

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Dewitt C. Greer Building
Ric Williamson Hearing Room
125 East 11th Street
Austin, Texas

Thursday,
February 21, 2013
9:40 a.m.

MEMBERS:

J. PAUL OXER, Chair
TOM H. GANN, Vice Chair
LESLIE BINGHAM ESCAREÑO
LOWELL KEIG
JUAN S. MUÑOZ
J. MARK McWATTERS

STAFF:

TIM IRVINE, Executive Director

ON THE RECORD REPORTING
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P R O C E E D I N G S

MR. OXER: Good morning, everyone. I'd like to welcome you to the February 21 meeting of the Texas Department of Housing and Community Affairs Governing Board.

We will begin, as we always do, with the roll call.
Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Professor McWatters?

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz, we have a message that he's on the way. I'm here, that's five currently, we're expecting the sixth, we have quorum, so we may safely proceed.

May we stand and salute the flags.

(Whereupon, the Pledge of Allegiance and the Texas Allegiance were recited.)

MR. OXER: All right. Let's be about our work here.

We have a resolution for April?

MR. IRVINE: Fair Housing Month.

MR. OXER: Do we need to recite it or state it?

MR. IRVINE: I think we can just state it as adopted.

MR. OXER: Okay. Then we're simply recognizing that resolution.

Any questions from the Board?

(No response.)

MR. OXER: With respect to the consent agenda.

MS. LATSHA: Good morning. Jean Latsha, Housing Tax Credit Program manager.

Just a couple of clarifications on the consent agenda. Item 1(d), Champion Homes at Tahoe Lake, we did complete a previous participation review and it was cleared.

And then also on item 1(g) regarding the community revitalization plans, that approve includes our recommendation is approval of the plans with their corresponding budgets. There was one plan in there that had a range of \$2 to \$10 million for their budget, but we have since received additional information and confirmed that that budget is actually \$10 million, so we'd like to make that part of our recommendation.

MR. OXER: So these are just modest clarifications as opposed to any real changes, not necessarily needing any discussion.

MS. LATSHA: Yes, sir.

MR. OXER: Okay. Any questions of the Board?

(No response.)

MR. OXER: Thanks, Jean.

All right. Motion to consider?

MR. GANN: So moved.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Vice Chairman Gann to accept the consent agenda as modified. Is there any other discussion from the Board? Any other questions from the audience?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous. Thank you.

We're going to defer item 2 which is an executive item, until Dr. Muñoz arrives. We anticipate that he'll be here, but with the weather this morning, his plane is probably delayed slightly, so we're going to move on to item number 3.

Cameron, ready?

MR. DORSEY: Good morning. Cameron Dorsey, director of Multifamily Finance.

Item 3(a) is the approval for issuance of tax-exempt bonds for the Waters at Willow Run transaction.

It's a multifamily transaction. It is located up in the Wells Branch area, has frontage on FM 1325 which now has been bypassed by the toll road up there, 45, but used to be kind of the feeder into MoPac for the western north-south corridor through Austin.

This is the first TDHCA new bond issuance that we've had in several years, so I'm going to kind of walk through, there's a little bit of a unique structure to the financing that I'm going to walk you through. We're recommending approval to issue up to \$16 million in tax-exempt bonds, however, at this point in time we believe that we will probably only close on approximately \$14.5 million.

The transaction is structured such that the bonds will be retired after construction. The financing mechanism, the way it works is the bonds will be held by the trustee, as construction occurs, bond proceeds will be drawn down from the trustee used to pay for those costs, and there is a HUD FHA 221(d)(4) loan which is not a tax-exempt financing mechanism. It will be the cash collateral for those bonds, and so as bond proceeds are drawn down from the trustee account, proceeds from the 224(d)(4) loan will be drawn down and deposited in the trustee account, and so at all times

it's 100 percent cash collateralized -- the tax-exempt bonds are cash collateralized by the 221(d)(4) loan.

The reason that this transaction is structured this way is because the 221(d)(4) program provides more favorable terms than would be allowed through a permanent tax-exempt bond structure. So the interest rate we're looking at is just under 4 percent which is very low, and a 40-year amortization. That allows the owner to take down a significantly higher amount of debt and support that debt with cash flow from the property.

We've done a lot of due diligence in this transaction and we've received a lot of public comment. We held the TEFRA hearing which is a hearing required for the tax-exempt bonds. We have expanded kind of the purpose of the TEFRA hearing to incorporate more general public comment on the transaction. A significant number of folks attended that TEFRA hearing -- I think it was over 225, certainly, possibly over 300, although not all signed in.

The neighborhood has some pretty significant concerns about the impact on traffic, safety related to pulling out directly from the site onto 1325 which is a relatively busy road, some school overcrowding type issues, and those types of things. However, the City of Austin rezoned this property to multifamily. In December 2011 they

held a zoning hearing. Many of these issues were discussed during that zoning hearing. The school overcrowding issues, for example, were discussed at that hearing, as well as some of the issues related to traffic and whether or not a stoplight would be appropriate to place at the entrance of the property.

The City of Austin Zoning Board voted, I believe, six to one to approve the zoning change.

With these bond transactions, we don't really have a scoring mechanism that takes into account public comment when we're under-subscribed for bonds, and so we've received a lot of public comment, but the transaction on its face meets all of the applicable rules and requirements that the department has and that are applicable to this transaction.

And we generally rely on local zoning boards and cities and counties to make decisions related to issues such as school crowding and whether or not zoning changes are appropriate in light of any school issues that may be present or traffic issues and those types of concerns.

I believe you may hear some more from the public, as well as possibly from the developer in a moment on some of those issues.

We've completed the underwriting of the transaction, as well as the program review, and are comfortable recommending approval to issue those tax-exempt

bonds, as well as to issue a determination notice for just over \$700,000 in tax credits.

The one thing that's still outstanding that I just wanted to note is we're continuing to work through some issues related to subordination with HUD. They're the 221(d)(4) guarantor, obviously, and so we're continuing to work through some of those issues, but we've got Barbara helping us out with those, as well as our bond counsel, and all the folks that we externally rely on with these transactions.

So we recommend approval as reflected in the Board materials.

MR. OXER: Thanks, Cameron.

Any questions from the Board? Mr. Keig.

MR. KEIG: Mr. Dorsey, in the hearing you stated: Basically it says that developments where the buildings are located within the easement of any overhead high voltage transmission line or inside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, et cetera, are ineligible.

Did you subsequent do due diligence to determine whether the project was ineligible or eligible under that criteria?

MR. DORSEY: Sure. We have a site plan that clearly lays out that the buildings are not located within

the easement for the high voltage power lines. There's actually two high voltage power lines that run through the property and they've designed the property in such a way that none of the buildings are located within those easements.

There has been some ongoing communication about the engineered fall distance. Generally, we rely on certifications and disclosures as verification for meeting that requirement. Given the heightened level of concern in this case, our real estate analysis division included in their underwriting report a condition that before we proceed with closing this transaction we would have confirmation from a third party engineer that the buildings are not within the engineered fall distance.

The engineered fall distance, we're kind of having a hard time pinning down exactly how to do that calculation.

It's not an exact height of the pole as if it were laying on the ground, it's a little bit more complicated than that, and so we're having some ongoing communication about that.

In addition, HUD has similar requirements and they're going to have to meet HUD's requirements in order to take down the over \$18 million in debt that's essential for this transaction to move forward, so there will be some additional verification on HUD's end.

MR. KEIG: Thanks. And at that time there was

also pending the issue of concentration criteria. Could you speak to that?

MR. DORSEY: Sure. This transaction does not violate any of our concentration criteria that we have in place. We have identified one existing tax credit development within one mile. That tax credit development was a 1998 transaction, a 1998 9 percent deal. There is one new 9 percent -- relatively new, it was a 2011 transaction located within two miles of the development, however, it does not violate any concentration criteria. In addition, we've got a third party market study that clearly indicates that there's a very high demand for these units, and in the city more generally, there is a significant demand for multifamily units right now.

MR. KEIG: Thanks.

MR. OXER: Any other questions from the Board?

MS. BINGHAM ESCAREÑO: I just have a clarification on Mr. Keig's question? So what do we think the timeline is that we would get clarification on the fall?

MR. DORSEY: I would anticipate we will have confirmation within the next week.

MS. BINGHAM ESCAREÑO: Thank you.

MR. OXER: And there's a radio tower and transmission towers.

MR. DORSEY: There are three power poles. Two of them are taller power poles, they're quite tall, they're concrete power poles, and then there's one set of the power lines is galvanized steel power poles, but there are three located on the site.

MR. OXER: And for those of you who don't know, I happen to know a radio tower, they don't fall like this, they fall in a coil. The transmission towers are built to buckle in place too. There's a certain distance out beyond those that they could fall, but they are designed to sheer and fall in on themselves. Just collateral contribution to the discussion.

MR. DORSEY: No, I appreciate that. I'm definitely not the expert on such.

MR. OXER: And for the record, I ain't signing their letter either.

(General laughter.)

MR. OXER: Any other questions? Yes, sir, Professor McWatters.

MR. McWATTERS: Thank you.

Mr. Dorsey, I noted in a number of letters that I've received, and I also noted in the Board book, this combination of factors of lack of public transportation and limited employment opportunities. Can you speak to those?

MR. DORSEY: Sure. In terms of lack of transportation, the City of Austin used to have a bus line that served this area, however, the ridership just wasn't high enough. The developer did reach out to Capital Metro and they indicated that the additional ridership gained from this property would not be sufficient to implement a route there or reinstate that prior route.

However, you know, in these types of tax credit transactions, most of the time upwards of 90 percent of the folks have cars. We're dealing with folks' income -- for example, the market study looks at and evaluates demand from families whose income is between \$28- and \$47,000, so generally those folks have cars. This is Texas, not the Northeast, and so just generally speaking, folks have cars.

This is in a really great spot in terms of jobs, from my perspective -- I used to live up in that area. And the site is located with great access to both MoPac and IH-35, as well as Round Rock and Leander, 183 is relatively close by with the toll road located right there, La Frontera is a humongous commercial shopping center that was developed probably a decade ago, and I think it's going to have pretty phenomenal access to job opportunities. There will be driving required, however, like I said, most folks drive to their jobs even when they live in tax credit properties.

MR. OXER: As a housekeeping comment, let the record reflect that Dr. Muñoz has joined us, so we have a full count on the Board today.

Are there other comments from the Board?

(No response.)

MR. OXER: WE need a motion to consider.

MR. McWATTERS: Well, let me ask one more just to kind of clear through these. Cameron, can you comment on the objections with respect to road congestion, that building this project will extend the capacity of the existing road grid, and also lack of sidewalks near the property to elementary schools and the like?

MR. DORSEY: Sure. The property has frontage on 1325. 1325, I believe, is a five-lane road, it has two lanes going either direction with a center turn lane. 1325 was historically, before the construction of the toll road, a very heavily trafficked; it's probably just a fraction of the amount of traffic that that road can support, and has historically supported, that's currently on that road. There are a number of stop lights and there could be times where you have to wait a good while to be able to take a left-hand turn out of the property. There is a center turn lane to turn into, so you don't have to kind of do that deal where you time traffic both ways and that type of thing.

There's also a multifamily property located directly across the street. That property has been there for a number of years, probably at least ten years, and they're dealing with the exact same turning issues. I don't think that it's a significant obstacle.

The developer did contact TxDOT and asked about putting in a stop light at the entrance to the property. They indicated that they didn't believe that the additional traffic would necessitate a traffic light at that location.

With respect to the sidewalks, there will probably not be sidewalks that connect this property to Merrilatown Drive which is probably the best way if one was walking or biking to the elementary school, most off the busy roadways.

The developer plans on putting sidewalks on his property, but obviously can't compel neighbors to put sidewalks on their properties. There is probably not a high likelihood that you'll have a lot elementary kids walking to school without their parents.

MR. McWATTERS: How far away is the school?

MR. DORSEY: It's 1.8 miles away. We went up there when school was letting out and kind of watched, and there are definitely kids that walk but generally they're accompanied by parents or adults, and 1.8 miles is quite a long way for a young kid.

If one were to walk, there's a very wide grassy, pretty flat area between the road and the other businesses that have frontage there on 1325, such that I walked it, you can pretty readily get to 1325 without being in a lot of danger.

MR. McWATTERS: What's the view with respect to the effect on the school system, maybe perhaps elementary school, on a 242-unit complex?

MR. DORSEY: I think the developer has estimated between 70 and 100 additional kids. They would obviously be spread out among the elementary, middle and high school.

Each of the schools, I believe, is overcrowded. Some of that was discussed at the zoning hearing, it was noted that the schools were overcrowded at the zoning hearing, and despite that fact, they decided to rezone the property for this purpose.

In addition to that, the developer did reach out to the Round Rock Independent School District. The property is in an interesting kind of location: it straddles Williamson and Travis counties and the schools are Round Rock and the zoning was done by the City of Austin -- which I think is some of the neighborhood's concerns that they didn't have the appropriate outlet for their opinions at the local level.

But the schools are all recognized schools under the 2011 TEA rating, and the school district, in response to the

developer's inquiries, I believe indicated that they were looking into the school overcrowding issue and were looking to construct an additional school to help alleviate some of the growth in that district generally.

Williamson County is an extremely fast growing county in the country, and you know, I think that county is dealing with the typical growing pains that are associated with that extremely high level of growth.

MR. McWATTERS: I just have one more question. Is this project going into an otherwise single family neighborhood where this is being airdropped in, or are there other multifamily projects around? You mentioned one across the street. Is that the only one, or are there others?

MR. DORSEY: There is one located directly across the street. If you looked at where the neighborhood was located, the one across the street is going further away from the neighborhood. I think some of the neighborhood's concerns relate to the fact that the rear of this property is basically adjacent to the neighborhood and to several houses that are located along the back property line. I'm not certain if there are other multifamily properties that back up in that manner to the neighborhood. The ingress and egress from the site is not into the neighborhood, it's out onto 1325. And there are at least three or four multifamily

properties very close by and a whole host of other ones in the area, most of them are market rate properties. But I don't know if they back up to the neighborhood in the same manner, but there definitely are additional ones in the neighborhood or in the area.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Any other questions from the Board?
(No response.)

MR. OXER: Cameron, can you come back for a second?
Just in a summary -- and I'm looking for anything to hang a hook on here -- is there anything in the evaluation criteria that you would use that would make it evident that we shouldn't do this? Are they opposing on any side of any law or regulation or line that we would put down?

MR. DORSEY: No. There really isn't anything that's a major concern at this point. As I previous indicated, there is a condition in the underwriting report that needs to be satisfied, we're working through the bond documents, but there's nothing out of the ordinary that we wouldn't encounter on any other type of multifamily trans action.

I will say that during the zoning hearing the high voltage power lines came up as an issue, and the city folks indicated that it's a pretty common issue that's dealt with.

There's a high-end condo development down on Rainey Street that was mentioned during that zoning hearing as kind of dealing with a comparable situation where there are high voltage power lines within a very short distance from the buildings of a higher end condo development down near Lake Austin.

MR. OXER: Okay. Thanks.

Any other questions of the Board?

(No response.)

MR. OXER: Okay. Then we'll need a motion to consider and then we'll have comment.

MS. BINGHAM ESCAREÑO: Mr. Chair, I'll move staff's recommendation.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation to approve the recommendation here. Do I hear a second?

MR. GANN: I'll second.

MR. OXER: Okay. Second by Vice Chairman Gann. Michele, do we have a letter?

MS. ATKINS: Michele Atkins, Executive Division, TDHCA.

I have Nick McIntyre has registered his opinion to support staff's recommendation.

MR. OXER: These are public comments, as opposed

to a city?

MS. ATKINS: Yes. I was going to go ahead and do all of them. And Erik Ulland also in support of staff recommendation.

And then I have a letter from the mayor pro tem of the City of Austin, Sheryl Cole. Her letter reads:

"Chairman Ozer, et al., This letter is to voice my strong support for affordable housing within the City of Austin to serve our growing population and to encourage TDHCA's financial support of such projects. We appreciate all that TDHCA has contributed towards our local affordable housing goals in the past, and we hope that you continues these efforts with the Austin-based projects before you today.

"A 2009 housing market study calculated a need of over 39,000 new rental units for low income families in Austin. As the fastest growing metropolitan area in the United States in 2012, this need has only accelerated. All levels of the public and private sector must work together in order to leverage the necessary resources to address and respond to this need. We are excited about any opportunity that helps us move closer to the goal of a more affordable, livable Austin.

"I would also like to highlight the significant priority given by the City of Austin to our successful Good

Neighbor Program that works with nearby residents to integrate new and renovated affordable housing developments into their community so that they can become appreciated as valuable assets to their neighborhood.

"Please contact me if there are any questions. Thank you again for consideration of bringing this vital funding to the Austin community to help address one of our most critical needs. Sincerely, Sheryl Cole."

MR. OXER: Good. Thanks. Anything else?

MS. ATKINS: That's it.

MR. OXER: As is our custom, we'll have public comment. The front row up here -- I'll tell everybody for every item -- we reserve that for people that wish to speak.

For those who wish to speak, come up here and sit down. I understand there's quite a number, perhaps, in opposition to Willow run. How many would like to speak if you had a chance to speak?

(A show of hands from audience members.)

MR. OXER: Okay, good. A few in the back.

We have a three-minute rule, but happy to hear from you. And here's what's going to happen, folks -- stay right there, don't worry about it -- we're going to start from where this gentleman is right here and work across the line, and as they clear out, you can fill in a chair, and

when we get to the end we're going to start back over here so everybody gets a chance to speak today.

(General talking and laughter.)

MR. OXER: All right. We'll start right here then. And we don't have a hook but we'll ask you to be courteous and recognize other people wish to speak as well. We do have a beeper that will go off in three minutes.

MR. IRVINE: And just as a matter of protocol, for everyone who comes and speaks today, state your name and on whose behalf you're appearing.

MR. HOWE: For the record, my name is Mike Howe, H-O-W-E. I'm a resident of Wells Branch. Thank you for the opportunity to speak.

I've lived in Wells Branch for over 30 years. Our children started elementary school there and have grown and moved on. I was the formally elected president of the Wells Branch Municipal Utilities District, the charter president of the Wells Branch Neighborhood Association, and for 18 years was the appointed commissioner to the Travis County Emergency Service District #2 by the county commissioners. I mention all this to simply note that I've been involved in my community since I moved there, and I bring a certain level of knowledge and expertise based on that experience.

During all my time living in Wells Branch, any number of affordable housing projects have been successfully located in our area. These have been family-based developments and senior communities, and through our neighborhood's efforts to work with developers, these communities have been built and fully integrated into our community. We've learned a lot about the importance of affordable housing and what works and doesn't work.

I know you've received a number of letters regarding this proposal and transcripts of the hearing, and even a letter from our senator, Kirk Watson. Most, if not all, of these letters were pointing out the serious deficiencies of this Waters at Willow Run proposal. I was also surprised to see the letter from the Tarrant County Apartment Association. These folks must know more about our area than I do. But that appears to be the only letter of support, and I believe the reason is because there is so little reason to support this project.

If you examine this project in detail, you'll note the property is located in a very isolated area in southern Williamson County, between Austin and Round Rock just outside of Wells Branch. The land is under two high power tension lines where construction is normally restricted. The applicant was able to have the land annexed into Austin, even

though the property is not contiguous with the City of Austin.

Because it is in Austin, Austin is the first responder fire department, but the nearest Austin fire station is more than two miles away at Parmer and MoPac. EMS comes from Williamson County, also two miles away, but in the other direction.

You might hear that the Emergency Service District has a station closer, but they can't respond into the area because it is in Austin and Williamson County. They do not have automatic mutual aid for this area. And recall, I do have experience with this fire department.

And because this development is at the furthest edge of both Austin and Travis County, the nearest law enforcement is Williamson County Sheriff's Department who does not even patrol the area on a routine basis.

The nearest full service grocery store is over two miles away, the nearest bus service is over two miles away. Because of this fact, the applicant was not able to get credits from the City of Austin. There are no sidewalks for residents to walk or ride bikes along FM 1325 and the speed limit is 60 miles per hour and it is still a heavily traveled road for those avoiding the tolls on the tollway.

The nearest intersection at Shoreline Drive has a long history of many serious and fatal accidents. The nearest school, Wells Branch Elementary, is already

overcrowded, with little relief in sight, and it is a 1.8-mile walk along streets with no sidewalks, and they are collector streets, they are not residential streets. There's also no access to public parks and recreation. The land is bordered by two fields on either side, and with the high power tension lines, you'll recall those were what caused fires in open fields in Bastrop and Steiner Ranch.

Additionally, the land is so isolated there's not even sufficient access for water or wastewater service and the cost would be prohibitive, and the applicant has not given any indication how he's going to meet those needs. And the applicant's submission to the City of Austin still has not been approved for a number of serious deficiencies. There are reasons why over the last 30 years this land has not been developed. There's only a wholesale nursery, a storage facility and a contractor's office next to this land.

It's easy also in these situations to be blamed of NIMBYism. This seems to be the standard response when a developer gets pushback from a neighborhood to do an affordable housing project, and I'm sure you've all heard it enough that you don't really pay attention to this anymore.

But if you look at our history in Wells Branch, that's not what we do. We believe that everyone deserves a good place to live and have supported any number of developments that

made sense for them and for our community. This proposal does not make sense for anyone.

Why would anyone put families and seniors in absolute isolation with no amenities, no access to grocery stores, no public transportation, on a dangerous highway, with no access to the basic retail stores, under the high tension lines, with clear issues with EMS, fire and police, and no neighborhood schools and no place for children to play. You need to ask the applicant those questions.

But today I ask you to find better proposals to use your dollars to fund. This proposal does not deserve your consideration, and frankly, does not meet anyone's criteria as a good place to live.

Thank you for the opportunity.

MR. OXER: Thank you. Are there any questions from the Board?

MR. KEIG: Yes. Help me with the emergency responders. Fire comes from Austin.

