYS: None


THE MOTION CARRIED.

7. ZONING CASE NO. Z2002108 C S

Applicant: Jerry Arredondo

CITY OF SAN ANTONIO

ENRIQUE "KIKE" MARTIN
COUNCIL MEMBER
DISTRICT 4



October 1, 2002

Ms. Edwina Carrington
Executive Director
Texas Department of Housing
& Community Affairs
507 Sabine
Austin, TX 78701

Re: City of San Antonio Zoning Case No. Z2002027, Heatherwilde Estates (Old Pearsall Road)

Dear Ms. Carrington:

The City of San Antonio's Planning Department has recommended approval for the above referenced rezoning application. On Tuesday, October 1, 2002, the City of San Antonio's Zoning Commission recommended a denial for the subject zoning case. As Council Member for District 4, which is the district in which the proposed project is to be located, I have had little input into either the recommendation by the City of San Antonio's Planning Department staff or the City of San Antonio's Zoning Commission. However, it is my duty and obligation to make a motion before the City of San Antonio's City Council to either approve or deny the subject zoning case. At this time, I am working with both the applicant of the proposed project and the interested neighbors and neighborhood associations in an effort to work out a resolution to this issue. While I am a supporter of affordable housing, it is also my duty to insure that the affordable housing is both welcomed and compatible with the existing uses within my district.

It is my understanding that the subject rezoning application will be presented to the San Antonio City Council sometime in late October. That gives me approximately thirty (30) days to try to work out a resolution to this matter. It is my sincerest desire to accommodate the proposed Heatherwilde Estates project. Based upon my first hand knowledge of other projects that have been developed by the applicant, I do believe the Heatherwilde Estates project would be a welcomed asset to District 4. As stated herein, the final decision on the subject rezoning application rests with myself and my colleagues on the San Antonio City Council, and it is my intention to work out an amicable resolution for all parties concerned.

If you have any questions with regards to this matter, please do not hesitate to contact my office at (210) 207-7281.

Very truly yours,

By: 

Enrique "Kike" Martin
Council Member, District 4

CITY HALL MAILING ADDRESS:
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 207-7281
FAX (210) 207-7027
EMAIL: district4@ci.san.tx.us

HUNT LANE FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 678-0044
FAX (210) 678-0099

SOUTHPARK MALL FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 822-3874
FAX (210) 922-3907



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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GOVERNOR

Edwina P. Carrington
EXECUTIVE DIRECTOR

BOARD MEMBERS
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October 22, 2002

Mr. Leroy "Bobby" Leopold
Managing Member, MGP
Heatherwildc Estates Housing, L.P.
5839 Sandhurst, Suite B
Dallas, Texas 75206
Telephone: (214) 232-5445
Facsimile: (214) 987-9294

Re: Heatherwildc Estates Apartments
LIHTC Development No. 02075

Dear Mr. Leopold:

Please be informed that the Department has approved your request to extend the deadline for meeting the Carryover 10% Expenditure Test for the tax credit property captioned above from October 11, 2002 to November 30, 2002. If the Carryover and all required documentation are not submitted to the Department by 5:00 p.m. on November 30, 2002, the tax credit commitment with respect to this property shall terminate automatically on that date.

Your request to extend the deadline for submitting the Carryover Allocation package has been approved with the following conditions: (1) By November 1, 2002, submit a letter from the City confirming that the final vote to approve zoning will take place by November 14, 2002; (2) The new deadline for submission of documentation of approved zoning is November 15, 2002. If the two items of documentation are not submitted to the Department by 5:00 p.m. on the respective dates, the tax credit commitment with respect to this property shall terminate automatically.

Please note that no further notice or reminder will be sent to you prior to the expiration date of these deadlines. If you have questions or need any further assistance in this matter, please contact Charles Nwaneri, Co-Manager of the Low Income Housing Tax Credit Program, at (512) 475-1971.

Sincerely,

Edwina P. Carrington
Executive Director



CITY OF SAN ANTONIO

October 31, 2002

Earl & Brown
Attorneys at Law
Attn: Habib H. Erkant
Riverview Towers, Suite 1111
San Antonio, Texas 78205

Re: Zoning verification Heatherwilde Estates, 15.00 acres out of 65.236 acre tract, NCB 14491, San Antonio, Texas

Dear Mr. Erkant:

This is to verify that the above referenced properties are zoned "C-3R" Commercial District Restrictive Alcoholic Sales as per Ordinance 93881, adopted on May 3, 2001 that amended/ revised the existing City of San Antonio Unified Code. Effective February 4, 2002, all previous zoning code classifications were converted to new zoning classifications adopted with this ordinance. Specifically, for this site, the zoning was converted from "B-3" Restrictive Business District Restrictive Alcohol (Ordinance 69288, dated April 13, 1989) to the zoning described above.

As per your inquiry, "C-3R" zoning permits "housing-Multi-family Dwellings, Extended Stay Hotel Or Timeshares" as per the UDC Table of permitted uses.

The City of San Antonio Development Services Department Building Inspections Division is responsible for enforcement of building codes ordinances and similar codes or ordinances related to development of the said described property which may include the review of site plans, the issuance of building permits, variances for site and building specifications, and certificates of occupancy. In addition, the Central Records Section of the Building Inspections Division can provide information on any building violations and/or citations.

In addition, the owner(s) of the property have the right to restore or rebuild due to damages caused by fire or other causality, subject to compliance to City of San Antonio code requirements.

If we may be of further assistance to you regarding this matter, please call us at (210) 207-7900.

Sincerely,


Pete Gomez
Planner I

DEVELOPMENT SERVICES DEPARTMENT • P.O. BOX 888966 • SAN ANTONIO, TEXAS 78283-3966
TEL: (210) 207-7900 TTY: (210) 207-7911 FAX: (210) 207-4441

10/31/02 THU 14:10 [TX/RX NO 7874]



BEXAR APPRAISAL DISTRICT

N S. GAINES
f Appraiser

411 N. Frio, P.O. Box 830248
San Antonio, TX 78283-0248
Phone (210) 224-8511
Fax (210) 242-2451

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October 31, 2002

Heatherwilde Estates Housing, L.P.
% Dario Chapa – Executive Director
1534 Contour Dr # 201
San Antonio, Texas 78212-1240

RE: Preliminary Determination for Tax Exemption

Dear Mr. Chapa:

Based on the documentation received it has been determined that your organization would be exempt from property taxes. According to Section 11.111 of the Texas Property Tax Code your organization does not need to provide an application.

However, the following items would be needed in order for the Appraisal District to grant the Public Property Used to Provide Transitional Housing for Indigent Persons Tax Exemption.

- 1.) Recorded Warranty Deed – showing that the organization owns the property.
- 2.) Plat – to be able to separate and establish an account for the 15.00 acres.

If you have any questions please call me at 242-2407.

Sincerely,

Elizabeth S. Bernal
Exemption Coordinator

/s

SOUTHWEST INDEPENDENT SCHOOL DISTRICT

11914 Dragon Lane • San Antonio, Texas 78252-2647
(210) 622-4300 • Fax (210) 622-4301

November 7, 2002

The Honorable Mayor Ed Garza
P. O. Box 839966
San Antonio, Texas 78283-3966

Dear Mayor Garza:

In regard to the Zoning Case #Z2002175 (the proposed Multi-Family District housing units to be built on south Highway 16, south of SW Loop 410) a review showed that this plot will impact the Southwest ISD and especially Bob Hope Elementary school. The concerns about this project include:

- The taxpayers in the Southwest School District are encumbered for two bonds passed in 1999 and 2001 with a 30-year payback note. The bonds were passed to replace schools that are 45-50 years old.
- The Maintenance & Operation rate for the Southwest School District is at the maximum of \$1.50 at present.
- As recently reported, the taxpayers in the Southwest ISD are paying for 60% of the costs related to public education while the state of Texas pays 40%.
- An explosion of new students to the Southwest ISD, a low wealth district, would negatively impact the present taxpayers with no relief from the proposed housing entities. The concept of "affordable housing" with multi-family units does not generate a "fair share" of the taxable burden in relationship to the number of students living in this type of development.
- No planning or notice was given to the SWISD in order to facilitate an influx of students such as the proposed housing would bring.
- The process to complete a new school with money on hand takes 2-3 years or 4-5 years when a bond election must be held to fund a new school.
- Bob Hope is at capacity and will exceed the student load with Phase I of the Crest View Mobile Home Park.
- Bob Hope will not be able to house students projected from Phase II and Phase III of Crest View Mobile (850 total lots).
- Hunter's Pond has proposed 167 lots for single family units in the Bob Hope attendance zone.
- Palo Alto Village will build 34 single family units per year for a total of 136 by 2006.
- Magi Properties LLC are planning a 250-unit apartment building and 64 single family dwellings.
- Craig Blume is planning to build two new subdivisions: a 224 single family unit development and a 225 single family development in the area.

Southwest High School
McNair 6th Grade School
McAuliffe Junior High School
Scobee Junior High School
Southwest Enrichment Center

Southwest Elementary School
Sun Valley Elementary School
Indian Creek Elementary School
Bob Hope Elementary School

Sky Harbour Elementary School
Hidden Cove Elementary School
Big Country Elementary School
Elm Creek Elementary School
Kriewald Road Elementary School

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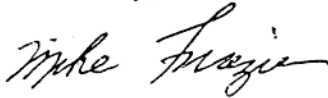
Raul Guzman
Juan Martinez, Jr.
Sylvester E. Vasquez, Jr.

SUPERINTENDENT OF SCHOOLS
Pete Anthony, Ed. D.

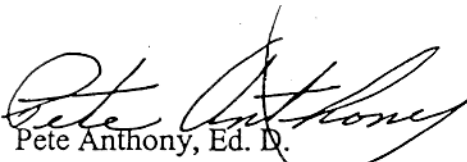
- No more property is available for expansion purposes at BH.
- All students from any new development would have to be bussed to Bob Hope after declaring Hwy. 16 and Loop 410 a "Hazardous intersection."
- Any students beyond the maximum would have to be bussed to an elementary that is not at capacity. This is not within the neighborhood elementary school concept.
- No bond money is available to purchase new land or build a new school. A tax increase for this purpose would not be an incentive for the public to move into the area.

The Southwest Independent School District does not support the concept of a multi-family housing unit within the boundaries of the Southwest ISD without additional study. Future housing developments should be based on taxing revenues aligned with the Bexar Country Appraisal District in order to provide educational opportunities for expected enrollment. Only through sound money management practices, planning, and a commitment from the Board of Trustees and the community was the District able to build a Food Service Facility, a Transportation Facility, Elm Creek Elementary, Kriewald Road Elementary, and Scobee Jr. High from Fund Balance without additional tax burden to the patrons.

Sincerely,



Mike Frazier
President, Board of Trustees



Pete Anthony, Ed. D.
Superintendent of Schools

Cc: City Council Members
County Commissioners
Emil Moncivais, City Planning Director

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Nov 10, 2002

Councilman Enrique Martin
POB 839966
San Antonio, TX 78283-3966

Councilman Martin;

REF: Zoning Case Z2002-027, to be decided at Nov 14th City Council meeting.

Per your request on Oct 4th, we revisited and reconsidered the information regarding the proposed Heatherwilde Estates. As you know, three of our members even went to Dallas on Nov 2nd, but were disappointed, that despite repeated early requests that the group visit more of Southwest Housing Development's (SWD's) *family* complexes, the group only got to visit one operating family complex. [Other than that one, the group visited two senior complexes and drove through two family complexes under construction and one operational family complex.] As you are well aware, previous favorable decisions at state and county levels were based on much *misinformation*. We've not seen, read, or heard anything that makes us believe this project would be good for our area. Therefore, we will oppose it at Thursday's Council meeting and we ask for your support and vote against it.

We reviewed the information in good faith; however, we don't know how any deed restrictions we might ask for could/would be reconciled with current agreements already made to secure the favorable state and county decisions. For example, SWD told us on Oct 4th that they would consider changing the income mix of the project - maybe even including seniors. However, they obtained state approval for this project specifically because of the low income mix; how can they legally change that mix now? We don't believe they can. They also claim they will sign a contract to agree to pay taxes to the Southwest Independent School District (SWISD). However, one of the conditions for TDHCA's approval of this project is "conclusive written documentation from the taxing authority evidencing the claimed tax exemption". If this is a condition of state approval, how can they legally agree to pay any property taxes? We don't believe they can.

We are not against development. We are not against low-income people; indeed most residents in our area are low-income. Most of our members would probably be considered low-income. That existing concentration is one of the main problems. You know that over the years District 4 has had a disproportionate share of Section 8 rentals in the city. At our Sep 23rd meeting, you stated that ZIP Code 78242 had 48% of San Antonio's Section 8 rentals. Many other homes in our area are also occupied by renters, not owners. We have nothing against renters, but they typically have no "buy-in" to the community. They can always pick up and leave at any time - and they do. This temporariness contributes to *instability* in our community. *Instability* does not lead to problem solutions. At this time, we don't need hundreds more rental units in our area, we *need* commercial development.

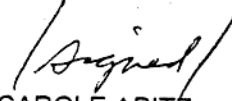
We've just recently received a copy of an Oct 24, 2002 letter from the Chair of the National Association of Home Builders (NAHB) to TDHCA which you might be interested in. It states:

"Our second concern is that there seems to be a conflict in this section between the goals of serving the lowest incomes and revitalizing the poorest communities. By awarding higher points for projects serving the lowest incomes and projects in the poorest areas, you encourage the concentration of poverty. If we learned anything from the experience with public housing, it is that this type of concentration is harmful to residents and destabilizing to communities. We urge TDHCA to amend this section by setting the following caps: no more than 50 percent of the units in a project at 50 percent AMGI and, within this, no more than 10 percent of the units or less and 30 percent and 40 percent of AMGI, respectively." (Underlining added.)

apartments at 40% AMGI or less; and 32% of the apartments at 50% AMGI or less - well above the recommendations of the NAHB.

This property is within our association's boundaries and only our association's boundaries. We again ask that you not turn away from your many previous public assurances that, on zoning issues, you would always support the neighborhood association's position. Thank you.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Nov 11, 2002

Bexar County Judge Nelson Wolff
Bexar County Courthouse
San Antonio, TX 78205-3036

Judge Wolff;

REF: San Antonio Zoning Case Z2002-027, to be decided at Nov 14th City Council meeting. [Also known as Texas Department of Housing and Community Affairs (TDHCA) case #02075.]

On Nov 14th, San Antonio City Council will vote on a zoning issue within our association's boundaries to change zoning on approximately 15 acres from "commercial" to "multi-family". Specifically, this is to enable construction of a 176-unit, 2-, 3-, and 4-bedroom, property-tax exempt, affordable apartment complex - called Heatherwilde Estates. This zoning change was denied unanimously at the Oct 1st SA Zoning Commission hearing.

Despite this property being within our association's boundaries, none of the partners/sponsors even attempted to talk with us about it until the first week in Aug 2002. After tracking the paper trail, we were surprised to learn that this project had been being worked through the county and state levels since at least Jan 2002. We were shocked to learn that the Bexar County Housing Authority (BCHA) was the main government sponsor. We were disappointed to see the amount of misinformation provided at each level upon which various boards based their decisions. We believe that if this had been handled more properly and openly, with boards verifying the information they received, this project would never have gotten as far as it has.

The day after the Oct 1st Zoning Commission hearing, District 4 Councilman Martin's office called us to the Oct 4th meeting with Mr. Ken Brown and Southwest Housing Development (SWD), of Dallas (the for-profit partners on this project). The purpose of the meeting was to get "the truth" out; the developers having realized that their previous representative, Mr. David Marquez, had been giving them and neighborhood people much misinformation. They said they'd terminated their contract with him. Councilman Martin said he wanted us to reconsider our opposition based on "correct" information and the developer's willingness to now *consider* stringent written deed restrictions to quell neighborhood concerns. He said he'd changed his opposition to this project, because he'd become aware of the quality of SWD's projects.

This is a very convoluted zoning issue. We reviewed the information in good faith; however, we don't see how any deed restrictions we might ask for could/would be reconciled with current agreements made to secure the favorable state and county decisions. For example, SWD told us on Oct 4th that they would consider changing the income mix of the project - maybe even including seniors. However, they obtained state approval for this project specifically because of the low income mix; how can they legally change that mix now? We don't believe they can. They also claim they will sign a contract to agree to pay taxes to the Southwest Independent School District (SWISD). However, one of the conditions for TDHCA's approval of this project is "conclusive written documentation from the taxing authority evidencing the claimed tax exemption". If this is a condition of state approval, how can they legally agree to pay any property taxes? We don't believe they can.

Judge Wolff, we would appreciate your support to oppose this project; as Commissioner Tejeda opposed it at the Oct 1st Zoning Commission hearing. However, the main reason for this letter is to make you aware of actions done on behalf of Bexar County. We question whether they were appropriate and proper, and we are asking you to investigate and give us a written reply following your investigation.

... testimony that BCHA Board member, Mr. Chapa, made erroneous statements to the Texas Department of Housing and Community Affairs Board. Attachment 1 is a copy of the transcript of his statements to the Board on Jul 29, 2002. Attachment 2 is a copy of my e-mail to Elaine DeLaRosa, President of the Hidden Cove/Indian Creek Neighborhood Association, asking if that information was correct. Attachment 3 is a copy of her e-mailed response. You can easily see the disparities.