MR. HOWE: Right.

MR. KEIG: And emergency medical services comes from.

MR. HOWE: Williamson County.

MR. KEIG: Williamson County. And then what was the one that you said you could not respond?

MR. HOWE: Travis County ESD #2, which actually has a station a better part of a mile and a half or so from this actual facility, cannot respond because they are limited to the response inside their district inside Travis County, and they do not have automatic mutual aid on this property inside Williamson County.

MR. KEIG: Then what does ESD stand for?

MR. HOWE: Emergency Service District.

MR. KEIG: And they handle what?

MR. HOWE: They would handle first responder medical and fire if they could serve this property.

MR. KEIG: So there are fire and emergency medical services to that location from two separate directions, it's just not the closest one. Is that what you're saying?

MR. HOWE: Right. Austin is two miles away this way and EMS is two miles the other way, and there's no real law enforcement in this area because it is literally in a no-man's land.

MR. KEIG: Travis County Sheriff's Office?

MR. HOWE: No, it's Williamson County.

MR. KEIG: Williamson County Sheriff's Office.

MR. HOWE: Yes.

MR. KEIG: Okay. Thanks for clarifying that.

MR. OXER: And I'll remind everybody when you come

up to speak, make sure that you sign in on our roster that we put there because that's what we'll use to make sure we get your name spelled right to put in the record on the transcript.

I have a question. You said this was annexed by Austin, City of Austin.

MR. HOWE: At the applicant's request.

MR. OXER: At the applicant's request. The City of Austin's boundaries are at Shoreline which is probably a half mile or more. That's the extent of where the city limits are. The land between Shoreline Drive and this property is not in the City of Austin, it is not contiguous to the City of Austin at all.

MR. OXER: I've seen instances where this occurred before and they would annex a ten-foot wide stripe down the side of the highway to get to that one.

MR. HOWE: That is not even the case. Shoreline Drive is here, City of Austin city limits are here, there is land between there, including a contractor's office and a wholesale nursery which are not in the City of Austin, and then this property, and on the other side a storage facility.

MR. OXER: Okay. Thank you.

MS. PREVIN: My name is Emily Previn. I've been a resident of Wells Branch for seven years, and I oppose this

property based on Chapter 10, Subchapter B, Rule 10.101(a)(2), Mandatory Site Characteristics.

A development's site must be located within a one-mile radius of at least six services. If you look at the underwriting report, you can see the one-mile radius, and if you compare that to the map provided by Atlantic Housing, you will see that there are only three amenities located within that one mile: a mini market, a church, and outdoor recreation. Which while I question -- I don't think the streets Atlantic Housing, where they drew it, matches up with the locations, I agree 100 percent with Atlantic Housing there are three amenities within a one-mile radius, but three does not equal six. If you be very generous about where you draw that one-mile radius, you can also pick up a restaurant, which brings you to four but that is still not six.

From my own personal experience having started a family at the same time I was in graduate school, being the type of family that Atlantic Housing is trying to attract, I think access to public transportation and access to amenities is vital. This is an important requirement, this property doesn't meet it, and I ask that it be denied based on that.

And I guess on a side note, I am a professional

engineer, and while I do not deal with towers for high voltage power lines, I do design the 70-foot masts that TxDOT uses for lighting, and you are correct that most towers found in --

MR. OXER: Lattice towers.

MS. PREVIN: Yes, lattice towers. These are not lattice towers, they're single pole, and typically the failure mechanism would be at the base, and so a 110-foot tower, 50 feet from edge of easement, I do question that there may be a possibility that it's within the fall zone.

MR. OXER: For the record, we're glad to have you here because I have one of those on the back of my name too.

Any questions of the Board? Lowell.

MR. KEIG: Yes. What was that rule, again, that you cited?

MS. PREVIN: Chapter 10, Subchapter B, Rule 10.101(a)(2), Mandatory Site Characteristics.

MR. KEIG: Thanks.

MR. OXER: Okay. Next. And I'll ask you as you complete your presentation or your comments, we're going to make some room for these folks that are waiting to speak. So if you care to, come up here. I know where we're at on the list here or on the sequence.

MR. SWAIN: Thank you, Chairman Oxer and Board. My name is Scott Swain, Richard Scott Swain, and I have a

group in our neighborhood we call the Wells Branch Neighbors for Responsible Development, NRD, we're coined as the nerds, it seems.

In any case, I want to correct a couple of things on the agenda. I noticed that the number of attendants that signed in at our meeting at Wells Branch Elementary with Atlantic Housing and the TDHCA was numbered more like 325 rather than the 225 reported. There were a number of people who, we ran out of sign-in sheets and we signed in on the back, and I don't think those people were actually counted.

Going on, I'd like to speak a couple of things about something that nobody really wants to talk about, and that's NIMBYism. We in Wells Branch have some ideals we'd like to live up to. This I found true amongst all of my neighbors. I had a long, hard soul search myself when this came up and wondered what am I actually opposing here: is it affordable housing, is it Atlantic housing, is it this site, what exactly is it, is it in my back yard.

Over the period of time, looking at all of the evidence that we've accumulated that seems to be the specifications from a number of different entities, for example, the smart housing of the city itself, not having transportation, they weren't able to get that money. Everybody that I've talked to in my neighborhood, there's

been extremely few that mentioned anything about home values, mentioned anything about their personal interests.

I've also been contacted by a number of people in the industry of placing people and homes and that have, without my solicitation, contacted me and felt like their overwhelming thoughts were that this was a less than wonderful location. And again, it's not about Atlantic Housing, Michael Nguyen. I know you got a letter from the Tarrant County Apartment Association endorsing him, and again, that was endorsing Atlantic Housing. I think I'd probably would endorse Atlantic Housing, from what I know about them, not a problem with them, it's simply the location. We have a school system that is taxed with 900 kids in the elementary school that has a capacity of 700-and-something.

One thing I'd like to speak of is your specifications, while they may be met, your expectations is what I would think might be hampered here. The expectation of folks who are already challenged to go into an environment that has limited access out of their environment into shopping, schools, hospital, medical, so on and so forth, is a bit taxed.

There are 242 apartments we're talking about. I can only imagine that would probably be somewhere in the neighborhood of three to four, maybe 500 kids. While their

parents may have automobiles, the kids generally do not, and certainly if they're not driving age they're not going to be driving, they'll be eating out of the convenience store down the street, they'll have to walk the highway to get to anywhere.

There's been a bit of speculation about access into the neighborhood from the back side of the property. This really does not address much of their issues. It doesn't get them to groceries, it doesn't get them to a lot of things.

So we feel like -- and I appreciate, by the way, your obvious consideration of this issue and I hope you continue to look at it further, I appreciate your help, thank you very much.

MR. OXER: Indeed.

Are there any questions from the Board?

(No response.)

MR. OXER: You signed in. Correct?

MR. SWAIN: I did. Thank you.

MR. OXER: Good. Mr. Nguyen.

MR. NGUYEN: Good morning. My name is Michael Nguyen. I am the president and CEO of Atlantic Housing Foundation, the developer. Thanks for the opportunity to speak today to the Board.

This is a project that we're awfully proud of. I want to take a little bit of time to talk about who we are

as an organization. I think we fit very well, perfectly in that Good Neighbors definition from the City of Austin. We are a 502(c)(3) not for profit established in 1999. We currently own and operate over 30 communities in three states, 22 different cities. Our primary mission as a foundation, we aspire and we believe in making a difference in the communities that we serve. To that end, we pay particular attention to fostering a sense of community, being good neighbors. We provide services that help our residents improve their lives, have a better quality of life, and have avenues for growth and advancement. Much of our focus is actually on the kids and it's on education.

A program that I'm hugely proud of is our scholarships for disadvantaged residents coming from a low income background. This past year we provided 52 scholarships with an aggregate value of over a quarter of a million dollars. Since 2006 we have given out over \$2 million in scholarships for young men and women coming out of low income backgrounds, disadvantaged backgrounds, with the hopes that education will allow them to break that cycle of poverty. And you can see behind me there's a number of them that have taken their time, skipping school today, to come out in support of the project.

A couple of concerns, as you've heard from Mr.

Dorsey, and certainly concerns raised by representatives of Wells Branch, we've met with the neighborhood on several occasions, numerous correspondence, emails, telephone calls.

We listened intently to their concerns and we in earnest worked and outreached to make sure that those concerns are addressed.

The school overcrowding, Round Rock Independent School District acknowledges that there is an issue there between Wells Branch and the neighboring neighborhood called Bluebonnet. They have identified a site that is about 12-plus acres in between the two neighborhoods, and subject to available funding and approval of their board, that is a way in which they would address the overcrowding issue.

We've also reached out to the school district to make sure that bus service is available. So the fact that these kids are having to walk 1.8 miles to get to school, I believe is mitigated by the fact that bus service will be there.

MR. OXER: And may I clarify. When you say bus service, that's school bus service, yellow school bus service, as opposed to city bus service.

MR. NGUYEN: Yes, sir.

DR. MUÑOZ: I've got a follow-up.

MR. OXER: Hold on, Juan, let him finish because

he's on the clock, please.

DR. MUÑOZ: It's a clarification on your question.

MR. OXER: Okay. Then do that.

DR. MUÑOZ: Are you saying that you've spoken to them regarding bus service, or that they've obligated to provide bus service? Having a conversation with them doesn't mean that there will be bus service.

MR. NGUYEN: Right. The conversation was we asked will there be bus service available to this property, and the answer is yes.

DR. MUÑOZ: And you have that definitively in writing somewhere?

MR. NGUYEN: Yes, sir, an email exchange. It's not a legal document, but yes, an email exchange.

DR. MUÑOZ: From the school district.

MR. NGUYEN: Yes, sir.

MR. OXER: For the record, you know what the E stands for in email, don't you? Evidence.

(General laughter.)

MR. NGUYEN: I'll keep that in mind.

So I was saying, the other point of access for transportation, as Mr. Dorsey indicated before, we had a bus stop right in front of the property when we acquired it, the route was discontinued because of lack of ridership.

We've reached out to Capital Area Metro and said, Look, will you bring it back? They said, Well, we can't commit, it would only be subject to ridership. And so short of that, we've got them to commit to provide a carpool van service, so they'll provide the van, the insurance, we would operate such that to the extent anyone who doesn't have transportation can easily get to major bus depots, rail depots, the Howard Lane rail station less than two miles away.

MR. OXER: And that system would be based at the facility?

MR. NGUYEN: Yes, sir.

So I think we've made every single effort. We also have our engineers here to be able to address the power line issue, and more specifically, we will have that requirement met here within -- well, probably today if time allows.

And so in terms of pedestrian traffic, yes, we are proposing a couple of alternatives to get pedestrian traffic through the neighborhood, if they'll allow it, at our cost. We firmly support their desire to have sidewalks along 1325, and so we will work and be cooperative with them to that extent.

And then lastly, most of the comments, I think, that we've heard over this process paints a very bad view

of what affordable housing is. I believe, in my very humble opinion, a very outdated view of what affordable housing is.

This is workforce housing for hard working families who want a quality, decent place to live, close to where they work, where they can send their kids to school, to really good schools, and help raise their families.

And I'm reminded that people like me, this agency, we haven't done a good enough job of educating the public and trying to remove that stigma about affordable housing, and so that end, I'd like to invite some of our scholarship kids to very briefly --

MR. OXER: They've got to get back to school.
Right?

MR. NGUYEN: Yes, sir -- very briefly describe their experience and how affordable housing has impacted their lives.

MR. OXER: Okay. Cynthia, would you like to speak next?

MS. BAST: (Speaking from audience.) I'll go last.

MR. KEIG: Mr. Nguyen, is Ms. Bast going to speak on your behalf, your company's behalf?

MR. NGUYEN: Yes, sir.

MR. KEIG: I'll ask her my questions. Thanks.

MR. NGUYEN: Okay.

DR. MUÑOZ: Chairman, I've got questions for Mr. Nguyen.

MR. OXER: Okay, Dr. Muñoz.

DR. MUÑOZ: Just a few questions. What I have concerns about is this school that is theoretically going to be possibly developed if the funding should perhaps make itself available. I was on a bond committee in the city that I lived in and it took years, the first one failed. It's one thing to talk about the financing, it's quite another to get the electorate to vote and provide the revenues and then design it and then build it and then populate it and then staff it, and that could be five years, five to seven years.

So in the meanwhile they would go to an already recognized -- a good school, recognized school, but also recognized as overcrowded and impacted. There's a clear deterioration of quality, pedagogical integrity, et cetera when overcrowding occurs. So in the interim what would happen? Because there's no guarantee that this school that you suggest there's some interest in building to offset that density would be built.

Another thing is -- and you've probably been privy to more conversations about this project, but I haven't heard

the misrepresentation of affordable housing, I suppose. In my interpretation of the letters and the claims of the residents, I've heard concerns about the availability of emergency services, I've heard concerns about the coordination of emergency services from different municipalities, I've heard concerns about the lack of explication related to wastewater and how that will be disposed of. I've heard those kinds of specifics, none of which strike me as prejudicial or bigoted or in any way demeaning of affordable housing.

MR. NGUYEN: Okay. Well, do you want me to repeat some of those comments?

DR. MUÑOZ: No, no.

MR. NGUYEN: I've heard it but I don't want to focus the time here on that. Let me address the concerns that you just raised.

Obviously, we don't control the school board, what we can do is give them a heads up: this development is coming, this is what we're planning, this is what we're thinking about.

And you're right, it takes a tremendous amount of effort, but certainly there are plenty of folks who recognize the growth that's coming into the northwest corridor of Austin.

Apple Computers and all of their vendors and suppliers are making a tremendous investment in the area. That will only

draw and create jobs and draw additional residents and developments there. And so we're not the first developer to have recognized this trend.

EMS, medical, fire, we spoke to all the relevant providers and confirmed that there will be emergency services provided and that our design and layout allows for their vehicle to access and turn around and safely service the project.

The other issue was utilities. We are tapping into the City of Austin water and wastewater. We will not be reliant up the MUD district which is Wells Branch. It cost us a tremendous amount of resources to be able to do that. We have to go way north to tap into the main lines, but that has been confirmed, and all services will be available through the city.

MR. OXER: So utility services are not an issue?

MR. NGUYEN: No, sir.

DR. MUÑOZ: And you've spoken to these emergency responders and are obviously satisfied that your development would be properly serviced in the event of some emergency.

MR. NGUYEN: Absolutely. I think that it would be inappropriate of us to put a development in that has no services, particularly emergency services.

DR. MUÑOZ: You've heard the comments earlier,

obviously. Right?

MR. NGUYEN: Yes, sir. And we've had direct conversations with the emergency services provider and they confirm that services are available and they can service the property. Unfortunately, I think we have a difference of viewpoints, but we can demonstrate to you and the staff that that has taken place.

DR. MUÑOZ: Last question. One of the residents earlier said that there were -- and I read in the documents that I received -- six other affordable housing projects. Within what distance are those projects to your project, do you know?

MR. NGUYEN: They are all within probably a three- to five-mile radius. I do know the one in particular that Mr. Dorsey referenced, we had our market analyst and we surveyed it. It's full with a waiting list, but yes, within a three- to five-mile radius of the project.

DR. MUÑOZ: Thank you.

MR. OXER: And the rule is what on this, Cameron? Stay where you are, please, Mr. Nguyen. The podium is big enough where we can have everybody there, so stay up there.

MR. DORSEY: Cameron Dorsey, director of Multifamily Finance.

We have several concentration criteria. One is called the one-mile/three-year rule that could apply in this case -- except that they don't violate the rule -- and that is that basically if there were another transaction serving the same population within a one-mile radius within the last three years, that was approved within the last three years, then that would cause a problem and require the City of Austin to pass, by resolution, support for the transaction despite that concentration. In that case that wasn't necessary, although you did hear some support from the mayor pro tem.

MR. GANN: I've got a question of Mr. Dorsey, if you don't mind.

MR. OXER: Please, Mr. Vice Chairman.

MR. GANN: Since you're up there already, on that 10.101(a)(2) rule that they're talking about which is site characteristics, would you go into a little detail about that, because we're hearing that there's three and there should be six.

MR. DORSEY: I can tell you that we did the standard due diligence that we do in reviewing any of the applications we receive. The rules are quite long and the applications are quite large, so I didn't memorize the six amenities and I didn't personally review it, but our staff did the normal due diligence we would do. Sometimes two

amenities are housed in one facility, for example, like a pharmacy that's part of a WalMart. Those types of things might be going on, I'm not certain, except to say that we've done our normal due diligence.

I'd be happy to go back and verify after the meeting, if you all want to place a condition prior to closing that we doubly verify that, but we've done our normal underwriting process.

MR. OXER: Essentially, your underwriting diligence has said you checked all the boxes.

MR. DORSEY: And the underwriting report doesn't identify specific amenities, it just has a map.

DR. MUÑOZ: And Cameron, I'm asking that you go back and check.

MR. DORSEY: Will do, will do.

MR. McWATTERS: And Cameron, as a follow-up to that, the statute, from my read of it says a radius of two miles if it's in a rural area. Is this a rural area?

MR. DORSEY: This is definitely an urban area.

MR. McWATTERS: It's definitely urban so we're definitely under the one-mile rule.

MR. DORSEY: Yes.

MR. OXER: Mr. Nguyen, one of the earlier commenters said that you had asked the City of Austin to annex

the property, it was at your request. Clarify that.

MR. NGUYEN: That's incorrect. The property was annexed prior to us acquiring it, so I'm not privy as to who requested that annexation, but it wasn't us. We requested the zoning change. When it was annexed, it was annexed under some sort of a rural general zoning, and for this specific use we needed a multifamily zoning, which we did receive from the city.

MR. OXER: And since you're not contiguous with the City of Austin limits and you're depending on them for your utility services for water and wastewater, obviously there's an easement that goes north to where your interconnect is.

MR. NGUYEN: Yes, sir, and we've gotten those easements.

MR. OXER: Any other questions?

DR. MUÑOZ: Mr. Nguyen, you mentioned the various projects you have, over 30, I believe, in different states. Are others here in Texas?

MR. NGUYEN: Yes. We have 19 here in Texas, one, in fact, in Austin on the south side, which we did invite representatives of the neighborhood to go and tour, which they did, and I believe -- Scott, correct me if I'm wrong -- it was a favorable impression, very much liked how the project

looked.

DR. MUÑOZ: How long has that project been in service, more or less?

MR. NGUYEN: Early 2000s, 2001 or '02.

DR. MUÑOZ: High occupancy?

MR. NGUYEN: Yes, sir.

DR. MUÑOZ: Waiting list?

MR. NGUYEN: Some, not much, but it's high occupancy, it's 96 or 98 percent.

MR. OXER: There's going to be a certain turnover, 100 percent is pretty rare.

MR. NGUYEN: It is.

MR. OXER: With respect to the schools and the access and the walking and the buses and all that kind of stuff, Cameron said that there's a multifamily development across the street. Is that correct?

MR. NGUYEN: Yes.

MR. OXER: About the same size, larger than, smaller than?

MR. NGUYEN: It is larger.

MR. OXER: How many units do you have, again?

MR. NGUYEN: Two forty-two.

MR. OXER: And over there is probably?

MR. NGUYEN: Three hundred.

MR. OXER: How do they get to school?

MR. NGUYEN: They also have a bus service, school bus that goes to that site. Again, it's not an affordable product, it's a conventional Class A market rate. Rents are about \$200-plus higher than what we're proposing. They're also full, and they've been around a while, ten-plus years, I think, per Cameron, and highly successful.

MR. OXER: Any other questions?

(No response.)

MR. OXER: Are there others you would have speak?

MR. NGUYEN: Yes. I think it would be great to hear from these young men and women. Thanks.

MR. OXER: All right. Here's the story: do you want to do it one at a time or a couple of you together? Come on up.

MS. CRUZ: My name is Chelsea Cruz and I go to Sam Houston State University in Huntsville, Texas, and I stay at the Arbors of Sam Houston.

I'm from El Campo, Texas, and my father is a police officer and my mother is a utility clerk at city hall, and they definitely couldn't afford for me to go two hours away for an apartment. And also, the Atlantic Housing Foundation has helped me keep a part-time job and go to school full-time.

Instead of working 30 to 40 hours, I can now work like 15-20

and be able to focus on school, and I'm still financially stable. So affordable housing has definitely made a difference for me. Thank you.

MR. OXER: Good. Thanks for coming to speak to us.

MS. McCULLOUGH: Good morning, everyone. My name is Jasmine McCullough, and I attend Sam Houston State University in Huntsville, Texas as well. I live at the Arbors of Sam Houston.

I am a single mother and I got pregnant early on in college and then I learned about the Atlantic Housing Foundation scholarship, because Sam Houston, the campus didn't offer family housing for you to be able to stay on campus, so if I hadn't heard about Atlantic Housing Foundation scholarship, I wouldn't have had anywhere to live with my daughter. So they definitely have made an impact on my life.

And basically, now I'm a graduating senior and I graduate in May and I'll have a bachelor of science degree in criminal justice and a minor in psychology, and they've helped me go from a single mother with nothing to graduating with a degree. So I definitely appreciate everything that they've done for me and the opportunity, and affordable housing has made a difference in my life, and I just wanted everyone to know that. Thank you.

MR. OXER: Congratulations on finishing your degree.

MS. McCULLOUGH: Thank you.

(Applause.)

MR. OXER: I was so glad I finished mine, but most of the professors are the ones cheering when I left.

(General laughter.)

MS. ARMSTRONG: Good morning. My name is Adrienne Armstrong. I'm a graduating senior at Sam Houston State University. I live in the Arbors of Sam Houston.

Just a little bit about me. I am from Houston, Texas, I'm a product of a young mother, she had three kids, and we were low income, so when I moved to school, I was the first one in my family to even go into higher learning, so I had to learn everything on my own which was very stressful.

And so when I learned about the Atlantic Housing Foundation, it was definitely a weight lifted off of me because I was working 40 hours at Walgreen's, and I was definitely trying to attend school full-time. So once I learned about the scholarship, I just knew it was a blessing to me.

And I just want to thank you for your time and thank Atlantic Housing Foundation because it has made a difference in my life.

MR. OXER: Good. Thank you for your comments.

MS. SINGLETARY: Good morning. I'm Markisha Singletary. I attend Sam Houston State. I won't graduate until December '13. I live in the Arbors of Sam Houston.

I'm from a small town called Van Vleck, Texas. I came from a single mother of three. I had my son when I was a junior in high school, so graduating was a big step, but also being the first generation to go to college was also a bigger step. Being not really stable financially, so finding out about the scholarship helped me a lot, and it's made life stress-free about trying to pay rent and pay bills and everything else. So affordable housing has made a difference in my life.

MR. OXER: Thank you.

MS. JAMES: Hello. Good morning.

MR. OXER: Good morning.

MS. JAMES: I am Shonecra James. I attend Sam Houston State University. I'm a junior at Sam. I currently live at the Arbors of Sam Houston.

My senior year my dad passed away, he was the provider for my family, and my mother lost her job, and we come from a low income family, and when I found out about Atlantic Housing Foundation, it was a weight lifted off of me. I couldn't afford school and pay for housing, so when I found out about it, I applied immediately, and it has made

a difference in my life, because I was working two jobs and trying to go to school full-time. And I appreciate Atlantic Housing Foundation and it has made a difference in my life.

MR. OXER: Good. Thank you for your comments.

Okay, one more.

MS. O'DONNELL: My name is Kristie O'Donnell. I'm a graduate student at Texas State University.

I've worked hard to get where I am and I continue to give every effort to my work. I volunteer, work for nonprofits, and research new ways of engaging students in supporting marginalized groups in their educational efforts.

Despite all my work and part-time jobs, I cannot afford good housing on my own. Much of my efforts go without pay, and a future in a university does not offer much prospect of good pay until several years and thousands of tuition dollars later.

Affordable housing organizations, such as the Atlantic Housing Foundation, has given me a place to live while I work to achieve my goals. The investment that Atlantic Housing has made in my future will continue to show as I am subsequently able to help other students. They've made my graduate study possible in the midst of a student loan debt crisis and a national devaluation of the humanities as a course of study. Obtaining a degree in rhetoric and

composition could be a potentially risky move, but with the help of the Housing Foundation, I'm able to pursue my goal of teaching college students and writing for social justice issues.

Many individuals and families work hard but they may not be given the same financial opportunities to afford good quality housing. Should that mean they live in squalor?

Should they have roaches for roommates? Sometimes people need help along the way, and affordable housing is one of the most important things to support a long-term goal to support the potential of families and individuals.

Affordable housing has made a difference.

MR. OXER: Good. Congratulations. You know, this is the time, the biennial season, when that rhetoric and logic and composition might be real useful across the street.

(General laughter.)

MS. LUDWIG: Hi. My name is Laura Ludwig, I'm a Wells Branch resident. And I wasn't planning on coming up today but I feel compelled to after hearing additional public comment and additional information being presented.

A couple of points that I just need to address very quickly. The apartment complex across the street that's being referenced is across a five-lane highway. We want to

be really clear about that property and that proximity and that road because it seems that the full picture oftentimes doesn't get described quite accurately, in some of our opinions.

And also, I think about the annexation of the property, from what I'm aware of, that all kind of happened along with the zoning changes as part of this development.

So I'm not privy to all of the paperwork or technical details on that, but the reason that I'm bringing it up is because regularly throughout this process the residents have definitely performed due diligence in trying to make sure that we have accurate information, and also, just like Scott, my neighbor, voiced, you know, it's been a little bit of a roller coaster, in this process I want to make sure that I'm not opposing this for the wrong reasons. And I can tell you that we have put forth lots of effort to try and ensure that this is, I used to say a quality development, but sometimes I feel like that term should be changed to simply an adequate development.

And I applaud the efforts of the Atlantic Housing Foundation in their scholarship provisions. I don't think anyone would dispute that that is very valuable and affordable housing is very needed, but what we've been speaking to is the day-to-day living environment itself, and I ask you to

please hold off on approving this as is. There are some serious concerns and there is conflicting, if not completely inaccurate, data. And yes, we've been present at the zoning meetings, we've been present all along the way, and it's a little discouraging to see this questionable data just get dismissed or passed on through.

So I'd like to ask you who are you tasked with serving in these transactions, as they're so clinically called. We have made many efforts to try to establish what we think is beneficial and will work for the incoming residents, as well as for our community, and at the public meeting I offered to serve as a liaison because, sure, people have concerns, they've listed them over and over about the site plan, EMS response. I can tell you when I call to report a deer in the road, it takes minutes and minutes for the non-emergency folks to find out who handles it, and that is firsthand experience, that is not some study that someone dismissively says yes, it will get taken care of.

The transportation issue, I need to again check myself and make sure that I have the true facts on who will have vehicles, who needs this transportation assistance, but I don't feel that that has been properly clarified or addressed, not to mention the school overcrowding. The data presented at the zoning meeting was flat-out false.

So we are open to a quality and even an adequate development. We have not seen that this development meets those standards at this time. And I love the reference to the Good Neighbor Program, but what really helps to assimilate communities and help everyone involved feel like a community is quality development, not just checking the box and saying: oh, it's met this requirement; oh, we'll take care of that; oh, yes, I've spoken to them, it's going to be okay.

I implore you to please give this some more time and not approve it for this precious funding today. Thank you.

MR. OXER: Thank you, Ms. Ludwig. I have a question. At the zoning hearing you said there was inaccurate data presented.

MS. LUDWIG: Yes.

MR. OXER: What was the nature of that data?

MS. LUDWIG: On the overcrowding of the schools. We have residents in the community who work in all different fields and industries and one of our residents did a very thorough study, very recent data, and if you read the transcripts or if you are able to watch the recording, I request that you do that because that was rather dismissively answered and that data was incorrect.

MR. OXER: And what was that data? That's what

I'm asking, what was the data that was incorrect.

MS. LUDWIG: The numbers of the children in the schools currently was incorrect, and then there's been a range as far as how many children will be coming into the area with this new development. Now, I didn't memorize all of the numbers in that presentation, but if you watch the recording, you can see how that data was gathered, she put together her graph, she cited her sources, and I was a little appalled to see it pass anyway.

DR. MUÑOZ: The information we have clearly establishes that in one case, I think, they're at 122 percent and the other school is also impacted. I don't think any of us have been exposed to something that suggests that there's ample capacity. And I think it was addressed earlier that the developer is cognizant of the overcrowding issue. There are a lot of schools across the state that, you know, experience impacted campuses. But I guess I'm under the impression that it's an issue and that it hasn't been dismissed.

MS. LUDWIG: Well, I appreciate that and I hope that all of you will keep that in mind because it seems to be kind of glossed over regularly. This community has been dealing with overcrowding for years, and you're correct, giving a heads up and saying oh, the funding will come along,

doesn't make it so.

So again, I would ask you who are you tasked with serving in this mission. We've got at least three parties: we've got the owner of the development who I know has made every effort within his industry which is expected of him, and I understand that; and we understand the landowner and their needs; then we've got the residents coming in, we have spoken to those issues with genuine concern; and then we have the people in the existing community.

The zoning did not pay respect to compatibility issues in any form, so I ask you to please consider everyone involved in this situation and vote accordingly. I don't believe this development is worthy at this time. I ask you to give it some more consideration.

MR. OXER: Other questions from the Board.
Professor.

MR. McWATTERS: Have there been any developments announced for market rate housing in the area, and if so, what's been the response of the community to those, vis-à-vis, school funding, school crowding and the like, or was it reserved for this particular project?

MS. LUDWIG: I'm not aware of other announcements of other communities. We have quite a few already in the area, and the data about density of whether it's market rate

or affordable, we have a lot of communities already in our area, and that is just fine. I'm not aware of any new market rates and reaction or response to those.

MR. McWATTERS: I'm just trying to follow the logic. I mean, if the schools are overcrowded now, a new development would make them yet more overcrowded, then that means you have to adopt a no growth policy across the board, I would think. There would be no single family, there would be no multifamily because heaven forbid, they may have children that want to go to those schools and it would exacerbate the overcrowding issue.

I mean, for example, the last project that came online, multifamily, say market rate, multifamily, I wonder if there was objection to that based upon schools. I'm just trying to mix apples to apples here.

MS. LUDWIG: Objection to another multifamily unit recently?

MR. McWATTERS: Yes. For example, if there is a multifamily unit that came online in the last year, was that opposed, was it opposed for the same reasons, did people write hundreds of letters, or not? I'm just trying to get to the source of the tension here.

MS. LUDWIG: I understand. It's a fair question. I'm not aware of a development that you're inquiring about

in the past year or recently where people had these same concerns, or I'm not even aware of one in this close proximity being proposed. What we asked for in the zoning meeting was lower density to be more compatible with our area because that would at least lessen the impact on the schools, or commercial.

So we understand the needs of the various parties. Our concerns have been with the adequacy of the development itself for people in their day-to-day life, for people to have what they need regardless of whatever kind of development. Whether it's commercial, multifamily, single story, we just want a quality, or even, as I said, adequate development, whatever comes in. Because we're aware that, you know, this is a crowded city, things will be developed and land will be built upon. We understand, and we have reached out and made efforts in those areas, we do get that.

MR. McWATTERS: But I'm just struggling with figuring out how that's going to happen because a person wants to build a single family home, build a market multifamily residence, are people raising employment issues, well, can you get a job here, what's your transportation like, what impact will it have on the school, or are those concerns reserved for projects like this. I think it's a fair question. It's a hard question, it's an awkward question

to ask, and I feel a little bit wobbly by doing it, but I'm listening to things and I just want to make sure that this stacks up.

MS. LUDWIG: I think it's an absolutely fair question, and you're right, there's been this current of sensitivity throughout and what I don't understand is whatever kind of development it is, you need to address the needs of that development. So for example, if it was a commercial, the school impact would not be relevant. If it is single story, if it's market rate, each development will have its own set of needs.

Because this development has its own set of needs, we have genuinely done our own research, honestly for myself, searched my soul, and tried to be very fair and envision what we think will truly be a good addition to this community for everyone.

MR. McWATTERS: Okay. Thank you. I don't want to repeat myself.

MR. OXER: Ms. Ludwig, please stay because we're not through -- I hate to say it quite like this, but we're not through with you yet.

(General laughter.)

MR. OXER: And I'll have another question for Mr. Nguyen as well.

To answer your question who is it that we serve,

okay, we serve the State of Texas and we serve at the pleasure of the governor, fundamentally. I understand the reason for asking that question because there's a lot of opposing interests in here. One of the more interesting things about this position is I will remind everybody here, and those of you who have been to these meetings before have heard me say this and everybody on the Board knows this, when I took this position, the Governor's Office told me: You've got to remember a couple of things. I said, What's that? One, it's going to be really hard work; two, nobody will appreciate what you're doing; and three, every decision you make is going to piss off somebody. Okay? My question was: Is there anything else I need to know? And they go: Yes, you're not going to get paid for it either. Great, that should be pretty easy, that way don't have to worry about raises, anyway, at this time of year on the budget side.

And I ask everyone to recognize that some of these decisions are painfully difficult at times because we recognize your issues and I think you have to recognize the issues that we have because our obligation is to see to it that the stock of affordable housing in the state continues to be available and escalates as the population escalates.

So with that, I'm putting some context in the decision here because I don't want it to go unsaid that we're serving some

commercial interest -- we are not, I assure you.

MS. LUDWIG: I understand and appreciate what you're saying. I would just like to ask that, given the large increase in applicants for these types of developments when the process shifted to more of an incentive-based process, as opposed to being in some people's minds over-regulated, we know that there has been a huge increase and there are more worthy concepts and proposed developments, I'm certain of that. I don't believe this meets the standard.

MR. OXER: Fair enough. And at least a collateral comment to Juan's point about the school board and that the funding for schools would be available five to seven years, that's going to happen anyway, if you had nothing else happen and just the people that were there. Because my background is doing infrastructure, and that sort of infrastructure, you don't build a school and hope that people come to fill it up, you put the schools where they are and you anticipate that growth, it takes some time. Schools just fundamentally are always going to be overcrowded, and I'm not justifying, I'm just saying life on earth these days means that all schools are going to be just about overcrowded because it's the overcrowding that drives the demand for new schools.

MS. LUDWIG: We understand, we're well aware and have been dealing with that for years. And we do ask you

to do the hard work that you referenced. I believe a solution is possible, I just don't believe it is in the current state that it is.

MR. OXER: And that could be.

All right. Anything else? Hold on. Let's answer that question right quick, because we've got one more speaker yet.

MR. HOWE: Mike Howe again, resident of Wells Branch.

In regards to your questions, our history out in Wells Branch, something I referenced in my previous testimony, in one situation where we had another similar project coming in, the developer agreed to make that a senior center because of the impact on schools. That was not in relative recent history, that was about six or seven years ago. There is currently an apartment being proposed on another piece of land in Wells Branch, but the developer has indicated it is mostly one-bedroom apartments and they're generally designing it for upscale singles, so the impact on schools is not an issue.

Just outside of Wells Branch on the east side along I-35, another developer came and requested out-of-district sewer service from Wells Branch and one of the issues that was brought up was how is the impact going

to be on schools, and at that time it was the Pflugerville elementary school, Northwest Elementary, and there was a lot of discussion, a lot went on for a long time, and the developer went to the Pflugerville School District and spoke to them, and they said, We have already indicated that area would be bused to another area where we already have a school under construction.

So our history is that we're more than willing to work on these issues and resolve them, but this has always been our issue. And we understand what you're saying about the infrastructure always catching up with the needs, but in our area we've worked very diligently and not opposed projects just on the idea of opposing them, it's been a very concentrated and collaborative effort to make these things work.

MR. McWATTERS: What would be your response if a large market based, multifamily apartment complex wanted to build in your neighborhood?

MR. HOWE: Part of our issue is that we are built out. Remember my earlier testimony, this project is outside of our area. In fact, it's so isolated that we are quite surprised that anybody is developing multifamily of any sort where they are. When the project across the street was developed, when we looked into it, we realized it would not

have a significant impact on us because it was going to flow to a different school boundary zone, so it was not an issue to us at all so we didn't have any objection.

It is when those issues are impacting us -- just as I mentioned that project on the east side of Wells Branch -- we would get involved in that, but if it doesn't have an impact, we won't discuss it. But the Wells Branch MUD, who is represented here today, if necessary will always ask those questions and determine and work with a developer also. So the question is that it depends on what the situation is, it's always situational, I think.

MR. McWATTERS: Well, let's say it's this situation, let's say the proposed project was changed tomorrow by the developer to be multifamily market rate.

MR. HOWE: I think we would still be having the same conversation about how the project is designed and the implications of that.

MR. McWATTERS: Say that it happened a year ago.

MR. HOWE: Oh, absolutely the same thing, yes. I mean, we would still be having that conversation because it would impact our schools and our neighborhood and everything else. The project, what's proposed, who's doing it is not what the issue is, the issue truly is the impact on our existing neighborhood and infrastructure and what would

be the impact on those residents living there.

MR. McWATTERS: Thank you.

MR. HOWE: Okay. Thank you.

MR. OXER: This is a relevant comment to that --

DR. MUÑOZ: I have a follow-up question.

MR. OXER: Okay. Dr. Muñoz.

DR. MUÑOZ: You said that the apartment complex across the five-lane highway, those children attend a different school?

MR. HOWE: Yes. They are bused to, I believe, Bluebonnet Elementary.

MR. OXER: How far is that, two miles, 25 miles?

MR. HOWE: Better than two. As the crow flies, it's probably over two miles.

MR. OXER: About four or five, maybe.

MR. HOWE: Actually driving is four or five miles.

DR. MUÑOZ: Okay.

MR. KEIG: Quick follow-up.

MR. OXER: Mr. Keig.

MR. HOWE: That apartment is more upscale and it is more for singles, there's fewer families, I would think, in that apartment.

MR. KEIG: If you don't mind --

MR. OXER: We're not through with you either, by

the way.

MR. HOWE: Yes, I can tell.

(General laughter.)

MR. KEIG: How is the proposed complex any different with respect to emergency responders than, say, you all's houses?

MR. HOWE: We live inside Travis County Emergency Service District #2, which I was a commissioner on, appointed by the commissioners court. Inside that are, inside the boundaries of that, which is inside Travis County and east of Burnet Road, we have first responder medical, and that's about 66 percent of the calls in any situation now are medical calls, that's first responder medical with full paramedics, and full fire service, Class A, Code 2 -- or Code 1 fire service, equal to the City of Austin fire service. And they have full mutual aid with the City of Austin inside our district.

As I mentioned earlier, because they cannot go into Williamson County except on automatic mutual aid or requested mutual aid, they would not be the primary service to this property. So inside we have excellent service. Just outside of the area we don't because of the boundary issues, and as was noted here, this issue with confusion of calling 9-1-1 is extreme.

MR. KEIG: So for your home the responders from the ESD you referred to, they're the ones that would respond.

MR. HOWE: Right, and they are literally half a block from my house.

MR. KEIG: Thanks.

MR. OXER: Okay.

DR. MUÑOZ: You're so technically proficient, we're all animated to ask a question.

MR. HOWE: It's the problem for hanging around so long and serving as commissioner.

DR. MUÑOZ: Couldn't a mutual aid MOU --

MR. OXER: Cooperative agreement of some variety.

DR. MUÑOZ: -- be arranged by the developer, theoretically?

MR. HOWE: It actually is done between the entities.

DR. MUÑOZ: Couldn't they lobby the municipal entity?

MR. HOWE: I suppose they could, they certainly could, they could certainly make that issue. But when I actually spoke to the fire chief, who at the time was actually working for me, I said, What is your position on this property?

His comment was: I can't really comment on this, though I personally have some issues with being under the power lines,

it's the City of Austin because they asked to be annexed into the city.

And the annexation was a condition of the sale by the previous owner to the applicant that the annexation would occur prior to it being sold. I mean, we all know how that was structured.

DR. MUÑOZ: Are you certain about that last point?

MR. HOWE: I am pretty certain.

DR. MUÑOZ: You heard what was mentioned earlier?

MR. HOWE: Yes, I did, and I'm pretty certain if you went back and looked that there was probably some discussion that that was a condition of sale. Now, I haven't seen the documents, to be honest about it.

DR. MUÑOZ: Neither have I.

MR. HOWE: But the fire chief of the ESD said, We cannot address the issue of emergency response, first of all, it's in Williamson County, and second of all, because they asked to be annexed to the City of Austin. When the site plan actually goes for approval -- which it actually hasn't made its way through -- that it would be the City of Austin Fire Department checking on it and they would be the first responder on it, and because it's in Williamson County, the ESD would not be on automatic mutual aid.

DR. MUÑOZ: Thank you.

MR. HOWE: And that makes a difference in response time because the automatic mutual aid says it's the first available unit, and they're all tracked in Travis County on GPS, so the first available unit. It's not uncommon for me to see an Austin fire truck on my street because it's the first available unit. But in this situation, we have this issue of it ping-pong back and forth between Williamson and Travis counties until somebody finally says oh, I know where that is. And that's my issue from my emergency response experience.

Anybody else?

MR. OXER: Cynthia, you're next. She's next. We've got you on the list, don't worry.

MS. BAST: Good morning. I'm Cynthia Bast of Locke Lord, and we are representing Atlantic Housing Foundation and its effort to finance and develop this property.

It seems that a lot of what I'm hearing with regard to the concern does have to do with the multiple jurisdiction issue, that this particular property is not really isolated as a little tiny piece of the City of Austin in a larger whole.

Actually, everything west of 1325 is City of Austin, it just happens that this property is on a boundary.

And it's not unusual to develop on boundaries.

I have worked on other affordable housing transactions that are actually bifurcated by a county line and have multiple jurisdictions that are affiliated with them, and those properties today are successful in doing what they're supposed to do.

I myself live in one of those areas. I live in the City of Austin, I'm in the Eanes School District, I get all of my amenities in Westlake Hills, and when I pull out of my subdivision, I see an emergency services facility that doesn't serve my house. So I understand that, but I still feel like I live in a great place. And the fact that we're in this kind of multi-jurisdictional boundary area should not preclude the development of housing.

As you know, these proposals go through an incredible process before they even get to you. First you have to have a zoned piece of property, and this property was zoned in December of 2011 before Atlantic Housing Foundation acquired it. They do currently own the property.

In that public zoning process, there was quite a bit of input, very similar to the input you are hearing today, and in fact, one of the things you have not heard is that, partially as a result of some of that input, the city council directed that this land would be zoned multifamily but at a reduced density. So they were trying to be sensitive to the

appropriate configuration for that particular site.

So this tract is multifamily in a high growth area.

It's going to be developed as multifamily. The question is: is it going to be an affordable opportunity for people?

It's going to be built in accordance with all zoning, all building codes, no variances are being requested. It has been through, and will continue to go through, multiple construction reviews. The financing parties have their own independent construction review, there are multiple people who are looking at this, including HUD, with regard to the fall zone question, to make sure that this is quality housing.

Another huge part of this incredible process, of course, is the TDHCA process. You have an extensive body of rules there for a reason. Those rules help guide you on what you think creates quality affordable housing, and your staff does incredible due diligence. As you heard, Mr. Dorsey walked the property and walked around the property. They don't just take a piece of paper and check boxes and say: Okay, does this meet everything; all right, fine. They really do take the time to examine, to listen to this public input, to ask questions. Every question that TDHCA has asked has been answered.

You heard that Atlantic has a very mission-driven approach. They are all about families and serving families,

and they chose this site because of the opportunity that it does provide for the residents. Wells Branch, as a community, is one of the higher income communities in the Austin metropolitan area. You've heard the Round Rock ISD has great schools. All of the schools that serve this property are recognized schools. Now, they maybe overcrowded but they're doing something right in educating their children.