Prior to my receiving Mrs. DeLaRosa's written response, I called Mr. Chapa and read those statements to him. First, he said he didn't remember naming any specific organization. Secondly, he said he was only stating what "our representative" had told them. I asked who the representative was. He said he couldn't remember the man's name. I asked if it was David Marquez; he said it was. Why does a county official, speaking officially on behalf of the county, base his input solely on the word of the "salesman" for the project?

When Mr. Chapa addressed the Oct 1st Zoning Commission hearing, he also said the percentage of "market rate" apartments in this complex would be 70 - 80%. Previous state documents clearly indicate the correct amount is 20%.

B. I personally attended the Housing Authority's board meeting on Sep 20, 2002, in case they talked about the Heatherwilde Estates project. They didn't, but I was intrigued by one board member's (Mr. Madrid) comment about the importance of "Due Diligence". He said Due Diligence consisted of talking to neighborhoods and everyone involved to get their support. The entire board and staff concurred with his comments, yet they never gave our area Due Diligence in this matter! Why?

C. We are concerned that previous Housing Authority Board member, Mr. Ken Brown, had a conflict of interest while serving on the board and lobbying for this project. (We've recently heard that Mr. Brown recently resigned from the Board.)

D. On the Bexar County website, we found the county's Vision and Goals statements. From what we can tell, when it comes to the Heatherwilde Estates project, BCHA failed miserably, on the following items, with how it treated the people of our area - current citizens and taxpayers who make county government possible at all!

- Committed to providing services with excellence.
- Recognizing the people of Bexar County as their customers to be treated with "dignity & respect".
- Continually striving to keep their trust and maintain county credibility.
- Being accountable to county customers and responsive to their needs.
- Being accessible to all.
- Improving community relationships and communications.

E. Lastly, the Bexar County website's Boards and Commissions listing indicates that most BCHA board members terms expired in '99, '00, '01. In fact, according to the website, only two of the five board members at the Sep 20th meeting were current, Mr. Madrid and Ms. Busch.

Thank you for your review of these actions. If you have any questions, please call me, 623-4965.

Southwest Proud,

CAROLE ABITZ
Vice-President & Zoning Chair

3 Attachs (as stated)

This zoning request was unanimously denied at the Oct 1st Zoning Commission hearing. The next day, Councilman Martin's office called us to the Oct 4th meeting with Ken Brown and SWD [referenced earlier]. The purpose of the meeting was to get "the truth" out; the developers having realized that much previous misinformation had gone out about their project. Councilman Martin said he wanted us to reconsider our opposition based on "correct" information and the developer's willingness to now consider stringent written deed restrictions to quell neighborhood concerns.

We reviewed the information in good faith; however, we don't know how any deed restrictions we might ask for could/would be reconciled with current agreements made to secure the favorable state and county decisions. For example, SWD told us on Oct 4th that they would consider changing the income mix of the project - maybe even including seniors. However, they obtained state approval for this project specifically because of the low income mix; how can they legally change that mix now? We don't believe they can. They also claim they will sign a contract to agree to pay taxes to the Southwest Independent School District (SWISD). However, one of the conditions for TDHCA's approval of this project is "conclusive written documentation from the taxing authority evidencing the claimed tax exemption". If this is a condition of state approval, how can they legally agree to pay any property taxes? We don't believe they can.

We are not against development. We are not against low-income people; indeed, most residents in our area are low-income. Most of our members would probably be considered low-income. That existing concentration is one of the main problems. Over the years, District 4 has had a disproportionate share of Section 8 rentals in the city. At our Sep 23rd meeting, Councilman Martin stated that ZIP Code 78242 (which includes the SWCA area) had 48% of San Antonio's Section 8 rentals. Many of the other single-family homes in our area are also occupied by renters, not the owners. We have nothing against renters, but they typically have no "buy-in" to the community. They can always pick up and move at any time - and they do. This temporariness contributes to *instability* in our community. *Instability* does not lead to problem solutions. At this time, we don't need hundreds more rental units in our area, we *need* commercial development.

Lastly, you should know that we just recently received a copy of an Oct 25, 2002 letter from the Chair of the National Association of Home Builders (NAHB) to TDHCA which states:

"Our second concern is that there seems to be a conflict in this section between the goals of serving the lowest incomes and revitalizing the poorest communities. By awarding higher points for projects serving the lowest incomes and projects in the poorest areas, you encourage the concentration of poverty. If we learned anything from the experience with public housing, it is that this type of concentration is harmful to residents and destabilizing to communities. We urge TDHCA to amend this section by setting the following caps; no more than 50 percent of the units in a project at 50 percent AMGI and, within this, no more than 10 percent of the units at or less and 30 percent and 40 percent of AMGI, respectively." (Underlining added.)

The Heatherwilde Estates project calls for 16% of the apartments at 30% AMGI or less; 32% of the apartments at 40% AMGI or less; and 32% of the apartments at 50% AMGI or less - well above the recommendations of the NAHB.

When do current residents, citizens, and taxpayers have their voices heard in these processes? Thank you for your consideration. If you or your staff have any questions, please contact me.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair
(210) 623-4965
"caroleab@hotmail.com"

Please also provide Michael Lyttle a copy.

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

Originally FAX'd Nov 13, 2002
10:35 AM

POB 27102
San Antonio, TX 78227
Nov 13, 2002

Executive Director, TX Dept of Housing & Community Affairs
PO Box 13941
Austin, TX 78711-3941

Ms. Carrington;

REF: Heatherwilde Estates project, TDHCA# 02075.

WE URGE YOU NOT TO GRANT ANY MORE EXTENSIONS THAT MAY BE REQUESTED ON THIS PROJECT!

The proposed Heatherwilde Estates project is within our association's boundaries, and only our association's boundaries. After studying, in good faith, as much information as we can get about this project [including visiting some of Southwest Housing Development's (SWD's) Dallas locations] we are opposed to this project; the affected school district is opposed to it, and the San Antonio Zoning Commission unanimously denied it on Oct 1st.

This property is within our association's boundaries. Our association is the only association whose boundaries this property lies within. However, none of the partners/sponsors even attempted to talk with us about it until the first week in Aug 2002. After tracking the paper trail, we were surprised to learn that this project had been being worked through the county and state levels since at least Jan 2002. We were shocked to see the amount of misinformation provided at each level upon which various boards based their decisions. We believe that if this had been handled more properly and openly, with boards verifying the information they received, this project would never have gotten as far as it has. Some of the most blatant misinformation includes:

- TDHCA's LIHTCP 2002 Development Profile and Board Summary For Recommended Applications, states that Councilman Martin supported this project; despite the facts that he'd sent them a letter dated Jul 19, 2002 saying he opposed it, and his senior aide, John Delgado, testified before the TDHCA board on Jul 29th, again stating Councilman Martin's opposition. (Reference our Oct 6, 2002 letter to you.)

- Bexar County Housing Authority Board member, Mr. Chapa, made erroneous statements to the same Jul 29th TDHCA board saying, in part, that their representatives had talked with the neighborhood associations and "they seem to be in agreement that this is needed -- much needed out there". In fact, no one in the neighborhood had made such statements. In later conversations, Mr. Chapa, said the "representative" he referenced was Mr. David Marquez, the paid representative of SWD. [NOTE: At a Oct 4th meeting in Councilman Martin's Valley Hi office, SWD stated they'd terminated Mr. Marquez' contract because they finally realized he had not been providing them correct information.]

This project received maximum points from TDHCA for Region 8 based primarily on the income mix specified by the sponsors. That mix is 30% or less of the area median gross income (AMGI), 40% or less of AMGI, and 50% or less of AMGI. We've heard (from others in the development community) that there is no other such complex with such a mix within all of Texas. In fact, of SWD's 9 housing projects in Dallas, 8 have 50%/60% income mix and only 1 has a 40%/50%/60% mix. Of SWD's 14 housing projects outside of Dallas, 1 is completely market rate, 10 have the 50%/60% income mix, and only 3 have the 40%/50%/60% mix.

Besides the misinformation, we are concerned that this project was not handled appropriately by the Bexar County Housing Authority. I personally attended the Housing Authority's board meeting on Sep 20, 2002, in case they talked about the Heatherwilde Estates project. They didn't, but I was intrigued by one board member's (Mr. Madrid) comment about the importance of "Due Diligence". He said Due Diligence consisted of talking to neighborhoods and everyone involved, to get their support. The entire board and staff concurred with his comments, yet they never gave our neighborhood Due Diligence in this matter. We also question a possible conflict of interest between a lobbyist for this project, Ken Brown, serving as a BCHA board member.

Chris Wittmayer

From: Ben Sheppard
Sent: Tuesday, November 19, 2002 11:26 AM
To: Chris Wittmayer
Subject: FW: Can multifamily dwellings be built under C-3R Zoning?

-----Original Message-----

From: John Jacks [mailto:jjacks@sanantonio.gov]
Sent: Tuesday, November 19, 2002 9:19 AM
To: Ben Sheppard
Cc: Roy Ramos
Subject: RE: Can multifamily dwellings be built under C-3R Zoning?

Mr. Sheppard

The property in question is zoned "C-3R". When the City adopted the new Unified Development Code in 2001, "B-3R" was converted to "C-3R". Apartments may be built in a "C-3R" at an allowed ratio of 2 square feet of residential floor use to 1 square feet of non-residential floor use, with a maximum density of 20 units per gross acre. In other words, a building must have both residential and nonresidential uses at a 2:1 ratio. So, the answer to your question is: Yes, if there is a mix of non-residential and residential uses in a building that meets the required ratio.

Thank you,

John Jacks
Senior Planner
City of San Antonio

-----Original Message-----

From: Ben Sheppard [mailto:BSHEPPAR@tdhca.state.tx.us]
Sent: Tuesday, November 19, 2002 8:48 AM
To: Roy Ramos; John Jacks
Cc: bsheppar@tdhca.state.tx.us
Subject: RE: Can multifamily dwellings be built under C-3R Zoning?

-----Original Message-----

From: Roy Ramos [mailto:RRamos@sanantonio.gov]
Sent: Tuesday, November 19, 2002 8:22 AM
To: John Jacks
Cc: bsheppar@tdhca.state.tx.us
Subject: FW: Can multifamily dwellings be built under C-3R Zoning?

John. Can you respond to this request?

Roy Ramos
 Senior Planner
 Comprehensive Division
 Planning Department
 207-7839 - Phone

11/19/02

207-7897 - Fax
759-3600 - Pager
rmos@sanantonio.gov

-----Original Message-----

From: Ben Sheppard [mailto:BSHEPPAR@tdhca.state.tx.us]

Sent: Monday, November 18, 2002 6:31 PM

To: Roy Ramos

Subject: Can multifamily dwellings be built under C-3R Zoning?

1. If so what is the maximum number of units per building?
2. Density in terms of units per acre?
3. Can a 170 unit apartment style development be built on 15 acres?
4. Is the southeast corner of Loop 410 and Old Pearsall Road zoned C-3R?
I have a zoning map that shows it as B-3R.
5. My bottom line question is - can the 15 acres of land on the south side of Old Pearsall adjacent to the west side of the railroad ROW (between the railroad ROW and Loop 410) be developed as a 170 unit apartment complex?

Ben Sheppard

From: John Jacks [jjacks@sanantonio.gov]
Sent: Wednesday, November 20, 2002 10:25 AM
To: Ben Sheppard
Subject: Southeast corner of Loop 410 and Old Pearsall Road zoning

Ben Sheppard
Texas Department of Housing and Community Affairs
Austin, Texas

RE: Apartments and "C-3" Zoning information on the 10400 block of Old Pearsall Road, Southeast corner of Loop 410 and Old Pearsall Road, San Antonio, Texas
15.00 acres out of NCB 14491

Dear Mr. Sheppard,

As requested, this letter will verify that the above-mentioned property is zoned "C-3R" Commercial Restrictive Alcohol Sales District.

Chapter 35 of the City of San Antonio Code out of the Table 311-2 Non-Residential Use Matrix does permit attached apartment dwellings in a "C-3R" District at an allowed maximum ratio of two (2) square feet of residential floor use to one (1) square foot of non-residential floor use, with a maximum density of twenty units per gross acre. The intent of this ordinance is to allow a building to contain two or more of the following major use types: residential, office, or retail. In order to meet this ratio, all multi-family buildings must contain non-residential uses.

For example: A building might contain one floor of retail use and two floors of residential use. Or, a building might contain one floor of retail space, one floor of office space, and four floors of multi-family dwelling units.

The ratio shall not exceed 2:1 (residential:non-residential), but may be less. Attached apartment dwellings may be constructed at an allowed minimum ratio of one (1) square foot of residential floor use to one (1) square foot of non-residential floor use, with a maximum density of twenty units per gross acre.

Therefore, a modern apartment-style development with a clubhouse and pool may not be constructed at this location.

If I may be of further assistance, please do not hesitate to contact me at (210) 207-7206.

Respectfully,

John Jacks
Senior Planner
City of San Antonio



November 19, 2002

The Honorable Frank Madla
Chair, Intergovernmental Relations
Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711-2068

Opinion No. JC-0576

Re: Whether a particular
community housing development
organization is entitled to an
exemption from taxation of its real
property under section 11.182 of
the Tax Code (RQ-0561-JC)

Dear Senator Madla:

You ask whether a particular organization that qualifies as a community housing development organization under section 11.182 of the Tax Code "and is 100% owner of the general partner in a limited partnership that owns improved real estate for the direct purpose of renting low income housing units within the county" is entitled to exemption from taxation of its real property. ⁽¹⁾ Because we have been provided with limited information regarding the particular organization and the issue in controversy, we answer your question in general terms. To qualify for an exemption from taxation of its real property under section 11.182 of the Tax Code, an organization must first satisfy the requirements of article VIII, section 2(a) of the Texas Constitution. Then it must satisfy all the requirements of section 11.182 of the Tax Code: The organization must qualify as a community housing development organization under section 11.182 (b) of the Tax Code and "control 100 percent of the interest in the general partner if the project is owned by a limited partnership" assuming section 11.182(e) of the Tax Code (which sets out particular requirements for a housing project constructed after December 31, 2001 with the proceeds of certain tax-exempt bonds) applies; and it must satisfy the other requirements of section 11.182 that apply to the organization and its property. We cannot and do not determine whether the organization you ask about is in fact entitled to an exemption from taxation of real property under article VIII, section 2(a) and section 11.182. The chief appraiser for the appraisal district in which the particular organization's property is located is authorized to determine in the first instance whether the property is tax exempt. The burden is on the organization seeking an exemption to show that it is entitled to the exemption under article VIII, section 2(a) of the constitution and section 11.182 of the Tax Code.

We briefly review the constitutional provision pursuant to which the legislature

adopted section 11.182 of the Tax Code. Article VIII, section 1 mandates that all real and tangible personal property, unless exempt as required or permitted by the constitution, shall be taxed in proportion to its value. *See* Tex. Const. art. VIII, § 1(a). Article VIII, section 2(a) provides that the legislature "may, by general laws, exempt from taxation . . . all buildings *used exclusively and owned by . . . institutions engaged primarily in public charitable functions*, which may conduct auxiliary activities to support those charitable functions; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void." *Id.* art. VIII, § 2(a) (emphasis added). Thus, under article VIII, section 2(a), to qualify for tax exempt status, an organization must be (1) a charitable institution and (2) the real property must be used exclusively and owned by the charitable organization. *See N. Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991); *Baptist Mem'ls Geriatric Ctr. v. Tom Green County Appraisal Dist.*, 851 S.W.2d 938, 941 (Tex. App.-Austin 1993, writ denied) (and cases cited). Before an institution can qualify for tax exempt status under a statutory scheme, the institution must first satisfy the constitutional requirements. *See N. Alamo Water Supply Corp.*, 804 S.W.2d at 899; *Baptist Mem'ls Geriatric Ctr.*, 851 S.W.2d at 941.

Under section 11.182 of the Tax Code, a qualified community housing development organization is entitled to an exemption from ad valorem taxation of its improved or unimproved real property owned for the purpose of providing low-income or moderate-income housing if it meets the requirements of subsection (b) of the Tax Code and the other provisions of section 11.182 that apply to the particular organization and its property.

Section 11.182(b) of the Tax Code provides that a community housing development organization within the meaning of section 12704 of the United States Code "is entitled to an exemption from taxation of improved or unimproved real property it owns if" it

- (1) is organized as a community housing development organization;
- (2) meets the requirements of a charitable organization provided in Sections 11.18(e) and (f) [regarding operations and assets];
- (3) owns the property for the purpose of building or repairing housing on the property to sell without profit to a low-income or moderate-income individual or family satisfying the organization's eligibility requirements or to rent without profit to such an individual or family; and
- (4) engages exclusively in the building, repair, and sale or rental of housing as described by Subdivision (3) and related activities.

Tex. Tax Code Ann. § 11.182(b) (Vernon 2001); *see also* 42 U.S.C. § 12704 (West 1995) (defining "community housing development organization" as a nonprofit organization that has as one of its purposes the provision of housing to low-income and moderate-income persons). That an organization qualifies under this provision does not end the inquiry.

To qualify for the tax exemption provided in subsection (b), an eligible community housing development organization must satisfy the specific requirements or restrictions of subsections (c) through (g) of section 11.182, to the extent those provisions apply in the particular situation.