You've heard that there's a growing workforce and opportunities here with expansion by Apple and other businesses in this area. All of that leads to a community that will allow, like these students that you heard from, to get their education and then get jobs and be great parts of the community. And that's why Atlantic chose this site, it didn't choose to go into a qualified census tract, it chose to go into somewhere that it thought would provide significant opportunities for the residents.

You have heard that Atlantic has reached out to the neighborhood in every way that I think TDHCA could request.

In fact, they held meetings before the TEFRA. They didn't just have a TEFRA and say okay, we got this public comment and then go on about their business, they held meetings, they responded to questions. Every question that has been asked, they have been able to respond to.

The questions about: will there be

transportation for people who don't have cars; will there be bus service; what are you going to do about sidewalks; will the EMS vehicles be able to turn around; what about the fall zone. All of these questions that have been asked have been responded to. And I think that's an important recognition for responsible developer that is trying to reach out, because we've all seen situations where the developer just tries to fly through the TEFRA hearing and does not have any other community engagement.

So in short, I just want to conclude that this property has been through an incredible process, will not be done until it goes through even more process, and has met all of the criteria along the way. It's going to be developed in accordance with zoning and building codes, it meets your QAP, so it meets all of the criteria for this agency to award the credits.

So we'd request your approval of the development.

And the last thing I'd like to say is I know you may have more questions, and there are more people from the Atlantic Housing development team here. Just want to make you aware that the civil engineer is here and can address any fall zone issues or other engineering issues; the architect is here; the financing parties are here, Merchant Capital and City Real Estate Advisors are here to be able to speak to why they

want to invest in this particular property.

Along with from the Atlantic team we have the director of development, we have the director of community services who works with not only that wonderful scholarship program that you heard about but all the rest of the services that are provided to the residents, and the director of compliance for Atlantic Housing are all here and available to answer your questions.

Thank you.

MR. OXER: Good timing. The beeper just went off.

Do we have a question of Cynthia?

DR. MUÑOZ: Cynthia, do you have any insight into the suggestion related to the annexation and it being discussed prior to the transfer to the new owner?

MS. BAST: I was not involved in the zoning process and my firm was not involved in that.

DR. MUÑOZ: We keep hearing that the developer requested.

MS. BAST: I will tell you that my client has advised me that the annexation occurred before the zoning process and before they acquired the property.

DR. MUÑOZ: Which is what he said earlier.

MS. BAST: And I have my laptop here, I could probably go find the purchase contract and see what it says,

if needed.

MR. OXER: That would be a good thing to be looking for right quick.

MS. BAST: Okay.

MR. OXER: Second thing, question from me, there seems to be some -- we're not on a consistent fact basis here yet, we're not working off a clean set of facts, so just as a point of question, what would be the impact on this project of delaying it for 60 days?

MS. BAST: As you know, under state law, once a bond reservation is received, you have 150 days to close. We are juggling quite a few financing pieces here because of the additional HUD piece, it has its own process, of course, and so this is the ultimate date to get that approval to make all of these things happen within the 150-day window.

MR. OXER: Today is the last day. Is that what you said?

MS. BAST: Well, I don't think it's the last day.

MR. OXER: Last meeting, essentially.

MS. BAST: My financing people are saying it very well could be tough if we delay till April because, of course, we don't have a March meeting.

MR. OXER: Right. That's why I was asking.

MS. BAST: Right.

MR. OXER: And while I appreciate everything that's been said and I applaud Atlantic Housing for their contributions to the education for their residents and former residents, that has little to do with the viability of the site with respect to the project. They're good neighbors.

MS. BAST: I see what you're saying in terms of the disconnect, but the truth is that they do all relate to one another in that Atlantic chooses sites that it believes will be quality sites for its residents. Helping its residents, whether it be through providing scholarships or other kinds of services or just quality housing on a good site, that's all part of the Atlantic mission. So I think that there is a relationship there.

MR. OXER: All right. We have one more speaker and I'm going to exercise a privilege of the chair at this point because we've been sitting in these chairs for an hour and 45 minutes, so we're going to take a 15-minute break, or closer to an eight-minute break.

MR. KEIG: Can I ask just one question of her?

MR. OXER: Go ahead.

MR. KEIG: Mr. Dorsey is going to go independently, on behalf of the agency, verify the mandatory site characteristics, but can you or somebody with Atlantic address that issue, and if not you then maybe somebody else,

after the break?

MS. BAST: I believe we can. I believe we have the tax credit application here and I believe we can do that.

MR. OXER: We'll give you some time over the break to search out the details on the annexation contract. And we're going to take a quick break, let's be back in ten minutes. We have one last speaker on this.

(Whereupon, at 11:26 a.m., a brief recess was taken, and the meeting reconvened at 11:46 a.m.)

MR. OXER: We are back in session.

We had one other speaker in the back. That's all right, we'll wait until he comes up.

There was one other question in terms of the reservation schedule for this. Would you go over that again?

MS. BAST: Sure. For the record, Cynthia Bast of Locke Lord.

The HUD package went in on February 8, therefore, assuming that the commitment comes out within 60 days, there will be a closing deadline of May 8. Now, here's challenge, the next Bond Review Board meeting is in March -- after this meeting we have to go to the Bond Review Board, so the next Bond Review Board -- so the next Bond Review Board meeting is in March. If we miss that one, then we have to go in May and that Bond Review Board meeting is after the May 8 that

we expect to be the 90 days in which HUD will expect closing.

So that is part of what is driving all of this timing is that there's this HUD piece, as well as the Bond Review Board piece that's also required.

MR. OXER: Okay. Any other questions?

MS. BAST: Did you want me to answer the other questions?

MR. OXER: Yes.

MS. BAST: Sure.

DR. MUÑOZ: Are you going to answer the amenities question?

MS. BAST: Yes, sir, and the annexation question.

I have in front of me the purchase and sale contract. The purchase and sale contract did not have a condition with regard to annexation, it only had a condition with regard to zoning change. Our civil engineer had his office, during this break, conduct some search of the public records. This land was annexed into the ETJ in 1969 and then put under a special use annexation with the City of Austin in the mid 1980s, and I'm not sure if we yet have that exact date of the 1980s, but that's when that occurred. So we don't think that there was any condition of annexation with regard to this particular transaction.

The last thing was the amenities. I have with

me the Google map that was submitted with the application.

The applicant took the Google system and ordered a one-mile radius drawn and came up with seven possible amenities. We understand that if there is any concern about these amenities and the meeting of the threshold, then that may merit more investigation, but we're happy for you all to put a condition on the award as you would on other kinds of things.

MR. OXER: Just like we have on the fall zone.

MS. BAST: Exactly. We'll put a condition on this that we want to confirm that it does meet the threshold criteria.

DR. MUÑOZ: At the bottom, are those the seven amenities?

MS. BAST: Yes. This is the list from the application and it includes a grocery store, restaurant, recreational, religious, a park, retail, furniture store, nursery and a bank/credit union is what it shows on this map that we submitted.

MR. OXER: It actually calls the bank a service?

MS. BAST: That's your rule.

MR. OXER: Sorry. I know.

(General laughter.)

MS. BAST: Is there anything else I can answer for the Board?

MR. OXER: Any other questions of the Board?

(No response.)

MR. OXER: Thanks, Cynthia.

MS. BAST: Thank you.

MR. OXER: Okay, last speaker. Okay. He looks like he's pretty good.

There seems to be some questions on this one and I'd like to have some more answers, but we have a motion by Ms. Bingham and a second by Vice Chairman Gann.

MS. BINGHAM ESCAREÑO: Mr. Chair, may I amend my motion?

MR. OXER: That's where I was getting to where we're at, so I would offer you that opportunity should you like to.

MS. BINGHAM ESCAREÑO: Okay. Gosh, you're putting me on the spot. How would I like to amend it? I'll accept a recommendation for a friendly amendment, or I can make one myself.

MR. OXER: I'm offering a discussion, which I get to do as chair, there's some question about the school bus service, documentation of that, the fall zone certification, and while I know that we have the engineering team here for Atlantic Housing, we have what's the proper term, a condition to hold on this, or conditioning our approval with the hold

on the fall zone certification. I would ask a member to offer an amendment on the EMS, the emergency services and the multiple jurisdiction, having some commentary or some documentation from those who would be responsible for responding to this particular area, regardless of what happens. The amenities and the annexation seem to have been addressed through the documentation, the information that Cynthia has provided.

Anything else, Tim?

DR. MUÑOZ: I might just ask Cameron to reconfirm that those amenities still exist.

MR. OXER: Like a field survey.

MR. DORSEY: Definitely, I will verify. I think there were some questions about the radius on the map and some stuff like that. I think it's probably the best idea that when I've got all my resources at my disposal, I can verify with more certainty.

MR. IRVINE: I think that as great as it is to have access to the computer and to be able to pull up this kind of information, in order for it to be done in a really orderly and well documented manner, it would be appropriate for staff to go back and confirm the actual presence of the required amenities, to confirm that all of the emergency responders are, in fact, in place within appropriate radii

to serve the site, to confirm the availability of the school bus service to the site, to confirm the engineering study with respect to the fall zone, all of those issues.

MR. OXER: And confirming the transportation availability to be provided by Atlantic. And we're speaking of this because there's been a motion to approve the staff recommendation by Ms. Bingham and a second by Vice Chairman Gann, these would be the conditions put onto it.

MR. GANN: I agree to have the director to confirm all. Is that part of it too?

MR. IRVINE: Yes.

MR. GANN: I amend my motion to reflect all of that.

DR. MUÑOZ: Also if it's possible for the developer to produce some of the informal correspondence related to his conversations with the school district about the possibility of --

MR. OXER: -- expansions of the capacity.

DR. MUÑOZ: That's right.

MR. OXER: Do we need to articulate that more succinctly?

MS. BINGHAM ESCAREÑO: I can give it a try.

MR. OXER: Why don't you do that.

MS. BINGHAM ESCAREÑO: Okay. So I'd like to amend

my motion to approve staff's recommendation, still to approve staff's recommendation but with the following conditions: verification that the fall zone for the power lines are in compliance with the standards as set; providing written confirmation that school bus service will be expanded to include the new development; clarification on the collaborative effort to provide EMS and fire service to the area; confirmation that at least six amenities are currently available within the one-mile urban requirement; and I believe, Mr. Chair, we added confirmation in writing that Atlantic will provide pedestrian assistance? Is that the last one that you said?

MR. OXER: Yes.

MS. BINGHAM ESCAREÑO: Transportation.

MR. OXER: The non school bus service, a transportation unit there based at the facility for those who are not mobile.

Cameron.

MR. DORSEY: I think it was the Ride Share program, I think that's what it was. It's a carpool type program that's provided.

MR. OXER: Okay.

DR. MUÑOZ: And also the point of some sort of informal copies of communiqués related to the expansion of

school services.

MS. BINGHAM ESCAREÑO: So noted.

MR. OXER: Right, so noted.

All right, we have to vote. And is there a second to the amendment?

MR. GANN: I second.

MR. OXER: Vice Chairman Gann seconds the amendment.

MR. DORSEY: Would it be appropriate that these be conditions of the closing with a report at the April meeting due to the timing issues, or would you prefer that we bring it back to the April meeting prior to closing?

MS. BINGHAM ESCAREÑO: The intent of my amendment would be conditions of closing, that it would not have to come back between now and then.

MR. DORSEY: And we'd be happy to report on it in April as well.

MR. OXER: And I'd offer up that those conditions should be reported to the executive director so he can sign off on them so that they can proceed as expeditiously as possible. There's been an amendment offered by Ms. Bingham, second by Vice Chairman Gann. All Board members in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. The amendment stands.

Now, there's been public comment on this, so the current motion on the floor is to approve staff's recommendations conditioned with those articulated by Ms. Bingham, second by Vice Chairman Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none, it's unanimous. And thank you all for your comments.

We'll move to the item that we skipped on behalf of allowing Dr. Muñoz to be able to join us. It is a requirement of this Board that each two years on the first meeting after January 31 on odd number years that coincides with the essentially the legislature coming into session that we elect a vice chairman. I think most of you know that the chair is filled at the pleasure of the governor, and despite what I may choose or want some days, I can't get out of this, so we get to elect somebody who is going to be the backup in case I'm MIA, as it were. And there are several positions that we'll be filling, including a secretary and an assistant secretary, which typically are held by staff.

At this point I'll open it up to the Board for any nominations. I'd like to say personally that I've appreciated having Tom Gann on my left. It's a great comfort to me to know that I've got somebody that knows the business as well as he does. So with that, I'll open it to the Board for any nominations for vice chairman.

MR. GANN: Mr. Chairman, I'd like to make a nomination, after serving with two different chairmen, you being my last -- which I've definitely enjoyed but it's time to move on -- some put in the nomination the name of Dr. Juan Muñoz with great delight.

MR. OXER: Dr. Muñoz, would you accept such a nomination?

DR. MUÑOZ: Yes.

MR. OXER: Succinct. I love it.

All right. Are there any other nominations for the position?

(No response.)

MR. OXER: None. All right. All in favor of having Dr. Juan Muñoz as the vice chair for the coming two years, please say aye.

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: And there are none. Congratulations, Juan.

(Applause.)

MR. IRVINE: I would like to offer for the Board's approval the services of Barbara Dean to serve as your secretary, Michele Atkins to serve as your assistant secretary, and David Cervantes to serve as your treasurer.

MR. OXER: We have to vote on that. Do we vote on each of them?

MR. IRVINE: One motion would be fine.

MR. OXER: Okay. Need a motion to that effect.

MR. KEIG: I move the executive director's recommendation.

DR. MUÑOZ: Second.

MR. OXER: Motion by Mr. Keig to have Barbara Dean as secretary, Michele Atkins as assistant secretary, and David Cervantes as treasurer. There was a second by Dr. Muñoz, our newly elected vice chairman -- who takes office on the next meeting, by the way, officially.

MR. GANN: Are you sure about that?

DR. MUÑOZ: I'm fairly certain about that, Tom.

(General laughter.)

MR. OXER: All right. Those in favor?

(A chorus of ayes.)

MR. OXER: And those opposed?

(No response.)

MR. OXER: There are none. So welcome aboard, everybody.

And for the record, so that everybody knows, we could do without Tim, I'm not doing without the ladies that help us make this work.

All right. Let's go to -- I think you're back up, Cameron.

MR. DORSEY: Yes, I am.

Item 3(b) relates to waiver requests for the March 1 commitment deadline for the CDBG-DR commitment deadline in order to access the points under the CDBG-DR plan option of the community revitalization plan point item. So I think we have another related kind of waiver rolled in here that I'll talk about in a moment, but let me rewind a little bit and talk about the development of this scoring item so that we all have the same context.

When we developed the QAP, we developed a point item for those developments located in areas targeted for revitalization. Rural areas have a completely different type of option so what we're talking about is for urban areas here.

For Urban Region 3 which is the Dallas-Fort Worth area, there is no CDBG-DR option, but at the same time there are no CDBG-DR

funds up there. They have just the standard revitalization plan option which requires a substantive revitalization plan to have been in place prior to January 8 and that there's a certain investment by the city in those target areas, et cetera.

For those urban developments located outside of Region 3, they kind of have two options for revitalization.

One is the same option that's available to Urban Region 3 that development of a community revitalization plan with public input, all put in place before January 8 with associated budget, et cetera. In addition to that, and after discussions with the City of Houston and just general awareness of the fact that the state has a significant of CDBG Disaster Recovery funding, that it is looking to invest in housing development in the coastal areas of the state, we developed this additional option for revitalization.

And that option allows access to six points if you are in the target area of a CDBG-DR plan that is in place for a city or county or government entity, and you have a commitment of CDBG-DR funds by March 1. Now, there are also a series of other requirements related to HUD's Fair Housing requirements that just are naturally gone through in the administration of a CDBG-DR program, et cetera.

The City of Houston is one recipient of a large

amount of the CDBG-DR funds and they've been working through the program design to administer those funds. A good portion of those funds are intended to be used for the development of multifamily housing, and I think the city is looking for ways to leverage that with other resources, such as the 9 percent housing tax credit or the bond program, et cetera.

And so this scoring item is kind of viewed as an essential mechanism to help facilitate that partnership of funding and layering of resources.

When we developed the scoring item, we also got public comment from the City of Houston and we made all of the changes that they noted or recommended, in large part because they made absolute sense. They were really necessary in order to make sure the scoring item functioned appropriately. No comment was made with regard to the March 1 deadline for having a commitment in place of the CDBG-DR funds for a particular development, however, at the time I believe the city, in good faith, believed that they could get commitments in place by that March 1 date.

Since that point in time, and on January 7, they sent out a notice to a whole host of folks indicating that they recommended asking TDHCA for a waiver of the March 1 date as they believed they may not be able to get commitments in place by that deadline.

We currently have four pending pre-applications.

Let me say that the pre-application deadline was the day after that notice went out, it was January 8. So we get pre-applications in on January 8 and we recognized that there are a handful of them that are looking for points under that particular item. A couple of those developments have since withdrawn or are otherwise not planning on submitting full applications, so at this point we're down to four developments that are potentially within the scope of this waiver item.

Two of those were able to, in that day turnaround when that notice came out, get that waiver request into their pre-application and submitted those pre-applications, those came in, and they met the deadline for requesting waivers which is January 8. They had to request waivers with their pre-applications, and so there was really kind of a day turnaround to get those waiver requests in.

There are two that are similarly situated in that they're looking for points and they're in the City of Houston, and those two did not get the waiver requests of the March 1 date in before the deadline to request that waiver. So we have a body of four transactions, two requested the necessary waiver -- well, the waiver that we now recognize may be necessary in order to access the points, and then you have two that did not get that waiver request in that are

in a similar situation.

One of the ones that did not request a waiver of the March 1 deadline did request another waiver. Their waiver was basically: hey, I'm not in a target area for the CDBG-DR plan, however, I believe that the City of Houston may ultimately fund my transaction and so I want a waiver for not being in a target area. Basically, that waiver request is: if I ultimately get CDBG-DR funding, then can I be considered for the points -- is effectively what that waiver request entails.

So we have two developments that requested waiver of the March 1 deadline, two other developments that probably would need a waiver of the March 1 deadline but did not request it by the deadline that's required in the QAP of January 8, and one of those two that didn't request a waiver of that March 1 deadline requested a waiver of this other requirement to be located in a target area. So four developments, all related to the City of Houston CDBG-DR plan.

Let me fast forward a little bit. Since January 8, the city has continued to engage stakeholders in the development of their CDBG-DR plans, I've had a good amount of correspondence with the city staff and they're still in some substantive negotiations to finalize the plan and how those funds are going to be administered.

At this point I think the city may be able to shed a little more light on when they could get commitments in place, however, prior to today, Due to the fact that they were in negotiations, they were unable to definitively provide a date that said yes, I can get commitments and deadline by this time frame, so as to have an alternative deadline.

Staff's position on this situation is that we're not recommending the waiver request be granted. It really comes down to, one, the fact that the rules were developed in a very open, transparent process, we had a lot of public comment, the March 1 deadline, I think everyone believed to be reasonable at the time it was established, and while in hindsight that may not be the case, that could be the case with a lot of rules that we have within the QAP. Hindsight is always 20-20 -- well, not always.

Another issue is the idea that if you wanted -- there are two, like I said, that requested the necessary waiver but two didn't which means that they would kind of need this double waiver. One of the waivers is to waive the March 1 deadline, but the other waiver would be to waive the deadline for having requested a waiver.

And we have some concerns, just generally, about the sweeping effect that that might have on the implementation of that deadline in most contexts for the rest of the cycle.

For example, if that deadline is waived in this context, then I could foresee an outpouring of future potential waiver requests where the waiver request didn't come in but because the Board previously waived the deadline for waiver requests, they feel as though they now have access to a waiver as well.

Certainly speculative, but an important consideration.

In addition, there are a couple of other point items that could be at play here, and I think the City of Houston will likely speak, as well as some applicants, so maybe they can shed some light on what their actual goal is here, but under our local political subdivision funding item -- we call it the unit of general local funding item, but it's basis in statute is LPS -- under that item you get an additional point if you have a commitment in place prior to March 1 and CDBG-DR funds can count under that scoring item. I'm not clear if they're looking for a waiver of that requirement to access that one additional point. They can probably shed some light on that. It's not encompassed by the strict reading of the two requests that we got in.

In addition to that, there is a scoring item for leveraging of private state and federal resources and that point item has a threshold in it where a transaction with CDBG-DR funds doesn't have to leverage quite as much other resources and can still access the same number of points as

other applicants that didn't get CDBG-DR but that are leveraging more funding.

And so it creates a bit of a timing issue there.

The way that scoring item is written, basically after the applications are awarded, any changes, we can't go back and reassess the points for that, but if we don't have the CDBG-DR commitment prior to awards being made in July, then we almost kind of need to go back and relook at whether or not they would have scored appropriately under that item, given the new set of facts that makes this a future date.

That's kind of the situation from a bird's eye view, but I'm sure there are folks that have a good amount of comments to make after me. Any questions?

MR. OXER: Thanks, Cameron.

Any questions? Professor.

MR. McWATTERS: Cameron, I understand taking sort of a strict view of a rule, a rule's a rule, and adhering to that rule, but I think a condition precedent to doing that is that the rule has to be transparent, and I think that burden is satisfied here. I think that the posting, the discussion on the March 1 date is transparent.

The second criteria in order to take sort of a strict view of the rule is I think the rule has to be a reasonable rule, and it seems from what you're saying at the

time the rule was put in the QAP that March 1 was a reasonable date, that some diligence was done and March 1 was picked.

Through no fault of the Department and no fault of the applicants, it seems like the City of Houston, if I'm reading this correctly, has come back and said: No, you know, March 1 won't work, it could be June, it could be July, it could even be a date after the credits are allocated -- which defies imagination how that could possibly work.