We summarize those provisions in general terms. Under subsection (c), a community housing development organization's real property may not be exempted from taxation after the third anniversary of the date of the property's acquisition unless the property is offered for rent or is rented to low-income or moderate-income individuals or families. *See* Tex. Tax Code Ann. § 11.182(c) (Vernon 2001). Pursuant to subsection (d), a multifamily rental property consisting of thirty-six or more dwelling units may not be exempted in a subsequent year unless in the preceding year the organization expended at least forty percent of taxes saved as a result of the exemption in that year on social, educational, or economic development services, capital improvements projects, or rent reduction. *See id.* § 11.182(d); *see also id.* § 11.182(h) (property exempted from this requirement). This requirement, however, does not apply to property financed with tax-exempt bonds between January 1, 1997 and December 31, 2001. *See id.* § 11.182(d). But under subsection (e), an organization seeking tax exemption for improved real property that includes a housing project acquired after December 31, 2001 with the proceeds of certain tax-exempt bonds, must "control 100 percent of the interest in the general partner if the project is owned by a limited partnership[.]" *see id.* § 11.182(e)(1);⁽²⁾ comply with the community housing development rules and laws administered by the Texas Department of Housing and Community Affairs (the "Department"), *see id.* § 11.182(e)(2); and file annually with the Department and each taxing unit from which a project receives an exemption evidence that the organization spent more than ninety percent of the project's cash flow for eligible individuals or on social, educational, or economic development services, capital improvement projects, or on rent reduction, *see id.* § 11.182(e)(3); *see also id.* § 11.182(h) (property exempted from this requirement). Finally, to receive an exemption, under subsection (b) an organization must annually have an audit prepared by an independent auditor and deliver a copy of the audit to the Department and to the chief appraiser of the appraisal district in which the property sought to be exempted is located. *See id.* § 11.182(g).

In short, to qualify for an exemption from taxation of its real property under section 11.182 of the Tax Code, an organization must not only meet the requirements of section 11.182(b), but it must also satisfy the other requirements and restrictions of section 11.182 to the extent they apply in a particular situation.

We have not been provided with any information regarding the particular organization or property at issue other than that the organization is a qualified community housing development corporation and "is 100% owner of the general partner in a limited partnership that owns [the] improved real estate [.]" Request Letter, *supra* note 1, at 1. We do not know the provision of section 11.182 in controversy or requiring clarification. *See id.* Furthermore, we do not know whether as "100% owner of the general partner in a limited partnership that owns

[the] improved real estate," the particular organization seeking the tax exemption is the exclusive user and owner of the property as required by article VIII, section 2(a). *Id.* Accordingly, we answer your question only in general terms. To qualify for an exemption from taxation of its real property under section 11.182, an organization must first satisfy the requirements of article VIII, section 2(a) of the Texas Constitution. Then it must satisfy all the requirements of section 11.182 of the Tax Code: it must qualify as a community housing development organization under section 11.182(b) and "control 100 percent of the interest in the general partner if the project is owned by a limited partnership" assuming section 11.182(e) applies; and it must satisfy the other requirements of section 11.182 that apply to the organization and its real property. Because we have been provided with limited information and because this office does not make finding of fact in the opinion process,⁽³⁾ we cannot and do not determine whether the organization you ask about is in fact entitled to an exemption from taxation of real property under section 11.182 of the Tax Code.⁽⁴⁾

The chief appraiser for the appraisal district in which the particular organization's real property is located is authorized to determine in the first instance whether the property is exempt. In general, to receive a tax exemption, a person must apply for the exemption by filing an application with the chief appraiser for the appraisal district in which the property claimed exempt is located. *See* Tex. Tax Code Ann. § 11.43(a) (Vernon 2001). The chief appraiser determines an applicant's right to an exemption. *See id.* § 11.45(a). After considering the application and the relevant information, the chief appraiser must, "as the law and facts warrant," (1) approve the application and allow the exemption; (2) modify the exemption applied for and allow the exemption as modified; (3) disapprove the application and request additional information from the applicant supporting the exemption; or (4) deny the application. *Id.*

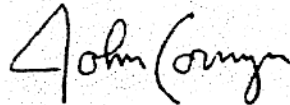
The burden is on the organization seeking an exemption to show that the organization is entitled to the exemption under article VIII, section 2(a) of the constitution and section 11.182 of the Tax Code. Exemptions from taxation are not favored by the law and are not favorably construed. *See N. Alamo Water Supply Corp.*, 804 S.W.2d at 898. "Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally." *Id.* Thus, the burden of proof clearly showing that the organization falls within the statutory exemption is on the claimant. *See id.*

SUMMARY

To qualify for an exemption from taxation of its real property under section 11.182 of the Tax Code, a particular community housing development organization must first satisfy the requirements of article VIII, section 2(a) of the Texas Constitution. Then it must satisfy all the requirements of section 11.182 of the Tax Code: The organization must qualify as a community housing development organization under section 11.182 (b) of the Tax Code and "control 100 percent of the interest in the general partner if the project is owned by a

limited partnership" assuming section 11.182(e) of the Tax Code (which sets out particular requirements for a housing project constructed after December 31, 2001 with the proceeds of certain tax-exempt bonds) applies; and it must satisfy the other requirements of section 11.182 that apply to the organization and its property. Whether a particular organization is entitled to an exemption from taxation of real property is a question of fact that cannot be determined in an attorney general opinion. The chief appraiser for the appraisal district in which the particular organization's property is located is authorized to determine in the first instance whether the property is exempt. The burden is on the organization seeking an exemption to show that it is entitled to the exemption under article VIII, section 2(a) of the constitution and section 11.182 of the Tax Code.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

NANCY FULLER
Deputy Attorney General - General Counsel

SUSAN DENMON GUSKY
Chair, Opinion Committee

Sheela Rai
Assistant Attorney General, Opinion Committee

Footnotes

1. Letter from the Honorable Frank Madla, Chair, Intergovernmental Relations Committee, Texas State Senate, to the Honorable John Cornyn, Texas Attorney General (June 13, 2002) (on file with Opinion Committee) [hereinafter Request Letter].
2. *Compare* Tex. Tax Code Ann. § 11.182(e)(1), with Tex. Const. art. VIII, § 2(a) (authorizing legislature to exempt only "all buildings used exclusively and owned by . . . institutions engaged primarily in public charitable functions")

(emphasis added).

3. *See, e.g.*, Tex. Att'y Gen. Op. Nos. JC-0032 (1999) at 4 (stating that question of fact is beyond purview of this office); JC-0027 (1999) at 3 (stating that questions of fact cannot be addressed in attorney general opinion); JC-0020 (1999) at 2 (stating that investigation and resolution of fact questions cannot be done in opinion process).

4. *See, e.g.*, *Baptist Mem'ls Geriatric Ctr. v. Tom Green County Appraisal Dist.*, 851 S.W.2d 938, 945 (Tex. App. -Austin 1993, writ denied) ("Whether an organization is a purely public charity is a question of fact . . . Similarly, whether the property in dispute is used in furtherance of the organization's charitable purposes is a fact issue."); Tex. Att'y Gen. Op. Nos. DM-402 (1996) at 4-5 (whether particular resource conservation and development council exclusively serves charitable purpose or exclusively promotes social welfare is question of fact inappropriate for opinion process); JM-1257 (1990) (decision that particular entity is charitable organization within act ordinarily involves investigation and resolution of fact questions, which cannot be undertaken in opinion process).

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**LAW OFFICES OF
EARL & BROWN**
A PROFESSIONAL CORPORATION
Riverview Towers
111 Soledad, Suite 1111
San Antonio, Texas 78205
(210) 222-1500 Telephone
(210) 222-9100 Facsimile

MEMORANDUM

TO: Chris Wittmayer

FROM: Kenneth W. Brown, AICP

DATE: November 21, 2002

RE: Zoning Issues Associated with Heatherwilde Affordable Apartment Project

The purpose of this correspondence is to address the memo from John Jacks, Planner, Development Services Department of the City of San Antonio to you with regards to the appropriateness of multi-family dwellings in the "C-3R" zoning base district. As stated in Mr. Jacks memo, Chapter 35 of the City of San Antonio's Unified Development Code ("UDC") Table 311-2 (Non-Residential Use Matrix) controls in connection with permitted uses allowed within the "C-3R" zoning base district. Mr. Jacks' memo concentrates on multi-family construction in connection with a mixed-use structure. In particular, he references a use that allows a building containing two or more of the following major use types: residential, office, or retail. The provisions in the Permitted Use Table that he references would not allow a modern apartment style development with a clubhouse and a pool. However, what he neglects to mention is that on the same table there is a separate and distinct provision under the general category of housing. In particular, the permitted uses allowed under the broad category of housing includes multi-family dwellings, extended stay hotel or timeshares. These uses are permitted under the "C-3" zoning base district. As I have referenced in our telephone conversation, we have a zoning verification letter in our files dated October 31, 2002, which is signed by Pete Gomez, Planner I, who states that the "C-3R" zoning base district permits "housing-multi-family dwellings, extended stay hotels or timeshares" as per the UDC Table of Permitted Uses.

The permitted use table and the letter referenced herein are clear on the subject issue, which is that a modern apartment-styled development with a clubhouse and a pool is a permitted use in the "C-3" Commercial zoning base district.

If you have any questions or if you need documentation of any of the materials referenced herein, please do not hesitate to contact my office.

November 27, 2002

Mr. Andy Martin
City Attorney
City of San Antonio
100 Military Plaza, 3rd Floor
San Antonio, TX 78205

Via Hand-Delivery

Re: Heatherwilde Estates 15 Acres out of a 65.236 Acre Tract, NCB 14491, San Antonio, Texas

Dear Mr. Martin:

On behalf of my client, Heatherwilde Estates Housing, L.P., please accept this letter as a demand that the City of San Antonio recognize that the above referenced property can be developed for multi-family housing.

As background information, it should be noted that on October 22, 2002, I delivered to the City of San Antonio's Department of Development Services a zoning verification request with payment of the appropriate fees for \$135.00. Thereafter, on October 31, 2002, I received from Mr. Pete Gomez, Planner I, a letter that verified that the property was zoned "C-3R". Moreover, Mr. Gomez' letter went on to read as follows:

"As per your inquiry, ("C-3R") zoning permits "housing-multi-family dwellings, extended stay hotels or timeshare" as per the UDC Table of Permitted Uses."

Based on the information provided by the zoning verification letter, my clients closed on this property for the purpose of developing said property as a multi-family housing project. Subsequently, we have learned of an opinion from your office that in essence concludes that the Table of Permitted Uses doesn't mean what it says. Application of the City Attorney's Office opinion to this matter has and will continue to substantially damage my client in that they cannot develop their property in a manner that they are lawfully entitled to do so. Consequently, unless the City of San Antonio acknowledges that my client is lawfully entitled to develop the subject property as multi-family housing as is allowed in a "C-3R" zoning district, my client shall have no choice but to file suit for declaratory judgment and seek monetary damages. If needed, those pleadings may include, but are not limited to claims of mandamus, as well as estoppel, for the City's issuance of the zoning verification letter clearly indicates a multi-family housing is allowed at the subject location as well as claim that the City's action is in violation of the Federal Fair Housing Act.

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NOV 27 2002

City Attorney's Office
San Antonio, Texas

It should be noted that this client came to us due to their erroneous belief that this property was zoned "I-1" and a zoning change was necessary in order to obtain the property zoning to allow multi-family housing. Due to the filing of the zoning case, it has become apparent that some neighboring property owners have objected to the use of this property as multi-family housing. On our review, we found that the property was actually zoned "C-3R" and that in accordance with the Table of Permitted Uses, a zoning case was not necessary. As previously mentioned, this conclusion was verified by the City of San Antonio through a zoning verification letter. It seems at this point that it is highly likely that the City of San Antonio is discriminating against individuals, who for whatever reason, need federal assistance for their housing simply to placate a few neighbors.

In short, this abuse of authority by the City of San Antonio is arbitrary and capricious. If forced to, my clients will have no choice but to seek legal recourse. This will expose the City of San Antonio of the possibility of paying substantial monetary damages and attorneys fees. Due to the fact that this matter has been dragged out for over a month, I am requesting that the City acknowledge my client's rights on or before Friday, December 6, 2002. The City's failure to do so will cause my client no choice but to file suit.

Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,
EARL & BROWN, P.C.

By:


Habib H. Erkan, Jr.

**REPRESENTATIVE-ELECT
KEN MERCER
TEXAS STATE HOUSE DISTRICT 117**

Honorable Ed Garza
Mayor of the City of San Antonio

December 11, 2002

Dear Mayor Garza:

I wish to again express my strong concerns related to the affordable housing project titled Heatherwilde Estates that is proposed for construction at Old Pearsall Road and SW Loop 410 in the city. I believe the project has also been presented as Zoning Case #Z2002-027. I emphatically do not believe that this project would be in the best interests of the community, most certainly not at this location.

I understand that this area of the city already has a disproportionately large percentage of subsidized housing. I fully support the need for affordable homes. However a density factor approaching 50% of ALL such programs in one sector of the community would seem to suppress rather than foster economic development. Furthermore, I understand that a project of this nature is not only needed but also desired in another area of town but is unable to proceed due to state limits on tax exempt allocations applied to the Heatherwilde development.

My concerns are based on three findings:

- o First, I was present at the September 23rd, 2002 community meeting where the impacted citizens in my district unanimously spoke out against this project in their community. The District 4 Councilman publicly supported the citizen's decision at that time.
- o Second, the Southwest Independent School District opposes the project due to the significant negative impact the additional students would have on the district's ability to educate the children.
- o Finally, the above opposition was further supported by the unanimous rejection of the rezoning request at the Zoning Commission hearing on October 1, 2002.

The Councilperson for District 4 had supported, in written and public forums, the community's opposition; however, he inexplicably changed his stance in a letter to the Texas Department of Housing and Community Affairs, on the same date that the Zoning Commission denied the rezoning request.

I understand that subsequent to the November 14, 2002 City Council meeting at which this action was continued until December 12, 2002 at the request of the developer, additional actions have occurred.

My staff has been in frequent contact with city and state staff entities to ensure that the concerns of the constituents are addressed. It has been brought to my attention that there are now legal issues surrounding the city's position on the application of the Uniformed Development Code in terms of the developer's newest request to the Texas Department of Housing and Community Affairs.

Please be assured I do not desire to interfere in this process; however, the impacted citizens of my new State District 117 (as of 14 January 2003) clearly oppose this project. They contacted my office and as their elected Representative I support my constituents.

Respectfully yours,

Ken Mercer



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CITY OF SAN ANTONIO
CITY CLERK
2002 DEC 12 AM 10:32

**Agenda
City Council Meeting
Municipal Plaza Building
City Hall Complex
103 Main Plaza
San Antonio, Texas 78205
December 12, 2002**

At any time during the "B" Session or the Regular City Council Meeting, the City Council may meet in executive session for consultation concerning attorney-client matters (real estate, litigation, contracts, personnel and security).

- I. The City Council will convene for a "B" Session in the B Room of the Municipal Plaza Building at 10:00 A.M. for the following:
 - A. Boards and Commissions Work Session. [Presented by Yolanda Ledesma, Acting City Clerk; Travis M. Bishop, Assistant City Manager]
 - B. Staff presentation on City of San Antonio 108 Policies. [Presented by Andrew Cameron, Director, Housing and Community Development; Jelyne LeBlanc Burley, Assistant City Manager]
- II. The City Council will convene in Council Chambers, Municipal Plaza Building in a Regular Council Meeting at 1:00 P.M.
 1. Invocation by Juan Valenzuela and John Valenzuela from Capillo Del Pueblo Church, and Pledge of Allegiance.
 2. Ceremonial Items.
 3. Approval of the minutes for the regular City Council meeting of October 10, 2002 and November 7, 2002.

DISABILITY ACCESS STATEMENT

This meeting is wheelchair accessible. The accessible entrance is located at 103 Main Plaza. Accessible parking spaces are located at City Hall, 100 Military Plaza. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested forty-eight (48) hours prior to the meeting) by calling (210) 207-7245 V/TTY for assistance. Closed captioning is available on broadcasts of the Council meetings on 21-TVSA.

Questions regarding this agenda notice should be directed to the City Agenda Coordinator at 207-7080.

THE FOLLOWING ITEMS WILL BE CONSIDERED AT THE TIMES INDICATED:

4. 2:00 P.M. – Public Hearing and Consideration of the following Zoning Cases: [Presented by Florencio Pena, Director, Development Services Department; Christopher J. Brady, Assistant City Manager]
 - A. ZONING CASE NUMBER Z2001223-2A: The request of City of San Antonio, Applicant, for Borden Park LP, Owner(s), for a change in zoning to designate those properties as part of River Overlay District 2 on Lots 11, 12, 12A, 12B, 12C, 13, 14, NCB 3053, 815, 825, 835, 837, 841, 875 East Ashby Place. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 1)
 - B. ZONING CASE NUMBER Z2002156: The request of COSA-HPO-Ann B. McGlone, Applicant, for Larry Polinard, Owner(s), for a change in zoning to designate Historic Significance on Lots 3 & 4, and east 114.6 feet of Lot 14, Block 3, NCB 1726, 2011 McCullough Avenue & 211, 215 Courtland Place East. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 1)
 - C. ZONING CASE NUMBER Z2002189 C: The request of The Watermill Express, Applicant, for The Watermill Express, Owner(s), for a change in zoning from "O-2" Office District to "O-2 C" Office District with a conditional use for a self-service water dispensing machine on the existing parking lot on Lots 14, 15, 16, Block 10, NCB 10210, 807 and 811 Lovera Blvd. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 1)
 - D. ZONING CASE NUMBER Z2002210: The request of Robert A. Marotta, Sr., Applicant, for Robert A Marotta Sr., Owner(s), for a change in zoning from "C-3 NA" Commercial Non-Alcoholic Sales District to "C-1" Commercial District on the east irregular 229.7 feet of Lot A-1, Block 3, NCB 3029, 2106 North St. Mary's Street. Staff's recommendation was for approval. Zoning Commission has recommended approval of "C-1". (Council District 1)
 - E. ZONING CASE NUMBER Z2002211: The request of Xenia Aguilar, Applicant, for Xenia Aguilar, Owner(s), for a change in zoning from "C-3 NA" Commercial Non-Alcoholic Sales District to "C-2" Commercial District on Lot 3, NCB 11691, 3454 West Avenue. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 1)
 - F. ZONING CASE NUMBER Z2002237: The request of Gary M. Carter, Applicant, for Gary M. Carter, Owner(s), for a change in zoning from "C-2" Commercial District to "R-6" Residential Single Family District on Lots 6 and 7, Block 8, NCB 1730. 225 E. Locust Street. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 1)

- G. ZONING CASE NUMBER Z2002076 A: The request of City of San Antonio, Applicant, for Theissen Family Ltd, Partnership, Rosillo Creek Inc., Owner(s), for a change in zoning from "I-1" General Industrial District to "C-2" Commercial District on Lot 6, P-32B, P-32D, P-34 save and except the northwest 100 feet and all of P-32, Block 1, NCB 17322; and P-32A save and except the northwest 100 feet and all of P-33, NCB 17992, P-32C, P-34, P-34B, P-34C, P-63 save and except the northwest 100 feet, NCB 17993, from "I-1" General Industrial District to "R-6" Residential Single Family District P-38, P-38B and P-36B, NCB 12867 on IH 10 East Expressway. Staff's recommendation was for approval. Zoning Commission has recommended denial. (Council District 2)
- H. ZONING CASE NUMBER Z2002200: The request of KB Home, Applicant, for Rosillo Creek, Inc., James W. Woodward III, Owner(s), for a change in zoning from "R-6" Residential Single Family District to "R-4" Residential Single Family District on 58.363 acres out of NCB 35098, 1100 block of Foster Road. Staff's recommendation was for approval. Zoning Commission has recommended send to City Council for consideration. (Council District 2)
- I. ZONING CASE NUMBER Z2002215: The request of Ethel V. Duncan/Roger De La Cruz, Real Estate Supervisor, City of San Antonio, Applicant, for Ethel V. Duncan, Owner(s), for a change in zoning from "C-2" Commercial District to "R-4" Residential Single Family District on East 31 ft of Lot 4, Block 7, NCB 603, 212 Idaho Street. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 2)
- J. ZONING CASE NUMBER Z2002217: The request of Kaufman & Associates, Inc. , Applicant, for SSI Investments, Ltd., Owner(s), for a change in zoning from "R-4" Residential Single Family District to "C-3" Commercial District on the West 150 feet of Lot 11, NCB 10594 and from "R-4" Residential Single Family District "C-3 S NA" Commercial Non Alcoholic Sales District with a specific use authorization for a Recreational Vehicle Park on the east 364.8 feet of Lot 10 and the east 291.92 feet of Lot 11 on 1.997 acre tract of land out of NCB 10594,570 North WW White Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 2)
- K. ZONING CASE NUMBER Z2002206: The request of Andrew C. Guerrero, Applicant, for Curtis C. Gunn, Inc., Owner(s), for a change in zoning from "C-3 NA" Commercial District, Nonalcoholic Sales to "C-3" Commercial District on Lots E through K and Lot 105 save & except the east 62 feet of south 115 feet out of NCB 11178, 3550 Roosevelt Avenue and the 300 Block of East Harding Boulevard. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 3)

- L. ZONING CASE NUMBER Z2002218: The request of Kaufman & Associates, Inc., Applicant, for Dufner, Romie M II & Patricia A, Owner(s), for a change in zoning from "O-2" Office District to "C-2 NA C" Commercial District, Nonalcoholic Sales with a conditional use for automobile sales lot on Lot 16, Block 19, NCB 12047, 1907 Goliad Road. Staff's recommendation was for approval. Zoning Commission has recommended approval with conditions. (Council District 3)
- M. ZONING CASE NUMBER Z2002226: The request of Irma Alonzo, Applicant, for Dolores Alonzo, Owner(s), for a change in zoning from "R-4" Residential Single-Family District to "MH" Manufactured Housing District on Lot 30, Block 13, NCB 10895, 219 San Juan Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 3)
- N. ZONING CASE NUMBER Z2002227: The request of City of San Antonio, Applicant, for Johnny J. Valadez, Owner(s), for a change in zoning from "R-6" Residential Single-Family District to "C-3NA" Commercial Non-Alcoholic Sales District on the north 100 feet of Lot 4, Block 14, NCB 3232, 116 East Malone Avenue. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 3)
- O. ZONING CASE NUMBER Z2002027: The request of Mohammed Ali Rafati, Applicant, for Mohammed Ali Rafati, Owner(s), for a change in zoning from "C-3 R" Commercial Restrictive Alcoholic Sales District to "MF-25" Multi-Family District on 15.00 acres out of NCB 14491, 10400 block of Old Pearsall Road. Staff's recommendation was for approval. Zoning Commission has recommended denial. (Council District 4) *at the request of the developer this was continued to withdraw*
- P. ZONING CASE NUMBER Z2002205: The request of David & Donna Ann Ruiz, Applicant, for David & Donna Ann Ruiz, Owner(s), for a change in zoning from "R-6" Residential Single Family District to "MH" Manufactured Housing District on Lot 8, Block 1, NCB 15632, 5411 Sherry Drive. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 4)
- Q. ZONING CASE NUMBER Z2002233: The request of Big Fish Development One, Applicant, for Turner Bowman, Owner(s), for a change in zoning from "R-6" Residential Single-Family District to "R-4" Residential Single-Family District on Parcel 3C and Parcel 3E, NCB 16001, 6600 Block of South West Loop 410. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 4)
- R. ZONING CASE NUMBER Z2002203: The request of City of San Antonio, Applicant, for City of San Antonio, Owner(s), for a change in zoning from "C-3 R" Commercial District, Restrictive Alcohol Sales to "H" Historic Significance and an "IDZ" Infill Development Zone with uses permitted in a "C-1" Commercial and "MF-25" Multi-Family District on Lot 14, Block 32, NCB 6275, 1519 Nogalitos Street. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 5)

- S. ZONING CASE NUMBER Z2002207C: The request of Arturo Martinez, Applicant, for Arturo Martinez, Owner(s), for a change in zoning from "R-6" Residential Single Family District to "C-1 C" Commercial District, with conditional use for Auto & Vehicle Sales - New and Used - Small Scale (No More than 15 Vehicles Currently Licensed and in Running Condition on Site at any Given Time For Storage And/or Sale) with the following conditions: 1. Hours of Operation shall not exceed 8:00 A.M. to 7:00 P.M. on Lots 8 and 9, Block 28, NCB 8789, 1302 Quintana Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 5)
- T. ZONING CASE NUMBER Z2002212: The request of Alfred Castellano, Applicant, for Alfred Castellano, Owner(s), for a change in zoning from "R-6" Residential Single Family District to "C-3 R" Commercial District on Lot 3, Block 1, NCB 8973, 1542 W. Harlan Avenue. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 5)
- U. ZONING CASE NUMBER Z2002228: The request of James A. Donnel, D.D.S., Applicant, for Dr James A. Donnell, Owner(s), for a change in zoning from "R-5" Residential Single-Family District to "O-1" Office District on Lots 7 and 8, Block 17, NCB 6260, 114 Oriental Avenue. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 5)
- V. ZONING CASE NUMBER Z2002213: The request of Mike Hashim, Applicant, for Norina Properties Inc., Owner(s), for a change in zoning from "RM-4" Residential Mixed District to "C-2" Commercial District on west 91.43 feet of lots 175, 176 and 177 and the south 15 feet of the west 91.43 feet of Lot 174, Block 3, NCB 8124, 946 and 950 S. San Augustin. Staff's recommendation was for approval of "C-2". Zoning Commission has recommended approval. (Council District 6)
- W. ZONING CASE NUMBER Z2002222: The request of Earl & Brown, P.C., Applicant, for Dittmar Family Partnership, Ltd.; Attn: Joseph E. Dittmar, Owner(s), for a change in zoning from "C-3" Commercial District and "C-3R" Commercial District, Restrictive Alcoholic Sales to "RM-4" Residential Mixed District on Parcels P-7 and P-10, NCB 1787, 1300 Block of Horal Drive. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 6)
- X. ZONING CASE NUMBER Z2002223: The request of City of San Antonio Neighborhood Action Department, Applicant, for Victoria E. Lara, Owner(s), for a change in zoning from "C3-NA" Commercial, Nonalcoholic Sales District to "R-4" Residential Single-Family District on Lot 82, Block 6, NCB 13948, 1611 South Callaghan Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 6)

- Y. ZONING CASE NUMBER Z2002224: The request of Augusto Fors, Applicant, for Augusto Fors, Owner(s), for a change in zoning from "R-4" Residential Single Family District to "C-3 NA" Commercial District, Nonalcoholic Sales on Lot 3G, Block 15, NCB 8988, 4818 Eldridge Ave. Staff's recommendation was for denial. Zoning Commission has recommended approval of "C-3 NA". (Council District 6)
- Z. ZONING CASE NUMBER Z2002235: The request of Andrew C. Guerrero, Applicant, for Cable Ranch Ltd., Owner(s), for a change in zoning from "C-3 NA" Commercial Non Alcoholic Sales District to "MF-25" Multi Family District on 12.564 acres out P-4C, NCB 17332, 1400 Cable Ranch Drive. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 6)
- AA. ZONING CASE NUMBER Z2002195: The request of Joe Nix, Applicant, for Dallas Daughtry & Associates, Owner(s), for a change in zoning from "O-2" Office District to "C-1" Commercial District on Lot 25, NCB 18230, 9599 Braun Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 8)
- BB. ZONING CASE NUMBER Z2002199C: The request of Esther Garcia, Applicant, for Southwest Key Program, Inc. A Texas Corporation, Owner(s), for a change in zoning from "MF-33" Multi Family District to "MF-33 C" Multi Family District with a conditional use for a beauty salon on northwest irregular 131 feet of Lot 18, Block 18, NCB 14273, 11643 Vance Jackson Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 8)
- CC. ZONING CASE NUMBER Z2002208: The request of Chesley I. Swann, Applicant, for Milestone Braun Willow L.L.C., Owner(s), for a change in zoning from "C-2" Commercial District to "R-6" Residential Single Family District on 2.46 acres out of NCB 19174 on 8400 Block of Braun Path. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 8)
- DD. ZONING CASE NUMBER Z2002229: The request of City of San Antonio, Applicant, for Dallas Daughtry, Owner(s), for a change in zoning to designate Historic Exceptional on Lot 25, NCB 18230, 9599 Braun Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 8)
- EE. ZONING CASE NUMBER Z2002232: The request of Kaufman & Associates, Inc., Applicant, for Ronald F. Lammert, Dalton Evans, III and Betty Jane Evans, Owner(s), for a change in zoning from "C-2 NA C" Commercial District, Nonalcoholic Sales with conditional approval of a plant nursery & "C-3 NA C" Commercial District, Nonalcoholic Sales with conditional approval of a print shop to "C-3 NA S" Commercial District, Nonalcoholic Sales with specific use authorization for a mini-storage facility exceeding 2.5 acres on 4.16 acres out of NCB 16051, 8443 and 8491 Leslie Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 8)

FF. ZONING CASE NUMBER Z2002082: The request of George Gervin Academy, Barbara Hawkins, Applicant, for George Gervin Academy, Owner(s), for a change in zoning from "C-3 R" Commercial Restrictive Alcoholic Sales District to "MF-33" Multi-Family District on Lot 1, Block 2, NCB 16889, 6900 Block of East Sunbelt Drive. Staff's recommendation was for denial. Zoning Commission has recommended approval. (Council District 10)

GG. ZONING CASE NUMBER Z2002190C: The request of David & Stefanie Baller, Applicant, for Dos Amigos, Owner(s), for a change in zoning from "C-2" Commercial District to "C-2 C" Commercial District with a conditional use for an office warehouse on Lot 18 and P-100, Block 1, NCB 15864, 5030 La Posita Drive. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 10)

HH. ZONING CASE NUMBER Z2002204: The request of Judson - Lookout LTD, Applicant, for Benny Steinhauser and Hartman Associates, Inc., Owner(s), for a change in zoning from "R-6" Residential Single Family District to "R-5" Residential Single Family District on 29.97 acres tract of land out of NCB 17810, 14040 Judson Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 10)

II. ZONING CASE NUMBER Z2002225: The request of Chesley I. Swann, Applicant, for C & B Homes, Ltd., Owner(s), for a change in zoning from "R-6" Residential Single Family District and "C-2 NA" Commercial Non Alcoholic Sales District to "MF-33" Multi Family District on 0.95 acres out of NCB 15831, 5000 block of Stahl Road. Staff's recommendation was for approval. Zoning Commission has recommended approval. (Council District 10)

5. 3:30 P.M. – Consideration of the following ordinances: [Presented by Dennis J. Campa, Director of Community Initiatives; Frances A. Gonzalez, Assistant to the City Manager]

(A) An Ordinance authorizing the reprogramming of FY 2000 Housing Opportunities For Persons With AIDS (HOPWA) Grant funds in the amount of \$111,003.08 available from the Alamo Area Resource Center (AARC) in the amount of \$46,651.08 and the San Antonio Metropolitan Health District (SAMHD) in the amount of \$64,352.00; authorizing the close-out and cancellation of the affected projects and the creation of the appropriate project and project budget; authorizing the execution and submission of contracts and other documents as necessary in connection therewith; authorizing the appropriation and allocation of said funds to the San Antonio AIDS Foundation (SAAF) to provide Tenant Based Rental Assistance (TBRA) to individuals who have HIV/AIDS and their family members; and providing for payment.

(B) An Ordinance authorizing the reprogramming of FY 2002-2003 Emergency Shelter Grant (ESG) funds in the amount of \$45,215.00 available from the San Antonio Metropolitan Ministry (SAMM) Dwyer Avenue Overflow Shelter; authorizing the appropriation and allocation of said funds to the SAMM Shelter on Commerce Street; authorizing revisions of appropriate project budgets; authorizing the execution and submission of contracts and other documents as necessary in connection therewith; and providing for payment.

6. 5:00 P.M. – Citizens to Be Heard.

THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE REGULAR COUNCIL MEETING:

CONSENT AGENDA

Items Concerning the Purchase of Equipment, Supplies and Services

7. An Ordinance accepting the proposal from the Houston/Galveston Area Council of Governments for a contract with Texas Fire Rescue to provide the City of San Antonio Fire Department with an aerial ladder platform truck for a total of \$670,000.00. [Presented by Janie B. Cantu, Director of Purchasing & General Services; Travis M. Bishop, Assistant City Manager]
8. An Ordinance accepting the best value bid from The Colonnade Group, Inc. to provide rental of portable seating for the NCAA Men's South Regional Basketball Tournament to be held in 2003, and the Men's Final Four Basketball Tournament to be held in 2004, at the Alamodome for a total cost of \$303,800.00. [Presented by Janie B. Cantu, Director of Purchasing & General Services; Travis M. Bishop, Assistant City Manager]
9. An Ordinance accepting the bids of various companies to provide the City of San Antonio with maintenance agreement for matrix automated access control system, police pursuit tires and acquisition services, library books and non-print media on an annual contract basis for FY2002-2003 for a total of approximately \$3,800,625.00. [Presented by Janie B. Cantu, Director of Purchasing & General Services; Travis M. Bishop, Assistant City Manager]

Capital Improvement Items

10. An Ordinance accepting the low bid submitted by V.W. Brooks, Incorporated in the amount of \$711,000.00 for construction work in connection with the Lady Bird Johnson Park Skate/Aquatics Facility Project located in Council District 10; appropriating \$789,085.00 in 1994 and 1999 Park Bond Funds; authorizing the negotiation and execution of a standard construction contract; authorizing \$71,100.00 for construction contingency expenses; authorizing \$5,000.00 for architect contingency expenses, \$135.00 for bid advertising/printing expenses and \$1,850.00 for permit fees; and providing for payment. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
11. An Ordinance accepting the low bid submitted by 3TI, Inc. in the amount of \$149,987.00 for construction work in connection with the Riverwalk ADA Improvements Project located in Council District 1; appropriating \$169,340.00 in issued certificates of obligation; authorizing the execution of a standard construction contract; authorizing \$19,353.00 for construction contingency expenses; and providing for payment. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]

12. An Ordinance selecting Independent Design to provide professional architectural services in connection with the Presa Community Center Covered Basketball Court Project located in Council District 3; authorizing the negotiation and execution of a professional services contract in an amount not to exceed \$9,950.00; authorizing the execution of a license agreement allowing for the construction of a basketball court to be used by the public on Presa Community Center Property; establishing a the project budget; appropriating \$14,385.00 Park Bond Funds; authorizing \$2,485.00 for architect contingency funds; authorizing \$1,200.00 for bid advertising and printing fees and \$750.00 for permit fees; and providing for payment. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
13. An Ordinance approving Field Alteration No. 1 in the amount of \$58,830.00 and Field Alteration No. 2 in the amount of \$3,997.50 payable to San Antonio Constructors, Ltd., for construction expenses in connection with the St. Francis – Dowdy to Probandt Community Development Block Grant (CDBG) Project, located in Council District 5; revising the project budget; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
14. An Ordinance ratifying services and authorizing payment in the amount of \$48,551.32 from general obligations of the City to the Texas Department of Transportation for the City's share of twenty percent (20%) of construction costs in connection with the Metropolitan Planning Organization Gevers Street from I.H. 10 to Southcross (Sidewalks) Project, located in Council District 3; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
15. An Ordinance selecting 3D/International, Inc. to provide professional architectural services in connection with the Fire Station No. 7 Project, located on South St. Mary's Street with street frontage also on South Presa and Florida Streets, in Council District 1; authorizing the negotiation and execution of a professional services contract in an amount not to exceed \$153,637.00; authorizing \$15,000.00 for miscellaneous contingency expenses; authorizing \$4,000.00 for reimbursable and printing expenses and \$800.00 for advertising expenses; for an overall total of \$173,437.00 from 2001 Certificates of Obligation; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
16. An Ordinance selecting CDS/Muery Services, Inc. to provide professional engineering services in connection with the Howard Drainage – Wildwood to El Monte Project, located in Council District 1; authorizing the negotiation and execution of a professional services contract in an amount not to exceed \$90,923.00; authorizing \$10,000.00 for miscellaneous engineering contingency expenses; for an overall total of \$100,923.00 from 1999 General Obligation Drainage Improvement Bond funds; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]

17. An Ordinance amending a professional services contract and authorizing additional funds from 1999 General Obligation Street Improvement Bonds in the amount of \$14,250.00 payable to Bury + Partners-SA, Inc. for additional engineering services in connection with the Thousand Oaks Intersections Project, located in Council Districts 9 and 10; authorizing \$1,425.00 for miscellaneous engineering contingency expenses; revising the budget; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
18. An Ordinance ratifying services and authorizing payment in the total amount of \$5,566.00 from 2001 Street Certificates of Obligation payable to Chemron, Incorporated for environmental laboratory services in connection with the Mission Trails, Package II Project, located in Council District 3; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
19. An Ordinance ratifying services and authorizing payment in the total amount of \$1,881.00 from 1999 General Obligation Bond funds payable to Chemron, Incorporated for environmental laboratory services in connection with the Salado Creek Phase I (Hike and Bike) Project, located in Council District 2; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
20. An Ordinance ratifying services and authorizing payment in the total amount of \$1,918.00 from 1996 Certificates of Obligation funds payable to Chemron, Incorporated for environmental laboratory services in connection with the Flores from Durango to Franciscan Project, located in Council Districts 1, 3 and 5; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
21. An Ordinance authorizing payment in the amount of \$16,545.00 from 1999 General Obligation Drainage Improvement Bond funds to Drash Consulting Engineers, Inc. for environmental services under an existing Environmental Professional Service Consulting Contract in connection with the Military Ditch #65 Project, located in Council District 4; Byrne Vossmer, Assistant City Manager]
22. An Ordinance authorizing payment in the amount of \$12,443.00 from 1999 General Obligation Drainage Bond funds to KEI, Inc. for environmental services under an existing Environmental Professional Service Consulting Contract in connection with the Octavia Drainage #63 Phase II Project, located in Council District 5; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
23. An Ordinance authorizing payment in the amount of \$6,440.00 from 1999 General Obligation Street Improvement Bond funds to ATC Associates, Inc. for environmental services under an existing Environmental Professional Service Consulting Contract in connection with the Tezel from Old Tezel to Timber Path Project, located in Council Districts 6 and 7; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]

24. An Ordinance authorizing payment in the amount of \$11,580.84 from 1999 General Obligation Street Improvement Bond funds to Geo-Marine, Inc. for environmental services under an existing Environmental Professional Service Consulting Contract in connection with the Fay Avenue Phases I and II: Quintana Road to Creighton and Creighton to New Laredo Highway Project, located in Council District 5; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
25. An Ordinance authorizing payment in the amount of \$5,200.00 payable to ATC Associates, Inc. for environmental services in connection with the F Street from Pecan Valley to I.H. 10 Community Development Block Grant (CDBG) Project, located in Council District 2; revising the project budget; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
26. An Ordinance appropriating \$17,609.66 from 1999 General Obligation Drainage Improvement Bond funds to the City of San Antonio Public Works Department to provide construction services for the Dijon Court Drainage Project, located in Council District 1. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
27. An Ordinance approving a cooperative agreement with the Texas Department of Transportation for the reimbursement of \$18,130.00 to the City for the cost of furnishing and installing traffic signal equipment on Isom Road at Sahara and on Isom Road at Oasis/Portland in conjunction with MPO Project STP 2001(147)MM; and authorizing City staff to acquire and install the traffic signal equipment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
28. An Ordinance authorizing payment from 1996 Certificates of Obligation in the amount of \$9,236.54 to PAR Construction, Inc. for construction services and \$1,926.30 to Sprinkle Robey Architects, AIA, L.L.C. for design services in connection with the Fire Station No. 8 Project, located at 619 S. Hamilton in Council District 5; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
29. An Ordinance amending a professional services contract and authorizing additional funds in the amount of \$24,110.00 payable to Madeline Anz Slay Architecture, P.L.L.C. (D/WBE) for additional architectural services in connection with the Replacement of Bullet Traps at the Firing Range of the Police Training Academy located at 12200 S.E. Loop 410 in Council District 3; authorizing \$5,000.00 for architectural contingency expenses; for an overall total of \$29,110.00 from 2002 Police Improvements Certificates of Obligation; revising the budget; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]

30. An Ordinance ratifying services in the amount of \$2,450.00 payable to GGI Engineers for surveying services in connection with the Yellowstone from Mission Road to Roosevelt Community Development Block Grant (CDBG) Project, located in Council District 1; revising the project budget; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
31. An Ordinance approving Field Alteration No. 8 and authorizing payment in the amount of \$72,337.30 from 1994 General Obligation Street Improvement Bonds to Commercial Indemnity Insurance Company in connection with the Higgins Road from Nacogdoches to Stahl Road Project, located in Council District 10; revising the budget; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
32. An Ordinance amending a professional services contract and authorizing additional funds in the amount of \$69,900.00 to Hoyt Consulting Engineers, Inc. in connection with the Flores/Breeden/Beacon Drainage Outfall Phase II & El Monte from Flores to San Pedro Project, located in Council District 1; authorizing \$6,990.00 for miscellaneous engineering contingency expenses, for an overall total of \$76,890.00 from 1999 General Obligation Street Improvement Bond funds; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
33. An Ordinance accepting the low, qualified responsive bid in the amount of \$29,326.84 submitted by San Antonio Constructors, Ltd., for construction services in connection with the FEMA Emergency Damage Repair – St. Cloud Drainage Channel Project, located in Council District 7; authorizing the negotiation and execution of a contract; authorizing \$650.00 for advertising expenses; appropriating funds from Stormwater Regional Fund; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
34. An Ordinance accepting the proposal and authorizing the execution of an On-Call Professional Non-Engineering Services Agreement for asbestos abatement with Bexar Environmental, Inc. as necessary to regulatory compliance in an amount not to exceed \$366,000.00 annually, with two (2) additional one (1) year option terms; and providing for payment. [Presented by Daniel V. Cardenas, Director, Environmental Services Department; Melissa Byrne Vossmer, Assistant City Manager]
35. An Ordinance authorizing an amendment to the “Professional Service Agreement for Facility Condition and Building Component Assessment Services” with ISES Corporation to include the City’s library facilities and authorizing 1989 General Obligation Library Improvement Bond funds in the amount of \$145,379.89. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]

Items Concerning the Purchase, Sale or Lease of Real Property

36. An Ordinance authorizing payment in the amount of \$900.00 from 1994 General Obligation Street Improvement Bond funds to Dugger, Canaday, Grafe, Inc. for appraisal services in connection with the Babcock Road/Leon Creek Improvements – Hausman to DeZavala Project, located in Council District 8; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
37. An Ordinance authorizing payment in the amount of \$1,600.00 from Certificates of Obligation to Margaret Persyn Cadena and husband, Gilbert Cadena, for a Right of Entry Agreement in connection with the Grissom–FM 471 (Loop 1604 to FM 1560) Project, located in Council Districts 6 and 8; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
38. An Ordinance authorizing payment in the amount of \$966.88 to Ticor Title Agency of San Antonio for title fees in connection with the Hi-Lions Drainage Project #80, Phases III & V (\$458.74) and the Higgins – Nacogdoches to Stahl Project (\$508.14); revising the project budgets; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
39. An Ordinance authorizing additional funds in the amount of \$10,000.00 for fee simple title to one parcel and \$12,000.00 for miscellaneous expenses related to construction of utilities for a total amount of \$22,000.00 from 2000 Certificates of Obligation payable to Commercial Abstract & Title Company d/b/a Lawyers Title of San Antonio as escrow agent for HM Dominion Ridge, Ltd, in connection with the Fire Station No. 47 Project, located in Council District 8; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
40. An Ordinance authorizing payment in the amount of \$4,343.49 payable to Davidson & Troilo, P.C., for legal services in connection with the Babcock Road/Leon Creek Improvements–Hausman to DeZavala (\$416.10), Basse Road and San Pedro Intersection Metropolitan Planning Organization Project (\$90.00), Bitters Road – West Avenue to Heimer Metropolitan Planning Organization Project (\$2,617.80), Pleasanton Road – Southcross to Mayfield Metropolitan Planning Organization Project (\$183.75), and the Salado Creek Greenway (Hike & Bike) Project (\$1,035.84); revising the project budgets; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
41. An Ordinance authorizing payment in the amount of \$2,100.00, from 1999 General Obligation Drainage Improvement Bond funds to Eckmann Groll, Inc. for appraisal services in connection with the Octavia Drainage #63, Phase II Project located in Council District 5; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]

42. An Ordinance authorizing payment in the amount of \$2,400.00 from Certificates of Obligation to Eckmann Groll, Inc. for appraisal services in connection with the Grissom-FM 471 (Loop 1604 to FM 1560) Project located in Council Districts 6 and 8; appropriating funds; and providing for payment. [Presented by Thomas G. Wendorf, Director of Public Works; Melissa Byrne Vossmer, Assistant City Manager]
43. An Ordinance authorizing the execution of a Lease Agreement with Hunan River Garden, Inc. d/b/a Hunan River Garden Restaurant for lease of approximately 102.7 square feet of patio space on the San Antonio Riverwalk in Council District 1 for outdoor patio dining purposes, at an annual rental rate of \$1,848.60 for the first year, \$1,897.90 for the second year and \$1,784.97 for the third year. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
44. An Ordinance authorizing the execution of a five (5) year La Villita Retail Lease Agreement with Cliff Croom d/b/a Bolivar Café for lease of approximately 1,713 square feet identified as Building 9, Suite 202, at La Villita in Council District 1 for the period December 1, 2002 through November 30, 2007, at an annual rate of \$16,573.64 for the first year, \$16,773.17 for the second year, \$16,976.19 for the third year, \$17,182.76 for the fourth year and \$17,386.95 for the fifth year. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
45. An Ordinance authorizing a Lease Agreement with the Mexican American Unity Council, Inc. for 8,683 square feet of office space for use by the Department of Community Initiatives, Youth Opportunity Program, for its West Side Center at 2300 West Commerce for the period of January 1, 2003 through June 30, 2004; and authorizing monthly lease payments in the amount of \$10,903.54. [Presented by Dennis J. Campa, Director of Community Initiatives; Frances A. Gonzalez, Assistant to the City Manager]
46. An Ordinance authorizing the execution of a lease agreement with WaveNexus Corporation for the lease of three vascular screening and assessing devices for the period January 1, 2003 through December 31, 2003 at a monthly rate of \$1,500.00; and authorizing the acceptance of a \$30,000.00 grant from WaveNexus to be used in connection with said lease. [Presented by Dr. Fernando A. Guerra, Director of Health; Frances A. Gonzalez, Assistant to the City Manager]
47. An Ordinance changing a portion of Durango Blvd. E. (between I.H. 37 on the east to I.H. 35 on the west) to HF Garcia; as requested by Councilman Bobby Perez, District 1. [Presented by Florencio Pena, Director, Development Services Department; Christopher J. Brady, Assistant City Manager]

Miscellaneous

48. An Ordinance authorizing two extra commercial events at Alamo Plaza, located in Council District 1, to be held in January 2003, in addition to the two events previously approved administratively, superseding the stated limit in section 22-17 of the City Code of two commercial events per month as requested by the Convention and Visitors Bureau. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
49. An Ordinance authorizing the execution of standard City Delegate Agency Contracts by the Director of Parks and Recreation Department with the Bethel Neighborhood Center, the Madonna Neighborhood Center, Positive Beginnings Incorporated and the YMCA of San Antonio and the Hill Country for the operation of a total of ten (10) program sites under the Department of Parks and Recreation's After School Challenge Program at a total annual cost of \$132,350.00; and authorizing reimbursement for program contractors. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
50. An Ordinance authorizing the execution of a License Agreement with Christus Santa Rosa Hospital (CSRH) to allow for the periodic stationing of CSRH's mobile unit at the parking lot of Pearsall Park Community Center located at 5102 Old Pearsall Road for the purpose of providing pre-natal and related health services to the surrounding communities for the period of October 1, 2002 through September 30, 2003. [Presented by Dennis J. Campa, Director of Community Initiatives; Frances A. Gonzalez, Assistant to the City Manager]
51. An Ordinance authorizing the acceptance of a continuation grant in the amount of \$27,854.00 from the U.S. Department of Housing and Urban Development for the Housing Counseling Program of the Department of Community Initiatives, Community Action Division, Fair Housing Program, for the period October 1, 2002 through September 30, 2003; authorizing execution of a contract; establishing a budget; and approving a personnel complement. [Presented by Dennis J. Campa, Director of Community Initiatives; Frances A. Gonzalez, Assistant to the City Manager]
52. An Ordinance authorizing the submission of a continuation grant application by the City of San Antonio's Department of Community Initiatives to the Office of the Governor, Criminal Justice Division for the Juvenile Accountability Incentive Block Grant (JAIBG) in the amount of \$413,493.00 to support the Neighborhood Conferencing Committees and Striving Together to Achieve Rewarding Tomorrows Programs from August 1, 2003 to July 31, 2004. [Presented by Dennis J. Campa, Director of Community Initiatives; Frances A. Gonzalez, Assistant to the City Manager]

53. An Ordinance authorizing the acceptance of a cash grant award in the amount of \$224,968.61 from the Patrician Movement for the San Antonio Metropolitan Health District to administer the ongoing San Antonio Regional Detoxification Program during the period September 1, 2002 through August 31, 2003; approving the execution of a contract with the Patrician Movement; establishing a fund; adopting a budget; and approving a personnel complement. [Presented by Dr. Fernando A. Guerra, Director of Health; Frances A. Gonzalez, Assistant to the City Manager]
54. An Ordinance authorizing the acceptance of an additional \$32,000.00 in cash support from the Texas Department of Health (TDH) to augment the ongoing HIV/Hepatitis C Screening/Intervention Project of the San Antonio Metropolitan Health District; extending the grant period through August 31, 2003; approving the execution of a change to the contract with TDH; and revising the budget for the Public Health State Support Project 2002/2003 (State) Fund. [Presented by Dr. Fernando A. Guerra, Director of Health; Frances A. Gonzalez, Assistant to the City Manager]
55. An Ordinance authorizing the execution of a Memorandum of Understanding between the Department of Transportation Federal Aviation Administration and the City of San Antonio to develop the Environmental Impact Statement for San Antonio International Airport pursuant to the National Environmental Policy Act of 1969 and the Council on Environmental Quality. [Presented by Kevin C. Dolliole, Aviation Director; Christopher J. Brady, Assistant City Manager]
56. An Ordinance authorizing the execution of a contract with "Keep San Antonio Beautiful, Inc." to provide assistance to the City in conducting neighborhood clean up programs and public education; and authorizing payment of \$20,000.00 from the Solid Waste Operating Fund for these services for FY 2002-2003. [Presented by Daniel V. Cardenas, Director, Environmental Services Department; Melissa Byrne Vossmer, Assistant City Manager]
57. An Ordinance authorizing the City's consent, subject to certain conditions, to the transfer and assignment of the cable television franchise and the cable system held by Paragon Communications d/b/a Time Warner Cable to Time Warner Cable, Inc. and waiving the procedural requirements of Section 6 of the Cable Franchise Agreement regarding the transfer of rights through a bill of sale. [Presented by Ben J. Gorzell, Public Utilities Supervisor/Assistant Director of Finance; Melissa Byrne Vossmer, Assistant City Manager]
58. An Ordinance authorizing payment in the amount of \$27,000.00 for the City of San Antonio's annual membership dues to Public Technologies, Inc. for the period of December, 2002 through November 2003. [Presented by Gary Moeller, Director, Information Technology Services Department; Travis M. Bishop, Assistant City Manager]

59. An Ordinance authorizing the execution of an amendment to the Professional Legal Services Agreement with Davidson & Troilo, P.C., in association with Escamilla & Poneck, Inc., approved on August 17, 2000 pursuant to Ordinance No. 92329, to increase the amount of the agreement by an additional amount of \$47,533.61 for the purpose of providing payment for services rendered during Fiscal Year 2002; authorizing the assignment of said agreement to the Brooks Development Authority. [Presented by Thomas Rumora, Director, Brooks City-Base Office; Christopher J. Brady, Assistant City Manager]

Approval of Temporary Street Closures and Traffic Control Procedures for Special Events

60. An Ordinance approving a parade permit to the City of San Antonio's Martin Luther King Jr. Commission to hold the "2003 Martin Luther King Jr. March and Celebration Program" and authorizing the temporary closure of New Braunfels from Crockett to Gulf and of Houston from St. James to Polaris Streets on Sunday, January 19, 2003 at 1:00 P.M. to prepare a stage for the event and the closure of Martin Luther King from the 3500 block of Martin Luther King to New Braunfels and from Martin Luther King to Martin Luther King Plaza beginning at 9:00 A.M. until 7:00 P.M. on Monday, January 20, 2003 for said event. [Presented by Travis M. Bishop, Assistant City Manager; Terry M. Brechtel, City Manager]

Board, Commissions and Committee Appointments.