Is it reasonable, given those circumstances, to stay with the March 1 date, and would going to end of April or end of May be of any assistance, or would that create more confusion here, particularly if the City of Houston is saying nothing may happen until June or July?

MR. DORSEY: Let me say that I think that the city may be willing -- I talked to Veronica just before the Board meeting, and I think they may be willing to commit to a June 28 type time frame, however, I'll let them clarify that when they get up, but I just wanted to clarify I did have that discussion right before the meeting.

Extending the date will certainly create some confusion and a little bit more uncertainty, it has an impact on other folks that are participating within the region. That said, Jean and I are pretty good at figuring out how to implement what you all see as necessary to implement and

we can get it done, certainly, whatever the action is today.

But you know, I think it is fair to say that I think we all believed it was reasonable at the time, it's just that the city would like to do some additional due diligence, work with community stakeholders, et cetera.

You know, the other thing is I think we're certainly willing to work, there are other resources we have available that aren't subject to the same constraints, statutory application deadlines and what-have-you -- the bond and 4 percent program, namely, come to mind -- and we can certainly still work with the city in layering CDBG-DR funds with those transactions, and perhaps next year during the next cycle as well. That's kind of our perspective, staff's perspective.

DR. MUÑOZ: Cameron, you know, my hesitation about this is whenever we make -- you know, I appreciate the concern and the sensitivity to potentially moving the date further up, but when we make these exceptions and these waivers, it's sort of a catalyst, it creates a cavalcade of others saying: Well, as a result of the decision you made, now there are implications for ours. And then maybe there are decisions made for those that then create implications for others.

MR. DORSEY: Yes, I would agree with that. I think that's why we put the waiver deadline in place. The

thought process was: look, we're at a point where you've identified --

DR. MUÑOZ: It's in aligned with other deadlines and other expectations at the city, which maybe now they're redefining those deadlines, but that's outside of the control of the applicant or the agency.

MR. DORSEY: That's right.

DR. MUÑOZ: So every time a municipality might endeavor to sort of move a deadline, we subsequently move ours?

MR. DORSEY: We haven't necessarily in the past in all cases, but right, rhetorically I get what you're saying. It's a concern.

MR. OXER: Cameron, how many other applicants are there in that region which is Region 6, the Houston region?

MR. DORSEY: Yes. A lot.

MR. OXER: So they won't lack for an opportunity to receive their allocation of the credits?

MR. DORSEY: Just off the top of my head looking at a long list, 30 pre-apps. Now, some of them have withdrawn, and certainly I don't expect 30 full applications to come in. They're going to look at the playing field. The Board decision today might affect how many pre-applications we ultimately get. You know, folks may feel like they may be

less competitive if the decision is made to waive the deadline today. So I'm not certain in terms of full applications, but the number of pre-apps we got in was substantial. We'll probably end up being able to fund somewhere in the realm of five, six.

MR. OXER: And once they got this whatever it is they're straightening out, in the event that we denied their waiver -- one of the options is to do that, of course -- in the event that we denied their waiver, these projects could still be viable for next year.

MR. DORSEY: Certainly, and I think two of them are also -- at least two of them, I'm not certain about the other two, are within -- kind of had a backup plan which is: hey, there's this other revitalization plan option and we might be able to access four points there so it really comes down to a two-point differential. Well, the City of Houston's big reinvestment plan was approved on the consent agenda today as part of the Community Revitalization Plan pre-clearance process, and so it looks like those are likely to be able to achieve four points under that revitalization plan option, this waiver would provide access to an additional two.

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

(No response.)

MR. OXER: Could you restate the staff recommendation?

MR. DORSEY: Staff recommends denial of the waiver requests.

MR. OXER: Okay. And there appears to be nobody who wishes to speak.

MR. IRVINE: Yes. There's two coming up.

MR. OXER: I'm telling you that's what these chairs are in the front, folks.

MR. RACKLIFF: It was very comfortable in the back. I'm sorry.

MR. OXER: That's one of the reasons we want you in the front.

MS. BINGHAM ESCAREÑO: Do you need a motion?

MR. OXER: Hold on a second. We do have to have a motion to proceed. Motion to consider.

DR. MUÑOZ: Move staff's recommendation.

MR. OXER: Okay. Motion by Dr. Muñoz to approve staff recommendation to deny the waiver.

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann.

Okay. There is public comment.

MR. RACKLIFF: Thank you very much. It's a pleasure to be with you here this morning.

MR. OXER: And you are?

MR. RACKLIFF: My name is Neil Rackliff. I'm the director of the Department of Housing and Community Development for the City of Houston. We've enjoyed a long partnership with the TDHCA. We appreciate the very difficult work that you have to do, we very much appreciate the difficult work that your staff undertakes on our behalf, and we don't mean in any way to be dilatory regarding deadlines and cause problems for you.

What we are dealing with, ladies and gentlemen, is really a very extraordinary situation and we think an incredible opportunity that we hope that you will be partners with us on. And that is that because we have a substantial amount of Disaster Recovery Round 2 funding available to us, we are working together with a very broad coalition of parties and interests with the mayor of the City of Houston, the Department of Housing and Urban Development, grassroots activists and stakeholders, principally through the Texas Organizing Project, with Fair Housing advocates, spent a great deal of time and had wonderful cooperation and coordination with Texas Low Income Housing Information Services and Texas Appleseed, and we've worked very closely with the General Land Office.

This endeavor that we are engaged in is

extraordinary and we think will be historic, but we have been in a situation with regards to the timing that we hope that you can appreciate.

To give you a little bit of context, we're well aware of the timing deadlines that you have and we're not taking them lightly, but we're involved in a process where we are working and trying to balance the interests of Fair Housing activists, of the General Land Office and numerous stakeholders in the City of Houston. In an effort to do that, we have engaged in a public participation process that is absolutely unprecedented for any similar development that the city has undertaken.

What we are trying to do, we think, can be a type or a model for other communities that are facing Fair Housing challenges. As you all know, it is a position of the Fair Housing activists that you should not build affordable housing in areas of minority or poverty concentration and that they feel that the appropriate thing to do is to provide high opportunity areas in which you move individuals from historically underserved neighborhoods out of those neighborhoods and out into what they define or deem as areas where there are greater opportunities for educational access, of better schools, transportation, et cetera.

Well, there's another model that can be undertaken

because that model really doesn't help the City of Houston much at all. We are a majority minority city, that's a very unique situation, and when you look at the areas that are in areas of minority and poverty concentration, it's approximately 50 percent of the whole geography of the city.

So really what that high opportunity area does, when you look at where the high opportunity areas are going, it's going to move people out of the City of Houston into the suburbs, and from some perspective, I think that that is an appropriate thing at some times.

I've spent more time with John Henenberger than he probably ever wishes we'd spent together. We actually got to be good friends and I do think that he has very good intentions. But he and I have worked together to come up with a different, and hopefully, a better way, and that is we have a lot of folks who feel ideologically and are passionate about the fact that we have areas in the inner city of Houston in which we should put Community Development Block Grant funding to revitalize those area. That other interpretation of Fair Housing would say no, you can't put those dollars there. A lot of us think that that is contrary to the legislative intent of those federal laws and those funding mechanisms.

So what we're trying to do is go into areas of

minority and poverty concentration which is where these target areas are and do comprehensive revitalization instead of just putting housing in a silo manner and do other revitalization around that, look at retail opportunities, infrastructure opportunities, educational opportunities, so that we can lift up that area and create an area of high opportunity. And John and I are very excited about this possibility.

Getting to that has taken time, and certain time factors have just been beyond our control. It took longer than anticipated to negotiate our grant agreement with the GLO. Part of that has to do with the fact that we're taking a very much more complex approach to this problem, but one that they're supportive of and that HUD at very high levels in Washington, and our mayor and the activists, we've really got all these groups that often are not in concert to be in harmony, recognizing that we're trying to do something that hasn't been done before and find a better way forward.

So in the course of that, it just took longer, far longer than we anticipated to get our grant agreement done, to get our needs assessment done, and very recently, John and others asked us to add another layer of planning to what we're doing. We agreed to do that, but it has made our time frame more difficult.

So on a couple of fronts I will address the issues

that I think were very appropriately raised by your staff.

We are very happy to set a deadline. What we're shooting for is June 28, the city council date by which we believe that we can have these funding commitments in place.

Alternatively, we would ask that we use the same timeline for commitments of development funding from units of general local government, your UGLG provision, and that provides that you have to have a decision by September 30, and then a firm commitment of funding by tax credit commitment time which would be in mid August.

So contrary to what some of the thoughts were or anecdotes here, we are not asking for you to look at an award of credits after your time frame. We realize the burden that that -- well, we just realize that's impossible.

The other thing is it's not going to work -- and I completely appreciate Mr. Irvine and Cameron and the rest of staff working with us on this process to try to get this to work with this year's tax credit cycle. We didn't quite make it, we're asking you to work with us and help us to get there, but 2014 won't work for us because we have a 2015 deadline by the GLO by which all of these projects have to be completed, and that is a very, very aggressive timeline.

So next year is going to be too late, that's just not going to be an option.

We, again, think that this is an opportunity to do something historic. I've been involved in affordable housing for almost 20 years in one capacity or another, and this has been the most complex undertaking I have ever been involved in terms of working with stakeholders, getting folks on the same page, but we're not going at this from a perspective of being litigious with advocates and fighting them, we're working together with them, and we've found a solution that we think can be a model for the rest of Texas. So our plea is that you would work with us and help us to achieve that and give us the additional time that we've requested.

MR. OXER: Thank you, Mr. Rackliff.

Any questions from the Board? Juan.

DR. MUÑOZ: Well, I appreciate the sincerity of the request and I can't help thinking that if it were this historic and it had this number of stakeholders and invested parties, why couldn't you make the March deadline. And I appreciate the complexities and the nuances and everything that had to be arranged, but there are other potential applicants and they might not categorize their projects as historic but they would say that they're just as meritorious and deserving and there are implications for others.

MR. RACKLIFF: Your point is well taken. I understand that, but I will tell you that it just was

impossible to achieve by that deadline. I also would say that analogously, I recall years ago when the point category was looked at in the QAP for funding from units of general local government, one of the things that was recognized was that it's unrealistic for municipalities to actually make funding commitments before tax credits are awarded which is why you have the time frame in the UGLG provision as it is.

I remember one of the rationales is -- and actually, the Board worked with us on this at the City of Houston -- for example, in the City of Houston we might get, you know, 10-15 different applications for credits within our jurisdiction in a given year. Well, we're not going to actually award funding to 10 or 15 projects when maybe two, three or one will actually get credits. That's an extraordinary burden to put on the City of Houston, and frankly, we don't have the financial resources, it would cause chaos within our organization.

So I would suggest that while the March 1 deadline is what was in the QAP and perhaps that the fault is mine in not understanding that more clearly -- and for that I apologize -- we're in the same situation as your funding commitments for units of general local government where I do think that that time frame is a very reasonable time frame.

MR. OXER: Any other questions?

MR. KEIG: Yes. First question is if the Board denies these waivers, are all of these projects out of consideration for you?

MR. RACKLIFF: That is a question that I can't answer definitively right now because we just received responses to our request for proposals and we got about 30 responses and we're going through those. But what I will tell you is that we certainly will lose the ability to leverage, and one of our greatest desires here is to be very responsible stewards of taxpayer resources and leverage the CDBG funds that we have with every other source that we possibly can, so it certainly will be a missed opportunity.

MR. KEIG: You've got to clarify for me. It sounded like you told me there's still a chance, but then you also told me that it was a no go at the same time.

MR. RACKLIFF: Well, to be more clear, we won't be able to leverage using tax credits. That may kill the economic viability of those projects. We still have to go through and look at the applications and underwrite them, and it's possible -- we just barely got our proposals in -- that some could move forward with tax credits with some other source of funding, but we haven't had time to do that analysis yet and I can't tell you definitively if that's the case.

MR. KEIG: And the second question is are you speaking in support of only the waivers on the March 1 deadline, or are you also speaking in support of the other waiver that was on a different ground.

MR. RACKLIFF: The infamous double waiver? The second prong of the double waiver? Yes, we are asking for both. We might as well ask. Right? We think that they're meritorious also, and that there was some ambiguity with regards to the deadlines that we're approaching.

MR. OXER: Any other questions of the Board?

(No response.)

MR. OXER: All right. I'm going to exercise some chair authority here, or discretion, we have not finished discussion on this one, I can hear stomachs rumbling back there already, and myself, I'm running a little thin on fuel, so we're going to break for lunch. It's 12:32. We're going to be back here in a little while at 1:30. But I want everybody to just sit still because I've got to read this and it's got to be clear in the record, so just hold on, it will only take a few seconds.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time, pursuant to the Texas Open Meetings Act, to discuss pending litigation with its attorney under Section

551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, and to discuss issues related to fraud, waste or abuse under Sections 2306.039(c) of the Texas Government Code.

The closed session will be held in the executive room immediately to the rear of this room. The date is February 21, 2013, and the time is 12:34. We'll see you at 1:30.

(Whereupon, at 12:34 p.m., the meeting was recessed, to reconvene this same day, Thursday, February 21, 2013, following conclusion of the executive session.)

A F T E R N O O N S E S S I O N

MR. OXER: We are now reconvened in open session at 1:40 p.m.

We discussed matters of legal issues with our attorney, no decisions were made, and no decisions were recorded or taken.

Let's see, we do have a couple of items we need to take up as a consequence of that.

MR. IRVINE: I think you have a pending motion.

MR. OXER: That's right, we do have a pending motion. Let's take care of that first. We have a pending motion with respect to -- hold on, we'll get to you, just let me get the paperwork out of the way here -- with respect to item 3(b). Staff recommendation was to deny the waivers.

MS. CHAPA-JONES: My name is Veronica Chapa-Jones. I'm a deputy director with the City of Houston Housing and Community Development Department. Hi, good afternoon.

I actually have a letter to read into the record from Ms. Wanda Adams who is a council member for District D and also chairs our oversight committee for sustainable housing development and growth, and she says:

"Dear Chairman Oxer, Thank you to the Texas Department of Housing and Community Affairs Governing Board

for supporting the inclusion of disaster recovery efforts in the Housing Tax Credit Qualified Allocation Plan for the City of Houston.

"The need for quality, affordable housing is great, but both state and city funds are limited, therefore, the ability to leverage funds is crucial and your continued support of incorporating Houston's disaster recovery efforts into the HTC program is vital to our shared goal of investing and revitalizing our neighborhoods in most need.

"As both a council member and the chairwoman of the city's Housing, Sustainable Growth and Development Committee, I would like to take this opportunity to ask the TDHCA Board to support working with Director Neil Rackliff and his staff on accommodating the disaster recovery efforts in the city. This has been a historic undertaking, bringing together hundreds of stakeholders, including community members, housing advocates, policy experts, and development partners.

"Equity generated from the HGC program will be a key component of our revitalization plan which will leverage approximately \$158 million in federal and local funds to spur investments in neighborhoods, including multifamily, economic development, and single family home repair activities. By ensuring that disaster recovery efforts are

incorporated into the QAP, you are enabling the HGC program, and its resulting affordable housing, to be part of something bigger: true, comprehensive community revitalization on a scale that has never been done in Houston before.

"We value our partnership with TDHCA and want you to share in our success. Please contact me directly at 713-868-8305 regarding additional questions or concerns related to my support of this valuable endeavor.

"Thank you. Sincerely, Wanda Adams, Houston City Council Member, District D."

MR. OXER: Any questions of Veronica?

(No response.)

MR. OXER: Anything else, Veronica, any more comments?

MS. CHAPA -JONES: Nothing official.

MR. OXER: Okay, nothing official.

Okay. Diana, do you have anything?

MS. McIVER: Diana McIver, DMA Development, and I'm here actually as an applicant in the Houston area requesting points under this CDBG set-aside. Essentially, the project that I am involved with is Application No. 13-256, it's 4320 Old Spanish Trail, and we relied on the fact that there was a six point carve-out that was part of the QAP.

And to just reiterate some of the things that

Cameron told you, this year's QAP was very, very focused towards high opportunity areas, but in your interest in working with communities and helping them revitalize areas, there were two other possibilities for points, neither of which would get you to the high opportunity points but they would get you to a respectable so you could maybe be a bridesmaid, you could maybe be an also-ran, but you weren't going to be the queen, the prom queen. But in Houston there are some credits so sometimes being a bridesmaid works for us.

One carve-out, as Cameron described it, was for revitalization, and that was where you came in with a community revitalization plan, and that counted for four points, and as we call the most favored nation points, if your city picked that plan as the plan to support, you got an extra two. So there's that carve-out which is community revitalization plans that's four points, but each city got to pick their favorite revitalization zone and that added two points, so that was a carve-out of six points.

In Houston they did something different, and they had a carve-out also of six points for developments that went into one of their community development revitalization areas.

And if you had seen the plan -- and I know that Veronica shared it with you at one of the meetings -- it was very,

very targeted. If you're a developer going into Houston, you knew exactly where they wanted the housing, you knew exactly who they wanted you to work with, you knew that it was not just about putting housing in a neighborhood, it was about revitalizing that neighborhood, and it's much more than just building housing.

When you're applying in one of those zones, you're requested to do mixed income/mixed use housing, to have commercial retail as part of your housing. So as developers going in there believing that we could achieve these six points, we also were very sensitive to the sites we selected knowing that they needed to be mixed use/mixed income.

Our particular site is located on Old Spanish Trail, and by the way, it happens to be in Councilwoman Adams' district and she has given us a letter of support. We have worked with a lot of the neighbors in that area. But what we did was we believe we did everything we did everything right, because in our pre-application we used the waiver process that was part of the QAP this year -- it was new. We requested a couple of waivers. One, we requested that if for some reason the CDBG area didn't come about, then we requested to be a community revitalization zone too. We were approved in the consent agenda for that four points. So we also applied within the CDBG zone and we're one of the two

applicants who actually asked for a waiver of that March 1 date. We did that because the date of the day before the pre-app was due, we received word from the City of Houston that they were most likely not going to be able to -- well, not most likely -- they weren't going to be able to meet that March 1.

So that carve-out has two components to it. To get the six points -- which is all you can get -- the six points you have to be in one of those CDBG areas and you have to have a commitment of your funds by March 1. So our request for a waiver was to have that March 1 date extended.

Now, the reason the development community didn't get up in arms when the QAP was drafted in October and had that provision is because in October, March 1 seems forever away, and so no one really -- I mean, I think the solution, if anyone would have thought about it, was as long as you're in the CDBG area, could you not get that full six points, just like you could do in a city where you got the regular revitalization plan and you were their most favored plan. So I really feel that the waiver that we submitted should be considered.

I will tell you that, again, these little carve-outs -- and as Cameron said, there's only four of us that were part of this carve-out, there's only two of us that

thought to request the waiver -- but without that extra couple of points, these developments are not going to get funded.

I mean, if you look at Houston Region, there's a lot of high opportunity areas at the top and some of those may crash and burn because of NIMBY issues or whatever, but basically, we're not asking for this waiver because it will take us to the top of the pot, this waiver will simply get us to the point where we'll be on the cusp. If we have to live with our four points as the other CDBG applicants do, I think that you're going to find that you're funding nothing in the City of Houston with CDBG funds this year, there will be no 9 percent because they will not score high enough to compete within that region.

And so as an applicant that feels that she was wronged, I'm here saying that I believe the waiver is granted, I requested it, it was eligible for a waiver, and I would ask you to consider that request.

2014 -- and I know that the City of Houston already addressed this -- 2014 is too late for us to be thinking about funds that were out there for disaster. Funds that are allocated this year will have those units on the ground by the 2015 deadline that they need to get that money out. So waiting till next year is not an acceptable solution.

But I think if you were to grant the waiver and

allow that date to be moved from March 1 to another acceptable date, then I think that puts us on at least a level footing with other community revitalization areas. It was never intended that we'd be on level footing with the high opportunity areas, but I respectfully ask that you grant that waiver to allow the extension of the CDBG target timeline for the funding commitment. Thank you.

MR. OXER: Thank you.

Any questions from the Board of Ms. McIver?

(No response.)

MR. OXER: Did you want to speak? You're in a speaking chair. Just making sure our protocol is right here.

Okay. Who was the motion by?

DR. MUÑOZ: I think I made the motion to approve staff's recommendation.

MR. GANN: I think I seconded.

MR. OXER: Okay. Are there any more questions of the Board? There's no other public comment. There's a motion by Dr. Muñoz to approve staff recommendation on item 3(b).

Would you like to speak again, Mr. Rackliff?

MR. RACKLIFF: With your permission. The only other point that I can think of that I neglected to mention earlier is that when you look at the provision of the Qualified

Allocation Plan that we're addressing, it doesn't explicitly say that you need to have this commitment in place by March 1. There is some ambiguity in the language. I think that you could imply that. It says that the application must have a commitment of CDBG-DR funds --

DR. MUÑOZ: Page?

MR. RACKLIFF: I'm looking at page 21.

DR. MUÑOZ: Section?

MR. RACKLIFF: Look at the second Roman Numeral II up at the top of the page, and this is all within Community Revitalization Plan that begins on page 19.

I read through this several times, I've never found March 1 anywhere. The one place where, in fairness, you might arguably infer that is under little Roman Numeral II where it says: An application will qualify for six points if the city or county has an existing plan for Community Development Block Grant Disaster Relief Program funds that meets the requirements of sub-clauses 1 through 5 of this clause -- which ours does. To qualify for points, a development site must be located in the target area defined by the plan and the application must have a commitment of CDBG-DR funds.

There's no temporal element in there saying that the commitment must be by March 1.

MR. OXER: Cameron.

MR. IRVINE: That's the day you apply and it has to be in the application.

MR. DORSEY: Right. I think what Neil is pointing out is that -- I think most developers that you would talk to would recognize that, yes, that means that it needs to be in the application and the application is due March 1. However, when I was talking to Neil over the break, I think his point was -- or kind of reading into our discussion, his point was, you know, we're not engrossed by this process, we could have read that, easily skimmed over it and missed that that really was a temporal time, you know, hard and fast date. And so I think that Diana probably knew that it was March 1 but I get that the city could easily read it and skim over that part.