61. Consideration of the following board appointments: [Presented by Yolanda Ledesma, Acting City Clerk; Travis M. Bishop, Assistant City Manager]

- A. An Ordinance appointing David De La Garza (District 4) to the Ethics Review Board for a term of office to expire on February 21, 2005.
- B. An Ordinance reappointing John Nicholas (District 8) and Catherine A. Dean (District 3) to the San Antonio Public Library Board of Trustees for terms of office to expire on September 30, 2004.
- C. An Ordinance appointing Carrie Camus (District 6) to the San Antonio Local Development Company for a term of office to expire on May 9, 2004.
- D. An Ordinance reappointing Pete Gonzales, Jr. (District 6) to the Greater Kelly Development Authority for a term of office to expire on November 30, 2004.
- E. An Ordinance appointing Roland Salazar (District 4) to the Board of Appeals for a term of office to expire on July 31, 2004.
- F. An Ordinance reappointing Christopher Brady (City Manager's Designee - District 10) and Howard W. Peak (Technology and Research Category - District 6) to the Brooks Development Authority for terms of office to expire on November 4, 2004.

- G. An Ordinance appointing Rebecca Montalvo (District 3) to the San Antonio Youth Commission for a term of office to expire on June 1, 2003.
- H. An Ordinance reappointing Ramon Quintero (District 3) to Keep San Antonio Beautiful, Inc. for a term of office to expire on December 22, 2004.
- I. An Ordinance reappointing Larry Hufford (District 3) to the City of San Antonio, Texas Education Facilities Corporation for a term of office to expire on December 15, 2004.
- J. An Ordinance appointing Cynthia Mazuca (District 3) to the Affirmative Action Advisory Committee for a term of office to expire on January 31, 2005.

ITEMS FOR INDIVIDUAL CONSIDERATION

- 62. An Ordinance authorizing the City Manager or her designee to execute a contract with WHP Health Initiatives, Inc., d/b/a/ Walgreens Health Initiatives, to provide prescription drug program retail and mail order services under the City's Self-Funded Health Benefits Program for a term of three (3) years, beginning January 1, 2003 and ending December 31, 2005, with an option to extend the contract for up to two (2) one (1) year extensions, in an estimated budgeted annual amount of \$7,710,849.00 subject to and contingent upon funding and approval by City Council. [Presented by Elisa Pena Bernal, Human Resources Director; Travis M. Bishop, Assistant City Manager]
- 63. An Ordinance authorizing the execution of an Interlocal Agreement with the Texas Parks and Wildlife Department for the expenditure of up to \$400,000.00 from 1994 Park Bond Funds to construct the Government Canyon State Natural Area Interpretive/Education Center; and providing for payment. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
- 64. An Ordinance ratifying the execution of a grant agreement in the amount of \$30,000.00 with KaBOOM!, Inc. for the installation of park amenities in connection with the Spring Time Park (Oxbow/Babcock North Park) Project in Council District 8; authorizing a grant match of \$10,000.00; and establishing an expenditure code for park construction crew expenses in the amount of \$52,798.69 of FY 99-00 One Time Improvement Funds from Council District 8 previously appropriated for this project. [Presented by Malcolm Matthews, Director of Parks and Recreation; Melissa Byrne Vossmer, Assistant City Manager]
- 65. An Ordinance accepting the low bid submitted by Waste Management, Inc. to provide the City of San Antonio with an annual contract for garbage disposal services for an estimated annual cost of \$308,000.00. [Presented by Janie B. Cantu, Director of Purchasing & General Services; Travis M. Bishop, Assistant City Manager]

74. An Ordinance authorizing the expenditure of \$1,000.00 from the District 3 Contingency Account Fund, payable to the Highland Hawks Pop Warner Association, Junior Midget Division, to be used to help offset costs for traveling expenses for the Regional Pop Warner Playoffs; as requested by Councilwoman Antoniette Moorhouse.
75. An Ordinance authorizing the transfer of \$2,000.00 from the District 3 Contingency Account Fund to the District 3 City Hall Mail Parcel Line Item; as requested by Councilwoman Antoniette Moorhouse.
76. An Ordinance authorizing the expenditure of \$12,000.00 from the District 3 Human Development Services Fund, \$2,000.00 from the District 7 Human Development Services Fund and \$2,000.00 from the District 9 Human Development Services Fund, payable to the TexPrep Bridge Program for a newly created Bioscience Technology Program; as requested by Councilwoman Antoniette Moorhouse, District 3.
77. An Ordinance authorizing the expenditure of \$500.00 from the District 4 Contingency Account Fund, payable to the Brackenridge High School 1962 State Champs Committee, to be used to help defray costs associated with its 40th Anniversary Dance and Scholarship Fundraiser to raise money for scholarships to be held on Saturday, December 21, 2002; as requested by Councilman Enrique "Kike" Martin.
78. An Ordinance authorizing a license agreement with Jones Lang LaSalle Americas, Inc. as Agent for S.P. San Antonio Partnership, L.P., for the lease of 503 square feet of office space at South Park Mall to be used for the District 4 Field Office for the term September 1, 2002 through August 31, 2004, for a rate of \$500.00 per month, subject to annual appropriation of funds; as requested by Councilman Enrique Martin.
79. An Ordinance authorizing the expenditure of \$924.00 from the District 4 Contingency Account Fund, payable to the Parks and Recreation Department, to be used for the rental of one (1) Showmobile, with sound system (\$550.00), three Park Police (\$324.00) for security and traffic control and a temporary ramp (\$50.00) for Southwest Community in Action's Blue Santa Parade to be held on Saturday, December 14, 2002; as requested by Councilman Enrique Martin.
80. An Ordinance authorizing the expenditure of \$1,500.00 from the District 4 Contingency Account Fund, payable to the Miller's Pond Youth Football League, to be used to help defray costs associated with their 24th Annual Banquet to be held on Sunday, January 12, 2003; as requested by Councilman Enrique Martin.
81. An Ordinance authorizing the total expenditure of \$500.00 from the District 5 Contingency Account Fund (\$250.00) and the District 7 Contingency Account Fund (\$250.00), payable to the St. Dominic's Tigers baseball team, to be used to help defray the costs of uniforms, equipment and operating costs for the team; as requested by Councilmen David A. Garcia and Julian Castro.

82. An Ordinance authorizing the expenditure of \$1,000.00 from the District 6 Contingency Account Fund, payable to the Earl Warren High School PTA, to be used to offset the costs associated with the purchase or construction of a security and display case for former United States Supreme Court Justice Earl Warren's robe; as requested by Councilman Enrique M. Barrera.
83. An Ordinance authorizing the transfer of \$35,408.00 to the District 10 Administrative Assistant Fund from savings identified in the following One Time Projects: \$1,136.00 from Code Compliance – Surveillance Equipment; \$5,000.00 from Parks & Recreation – Friends of Comanche Lookout; \$1,976.00 from Police – Police Equipment; \$285.00 from Police – Bike Equipment; \$933.00 from Police – Radar Units; \$1,750.00 from Police - Hand Held Radar Guns; \$11,468.00 from Public Works – Flasher Lights; \$12,860.00 from Public Works – Speed Humps; as requested by Councilman David Carpenter.
84. A Resolution supporting the passage of an Educational Bond offered by the North East Independent School District to the residents of the district; as requested by Councilman Carroll W. Schubert, District 9.
85. City Manager's Report.
86. Executive Session: Consultation concerning attorney-client matters (real estate, litigation, contracts, personnel and security) may be discussed.
- A. Attorney-client consultation pursuant to §551.071 of the Texas Gov't Code to discuss legal issues related to collective bargaining negotiations with the San Antonio Police Officers Association.
- B. Attorney-client consultation pursuant to Sec. 551.071 of the Texas Government Code, to discuss legal issues relating to possible litigation against the city by Heatherwilde Estates Housing, L.P., in connection with property located in the 10400 block of Old Pearsall Road (related to Agenda Item 4(O) on this agenda).
- C. Attorney-client consultation pursuant to Sec. 551.071 of the Texas Government Code, to discuss legal issues related to a boundary dispute affecting city property east of the San Antonio River and immediately south of East Hildebrand Avenue.
- D. Attorney-client consultation pursuant to Sec. 551.071 of the Texas Government Code, to discuss legal issues relating to *City of San Antonio vs. Greg Abbott*, GV 204394, in the District Court of Travis County, Texas.

Chris Wittmayer

From: Roderick Sanchez [RodSanchez@sanantonio.gov]

Sent: Tuesday, December 17, 2002 12:54 PM

To: Chris Wittmayer

Subject: RE: Heatherwilde zoning

Please disregard all e-mails sent from the Development Services Department.

Roderick J. Sanchez, AICP

Development Services

-----Original Message-----

From: Chris Wittmayer [mailto:cwittmay@tdhca.state.tx.us]

Sent: Friday, December 13, 2002 1:44 PM

To: Roderick Sanchez

Subject: Heatherwilde zoning

Importance: High

Dear Mr. Sanchez:

Thank you for the voice message of late on 12/9 in which you advised that the issue of proper zoning on the Heatherwilde site would be discussed with the City Council on 12/12 and that we would receive an opinion on the zoning today. We look forward to promptly receiving the opinion as it could have a very significant impact on the developers applying for tax credits. A lot of money is at stake. I note that by letter dated October 31, 2002, to Earl & Brown, Planner Pete Gomez stated that the Heatherwilde C-3R zoning permits multi-family dwellings per the Table of Permitted Uses. Program deadlines are upon us and these issues must be timely resolved. Please respond to me by email or by fax to (512) 475-3978. Thank you.

Chris Wittmayer
General Counsel



CITY OF SAN ANTONIO

ANDREW MARTIN
City Attorney
Office of the City Attorney
Voice: (210) 207-8940
Fax: (210) 207-4004

P.O. BOX 839866
SAN ANTONIO, TEXAS 78283-3966

December 17, 2002

Via Facsimile: (512) 475-3978

Chris Wittmayer, General Counsel
Texas Dept. of Housing and Community Affairs
P.O. Box 13941
Austin TX, 78711-3941

Dear Mr. Wittmayer:

This will confirm our conversation earlier this afternoon concerning the zoning status of a proposed multi-family development known as "Heatherwilde Estates."

Let me highlight and emphasize the city's fundamental position by repeating this point from our conversation: the City of San Antonio supports additional affordable housing opportunities for San Antonio citizens that may be made available with financing assistance from your agency.

The Heatherwilde Estates property is currently zoned C-3-R Commercial Restrictive Alcoholic Sales District. You have a letter dated October 31, 2002, from Pete Gomez to Earl & Brown that quotes language from the Unified Development Code concerning permitted uses in the C-3-R district. As I stated in our conversation, that letter accurately quotes language of the Unified Development Code with respect to certain permitted uses in the C-3 district.

This Thursday, December 19, the following item is posted on the San Antonio City Council agenda for council consideration:

44. A Resolution to direct the Development Services Department to bring forward to the Zoning Commission for their recommendation and thereafter to this City Council for consideration, a change of zoning from "C-3 R" Commercial Restrictive Alcoholic Sales District to "MF-25" Multi-Family District on the property described as 15.00 acres out of a 65.236 acre tract, New City Block 14491, located in the 10400 block of Old Pearsall Road, in the City of San Antonio, being out of the Maria F. Rodriguez survey No. 4, Abstract No. 16, in County Block 4303, Bexar

County, Texas. [Presented by Florencio Pena, Director, Development Services Department; Christopher J. Brady, Assistant City Manager]

If adopted by the City Council, the resolution directs city staff to process a city-initiated rezoning of the Heatherwilde Estates site for council consideration of a change from the C-3-R zoning district to an "MF-25" Multi-Family district. That process normally requires 45 to 60 days, assuming no delays. In the recent rezoning case filed by the Heatherwilde Estates applicant, the staff of the Development Services Department recommended the proposed rezoning to "MF-25" district. I understand the recommendation for MF-25 rezoning from Development Services Department staff will continue. Of course, before the City Council decides on the rezoning, both proponents and opponents of the rezoning will have the opportunity to express support or opposition at public hearings before the Zoning Commission and the City Council.

I have reviewed a copy of an email dated November 20, 2002, from John Jacks, a senior planner with the City of San Antonio, directed to Ben Sheppard of your agency. Please be advised that this email should not be construed by your agency or anyone else as the final or unalterable position of the City of San Antonio in a dispute over how the city interprets and applies the Unified Development Code to a specific development proposal. The proposed city-initiated rezoning of the Heatherwilde Estates site to MF-25, if and when approved by the City Council, should moot any dispute about the proposed use of that site for a multi-family residential development.

Please let me know if I can provide any additional information.

Very truly yours,



Andrew Martin

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 15, 2002

Bexar County Judge Nelson Wolff
Bexar County Courthouse
San Antonio, TX 78205-3036

Judge Wolff;

Reference: Our Nov 11, 2002 letter to you.

In referenced letter, we expressed concern over how the Bexar County Housing Authority Board handled a proposed affordable apartment complex within our boundaries. In summary, those concerns were that we (the neighborhood) was not given Due Diligence, one board member gave incorrect testimony to the state, and one board member may have had a conflict of interest. We questioned whether those actions were appropriate and proper; we asked you to investigate it and provide us a written response. We included back-up documentation with our letter. Additionally, we asked if members still on the board are really current - and we mentioned Bexar County goals which, it appears, no attempt was made to follow.

To date, we've received no response from you. For the past two weeks, I've been calling your aides, almost daily, asking for an appointment to talk with you on this matter. I'd like to know the status of your investigation and find out when we can anticipate a final written response. However, I've yet to receive an appointment or even a sense that this issue is being reviewed at all.

Again, I request an appointment to speak with you on this matter. I anticipate only 1/2 hour will be needed. Please call if you have any questions, 623-4965. Thank you.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 22, 2002

Executive Director, TX Dept of Housing & Community Affairs
PO Box 13941
Austin, TX 78711-3941

Ms. Carrington;

REFERENCE: Heatherwilde Estates project, TDHCA# 02075.

Attachment 1 is a copy of an article from the San Antonio Express-News, Thu, Dec 19, 2002, which clearly points out that the applicant withdrew their request for Multi-Family-25 zoning in a letter dated Dec 6, 2002. It also states that San Antonio City Attorney Andrew Martin clearly responded that the current zoning of this property (C-3R) is NOT appropriate for the developers to proceed. At the Dec 19, 2002 City Council meeting, we turned in **petitions opposed** to Heatherwilde Estates with at least **1,178 signatures** from area residents. We are continuing to collect signatures for when this issue returns to the Zoning Commission next month. I will be happy to send you copies, if you wish.

Attachment 2 is a copy of an article from the Fri, Dec 20, 2002 Express-News, saying that this issue was going back through the zoning process.

Page 9, of your agency's Credit Underwriting Analysis on this project, under Conditions, item 2 states, "Receipt, review, and acceptance of documentation evidencing approval of rezoning to MF-25/Multifamily". We've heard that TDHCA is taking the word of the developers and lobbyists that they have appropriate zoning. After all of the misinformation that has become a hallmark of this project, we would expect TDHCA to be more thorough and professional than accepting their word as "evidence" of appropriate zoning.