I don't think that there's ambiguity per se, it's inherent that anywhere there's not a specific deadline other than March 1, it is March 1. We don't put March 1 everywhere that something is due in the application, it's just these are requirements to submit an application, the application is due on March 1.

MR. OXER: The application is due on March 1 and this is a part of the application.

MR. DORSEY: That's right. But I see how someone

that doesn't do this on a daily basis could easily read over that and inadvertently leave it out of their public comment.

I think that's a fair statement.

JUDGE LEONARD: Okay. Did you have a question, Juan?

MR. OXER: In requesting a waiver, for us to grant a waiver, the law says that we have to have a reason to grant a waiver, so would you please read that into the record for us?

MS. DEANE: Right. Barbara Deane, General Counsel.

MR. OXER: I know who she is.

MS. DEANE: Of all people, I should remember to do that, right?

A requested waiver must establish how the waiver is necessary to address circumstances beyond the applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law or purpose or policy set forth in Texas Government Code, Chapter 2306.

MR. OXER: Would you care to comment on that, Mr. Rackliff?

MR. RACKLIFF: Yes, please, sir.

I do think that the provision in Chapter 2306.001(a)(4) of the Texas Local Government Code, which

indicates that one of the purposes of the TDHCA in administering this program is to assist the governor and the legislature in coordinating federal and state programs effectively with local government, is absolutely on point.

We're involved in this very extraordinarily complex process of trying to coordinate deadlines between HUD, the GLO, the City of Houston's governing body and the TDHCA, and then there's also the provision in Chapter 2306 which provides that it's a statutory purpose to allow housing to be built in disaster recovery targeted areas following a natural disaster.

DR. MUÑOZ: Cameron, I have a question. The two applicants who filed in the pre-application or indicated a potential request for the waiver, those are also located in disaster areas?

MR. DORSEY: One of them that did not request -- there are two that did not request a waiver.

DR. MUÑOZ: The two that did.

MR. DORSEY: those have indicated that they are in a target area of the CDBG-DR plan. We have not verified that at this point, but both of them have indicated that that is the case. So the city has verified that they are located in the target area of the plan.

DR. MUÑOZ: Not the one that's outside of the area

and not the city that's requesting a sort of double waiver.

MR. DORSEY: The two that requested the waiver in the pre-apps, the city has just confirmed that they are located within a target area of the plan.

DR. MUÑOZ: Mr. Chair, I'm prepared to amend my motion.

MR. OXER: I'll assume that Vice Chairman Gann would accommodate that amendment.

DR. MUÑOZ: Well, my amendment is to grant the waiver to the two applicants that filed in the pre-app the likely request for a waiver and to deny it for the other two, one of which is outside of the affected area and the other which is asking for essentially two waivers.

MR. OXER: Do I hear a second to the amendment?

(No response.)

MR. OXER: Apparently not.

DR. MUÑOZ: All right.

MR. OXER: Okay. Good point, though.

MR. GANN: Move the question.

MR. OXER: Okay. Vice Chairman Gann has moved the question. We've had a motion by Dr. Muñoz to approve staff's recommendation to deny the waiver. The original motion stands by Dr. Muñoz so that's the motion to approve the staff recommendation, second by Vice Chairman Gann,

there's been public comment. Is there any other public comment? Is there any other question from the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: And there are none. The waiver is denied.

You're up, Cameron.

MR. DORSEY: We're tag-teaming.

MR. OXER: Your team is up, Cameron.

MS. LATSHA: Jean Latsha, 9 Percent Housing Tax Credit manager.

So before you now there's on your agenda four waivers but the last one, Mariposa at Pecan Park, has decided to pull that waiver for the time being.

So the first is for Huntington Estates. To go over the rule really quickly, on December 17, by December 17 applicants are required to send out letters to local officials requesting lists of neighborhood organizations. Those lists are then used later so that those neighborhood organizations can be notified at a later date.

So this applicant had a site picked out, found

out that that site was actually in two districts of two city council members, appropriately sent out letters by December 17 to those two city council members asking for this list of neighborhood organizations. But then his site fell through, he didn't have site control, so he had to go a couple of miles down the road, pick another site, but that site was in a different city council member's district. So he then notified that city council member, but after the deadline, so he is requesting a waiver of that December 17 deadline.

One thing to point out is that when we were talking about the reasons that you need to grant a waiver, and one of those being the furtherance of the policies set forth in Chapter 2306, this applicant has argued that he's going to submit under the nonprofit set-aside and that in order to help the Department meet that set-aside, we should grant his waiver. He can still submit an application under the nonprofit set-aside, he simply would not be eligible for pre-application points if he were to do so.

MR. OXER: And those represent how many?

MS. LATSHA: I'm sorry?

MR. OXER: Pre-application points are how many?

MS. LATSHA: Six.

But very simply, the deadline was not met, so staff recommends denial. I think there's probably someone here

to speak on that.

MR. OXER: Hold on just a second. Okay, presentation by staff recommended denial. Motion to consider?

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig to approve staff recommendation.

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.
Comment.

MR. LANG: Good afternoon, Chairman, members of the Board. My name is Tim Lang. I'm with the Tejas Housing Group, the applicant for this particular application.

Basically, what happened was we had an oral agreement with the landowner, we submitted a contract prior to sending out our notifications for neighborhood organizations, and about two days after that deadline had passed we found out that the landowner had changed his mind and counter-offered. That counter-offer made the application infeasible.

During our initial search for land, we had identified another piece of land that we didn't pursue that still happened to be available, so we put a contract in on that, notified the council member who was in that district

since it wasn't the same council member for the initial piece of land, and sent out the notification, and then with our pre-application submitted the request for the waiver since we had pointed out on our own that we had missed the deadline and a waiver request would be necessary.

So there's not really much else to it besides that.

It was just a matter of not being able to foresee the landowner changing the terms of the oral agreement. We had no other choice, we could not pursue that piece of land with a feasible application, so we were forced to look elsewhere and seek a request for a waiver.

MR. OXER: Okay. Any questions of Mr. Lang?

MR. GANN: Yes, if you don't mind, Chairman.

What kind of agreement? You said oral agreement, is that what I heard you say, an oral agreement for the land?

MR. LANG: That's correct. We had submitted a contract initially which was denied, and then there was some negotiation back and forth between our realtor and the seller, and we had come to a point where he had agreed to a price that we had also agreed to, so we submitted a contract on that. And the contract was submitted prior to the December 17 deadline.

MR. GANN: Was the contract signed?

MR. LANG: On our end, yes; on his end, no.

MR. GANN: But not on the other side.

MR. LANG: When he received that signed contract
for --

MR. GANN: Let me ask a question of the Department
here.

MR. GANN: Jean, isn't it one of the rules that
you have to have it tied up before you can make the application?

MS. LATSHA: Yes -- well, by pre-application,
this was the December 17 date. But actually staff is pretty
sympathetic to this type of situation and for a number of
years we've had in place a mechanism for developers to kind
of deal with this if they don't have their sites tied up,
and that is for purposes of this letter only, you can send
it to all of the city council members and simply say I have
a site in Killeen and not identify the actual site itself.
And had the applicant done that instead, he wouldn't be in
this position.

MR. GANN: Okay.

MR. OXER: Any other questions?

(No response.)

MR. OXER: Jean, this was just on the first one?
Where are we at on this here?

MS. LATSHA: Yes, sir, just the first waiver, just
Huntington Estates. The three waiver requests are quite

different.

MR. OXER: We have a motion by Mr. Keig and second by Professor McWatters to approve staff recommendation to deny the waiver. Any other public comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. It's unanimous, the waiver is denied.

Okay, Jean.

MS. LATSHA: The second on your list is for application number 13067, Rancho Viejo Villas.

Rancho Viejo is a little town right outside of Brownsville of about 2,400 people, but under our rules is considered urban. As we discussed earlier, there is a relatively new rule, it used to be a scoring item, it is now a threshold criteria, that if your site is located in an urban area, you need to be within a one-mile radius of six different services. This development site is not. They are within a two-mile radius of about six -- actually a number of services, they're about 1.7 miles away from the highway which is where a number of the services are located, and they would

simply like us to apply the two-mile radius rule which we apply to rural areas to this urban site.

They have made the point that they are located in a high income area, probably going to achieve opportunity index points on their application if they were to move forward, but we received 200 pre-applications that are in similar high income, low poverty areas, and all of those did not need a similar waiver. In addition to that, sixteen of the nineteen pre-applications submitted under Region 11, where this application is, are also in those high income areas.

So clearly on its face, the applicant is not making an argument that they're meeting the rule, there are clearly not services within a mile radius of the site, so staff recommends denial.

MR. OXER: All right. Motion to consider?

MR. GANN: So moved.

MR. OXER: Motion by Vice Chairman Gann to approve staff recommendation to deny the waiver.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Public comment.

MS. ADAME: Board, Melissa Adame on behalf of Rancho Viejo Villas. Thank you so much.

These are just aerials of the site. Rancho Viejo, as she said, is a small town north of Brownsville. It's a

country club community with a golf course, as you can see from the aerial. That is a map of all of our previous developments in the Rio Grande Valley.

One of our arguments is that this is an issue that's specific to Cameron County, we believe. As she said, there are a multitude of services and amenities located along the expressway there, and if we were closer we would definitely capture all of those things, but we'd also be much closer to the railroad that runs parallel to Expressway 83.

A little bit of background about our project. It's a model high opportunity project, it's 120 units in this country club community, 50 units of tax credit units and we're only asking for \$500,000 in credits this year, so we're trying to get to those incentives that you guys have placed there.

So you know, why don't I just find another site. Right? Well, the problem is in Cameron County we feel like the area lends itself to this. If you're not inside Brownsville or inside one of the cities, you're going to be in one of these upscale suburban communities which, for some reason, people don't seem to want to build a \$2 million home on the expressway. So there lies the rub. Right?

MR. OXER: With all that easy access to transportation?

MS. ADAME: I know. Right?

So we do have a few amenities close enough within that one-mile radius, and I'm sure if we really tried --

MR. OXER: How many?

MS. ADAME: Maybe two, and I could squeeze some more in there because retail counts. I did take a sample of some of the other applications in the region, and I'd like to say this would really help all of us because in that sample I looked at the most important amenities which is really more to your purpose, pharmacies, grocery stores, schools, and in just the six that I looked at that were not inside Brownsville or inside another city, they all had the same issue, actually.

And I have my research here in case you guys want to see it, but grocery store 3.2 miles, pharmacy 3.1 miles, and these are the closest of all of these amenities. And these are all, as she said, high opportunity sites. You know, high school 2.9 miles, elementary school 2.2 miles. So this is not a specific issue to my site. I'm not asking you to grant this just because I picked the wrong site, I think it's inherent to the area.

Also, I'd like to draw your attention to the NOFA, the CDBG NOFA put out by the Lower Rio Grande Valley Development Council. Their hurricane funds are intended to be leveraged with tax credits, but in their NOFA, that was

also approved by the General Land Office in December, defines near as two miles. So what I'm actually asking is just that we maybe bring our rules in line with theirs because their board is made up of locally elected officials who know their area better than any of us, and I would hope that we could rely on their input there. Two miles versus one mile is arbitrary.

Actually, today our HFC investment is being passed in about 45 minutes for a \$1.8 million loan from the housing finance corporation in Cameron County. But anyway, leveraging is critical in the Valley and that is the intent of this. And I thank you for your time and I hope you consider my request.

Do you have any questions?

MR. OXER: Are there any questions of the Board?

DR. MUÑOZ: I have a question. Were you aware of the one-mile radius and the six obligatory amenities when you chose this site?

MS. ADAME: Yes, and that's why we're bringing it up before full application, because it's a great site and we'd really like to move forward with it, but we can only do so with that waiver request.

MR. OXER: Stand your ground.

Jean, how many other applications are there in

that region?

MS. LATSHA: In that region, I don't know offhand, but I know that at least nineteen because I know that -- there are nineteen and then sixteen of those nineteen are in high opportunity areas.

MR. OXER: Okay. And they met the one-mile?

MS. LATSHA: We haven't reviewed those applications, but with the absence of the waiver, then I would assume that they at least assume that they're meeting those requirements too.

MR. OXER: Absence of requests for waivers.

MS. LATSHA: Right.

MR. OXER: Anything else, Dr. Muñoz?

DR. MUÑOZ: Well, you know, I appreciate the thinking of how desirable an area this is and upscale, high opportunity, but this rule exists, and you might make the argument -- you are making the argument that maybe the rule doesn't apply quite as much here as it might other places, but we've got to think about rules that are generalizable and apply to the broadest sort of swath of people and projects, and what you're asking is to make an exception here.

Earlier we heard another case where the people opposed to the project argued that they didn't satisfy the characteristics, the developer said we have satisfied, and

you know, you've got to establish some sort of expectation of availability of services to populations that would avail themselves of affordable housing. There's a practical reason for why the rule exists. And you're saying I knew it existed and I knew that it would apply to my project, and I'm still asking you to discard it.

MS. ADAME: I will say that I think it's important.

Our objective is yours: to bring affordable housing stock to these high opportunity areas. I feel that going forward, think three years down the line, if we are only allowing projects that are within a mile of these amenities, you're basically excluding everything outside of city centers, and when we built out Brownsville and the townships, we can't build in suburbs because you're not going to be within a mile everywhere in the suburbs. And I understand your point.

DR. MUÑOZ: I don't dispute the logic of your point, and that may be something that has to be revisited in the future, but the rule exists as it exists today.

MR. OXER: Right. And your point is well made, and there are places. The one-mile is a rule that's in the QAP. Somebody is going to say: Well, it needs to be longer.

Well, that's for next year's QAP. And I suspect that there's going to be a continuous escalating evolution of the QAP as we go as we try to adjust these to make them fit in all these

places, but right now the QAP says one mile.

Any comments, Jean?

MS. LATSHA: No. The only comment I would make in addition to both of yours would be that there was public comment during our rulemaking process on this rule, so if that comment needs to be made again for next year's, then we'd certainly listen to it.

MR. OXER: Fair enough.

MS. ADAME: I think we have one more comment. Thank you for your time.

MR. OXER: Certainly.

MS. SNEDDEN: Good afternoon. I'm Michelle Snedden. I'm an attorney with Shackelford, Melton & McKinley. I'm here to speak on behalf of the same project and support their request for a waiver on this threshold item.

MR. OXER: I can tell from your accent you're from West Texas. Right?

(General laughter.)

MS. SNEDDEN: Waxahachie, actually. I'm not going to repeat everything Melissa said, we know what the issue is. My main purpose today is to confirm to the Board that you do have the discretion to grant the waiver in these circumstances. Pursuant to Section 50.16(b) of the QAP, the Board, in its discretion may waive any one or more of the

rules if it determines that such waiver is necessary to fulfill the purposes and policies of Chapter 2306 of the Texas Government Code.

In these circumstances, we believe that the aims of 2306 would be met. In addition, we also think that the waiver would directly meet the objectives of the remedial plan that was filed with the court in the ICP case allowing a development to proceed in a high opportunity area.

Also, as we noted earlier, under Section 10.207 of the Admin Code, there's a two-prong test that must be met for the Board to grant the waiver. We believe that our client satisfies both of these prongs. First, the applicant must establish how the waiver is necessary to address circumstances out of their control. Well, as we know, they can choose the site, they can control the site, what they can't control is where the low income residents are, where the high opportunity areas are and neighborhoods that desperately need this housing.

And again, it's my understanding that there's a few other applications in this area that had the same issue.

I can't speak for them because I don't know exactly where they stand, why they're not requesting a waiver, or whether they were terminated, but it seems like, as Melissa said, an issue for the area rather than just specific to this site.

The second prong requires that the applicant show the department that it will fail to fulfill a purpose under Chapter 2306. Chapter 2306 outlines the functions of TDHCA, including the purpose of providing housing needs of individuals and families of very low income and contribute to the preservation, development and redevelopment of neighborhoods and communities. Our client's site, if it is allocated the tax credits, will directly meet this purpose.

It will allow for the development of affordable housing, provide for the needs of low income individuals, and further Fair Housing.

In addition, and as I just mentioned, the Board's granting of the waiver will meet the objectives set forth in the remedial plan to generate a greater level of tax credit developments in high opportunity areas. The plan does note that the Board has considered waivers only in truly exceptional and compelling circumstances where a failure to grant the waiver would result in a clear failure to make the opportunity to compete available throughout the state. We believe this is one of those exceptions.

It's a model location for what the Department is seeking to achieve in the high opportunity areas, therefore, we respectfully request the Board grant the waiver.

MR. OXER: Good. Thank you. Any questions from

the Board? Mr. Keig.

MR. KEIG: Mr. Dorsey -- well, either one of you guys, I guess -- of the pre-applications that we've received, how many would qualify as high opportunity areas, other than this application?

MS. LATSHA: We haven't actually reviewed them to see if they would actually qualify for those points, but we did look at all of the census tracts and what quartile they were in and what poverty level they were at, and according to just that information, they also need to be near good schools, which we don't know yet, but just according to that census data, 200 of the 285 applications were in high opportunity areas.

MR. KEIG: I meant in that region.

MS. LATSHA: In this region, sixteen of nineteen.

MR. KEIG: Sixteen of nineteen would potentially be in a high opportunity area.

MS. LATSHA: Yes, sir.

MR. KEIG: Okay, thanks.

MR. OXER: And while we recognize that the statute, we have to have a reason to grant the waiver, and that reason would be that some aspect of 2306 would not be achieved, and that assessment of whether or not the purpose of the statute would be achieved is not considered

unilaterally for a single project. And while I understand what your project would provide, it has to be considered in context within the whole Tax Credit Program. So that's just a collateral comment to the discussion.

Are there any other questions?

(No response.)

MR. OXER: There's been a motion by Mr. Gann, second by Dr. Muñoz to approve staff recommendation to deny the waiver. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. The waiver is denied.

MS. LATSHA: And the third on your list is -- I'm probably going to mess up how to pronounce this -- Laureles del Este. It's application number 13096. This application is in Fabens, another small town, I believe in El Paso County.

Basically, an applicant can achieve two points for an underserved area if they are in a census tract that does not have another active housing tax credit development.

This applicant is clearly in a census tract that does have another active housing tax credit development, it's only a mile down the road, 24 units, awarded in 1994. They have simply made the argument that because that other development

is over a decade old that they consider the area relatively underserved and want the points on their application.

They did not make any indication as to how this would further the policies of Chapter 2306 either, so staff again recommends denial.

MR. OXER: Questions on this before we get started here. Is that the one-mile and three-year?

MS. LATSHA: No, sir. This is simply a scoring item, just additional points for being in what we call an underserved area.

MR. OXER: Underserved. Okay, got it.

Mr. Gann, did you have a question?

MR. GANN: Not on this item.

MR. OXER: Okay. Motion to consider?

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig to deny the waiver.

Is there a second?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Is there any public comment?

(No response.)

MR. OXER: There appear to be none, the chairs being empty as they are. All in favor of staff recommendation to deny the waiver?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

MS. LATSHA: Thank you.

MR. OXER: Thank you.

MR. KEIG: Mr. Chair, could we take up a personnel issue at this time, a posted agenda item.

MR. OXER: We are at the end of part 3, so it is the appropriate time to take up the personnel item.

MR. KEIG: I would like to move that the Board delegate the responsibility for the executive director's performance evaluation to the Chair.

MR. GANN: I'll second that.

MR. OXER: Somehow I knew that was where that was going. Motion by Mr. Keig to delegate authority for doing the HR review for executive director, and second by Vice Chairman Gann. No public comment on this. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, so I'll handle it.

Were there any other items to be brought up from the executive session?

MR. IRVINE: No.

MR. OXER: Executive session is clear.

Appeals, Mr. Dorsey returns again. She gave you a break, let you sit down there for a while, it's your turn. Okay?

MR. DORSEY: That's right.

The next item is one appeal, it's the appeal of a termination of a pre-application. The application is number 13030, it's Evergreen at Rowlett Senior Community.

This is a pre-application that we received by mail on the final day of the pre-application acceptance period.

That's January 8. When we opened up the disk -- all the pre-apps come in on disks -- when we opened up the disk and tried to pull the files we needed off it, we recognized that the Excel version of the pre-application which is a pretty fundamental part of our application, was not on the disk, we recognized, I believe, the day after the application deadline when we were pulling all the files off onto our server. The disk did have an Excel file on it, however, it was the electronic filing agreement, I believe, and obviously that is not the Excel version of the pre-application.

We at that point terminated the pre-application. The QAP in Section 11.8(a)(2) specifically and explicitly requires submission of an Excel version of the pre-application

on the CDR that is submitted, so we terminated the application on that basis.

We did some additional due diligence upon appeal and looked at -- we had our IS folks go in and take a look at what may have happened. The way you burn onto these CDRs is basically the files get permanently etched into the bottom of the disk. If you look at the bottom of one of those CDRs, you can actually see where the data is located after you burn it. And while they were able to confirm that it appears that someone tried to burn another file onto the disk, it's pretty clear that it didn't get onto the disk.

Mr. Forsland has indicated that maybe something happened during the mail while it was being mailed in or while it was in the envelope or that type of thing. We don't really feel like there's a way that, you know, it could have gotten deleted off the disk somehow during that process. However, in their due diligence, I believe that they feel like maybe what happened is they checked the disk to make sure the file was there on the same computer that they burned it on and that maybe it was some type of temporary version of the file, and so they thought it was on the disk but then it ultimately wasn't. Needless to say, the file wasn't there when we reviewed it and it doesn't meet the requirements of the QAP.