Our association and our community are opposed to this project for a number of reasons, not the least of which, is the amount of misinformation upon which state decisions were/are based. The community first became aware of this project in Aug 2002; since then, the community has received more misinformation and pressure to capitulate to the developers and lobbyists. Just over 1 year ago, Dr. Fernando Guerra, Director of Health for the SA Metropolitan Health District, briefed City Council on the status of health in the city. One slide, which showed exactly the boundaries of our association, indicated the tremendous number of abandoned homes - which were either vacant or non-owner occupied. He referred to our area as an example of a "destabilized community that happened over time". One TV station even used his comments to label our area as the most unhealthy place to live in SA. We think it would be unconscionable for TDHCA to do anything further to assist in putting this project, to help a group of at-risk people, into *an area still at-risk itself*. I refer you of the Oct 25, 2002 letter from from the Chair of the National Association of Home Builders (NAHB) to TDHCA which warns against exactly that situation. It says in part, "By awarding higher points for projects serving the lowest incomes and projects in the poorest areas, you encourage the concentration of poverty. If we learned anything from the experience with public housing, it is that this type of concentration is harmful to residents and destabilizing to communities."

Ms. Carrington, don't let TDHCA continue to be used and misled. If you keep giving extensions on this project, you will permanently adversely affect the existing racially-mixed community of citizens and taxpayers. Thank you.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

2 Attachments

1. SA E-N article, Thu, Dec 19, 2002.
2. SA E-N article, Fri, Dec 20, 2002.

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 27, 2002

Executive Director, Housing Authority of Bexar County
301 S. Frio St., Suite 290
San Antonio, TX 78207

Ms. Torres;

REFERENCE: Heatherwilde Estates project, Agenda Item IX at your Dec 20, 2002 Board meeting.

If you recall, at your Dec 20th mtg, under "Citizens To Be Heard" I mentioned our concern that:

- our neighborhood had no Due Diligence regarding this project; we were not even made aware of this project until Aug 2002.
- we have concerns that Mr. Ken Brown, a supposed former board member had a conflict of interest, because he is also partner of Earl & Brown, the lobbyist for this project.
- your Board President, Mr. Chapa, testified incorrectly on Jul 29, 2002 to the TX Department of Housing and Community Affairs (TDHCA) saying our community thought this project was "much needed"; when, in fact, that was not true. Mr. Chapa commented at that Dec 20th meeting, that, at the time he made those comments to the state, he *thought* they were true. Now that he knows they were not, **we ask the Housing Authority of Bexar County to officially notify TDHCA, in writing, as soon as possible, that those comments were not correct.** (Please also provide us a written copy.)

Since that meeting, we've become aware of TX Statute 392 - which spells out rules for county Housing Authorities. Specifically, I quote the following subparagraphs:

- 392.015 Area of Operation of a County Housing Authority

"The area of operation of a county housing authority is the county in which the authority is created excluding the parts of the county that are within the territorial boundaries of a municipality."

NOTE: Heatherwilde Estates is within the boundaries of the City of San Antonio.

- 392.053 Public Meeting on Proposed Housing Project

"(b) Unless the commissioners of an authority hold a public meeting about a proposed housing project **before the site for the project is approved**, the authority may not authorize construction of the housing project or obtain a permit, certificate, or other authorization required by a municipality or other political subdivision for any part of the construction or the housing project. A majority of commissioners must attend the public meeting." (Bold print added.)

"(c) The commissioners shall hold the meeting at the closest available facility to the site of the proposed project.

(d) The commissioners shall allow a person who owns or leases real property within one-fourth mile of the proposed site to comment on the proposed project.

(e) If a housing authority has not complied with the requirements of this section and Section 392.054, a municipality or other political subdivision may not issue a permit, certificate, or other authorization for any part of construction of, or for the occupancy of, a housing project."

NOTE: There was no such public meeting in regard to Heatherwilde Estates.

- 392.054 Notice of Public Meeting

"(a) In addition to any other notice required by law, the commissioners of an authority shall post notice of the date, hour, place, and subject of a meeting required by Section 392.053. The notice must be posted before the 30th day before the date of the meeting on a bulletin board at a place convenient to the public in:

- (1) the county courthouse of the county in which the proposed site is located, and
- (2) the city hall of the municipality in which the proposed site is located, if applicable.

(b) Before the 30th day before the date of the meeting, the commissioners shall publish a copy of the notice required by Subsection (a) in a newspaper with, or in newspapers that collectively have, general circulation in the county in which the proposed project is located.

COMMUNITY ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Bexar County Judge Nelson Wolff
Bexar County Courthouse
San Antonio, TX 78205-3036

Judge Wolff;

References:

1. Our Nov 11, 2002 letter to you.
2. Our Dec 15, 2002 letter to you.

The day after the Dec 19, 2002 San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the meeting of the Housing Authority of Bexar County (HABC) board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.


On Dec 19th, we'd asked Council not to approve that resolution, because we felt the city would then be doing the work for the developers and lobbyists. We felt it would be a slam-dunk and a just the pretense of the democratic process. Prior to that Council meeting, when I mentioned that belief to City Attorney Andrew Martin, he assured me that the process would just start over, but that it in no way was the city predetermining the outcome of the zoning change request. Therefore, we continue getting signatures on our petitions and will continue to fight this issue at the Zoning Commission and at City Council.

Following the Dec 20th HABC board meeting, we became aware of state statute 392, which spells out the authority and responsibilities of county housing authorities. It appears that when it comes to Heatherwilde Estates the HABC did not follow any of the requirements, in violation of state law. (The details are stated in Attachment 1, so I won't repeat them here.) In summary, we believe that because the housing authority acted improperly, our rights were violated. In light of that, and in light of the continued misinformation being presented to HABC board members by the developers, we ask the elected County Commissioners to move quickly to kill this project and save the county further embarrassment - or worse.

Despite the fact that this proposed project is within our association's boundaries, we just became aware of it in Aug, 2002. We've been working behind the power-curve since then, to dig up more information. The more we dig, the more this whole project "doesn't pass the smell test" (not the least of which, is Councilman Martin's flip-flop on the issue). As stated in our previous letters, we'd like an appointment to sit down with you and discuss all of our concerns and provide our background information. We again ask for an appointment.

Thank you. If you have any questions, please call 623-4965.

Southwest Proud,


CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:

SWCA Dec 27, 2002 ltr to HABC Executive Director

... ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Precinct 2 County Commissioner
Bexar County Courthouse
San Antonio, TX 78205-3036

Commissioner Paul Elizondo;

This letter is to make you aware of some of our grave concerns regarding Heatherwilde Estates, of which the Housing Authority of Bexar County (HABC) is a partner.

The day after the Dec 19, 2002 San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the meeting of the HABC board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.

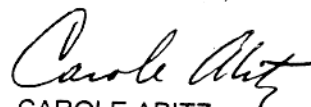
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Following the Dec 20th HABC board meeting, we became aware of state statute 392, which spells out the authority and responsibilities of county housing authorities. It appears that when it comes to Heatherwilde Estates the HABC did not follow any of the requirements, in violation of state law. (The details are stated in Attachment 1, so I won't repeat them here.) In summary, we believe that because the housing authority acted improperly, our rights were violated. In light of that, and in light of the continued misinformation being presented to HABC board members by the developers, we ask the elected County Commissioners to move quickly to kill this project and save the county further embarrassment - or worse.

Despite the fact that this proposed project is within our association's boundaries, we just became aware of it in Aug, 2002. We've been working behind the power-curve since then, to dig up more information. The more we dig, the more this whole project "doesn't pass the smell test" (not the least of which, is Councilman Martin's flip-flop on the issue). We'll be happy to sit down with you and discuss all of our background information. We would appreciate your support, in opposition, to this project.

Thank you. If you have any questions, please call 623-4965.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:
SWCA Dec 27, 2002 ltr to HABC Executive Director

... ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Precinct 3 County Commissioner
Bexar County Courthouse
San Antonio, TX 78205-3036

Commissioner Lyle Larson;

This letter is to make you aware of some of our grave concerns regarding Heatherwilde Estates, of which the Housing Authority of Bexar County (HABC) is a partner.

The day after the Dec 19, 2002 San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the meeting of the HABC board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.

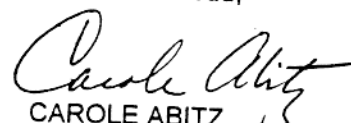
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Thank you. If you have any questions, please call 623-4965.

Southwest Proud,


CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:
SWCA Dec 27, 2002 ltr to HABC Executive Director

... COMMUNITY ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Precinct 1 County Commissioner
Bexar County Courthouse
San Antonio, TX 78205-3036

Commissioner Robert Tejeda;

Reference: Our previous letter to you, dated Oct 17, 2002.

The day after the San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the Dec 20th meeting of the Housing Authority of Bexar County (HABC) board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.

On Dec 19th, we'd asked Council not to approve that resolution, because we felt the city would then be doing the work for the developers and lobbyists. We felt it would be a slam-dunk and a just the pretense of the democratic process. Prior to that Council meeting, when I mentioned that belief to City Attorney Andrew Martin, he assured me that the process would just start over, but that it in no way was the city predetermining the outcome of the zoning change request. Therefore, we continue getting signatures on our petitions and will continue to fight this issue at the Zoning Commission and at City Council.

We thank you for your previous support to oppose this issue and still have your Oct 1, 2002 letter of opposition. For the past few weeks, I've been asking to meet with you again on this issue - to discuss latest status and verify that we still have your support. I again ask to meet with you.

Following the Dec 20th HABC board meeting, we became aware of state statute 392, which spells out the authority and responsibilities of county housing authorities. It appears that when it comes to Heatherwilde Estates the HABC did not follow any of the requirements, in violation of state law. (The details are stated in Attachment 1, so I won't repeat them here.) In summary, we believe that because the housing authority acted improperly, our rights were violated. In light of that, and in light of the continued misinformation being presented to HABC board members by the developers, we ask the elected County Commissioners to move quickly, on behalf of county citizens, to kill this project and save the county further embarrassment - or worse.

Thank you. If you have any questions, please call 623-4965.

Southwest Proud,


CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:

SWCA Dec 27, 2002 ltr to HABC Executive Director

... ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Precinct 1 County Commissioner
Bexar County Courthouse
San Antonio, TX 78205-3036

Commissioner Robert Tejeda;

Reference: Our previous letter to you, dated Oct 17, 2002.

The day after the San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the Dec 20th meeting of the Housing Authority of Bexar County (HABC) board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.

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Thank you. If you have any questions, please call 623-4965.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:
SWCA Dec 27, 2002 ltr to HABC Executive Director

COMMUNITY ASSOCIATION (SWCA)
[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 28, 2002

Precinct 4 County Commissioner
Bexar County Courthouse
San Antonio, TX 78205-3036

Commissioner Tommy Adkisson;

This letter is to make you aware of some of our grave concerns regarding Heatherwilde Estates, of which the Housing Authority of Bexar County (HABC) is a partner.

The day after the Dec 19, 2002 San Antonio City Council meeting, where we asked Council not to do the work of the developers and direct city staff to resubmit the zoning process regarding the request for MF-25 designation for Heatherwilde Estates (at which time, we turned in petitions with at least 1,178 signatures from area residents); I attended the meeting of the HABC board. I heard Mr. David Marquez, main presenter on Heatherwilde Estates, misrepresent the status of appropriate city zoning. I was not allowed to speak, but passed the information to Precinct 1's appointee to the board, Ms. Lupe Torres. In the note, I told her that the applicant had withdrawn the request for the zoning change and that the issue was to go through the zoning process again in Jan 2003. Ms. Torres, passed the note back to me without raising any questions or making any comment to the board.

On Dec 19th, we'd asked Council not to approve that resolution, because we felt the city would then be doing the work for the developers and lobbyists. We felt it would be a slam-dunk and a just the pretense of the democratic process. Prior to that Council meeting, when I mentioned that belief to City Attorney Andrew Martin, he assured me that the process would just start over, but that it in no way was the city predetermining the outcome of the zoning change request. Therefore, we continue getting signatures on our petitions and will continue to fight this issue at the Zoning Commission and at City Council.

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Commissioner Adkisson, there are three more points I want to make clear to you:

1. I've attended two HABC board meetings thus far. Your appointee, Ms. Nancy Busch, seems to be the only board member who asks pertinent questions AND is apparently not part of the affordable housing business community. Unfortunately, because of the recent transition of HABC legal counsel, there is no way she can verify the answers she receives as being correct or not prior to having to vote.
2. Because of the continued misrepresentations and misinformation provided on this project to the state, we've heard that millions of dollars have been lost this year, some of which would probably have enabled affordable housing projects in your precinct; projects that *had been properly coordinated with the affected neighborhoods*.
3. We've heard that you spoke out against this project at a public meeting a few weeks ago - and we thank you for that. We just became aware of this project (which is within our association's

boundaries) in Aug, 2002. We've been working behind the power-curve since then, to dig up more information. The more we dig, the more this whole project "doesn't pass the smell test" (not the least of which, is Councilman Martin's flip-flop on the issue). We'll be happy to sit down with you and discuss all of our background information. We would appreciate your further investigation - and support, in opposition, to this project.

Thank you. If you have any questions, please call 623-4965.

Southwest Proud,


CAROLE ABITZ
Vice-President & Zoning Chair

1 Attachment:

SWCA Dec 27, 2002 ltr to HABC Executive Director

SOUTHWEST COMMUNITY ASSOCIATION (SWCA)

[Founded: 1984; in the area bounded by Loop 410 on the west, Old Pearsall Rd on the north, Military Dr on the east, and the Union Pacific railroad tracks on the south.]

POB 27102
San Antonio, TX 78227
Dec 29, 2002

Executive Director, TX Dept of Housing & Community Affairs
PO Box 13941
Austin, TX 78711-3941

Ms. Carrington;

REFERENCE: Heatherwilde Estates project, TDHCA# 02075. Reference also our letter to you dated Dec 22, 2002.

As mentioned before, this property is within our association's boundaries, yet none of the partners bothered to tell us about it until Aug, 2002. We've been working behind the power-curve since then, to dig up more information. The more we dig, the more this whole project "doesn't pass the smell test". Just within the last week, we became aware of state Statute 392. This statute defines the authority and responsibilities of county housing authorities. The Housing Authority of Bexar County (HABC) is one of the partners on this project. Statute 392 clearly spells out requirements for public meetings on any housing project **before the site for the project is approved**. (I refer you specifically to 392.053 and .054.) Those requirements were NOT met on the Heatherwilde Estates project.

Additionally, 392.015 clearly states that a county housing authority's area of operation is "the county in which the authority is created excluding the parts of the county that are within the territorial boundaries of a municipality". Heatherwilde Estates is within the boundaries of the City of San Antonio. It appears HABC has exceeded its authority. We're asking HABC and the Bexar County Commissioners to withdraw from partnership on this project.

We continue to gather signatures on our petition to add to the 1,178 already submitted and will go back to the Zoning Commission and City Council in Jan to fight against the zoning change to MF-25. We are still digging up more information and expect we will be vindicated following a thorough investigation. Meanwhile, stop granting extensions for the Heatherwilde Estates project so the funding can be turned over for other projects in other parts of the city/state, which have been properly coordinated with the affected neighborhoods.

We would also appreciate receiving copies of TDHCA's mission and/or vision statements - and any oaths taken by yourself and/or board members. Thank you.

Southwest Proud,



CAROLE ABITZ
Vice-President & Zoning Chair

Dario Chapa
Chairman

Carlos Madrid, Jr.
Vice-Chairman

Kenneth Brown
Commissioner

Nancy Busch
Commissioner

Lupe Torres
Commissioner

HOUSING AUTHORITY OF BEXAR COUNTY

FILED IN MY OFFICE
GERRY RICKHOFF
COUNTY CLERK BEXAR CO.

2002 DEC 16 PM 3:23

301 South Frio Street • Suite 290
San Antonio, Texas 78207
(210) 225-0071 • Fax: (210) 225-6976

Christine D. Torres
Executive Director

December 16, 2002

A REGULAR SCHEDULED BOARD MEETING OF THE HOUSING AUTHORITY OF BEXAR COUNTY, TEXAS, WILL BE HELD AT 301 S. FRIO STREET, CONFERENCE BOARD ROOM #1, 1ST FLOOR, ON FRIDAY, DECEMBER 20, 2002 AT 4:30 P.M.

The following item(s) will be discussed, and if appropriate, action will be taken.

AGENDA

- I. Call meeting to order.
- II. Roll call.
- III. Communication – citizens to be heard.
- IV. Approval of the minutes of the regular scheduled board meeting held on November 20, 2002.
- V. Discussion and appropriate action of real estate acquisition for affordable Housing and Administrative Offices:
 - a.) Update by Mr. Apolonio Flores, Housing Consultant
 - b.) Update by Mr. Humberto Saldana
 - c.) Update by Commissioners Committee on meeting with Marcus Jahns
- VI. Discussion and appropriate action regarding mutual fund transition to J.P. Morgan Institutional Investments (Bear Spring Apartments)
 - a.) Update by Mr. Apolonio Flores
- VII. Discussion and appropriate action regarding pre-scheduling an annual meeting with the Bexar County Commissioner's Court
- VIII. Travel – NAHRO Legislative Conference
- IX. Status Report: "Heatherwilde" Estates Tax Credit Project
 - a.) Report by Mr. David Marquez
- X. Discussion and possible appropriate action regarding participation as general partner in "Primrose" SA L.P. Affordable Housing Development.
 - a.) Presentation by Southwest Housing Development
- XI. Closed Meeting
The Board of Commissioners may convene a closed meeting in conformance with Chapter 551 of the Texas Government Code §§551.071 - 551.076 for attorney-client consultation and discussion.
 - 1.) Discussion and appropriate action of Real Estate acquisition for Affordable Housing and Administrative offices.

Closed meeting item(s) may be discussed and acted upon, if appropriate, in open session.
- XII. Adjournment.

THE BOARD RESERVES THE RIGHT TO CONVENE IN CLOSED MEETING TO DELIBERATE ANY MATTER PERMITTED UNDER CHAPTER 551 OF THE TEXAS GOVERNMENT CODE IN CONNECTION WITH ANY OPEN MEETING ITEM LISTED ABOVE.

DISABILITY ACCESS STATEMENT

This meeting is wheelchair accessible. The accessible entrance is located at 301 S. Frio St., Main Entrance. Accessible parking spaces are located at 301 S. Frio St., Main Entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested forty-eight (48) hours prior to the meeting) by calling (210) 226-2766 TDD for assistance.

Christine D. Torres
CHRISTINE D. TORRES
EXECUTIVE DIRECTOR

DAVID MARQUEZ'S COMMENTS AT BEXAR COUNTY HOUSING AUTHORITY BD MTG, DEC 20, 2002

MARQUEZ: Introduces Bobby Leopold, B&L Development, a partner in the deal. His wife, Cindy Marquez, then he starts going over hand-outs he gave board members.
...the 3rd page, I'm sorry they may not be in order, if you look on the 3rd page, This is a letter reserving the tax credits for Heatherwilde Estates. this was forwarded to Bobby Leopold, and before this is sent out this was reviewed by the attorney general's office....

You have this commitment is subject to, and then here's the date here, Aug 11th. They have to be in receipt of ...appropriate documentation. They have to be in receipt, review and acceptance of complete approval of re-zoning to MF-25.

The reservation...how much is it? \$42,176, OK? We have to also submit, .if you look on page 1, allocation commit

You have to expend, before that deadline, \$1,068,000. Actually, you have to expend a little more, the way the IRS looks at it, these numbers don't always correlate....

So where we're at is that....We asked for an extension, from the agency, when they felt like we were going to achieve that. So they granted us an extension until Nov 30th, and Bobby do you remember the day, it was before the 30th when we sent....the material.

Based on the information and the letters we received, and based on a letter from the city of San Antonio dated Oct 31, that C-3R is zoned for multifamily dwellings.

A preliminary packet of information and tax exemption for Heatherwilde Estates
..the Friday before Nov 30th, we expended \$110,000 for the land, we aquired the land, we bought the land, we put the design disciplines to work, we bought lumber, appliances, and materials to achieve that. The state attorney forwarded that number to Mr. Wilson, in the event that you'd like to call him...

The Heatherwilde Estates LP is in solid confirmation, with everything to date...
..1-million, sixty-eight, which is somewhere around \$11 million dollars to build Heatherwilde Estates

CHAPA: Is the any questions before we move forward?

BUSCH: Back in October, and at each one of our board meetings when we've talked about it, I know that I have asked, Please, keep our consultant and our attorney up-to-date as we go, and I'm concerned that's not happening.

ATTORNEY: The issue is, that the prior attorney working on these matters was prior counsel.

MARQUEZ: Well, we were on the agenda for last month, and, uh, I apologize, I called Christine, I called the chairman...

I got sick for about 3 weeks, I had to go to Houston, so...in that meeting we would have probably have brought you up-to-date on where we were at, so I apologize for that.
But we also needed to take care of some issues, for this board.

BUSCH: There's an agreement....with our attorney, and I think that should be done as soon as possible.

[Unclear comments from unidentified person.] Then..

MARQUEZ: There was a lady in between, I can't remember her name. I talked with her several times and there was about a 45-day lapse there, and that's when Mr. Wilson.....

BUSCH: Are there any other letters or agreements that we should have; or that we do have?

MARQUEZ: Not that I know of, uh, there is supposed to be a letter, and this is why I've asked your legal counsel to - ... has a direct connection with the legal staff there at TDHCA, so that way, you're not hearing it from me, you're hearing it first-hand.

BUSCH: And who has the signed partnership agreement that we have with Southwest Housing?

MARQUEZ: There was a copy of everything that was forwarded to Sam, so I don't know what Sam did with those, are you saying you don't have them?

BUSCH: I've asked for it, Nono doesn't have it, the attorney doesn't have it. [NOTE: "Nono" is nickname for A. Flores, consultant to BCHA bd.]

MARQUEZ: Well, they were left with Sam at that time.

BUSCH: Could you get them?

MARQUEZ: I can certainly get those.

BUSCH: Does someone need to call Sam and ask him to make sure that he...

MARQUEZ: Ma'am I have tried to call Sam several times.

BUSCH: How do we handle this in our records?

[Different people talking at once, comments unclear.] Then..

MARQUEZ: I was not aware that this agency didn't have it. I thought your attorney would have made copies for you. I know we have to have it for our documentation, so we certainly.....we can have it...very soon.

BUSCH: Well, is that the only agreement you can think of, that you might have given our attorney that he didn't give us a copy or that...

MARQUEZ: We have, what we issued was a tri-party agreement between this agency,, and B&L... as well as the cost, and so at this point, that would be..

BUSCH: That would be the only one?

MARQUEZ: When we go to closing, yes, there would be a table full of documentation, and we have talked to Mr. Wilson about that, it should happen somewhere in Feb or Mar.

BUSCH: I wanted to ask that the board is made aware when you do go on and have these citizens' meetings, if you do had several of them, we were not invited to them, and I feel remiss that I didn't get to enjoy... Christine, would you make sure the board members know that when we have an opportunity....

MARQUEZ: [gives spiel about how these projects help people become eventual homeowners].

TORRES: The reason I'm asking this is because we , ...I would like to have some sort of study, because some of those people they're all hard-working...and build toward them owning their houses, to identify those people..

MARQUEZ: ...that we sent to the County Commissioners started about 11, 10 years ago, they had 5 employees in '92, and we started in the colonias ..and what happens is that agency has now gone to 190, they service some, I don't know, of course the whole premise is to be able to bring programs to people who did not have the ability, the where-with-all to learn, the capacity. It's just not available ... with us and they've met with Mr. Chapa and they've met with Mr. Moncevis (SADA) is that that's part of our overall program, so it's not just us, and we do want to make it.....

BUSCH: Are we OK with the zoning or not? Because we read one thing in the newspaper...

MARQUEZ: ... back to the commitment letter that was issued by the state, I'm referring back to where they have accepted our 10% carryover with all the commitments. I'm not an attorney, but I would have to

say that once they've received our money and they've taken their documentation, and they've said yes, we're moving forward. And for a comfort level, I'm just asking....legal....TDHCA. Because it is my understanding that as of this morning, that we're on go.

[Unclear question asked of Ms. Busch by someone.]

BUSCH: Yes, because we heard that our zoning is OK, but then there's been some things in the newspaper that it's not OK, so it's confusing. Either the paper's wrong, or we need toto get that out...

MARQUEZ: Well, let me tell you something, that's how come I decided to... the attorney gets to address the legal issue, the commitment letter, I don't want to get into....

BUSCH: Attorney can verify that?

//END OF THIS DISCUSSION//

District 117 State Representative – Elect
Ken Mercer
P.O. Box 781301
San Antonio, Texas 78278-1301

January 2, 2003

Ms. Edwina Carrington, Executive Director (VIA FAX & EMAIL)
Texas Department of Housing and Community Affairs
507 Sabine, Suite 300
Austin, Texas 78701

RE: 2002 LIHTC Application for the Heatherwilde Estates Project, San Antonio, Texas

Dear Ms. Carrington:

I can not express strongly enough my support for affordable housing projects, not only in San Antonio but throughout the state. These programs are a vital part of the economic development not only here in my district but wherever there is a genuine need.

However for these programs to be a viable part of the process they must be administered strictly within the letter and the intent of the law. I am deeply concerned that these parameters be adhered to, in this and any other program that affects my constituency.

As I promised in my conversation with the TDHCA Attorney, my impacted constituents require written responses to the below questions concerning the 2002 application for the Heatherwilde Estates project that is proposed for San Antonio, Texas. I expect that your detailed responses will be received by me no later than January 08, 2003, 5:00PM, Central Time.

1. By what legal authority does the TDHCA justify not expiring the Heatherwilde application after November 30, 2003, when the San Antonio's Zoning Commission unanimously denied Heatherwilde's zoning change on October 1, 2002?

The developer requested a continuation of the zoning before the November 14, 2002 City Council vote, perhaps due to clear community opposition to this project. It would appear that the requirements for project continuation had not been met before the mandated deadline.

2. What legal authority gives the TDHCA Board the latitude to determine that Heatherwilde's site was properly zoned when the City of San Antonio Zoning Commission denied its zoning request?

The very fact that a member of city council deemed it necessary to carry the request forward for a determination might suggest that the C3R was not applicable.

3. Under what legal opinion or authority did the TDHCA determine that the Heatherwilde site was correctly zoned under San Antonio's "C3R" Commercial Restrictive Alcoholic Sales District. Will this designation allow 176 apartments to be constructed without adding substantial commercial square footage and making a substantial modification to the site plan? Is it within the rules of the program to allow for a substantial change in a site plan?

4. Under what legal or Board authority is the TDHCA proceeding to hold any tax credits that were to be issued in 2002 over to 2003 for this project? Have the actions described above put at risk these credits which might otherwise be applied in other areas within San Antonio where the need has been articulated, coordinated and welcomed by the community?

In my conversation with the TDHCA Attorney, I was informed that "the decision" was made last July. However, the impacted Southwest Independent School District and the impacted Homeowners of the SWISD were not advised of the project until August.

We must explain to our voters a process where: 1) the School District (August) clearly opposes the project, 2) the impacted homeowners (September) unanimously oppose the project, and 3) the Zoning Commission (October) unanimously rejects rezoning for the project -- and yet that project will continue.

Ms Carrington, again, **I can not express strongly enough my support for affordable housing projects.** My constituents deserve an understanding of the process and an answer to the above questions.

I expect your detailed response by email at KBAMercer@aol.com with cc to djirmj2@earthlink.net by close of business, January 08, 2003. I further request your office to move as rapidly and thoroughly as necessary to correct any misapplications of procedures to salvage the tax credit allocations that would otherwise be lost to San Antonio.

Sincerely,

Ken Mercer
State Representative-Elect
Texas House of Representatives, District 117
San Antonio, Texas (210)691-2346

CF:
Southwest ISD
Southwest Community Association

January 7, 2003

The Honorable Ken Mercer
District 117 State Representative - Elect
San Antonio, Texas 78278-1301
By email to KBAMercer@aol.com

Re: 2002 LIHTC Application for Heatherwilde Estates, San Antonio, Texas

Dear Representative Mercer:

This replies to your email dated January 2, 2003, concerning Heatherwilde Estates and the questions you asked. First, I'll provide some background.

Background, Legal Authority: This Department administers the federal low income housing tax credit program authorized by 26 U.S. Code §42 under the authority of and in accordance with Texas Government Code, Chapter 2306, Subchapter DD, and, for 2002, the 2002 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules ("QAP"), Chapter 49, Title 10, Texas Administrative Code. The allocation of tax credits is an open and public process in which developers compete annually for the limited amount of credits authorized by federal law. The 2002 competition began in December 2001 when the pre-application cycle opened. The deadline for final applications was March 1, 2002.

Public Notice: As part of the application process, applicants are required to notify by letter the local chief executive officer (mayor or county judge), state senator, and state representative of the locality of the proposed development. ~~By four letters dated December 24, 2001, the Heatherwilde applicant notified Mayor Garza, County Judge Krier, State Senator Madla, and State Representative Longoria of the proposed development.~~ Applicants are also required to publish a public notice in a widely circulated newspaper in the area of the proposed development at least twice. This public notice must be published prior to submission of the tax credit application. Notice to the public was published in the San Antonio Express News on February 15 and 19, 2002. By three letters dated March 14, 2002, the Department also notified Mayor Garza, Senator Madla, and Representative Longoria of the proposed development and advised them that this Department's Governing Board would make a final decision on the 2002 tax credit allocations at its July meeting.

After receiving all 2002 tax credit applications, the Department evaluated, scored, and underwrote the applications. On June 24, 2002, after public notice on the Department's web site and in the Texas Register, and opportunity for public comment, the Department's Governing Board reviewed and preliminarily approved the highest scoring 2002 tax credit applications. On July 29, 2002, after further public notice and opportunity for comment, the Board approved the final allocations. Heatherwilde Estates was the highest scoring application in the region and received an allocation.

Zoning: The Department's 2002 QAP permits a tax credit allocation to be made, conditioned on the applicant providing evidence of proper zoning. The zoning issue for Heatherwilde Estates has been complicated and confusing, in part because of the City of San Antonio's adoption of a new

development code in 2001 and apparent conflict over its interpretation. To provide evidence of proper zoning, Heatherwilde Estates requested from the city and submitted to this Department a letter dated October 31, 2002 from the City of San Antonio Development Services Department signed by Pete Gomez, Planner I. This letter verifies that the Heatherwilde property is zoned C-3R and that "housing - Multi-family Dwellings" are permissible uses in that zoning. ~~This letter provided the evidence needed by this Department of proper zoning.~~ Subsequent issues raised about whether the zoning permitted the Heatherwilde development were clarified in a letter dated December 17, 2002 from the San Antonio City Attorney to this Department's General Counsel. In the letter the City Attorney confirms that the October 31 Gomez letter "accurately quotes language of the Unified Development Code with respect to certain permitted uses in the C-3 district." The City Attorney also advised that a possible rezoning of the site from C-3R to MF-25 zoning, if approved, should "moot any dispute about the proposed use of that site for a multi-family residential development." The Department carefully considered all available information on zoning, and particularly the City Attorney's confirmation of the October 31 Gomez letter, and concluded that the Heatherwilde development was entitled to continue in the tax credit process.

To respond further, here are your questions and the Department's answers.

1. By what legal authority does the TDHCA justify not expiring the Heatherwilde application after November 30, 2003, when the San Antonio's Zoning Commission unanimously denied Heatherwilde's zoning change on October 1, 2002?

The developer requested a continuation of the zoning before the November 14, 2002 City Council vote, perhaps due to clear community opposition to this project. It would appear that the requirements for project continuation had not been met before the mandated deadline.

TDHCA Response: In response to Heatherwilde's request to the City of San Antonio, the October 31, 2002 Gomez letter, subsequently confirmed by the City Attorney, verifies that the Heatherwilde site is zoned C-3R and that C-3R zoning permits multi-family housing. Based particularly on these letters, together with all other information available to this Department, ~~the Department determined that the zoning requirement under the 2002 QAP was met.~~

2. What legal authority gives the TDHCA Board the latitude to determine that Heatherwilde's site was properly zoned when the City of San Antonio Zoning Commission denied its zoning request?

The very fact that a member of city council deemed it necessary to carry the request forward for a determination might suggest that the C3R was not applicable.

TDHCA Response: Under the 2002 QAP, and based on all the information available, particularly the Gomez and City Attorney letters, the Department concluded that the Heatherwilde site is zoned C-3R and multi-family housing is a permitted use. Since C-3R zoning permits multi-family housing, rezoning may not be necessary. ~~Apparently, there is disagreement about what is permitted. In light of the conflicting information, the Department necessarily exercised its best judgment based on the available evidence.~~

3. Under what legal opinion or authority did the TDHCA determine that the Heatherwilde site was correctly zoned under San Antonio's "C3R" Commercial Restrictive Alcoholic Sales District. Will this designation allow 176 apartments to be constructed without adding substantial commercial square footage and making a substantial modification to the site plan? Is it within the rules of the program to allow for a substantial change in a site plan?

TDHCA Response: The Department carefully considered all the available information and particularly the Gomez and City Attorney letters. The Gomez and the City Attorney letters do not negate that the proposed Heatherwilde development could be constructed, as proposed. Under the 2002 QAP if a proposed development significantly modifies its site plan, the applicant must file a formal, written amendment to their tax credit application. The Department will then evaluate the proposed amendment, and provide an analysis and recommendation to the Department's Governing Board. The Board will then vote on whether or not to approve the amendment.

4. Under what legal or Board authority is the TDHCA proceeding to hold any tax credits that were to be issued in 2002 over to 2003 for this project? Have the actions described above put at risk these credits which might otherwise be used in other areas within San Antonio where the need has been articulated, coordinated and welcomed by the community?

TDHCA Response: Under the 2002 QAP, Heatherwilde has met the requirements to continue to move forward in the tax credit process with its proposed development. Tax credit allocations from one year may be, and typically are, carried over to the next year. The development process takes time. If Heatherwilde had failed to satisfy the necessary requirements prior to December 31, its allocation may have been reallocated to a lower scoring 2002 application on the waiting list. After December 31, if Heatherwilde subsequently fails to proceed, its allocation of credits will be reallocated to new applicants in the 2003 application round. The credits will not be lost.

I hope these responses are helpful. If you have additional questions, please call me at (512) 475-3932 or the Department's General Counsel, Chris Wittmayer, at (512) 475-3948.

Thank you for your strong support of affordable housing. Its development is often a considerable challenge, but the need is great.

Sincerely,

Edwina P. Carrington
Executive Director

Copy by email to djjrmj2@earthlink.net

EPC/CW:ma