We have a section of the QAP specifically that

we included this year to address really the competitive nature of the program and that due diligence is a fundamental part of this application process. Let's see, it says: "Applying for housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an applicant should proceed on the assumption that deadlines are fixed and firm with respect to both time and date and cannot be waived except where authorized and for truly extraordinary circumstances such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an applicant chooses to submit by delivering an item physically to the Department, it is the applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all documents are legible, properly organized, tabbed, and that the digital media is fully readable. Applicants are strongly encouraged to submit the required items well in advance of the established deadlines."

As part of our acceptance process, we try to go in real fast and verify that the disks are readable. When we receive ones by mail, we are often able to do that early if they're submitted early, however, the ones that come in by mail on the last day we're also dealing with a whole bunch of physical submissions, we take our conference room in the

office, we set up six computers, we have staff down there, folks come in throughout the day before 5:00 p.m., and those who submit the disk physically in person can wait and watch us verify that it is readable and get confirmation of that on the spot.

Oftentimes they are not readable, they bring their computers, they burn a new disk right there on the spot, it's the best way to assure that if you're submitting on the last day that your disk is readable and that you've got in what you need to get in.

In this case, obviously the applicant chose to use the mailing process and when we receive those on the last day, because we're doing all of the physical intake, we can't go in immediately and verify that all the disks we receive through the mail on the last day are good to go. We did look at it the next day and we did verify at that point in time that it wasn't there. So staff is recommending denial of the appeal.

MR. OXER: Any questions of Cameron by members of the Board?

MR. KEIG: Yes.

MR. OXER: Mr. Keig.

MR. KEIG: What is the purpose behind having an Excel version, something along the lines of administrative

efficiency, I assume?

MR. DORSEY: That's right. The Excel version of the file is something that we implemented a couple of years ago, first for real estate analysis purposes. They don't use the pre-application Excel file but they use the full application Excel file to, in an automated manner, pull a whole bunch of financial data out of the application at the snap of a finger, basically, and it allows us to process things more efficiently. For pre-applications what we do is we are able to electronically pull that data. It's what enables us to post pre-application logs extremely quickly -- this year I think we posted it within two days.

We were able to get the Excel version of the file.

When we contacted Mr. Forsland, probably within five minutes turned around and sent it by email, and so we went ahead and included that in the pre-application log that went up. You know, when you're dealing with this type of stuff, it's always hard to do the ends justify the means thing, and so I generally look at the means specifically and the rule in place, and despite the fact we were able to ultimately get the file and incorporate it into our log, it still didn't come in in the required time frame.

And there are certain deadlines that are very fixed and sometimes seem harsh. Mr. Forsland submitted this

application last year, I think they had been working with the community a long time and feel like it's pretty unfortunate that such a harsh result -- that this results in termination, however, you know, the deadline for submission is a fundamental part of running an effective, efficient, transparent and objective process, so we terminated.

MR. OXER: Professor McWatters.

MR. McWATTERS: Cameron, is there any reasonable basis to conclude that we internally may have done something to erase this Excel spreadsheet from the disk that was submitted?

MR. DORSEY: No. Possible, maybe some very, very small percentage, but highly unlikely.

MR. McWATTERS: But you mentioned on the back of these disks there's etching. I mean, if there's no etching there.

MR. DORSEY: Yes. I think electronics are a tough thing for us to conceptualize how they work, and so when we open up a disk on the computer and there's a little icon and we can open that file, when disks are burned, it's not like there's a little file that can get deleted off the back of the disk. All the data is mixed in, and so the likelihood that one specific file would get deleted is just not really a reasonable conclusion.

MR. McWATTERS: I think we ran into a similar problem last year, and with the granting of waivers in a situation like this, then the question becomes what's the real rule: is the real rule two days later, is it three days later, is it a week later? Well, what if someone is a week late but eight days would have solved the problem? So it's a tough issue.

MR. OXER: Mr. Keig.

MR. KEIG: Did we review any other pre-applications that came in with the FedEx delivery at ten o'clock on that deadline date?

MR. DORSEY: Yes, I believe we -- for example, I got a broken disk. That broken disk was very easily identifiable as problematic, so I did call the applicant in that case and let them know that their disk was broken. They drove in from either Houston or Dallas. I think there was one other applicant in a similar situation, however, you know, I understand why that's a relevant question and I would agree that that's a relevant question. I'll leave it at that.

MR. KEIG: If you can recall, was it from Dallas or from Houston?

MR. DORSEY: I think I had one from Dallas and one from Houston.

MR. KEIG: That had some kind of defect and they

were able to correct it before the five o'clock deadline.

MR. DORSEY: That's right.

MR. McWATTERS: But this was a defect that was manifest by just physically looking at the disk. Is that correct?

MR. DORSEY: The one that I'm recalling, yes, but I think there were a couple, and that day moved very quickly. There could have been one that was similar to what the applicant was dealing with.

MR. McWATTERS: So the rest just go in a stack and they're read the way they're read.

MR. DORSEY: Yes. We try to get to everyone; it's just not possible. We try to review them in the order they're received, certainly, but it's not always possible to get to all of them.

I'll tell you that the same thing happens with the administrative deficiency process, though. It's the applicant's responsibility to make sure that the file is complete. It's a very slippery slope. For example, some administrative deficiencies we receive within one day and they have a five-day response time frame, and so we're able to, within that one day, verify if they met the requirement.

If someone submits on the last day, we may not be able to get to that file. It's the applicant's responsibility to

make sure that they do the due diligence necessary to make sure they meet the requirements. So it can become a bit of a slippery slope if it's kind of our burden to make sure that we review every single thing and immediately call the applicant as soon as we receive it. That would be pretty tough.

MR. OXER: Because the burden of proof surely lies with them, not with you, to prove that the disk has sufficient information.

MR. DORSEY: Right. We do our best to reach out and let people know if we receive documentation early that there is an issue. Even when we receive it late, we do our best to let folks know. The last thing I want to happen is this, but it happens.

DR. MUÑOZ: Cameron, there was nothing on the disk then?

MR. DORSEY: There were two files on the disk, I believe. I've actually got a screen shot of the disk. No. Let's see, there were four files on the disk -- oh, wait, wait, that's the applicant's screen shot. There were two files on the disk: one was the electronic filing agreement that is an Excel file, could have mistakenly been looked at and thought oh, look, the Excel file is there -- not sure, that's speculative; and the PDF version of the pre-application

which includes all the signatures and everything was there, but the Excel version of the pre-application was not.

MR. OXER: It's critical to have the Excel version for the statistical review and the summary of the information.

MR. DORSEY: It is critical. And like I said, they got it in very quickly, but it's hard for me to look at the ends justify the means and say it was okay. If someone had waited ten minutes, do I say this one is a problem and that five-minute one is not, I don't feel I have the discretion to make such judgments.

MR. GANN: I've got a general question, Cameron. What percent turn it in on the last day and roughly what percent turn it in a week before? What kind of time frame are you getting there, a month before?

MR. DORSEY: Vast majority, vast majority turn it on the last day. Also, a good majority hand-deliver them. People fly in from across to hand-deliver them, people send the backups to Locke Lord and their attorneys that are located down the street. People go to great lengths to make sure that there is no way that they're going to mess this up.

There was a consultant, for example, that had seventeen pre-apps and I think three of their files were messed up, but they had their computer right there in the submission room, burned new ones and got them in.

MR. OXER: Three files or three disks?

MR. DORSEY: Three disks.

MR. KEIG: I move staff's recommendation.

MR. OXER: Okay. Motion by Mr. Keig for staff recommendation. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: Okay. Second by Professor McWatters.

We have public comment. Welcome back.

MR. FORSLAND: Thank you. Good afternoon, Chairman Oxer, members of the Board, and TDHCA staff. My name is Brad Forsland, I'm a partner with Churchill Residential. Obviously this is Evergreen at Rowlett, TDHCA 13030.

Cameron did a very good job of explaining basically the facts, so I'll try to just embellish where I can and not take your time. This pre-application was submitted with two others. The two other applications were fine. I would like to point out that we've done over 50 pre-apps/apps with disks before and we've never had a situation like this. Both TDHCA's IT department, as well, that use the software confirmed that they could see that we tried to burn that file to that disk and that there was more data on that disk than the bit count for the two files that were on there, so there is evidence that we attempted to do that.

To go beyond that, to try to understand really what happened, because again, without getting into a lot of detail, when you do one of these you basically go out and you grab the files that you're going to want to burn to this disk, it then becomes a temporary file, and then you burn that whole file to the disk at one time, so the Excel file and the PDF file get burned at the same time. So it really left us without an explanation of what possibly could happen, especially since we had the other two.

So we did more research on this, and we actually called the CEO of this ISO Buster which is what TDHCA uses to analyze these disks, and he said possibly what could have happened is -- because what we do is we'll actually pull these CDRs out, we'll reload them as if we were TDHCA, reboot them up and verify that those files are there -- he said possibly what could have happened is that since you double-checked it on the same computer, that it went to a temporary file.

He said he has seen that before. It went to the disk, didn't see it, it was likely unreadable, and then it went to the temporary file.

We're asking that this be handled through the administrative deficiency process, that the material deficiency definition -- or basically, the administrative deficiency definition includes non-material missing

information in an application, or in this case a pre-application, that does not necessitate a substantial reassessment or reevaluation of the application. And our whole point there is that the PDF had the full pre-app there, it had all the information, there was no missing information there. So by default, we feel it could have been handled under the administrative deficiency process.

Again, this was consistent with last year's executive director's action on the Western Center deal where there they did not submit their third party reports, and through the administrative deficiency process, they were granted leniency by the executive director.

I'd also like to point out that in the past the Board has shown leniency with pre-apps versus more so with applications. If I may, last year there were five pre-apps that were terminated, they were found ineligible, and the Board reinstated those pre-apps. And if I may just quote some testimony from Ms. Deane: "And that to fulfill the purposes of 2306, perhaps there should be more leniency or more ability to get some kind of waiver or leniency when dealing with pre-apps as opposed to full apps." She later said, "So you know, that said, that's why I believe, based upon other provisions that were cited this morning, that if you wanted to grant that, that I'll call it a waiver, grant

the appeal in a limited manner and provide the ability for the pre-app to go ahead and be considered and to move forward because it is a pre-app, and so it gets a bit more leniency or mercy."

And the last item I'd like to point out, and Cameron had discussed this, but just that this process, using these CDRs, it hasn't inherent issues with them, and that's why staff sets up these computers and is going through this process of testing these and making sure that these disks are readable.

So had our disk been tested that morning, it was FedEx'd, it was there at ten o'clock in the morning, had it been tested, it would have been very easy for us to email the file to the Coates Rose office here in Austin, they could have burned a CDR in a matter of minutes and had it over before noon. And I didn't understand you to say this, but it's not our expectation that it's TDHCA's responsibility to check these CDRs, it is a process that we have now discovered has its pitfalls.

So in conclusion, I just would like to reiterate that we checked and we double-checked and we went through this process on the computers to verify that that file was there. TDHCA's IT department did see that there was an attempt and that there was a file attempted to be burned to the CDR. We request that this be handled through the

administrative deficiency process, and that in the past the Board has shown leniency in situations like this.

And also in closing, I'd just let you know that, as Cameron said, this is the second year with Rowlett, the city is very in support of this deal, they have really bent over backwards on getting our approvals. We did get our financing approved Tuesday night by the city counsel, as well, for the local government financing.

So thank you very much for your time. Are there any questions?

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: I have a question. What do you do for a typical backup? Now, we all bet on UPS, Federal Express, DHL, all of those, and Federal Express has the best process tracking to determine where any of these things are. In fact, I've shipped a lot of secured containers through Federal Express because they have the best tracking mechanism. What would you have done if the plane crashed?

MR. FORSLAND: We track those FedEx every morning, we track them, and if they're not there on time, I mean, we're on standby to drive these things down to Austin, and we've always been on standby to do that. Fortunately, that has never happened.

MR. OXER: Okay. Thanks.

DR. MUÑOZ: I have a follow-up question for the executive director. Tim, he mentioned a couple of cases. Do you recall any of those, and do they bear a resemblance to what's being considered now?

MR. IRVINE: I do not specifically recall those cases, no.

MR. DORSEY: The one that was mentioned by name, Reserve at Western Center, it was a situation where a portion of one tab was missing. Initially we ruled it to exceed the scope of an administrative deficiency. I think Tim disagreed after further consideration and additional documentation, but it wasn't a full third party report or what-have-you, it was a portion of a tab related to one of the scoring criteria last year.

MR. OXER: Cameron, didn't we have an item last year or another CDR came in and it was incomplete, a tab was missing and there was information not on it?

MR. DORSEY: There was the Veterans Place transaction last year that I'm sure you all recall.

MR. OXER: Yes.

MR. KEIG: I have a couple of questions.

MR. OXER: Yes, Mr. Keig.

MR. KEIG: So in that Veterans what?

MR. DORSEY: Veterans Place.

MR. KEIG: Was there an additional file that had all the information there, just in a different format?

MR. DORSEY: No, I don't believe so.

MR. KEIG: I believe that's the case as well, that it was missing an actual --

MR. OXER: The information was actually not available in any format on there, whereas, this one you've got at least the information, it just doesn't have the Excel.

MR. DORSEY: That's right, that's correct.

MR. KEIG: All right. And my follow-up question is could you address their argument that this would be an administrative deficiency by providing non-material missing information in the application that in the Department staff's reasonable judgment may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or reevaluation of the application, because they had all that information in there, just in a different format?

MR. DORSEY: Well, it would have required us to go and do -- if we hadn't gotten it in within five minutes, it would have required us to go through and expend a significant amount of staff time doing the data entry manually, and it could have delayed our posting of a pre-application log which is really the fundamental part of

the pre-application process to allow other applicants to get a sense for what the competition is going to look like.

MR. KEIG: So we would have had a substantial reassessment or reevaluation if we had to do it with just the PDF and then go the Excel?

MR. OXER: No. It would not have been a reevaluation, it would have been an evaluation that would have taken more time.

MR. KEIG: But that's not what the test is that I'm reading.

MR. IRVINE: A material amount of additional work.

MR. OXER: A material amount of additional work, but not a material amount of additional information. Is that a fair statement?

MR. IRVINE: Fair statement.

MR. KEIG: Well, that's not the test I was reading to you from the rule, though. The test is: which may be cured by supplemental information or an explanation which will not necessitate a substantial reassessment or reevaluation of the application.

MR. DORSEY: I think fundamentally it's hard for us to call this non-material missing information. It's, on its face, missing material information in the sense that it's fundamentally built into our review process and has bearing

on -- for example, if this had happened with every application, we would have been in trouble. It would have taken us a long time to get a pre-app log out, the pre-app process would have not served its purpose if everyone had been in the same boat. And so while I'm sympathetic because they were able to submit it very quickly, it's very hard for me to call the Excel version of these non-material.

MR. OXER: Okay. Let's see where were we. We had a motion by Mr. Keig and second -- we've got one more speaker. Ms. Dula, I'm very sorry.

MS. DULA: Good afternoon. Tamea Dula with Coats Rose Law Firm.

I think that consideration needs to be given to the purpose of the pre-app process. This was developed some ten or so years ago in order to give developers an opportunity to see what other developers were considering applying for, and to evaluate whether or not they should spend the money for the extensive application, given the scoring and the number of other applications that were indicated as possibly intending to apply. The pre-app process was not developed for staff.

In the application CD-ROM that was delivered by FedEx, every bit of the information that was required by the pre-application was present. You take the Excel file and

you add to the Excel file documents that have to be inserted in it, and then you have the PDF made of that. The PDF contains every bit of information that was in the Excel file, plus more. So there was no one bit of information required in the pre-application that was not submitted on the CD-ROM.

Mr. Forsland was so upset when he found out that the Excel file was not included that he took the time to investigate and found out that there was a potentially logical explanation for why his staff, who followed the directions in the procedures manual completely, and actually removed the CD-ROM, reinserted it, booted it up and looked for the files and they found the Excel file. And the explanation was that because the CD-ROM was burned on the same computer that was used to check the CD-ROM, it was thought that the computer actually picked up a temporary file of the Excel file and showed that, displayed it on the screen so the staff member thought that they were seeing what was on the CD-ROM.

A logical and technical explanation which there is nothing in the procedures manual that says it is recommended that you review your CD-ROM on a computer other than the one that you used to burn the CD-ROM.

The procedures were followed completely. TDHCA's tech staff confirmed that there appeared to be an effort to burn a file onto that CD-ROM that was unsuccessful. The

CD-ROM contained more bits of information than were compiled in the two files that were successfully burned to it.

So I am suggesting to you that without pre-application points, no application is going to be viable this year, and this process is not really for the purpose of knocking people out of the application process, the whole pre-application concept was to help developers make a reasonable decision. When the fact that the Excel file containing no new information was missing was conveyed to Mr. Forsland, in four minutes it was sent to TDHCA by email.

So there was never any time that TDHCA staff had to go through the PDF file and extract the information that they wanted for their one-liner on the log book, the log book which says the project name, where it's located, whether it's elderly or family or whatever, how many units, what the amount of tax credits being requested are, what region it's in. It's a limited number of bits of information there, they were all available in the CD-ROM.

Now, it's very true that if this happened to everybody, staff would be up a creek in terms of putting out a log in a very fast fashion, but that Excel file is only for the purpose of expediting staff's manipulation of the information that was filed. There is no information on the Excel file that is not on the PDF file. It's very important

that you understand that. So this is an instance where no material information was left out of the application or the pre-application, none at all.

In past situations you have given passes to people who have had actual parts of their documentation missing. I'm the person who wrote the appeal for the Freedom at Kerrville Veterans group. My thought was that if I can show that there is this information in some other format somewhere in the file that that will convince you, and for the most part, I was able to show that. It didn't convince you then.

But this is a different situation entirely because here there was no need to go through the relatively limited PDF file for a pre-application -- they run about 40 pages, most of that is usually the purchase and sale agreement -- there was no need to do that. Within four minutes Mr. Forsland got that Excel file to staff. If they had called him on the 8th, it would have been there on the 8th. If they had called him and said your CD-ROM is broken, Coats Rose would have gotten the ROM to you on the 8th. There are backup plans in existence for situations like this.

But although it was delivered at 10:00 a.m. on the 8th, because of circumstances and the fact that it was a FedEx delivery, it was not looked at until the 9th, and four minutes later the administrative deficiency -- as it

really is, in my opinion -- was fulfilled and you had everything that was needed here at the Department.

So the question really is: is it a rule? Yes.

Is it a reasonable rule under the circumstances? Thank you, Professor McWatters, from earlier today. Not really. And especially when Cameron Dorsey indicated that frequently people come here in person to file their CD-ROMs and it turns out that there's a problem and they're given the opportunity to sit there or go to their office and come back and re-file.

So the frequency with which Cameron says this happens, and he said quite often, indicates that this is not a perfect process. And I think that Churchill Residential did as much as they could to comply with the requirements of the procedures manual and to do it in accordance with your process.

Do you have any questions?

MR. OXER: Are there any questions of the Board?

MR. KEIG: No. I'll withdraw my motion.

MS. DULA: Thank you.

MR. OXER: And your motion is?

MR. KEIG: My motion was to move staff's recommendation, and I've withdrawn that motion.

MR. OXER: Okay. I have a couple of comments, and you're welcome to stay up there if you like, Tamea. Mr. Forsland, you're welcome to be there too.

I understand the difference, because the information was there, it was not a material amount of information that would have required reassessment, it would have required a longer assessment, it would have been more work to assess it, and that's not the consideration we're giving, particularly since the Excel file which would have been there is for the purpose of administrative efficiency in executing the pre-application log, and I understand that.

If it gets down farther -- and Cameron, just take a note on this -- that's all right, we want to make sure that this is one of those processes, we're buffing and polishing and carving off rough edges and smoothing things out and as much as we can making this -- it's a constantly evolving process, as I think everybody in this building right now in this room knows, so we're looking for those little quirks and smooth edges.

Next time, Mr. Forsland, I recommend rather than sending it here, send it to her and let her check it and then she can bring it down. Now, for the record, just as a comment, I'm inclined to offer some consideration to this, simply because you're in the pre-application stage, and I understand the competitive nature of all this, you did get the information available and it would have been available.

That said, one of the things that happens in

guerilla warfare in the jungle, the first one through arms the triggers, you know. I wouldn't be late again, if I were you, for any reason. Okay? And let that stand for everybody.

We have crushed people's applications, full applications because they were late with their full application twelve hours. The first meeting I was at 21 months ago here on May 5, two years ago, we told somebody -- they were saying mea culpa, I'm sorry I was late but we got here the next day, Vice Chairman Gann reminded me that any rule without a sharp edge and a penalty is just a guideline and then it becomes a matter of how far out that you can push that rule. And I understand developers, once they put a stake in the ground, they're going to push it and see how far you can go and we're here to tell you how far that is. Okay?

You hit the edge of it, but you're inside of it, in my estimation, so Mr. Keig has rescinded his motion. I'll accept another motion to consider. Your motion was to approve staff recommendation which was to deny the waiver, Lowell, so you rescinded that. Do you care to make another, or does anybody else have another motion?

Yes, Counsel.

MS. DEANE: This is actually a request to reinstate, it's not a waiver.

MR. OXER: Okay.

MS. DEANE: It was terminated because it was not considered a complete application which was deemed never to have been filed, and so it's a request to reinstate.

MR. OXER: So it's a request to reinstate which is essentially to look at the use of the administrative deficiency process to complete this.

MR. IRVINE: Well, it's saying that notwithstanding the fact that a complete application was not timely filed, the fact that the additional information was promptly provided creates a situation where it should be treated as a compliant application.

DR. MUÑOZ: Pre-application.

MR. IRVINE: Pre-application.

MR. OXER: Pre-application. And because the information was there, just in a different format.

MR. IRVINE: Right, it was there.

If I might just read two excerpts from the rule. This is going to comprise a total of about three-quarters of an inch of verbiage.

"If an application, including the corresponding application fee, as described in Section 10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the applicant will be deemed to have

not made an application." And that is, in staff's estimation, what occurred.

DR. MUÑOZ: You interpret the pre-application as an application.

MR. IRVINE: Absolutely.

The second excerpt that I would read is from Section 1-B and Section 1-C of the general requirements. I understand completely Ms. Dula's explanation of the procedures manual and the related technical guidance, but as regards the rule, it says: Applicants should ensure that all documents, et cetera, and that digital media is fully readable by the Department. That is an obligation that's called to the applicant's attention and it's the responsibility, I don't care how you do it, just ensure it.

And right below that it says: The applicant must deliver one CDR containing a PDF copy and an Excel copy of the complete application to the Department.

Now, factually, I have no quibbling whatsoever with the fact that, as Ms. Dula said, having been promptly provided with the Excel version, we were not prejudiced in our ability or inability for any extended period, but simply in terms of the technical requirements, it was staff's assessment that a literal reading was that no application had been made and that the applicant had failed to meet their

responsibility to ensure that all the digital media that were required were there and were readable.

MR. GANN: I'll make a motion.

MR. OXER: One more piece here. What part, because there's a statutory requirement that any election on our part in opposition to staff recommendation has to be defined as meeting a component of 2306. Is that correct?

MR. IRVINE: You have to state your good cause any time you disagree with a staff recommendation.

MR. OXER: And it's not just for good cause, it has to be good cause and for the purposes --

MR. DORSEY: No. That's a waiver. It's only good cause in this particular situation.

MR. OXER: Okay.

MR. GANN: I'd like to make a motion that we approve staff recommendation.

MR. OXER: And deny the reinstatement. Okay. Do I hear a second?

DR. MUÑOZ: Second.

MR. OXER: Okay. There's a motion by Vice Chairman Gann to approve staff recommendation to deny the reinstatement of the application, second by Dr. Muñoz. Are there any other questions of the three before us?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: The application is denied.

MR. JOHNSON: Good afternoon. David Johnson, manager of Program, Planning, Policy and Metrics. I'm just waiting one moment for a presentation.

Under Brooke Boston's direction and leadership, 3PM has been working for quite some time now on the quarterly snapshot tool. I'm bringing it before you today on behalf of the team to go over some critical functions, as well as the layout using demonstration data, and address any questions or concerns you might have. We'd also very much like to receive any feedback you'd have as to any aspect of the tool, but especially layout and design.

The timeline for the release of the snapshot tool is to introduce it today using hypothetical or demonstration data, helping us to focus on the layout of the tool. Moving forward, I will bring the snapshot before you at each meeting with a couple of additional lines using actual data, presenting with the division directors so that we can articulate the specific nuances of each program. We believe that presenting the tool in this way we'll best be able to convey the use of the tool.

So the snapshot is designed as a tool for executive

management, the Board and our external stakeholders to gauge at a high level the Department's progress toward its goal of full implementation of funds under current awards and authorities. While each program has its nuances, we've tried to identify comparable stages for each program that will represent similar progress milestones. This presentation will go through the tools and demonstrate ways in which it can serve as a type of early warning system to identify potential problems and a way to generate informed questions and discussions concerning program progress.

So the snapshot is set as kind of a story reading from left to right. The story moves forward from award to administrative and programming uses, through contracting, to expenditure. While the columns all represent similar stages for each program, the exact definitions of each cell may vary slightly. That will be much bigger in a few minutes.

MR. IRVINE: We just lost our quorum.

DR. MUÑOZ: Do we need a quorum for the presentation?

MR. IRVINE: We cannot conduct any business without a quorum, by law.

MR. KEIG: Why don't you call a recess.

MR. IRVINE: We're defacto in a recess.

DR. MUÑOZ: I haven't assumed my duties yet, Vice

Chairman.

MR. GANN: I'd like to call a recess for five minutes.

(Whereupon, at 3:13 p.m., the meeting was recessed, and reconvened at 3:18 p.m.)

MR. OXER: Okay, let's go.

MR. JOHNSON: This is the layout of the snapshot. It's just one of the sections but this is kind of how it's going to be set. It reads as a story from left to right. The story moves from the award phase in column A through to administrative and programming uses, through contracting and expenditure, and then through to performance. I'll go through the real specifics later, I just wanted you to see the layout. While the columns all represent similar stages for each program, the definitions of the cells will often vary slightly because of the nuances of each program.

I'd like to go through the different sections of the snapshot. The first is the award and authority section.

Awards to be administered in column A may be for multiple years or biennia or funding cycles, depending on the program.

It may also be a single year but include small amounts of unspent funding from a previous cycle. In these ways the figures here may be different than as shown in the annual housing report as part of the SLIHP, or as part of the LAR.

Those two reports focus on awards and authorities in a particular state fiscal year, whereas, this report, by contrast, will show all the funds for which we're currently responsible for administering.

The awards to be administered for the year in column A is added to program income in column B -- you can see in kind of the zoomed in figure up there, although the line runs right through the letters -- to identify cumulative total funds, all funds for which we're currently responsible for administering. All subsequent numbers would come from this figure, so for example, funds contracted would never be more than this fund. This is the totality of the funds we're responsible for at this point.

Cumulative total funds, as you can see there in column C, are often split, depending on the program, between TDHCA administrative dollars and then funds for programming that would go to the field, for example, in man of the programs.

Some programs allow a portion of the funds to be used to support TDHCA operations, the rest, though, going to program activities such as weatherization, home rehabilitation, et cetera.

Using the first row as an example, you can see that cumulative total funds in column C is equal to column F, funds for programming. You'd expect this when you note

that in column D there is no TDHCA admin for this program, so all of the funds for this program would go right to programming. On the second row, however, we see that of the \$10 million the program was awarded -- and gain, this is all demonstration data, it's not real numbers whatsoever -- of that \$10 million, \$500,000 was kept at TDHCA for administrative purposes, so \$9.5 million went to programming.

Funds for programming -- so columns F and on -- proceed through multiple stages before they are fully utilized. Though the funds are initially unencumbered -- which means they're not contractually obligated nor under a reservation setup agreement -- some programs may not ever show funds in this column. Given the timing of the snapshots, which will be quarterly, many of the community affairs programs, for example, may have moved from award of funds to TDHCA to all of those funds being obligated under a contract in a single quarter, so you wouldn't necessarily see any funds at this stage, although they would move through that stage, of course. That would mean that the snapshot would always show in that example 100 percent because it would never move down.

The funds contracted stage may also refer to other comparable milestones, not just the obligation of funds under contract, such as loans in the First Time Homebuyer Program

being underwritten or funds in the 9 percent housing tax credit deals, those deals having reached the carryover stage.

The percentage you see in column I refers to what percent of funds are contracted out of the funds used for programming. So we're trying to break it down at each stage and show really the progress of these dollars. If you look at the topmost row, \$16.6 million -- which is kind of split in column H there by the screen -- is 83 percent, which you see in column I, of column F. I know that's kind of complicated. So the percent contracted row is one that can be an important indicator of progress.

To illustrate, if you look at the bottom row, the very bottom row shows that program funds are 99 percent contracted. This would likely mean the program is pretty far along in the process of being expended or drawn and is almost completely obligated under contract. The row just above shows 24 percent contracted. This could indicate that the program cycle is relatively new and they're still working to distribute funds. If you were to see this figure over multiple snapshots, you might inquire about the program's progress.

I'd like to note there the change indicator columns. Those columns will be here in the future as we have multiple snapshots to build off of. For example, if you were

to see in one quarter that a program is 50 percent contracted and the next quarter it would show, say, 85 percent, well, then the change indicator would show 35 percent, just that since the last time there was a snapshot the program has increased its percent contracted by 35 percent just as a real indicator of progress.

Additionally, you might see a sudden large drop-off in percent contracted. This could indicate that a new funding cycle has come in and so the program would have more work to do now obligating those funds. You may also notice that the second row there is largely merged together, and I'd like to go over that in just a moment.

Another very important column here is column K, expended or drawn. This is, in a sense, the funding being put to its final use. For DOE, for example, weatherization or LIHEAP weatherization, this would mean that the amount of funding has been used to weatherize those homes, for 9 percent tax credits, this would mean that that many dollars of deals have had their 8609 issued, for example.

The final section is performance. With the exception of the tax credit programs, the expenditure mark is where we assess performance, such as units, households, persons and properties. The second row from the bottom, for example, shows \$1.6 million as expended there in column L

which translates into about 535 units weatherized. While the entirety of the snapshot we try to focus on progress, this is where we talk about kind of accomplishments. It shows how much of the funding has been put to its ultimate use and what that translates to for service to Texans.

At the beginning of a funding cycle, be it a year or a biennium or anything else, the percent contracted and percent expended would start off a little low, so the blue and red columns. Between the overlapping funding cycles we often have and the timing of the snapshot, it's likely that snapshots will not show a program at either zero or 100 percent. Near the end of the cycle, potentially before the cycle is over, a new award will be issued and so the numbers will drop back down, so you'll never see 100 and you'll probably never see zero either.

This tool represents a great deal of collaboration between information systems, the program areas and 3PM. One consistent point of conversation is that the snapshot may not show milestones being achieved. We believe that the methodology here is consistent with the vision of the snapshot showing all the funding. Every time you see it, it will show all the funds for which we're currently responsible. That was kind of our goal: what monies are we currently responsible for right now which means that you might not see 100 percent.

However, we have found a solution to this, we've created a program area snapshot which is a little more zeroed in on each program and will show these accomplishments, and we'll get to that in just a moment.

So now that we've gone over the layout, I'd like to go over a few examples to show how the snapshot can kind of accommodate the unique aspects of each program. Please keep in mind that in the coming Board meetings we'll go over actual numbers, row by row, this is just demonstration data so it's not critical that we focus on specific numbers, I'm just trying to go over layout and things of that nature.

The first program is DOE WAP you'll see on the top row. The demonstration data, the way we set this up was that each program would show \$10 million a year, but you see DOE WAP at \$13 million without any program income. This is because DOE, like many programs, can carry over unused funding from one cycle to the next, so you see that it's a little higher than the initial award of \$10 million.

Moving from left to right, you see that there's no program income, so it's \$13 million. A small percentage of that was taken out for TDHCA administrative dollars, of which about 30 percent or so has been expended. So you can kind of see how we took out funds for TDHCA admin, a third of that has been spent, so about \$12.3 million went to the

subrecipient network. Of that, it's about 24 percent contracted, you can see there in column I, and that would be the relationship between what's unencumbered versus what's contracted. Most of it's not encumbered yet, so the program we can assume is relatively new in its funding cycle. Of that, roughly 13 percent has been expended, contributing to about 535 units having been weatherized.

The next example is the HOME row. This is a row that's largely merged together, and the reason for this is because HOME has both single family and multifamily activities. Even though it's two programs in TDHCA, two areas, it comes into the agency as one grant, so there's not really a way to break it up until you get to the contracted and expended stage because before that it's kind of considered one grant. NSP would have the same structure as well.

The progression for HOME from left to right is just the same as the row above. The nature of HOME is such that they administer multiple funding years at one time. So the cells are merged and it is not until the funds are at the stages of contracted and expended that you'd see them broken down, but this way you can see both how much money comes in for HOME to the agency, as well as how much of that is spent in single family or multifamily activities.

The final example is the First Time Homebuyer

Program. This row kind of articulates how you would tell the difference between a program that's relatively late in the cycle versus early in its funding cycle. For example, in column I on the bottom you see it's 97 percent contracted which means out of \$10 million, \$9.7- has been underwritten and loaned, so it's very far along in the process. Whereas, for example, if you were to see 3 percent in column I, that would show that it's relatively new, not many of the loans have been underwritten yet.

These are the program area snapshots I mentioned before. The vision for the department-level snapshot, the main page and the one that's in the Board book, is a one-pager that covers all programs in the Department. That's what we're going for: how can we look at one piece of paper and see at a glance how each program is doing. We realized early on that while we can convey very meaningful data in this way, some consequential program nuances and distinctions are minimized as a result. We designed these program area snapshots to accommodate some of those nuances. There will eventually be a one-pager for each program, as well as a one-pager for the entire department.

Some of the nuances, for example, HOME, as I said, administers funds for multiple years. Well, on the program area snapshot what you would see are those same program

milestones but split out into each different year so that you can really see how HOME is doing, for example. Of if a program has significantly different stages, then the way we've kind of articulated them on there, you would see those articulations broken down on the program area snapshot, actually using the same nomenclature that the program would use. Again, this would articulate those differences that the main tool would minimize.

So I appreciate the opportunity to discuss the tool with you and to show you what it can do. As I said, our plan moving forward is to bring this to you each month.

I'll present with the division director and kind of go through just a few rows on their specific programs and kind of articulate how their specific program fits into this kind of template that we use. I'm happy to answer any questions you have, and I'd certainly love to take any feedback to the team that you have for us.

MR. KEIG: You gave as an example an expenditure that we might be interested from quarter to quarter what the progress is, and you showed us a graph that kind of showed the life cycle of funding. Would we get some type of graph that would be similar to that to show the progress from quarter to quarter?

MR. JOHNSON: Absolutely. We're planning on

providing multiple visuals eventually. We want to try to work on the snapshot as we bring it to you. I'm not sure exactly when we might implement those, but certainly that would be our intention is to have both the bigger snapshot as well as the more specific tools for each program.

MR. KEIG: Yes. I don't want to get bogged down in too much detail, but that was an interesting point about your comparing the quarter-to-quarter expenditure.

MR. JOHNSON: Sure, and that's always been the balance: a lot of information versus keeping it --

MR. KEIG: A dashboard level.

MR. JOHNSON: Exactly, which is why the program area snapshots are kind of a nice balance because they're still high level but they show the fact that HOME is administering five years worth of funding at any given time, whereas, some other programs are only on one.

MR. OXER: On any single program -- you asked about the intuitive parts -- I'd like to see if there's a fixed deadline. We had some ARRA funding, for example, if it's like a three-year project and there's funding that will go through all of that. In fund raising that I've done for schools, for example, it would go from zero to the completion date which is the projected rate of expenditure and the mark you're at shows you above or below that line where you're

at. Red light/green light kind of thing.

MR. JOHNSON: Absolutely.

MR. OXER: That's for longer individual programs.

MR. KEIG: And I think those kind of graphical representations might be more useful to the Board than pure numbers.

MR. JOHNSON: Sure.

MR. OXER: Actually both.

MR. JOHNSON: Absolutely.

MR. OXER: Good work, good team.

MR. JOHNSON: Thank you.

MR. OXER: You can't manage what you can't control and you can't control what you can't measure, so what we're doing is measuring.

MR. KEIG: Is there a tractor?

MR. OXER: There's a tractor analogy in there somewhere.

(General laughter.)

MR. OXER: I don't want Tom to be disappointed about my tractor analogies. We're adding horsepower, adding weight to our tractor, as it were. Thanks.

MR. JOHNSON: Thank you.

MR. OXER: Okay, Cari.

MS. GARCIA: Cari Garcia, director of Asset

Management. And I'm sorry to say I don't have a poster or a cool accent.

MR. OXER: But do you have any good jokes or good analogies?

(General laughter.)

MS. GARCIA: And no tractor analogy either. Maybe apples later on in my presentation, but no tractors.

Good afternoon, Chairman Oxer and members of the Board. Item 6 is a request for the approval to repay HOME funds in the amount of approximately \$1,034,000 for three failed HOME transactions which are Mexia Homes, Duncan Place and Flamingo Bay Apartments, and the authorization of the use of TCAP program income, Tax Credit Assistance Program, to carry out programs that were anticipated to be funded by these non-federal funds, and that's more thoroughly described in the background section of your Board agenda item.

Both Mexia Homes and Duncan Place were originally awarded HOME funds in 1994 to a local nonprofit called Cause, Inc. These are small properties of four units and seven units, respectively, in Mexia and Hillsboro that were subsequently foreclosed and sold to a new owner who refuses to comply with the LURA. Flamingo Bay was a HOME award in 1999 which is in La Porte and is a 57-unit development, and that development was actually an abandoned property that was

funded to acquire and rehabilitate the development. The owner drew funds for the acquisition which is what the Department paid for, and then the city rezoned the area and so they couldn't go forward with the rehabilitation.

The Department does not have ownership or control of these three properties and has been unsuccessful in obtaining control or identifying replacement unit opportunities in these three areas that would meet HUD's requirements. Under the Multifamily HOME program, loans are made to developers in return for a certain number of restricted HOME units and compliance during the affordability period which is usually a 20-year period. And then as just seen in David's presentation, the HOME funds are both designated for single family and multifamily use, and in the most recent years our HOME allocation -- which is received from HUD as a grant -- has been around \$24 million annually, and that fluctuates each year.

Loan payments to the department made on these HOME loans are considered program income to be used for the development of affordable housing. HUD's primary objective is compliance with the HOME LURA over the affordability period. A required repayment of HOME funds occurs when a participating jurisdiction must repay funds invested in a development that was terminated before completion, such as

with Flamingo Bay, or invested in housing that failed to comply with the affordability requirements of the LURA, which is the case with the other two.

TDHCA HOME loans have historically been used as gap financing, with the majority being in a subordinate lien position. In March 2009, HUD conducted a monitoring review of the agency's HOME program and identified 26 developments with non-compliance issues that could result in a loss of affordability and a repayment of HOME funds back to HUD. The Department has worked diligently with the owners of these developments to correct non-compliance issues and provided quarterly status updates to HUD.

In June 2012, HUD monitored the state HOME program again and only nine developments remained on the list from 2009, and these nine developments continue to be in the Asset Management workout portfolio. While our attention has been on these nine developments and trying to work to obtain a resolution, Asset Management has also worked to prevent possible repayment to HUD on other loans by working with the Asset Resolution Committee in modifying HOME loans if needed to ensure long-term financial feasibility and compliance with affordability.

So for example, if we see an owner who is struggling to make their HOME loan payments, we reach out to them and work with them, figure out what the

problems are. If we determine that that loan could be modified in a way to ensure the success of the property, which means both that the physical condition of the property is maintained, hopefully we're paid back as well, but most importantly that the affordability period is met, that 20-year period that they keep those HOME units affordable during that period.

So through this effort we have successfully resolved three HOME developments that were in workout status that totaled approximately \$1.5 million which is money we don't have to repay to HUD because of that. Additionally, we're expecting that two developments on that list of nine that have non-compliance issues can possibly be resolved in the next couple of months.

So to put this information into perspective, the HOME developments discussed today that are in workout due to foreclosure represent a foreclosure rate of 1.6 percent of the total multifamily HOME loans that have been originated since 1990, which is approximately \$404 million on the multifamily HOME side. According to research from the Mortgage Bankers Association, of the commercial multifamily loans in the first lien position, the delinquency rate for banks in third quarter 2012 is 2.93 percent.

Now, you may ask is this a really apple to apple

comparison, and most of the nine properties, aside from the two with non-compliance issues -- well, actually one of those was a foreclosure as well -- most of those, the reason they're in workout is because of foreclosure by their first lien lender, which in turn wiped out our lien and wiped out our LURA. So it may not be exactly apple to apple, but it might be red apple to green apple type of comparison, and perhaps use a tractor to get the apples, I don't know.

(General laughter.)

MR. OXER: I'm telling you, you've got to be creative around here.

MS. GARCIA: I'm trying.

MR. OXER: Just working in our orchard here.

MS. GARCIA: So since the writing of this Board agenda item, we have received a follow-up letter from HUD which we received last Friday. Like I mentioned, we provide status updates on what we're doing with these remaining properties, and we were told in this letter that all outstanding non-compliance issues with the properties -- which they show eight transactions, they consider one transaction that is actually two developments under two numbers, they were done by the same owner so they consider it one, we consider it nine developments -- anyway, they have to be corrected by April 30 is what has been indicated

in this letter.

And now for this Board item I'm here on the three developments only that I feel we have exhausted all of our options and we have identified non-federal funds to do a repayment back to HUD. HUD has provided guidance that unless the properties were brought back into compliance providing HOME units through the required affordability period, that the only options were to repay the original loan amount to the local HOME account from non-federal funds or to submit a request to reduce the state's HOME grant in subsequent fiscal years.

Now, this request has to be signed off by the chief executive officer of the participating jurisdiction, which we believe to be the governor, and in general we've been provided some guidance that it needs to be at least 30 percent of your annual HOME grant which is about \$7 million, so our total payoff is slightly less than that. So we're not sure if they would be amenable to breaking that down over a three-year grant reduction if we have to end up doing that, but that's for another Board meeting.

At this time we feel we've exhausted all options for these three properties, and we've identified a source of non-federal funds that can be used to repay HUD the total amount of HOME liability for these three transactions.

Unfortunately, even with the efforts described today and the approval of this item, there remain possibly four, maybe six developments on the original HUD list totaling approximately \$5.3 million which we will need to bring back to the April Board meeting with a plan of action on how to deal with that section of properties.

So with that, I'd be happy to answer any questions you might have.

MR. IRVINE: And although this is posted as an action item, because we had the late receipt of the HUD letter, would it be possible for us to bring this whole item back for a consolidated resolution at the April meeting?

MS. GARCIA: Yes, that would be possible.

MR. OXER: So we could use this as informative, take into account what we received from HUD this past week, and try to integrate all of that.

MS. GARCIA: Right. I mean, the reason we brought this to this meeting is because we were working off of a previous letter that indicated two of these properties had to be resolved by February 28, so that's what we were working off of, and we included a third property that we felt needed resolution as well and we identified the funds. However, since that time we have this new letter that provides the April 30 deadline, and then I think for one property there's

a March deadline as well, but that's one of the properties that we do feel like it has just non-compliance issues that we can bring back into compliance, it's not going to require a grant reduction or repayment.

MR. IRVINE: So the April 30 deadline is available for these three properties as well?

MS. GARCIA: I believe so.

MR. OXER: Mr. Keig.

MR. KEIG: I just probably need a cup of coffee after 3:30, but the TCAP program income, did that clarification letter rule that out as a non-federal source, did it call it a federal source, or did we get some other direction from them that we could not use that?

MS. GARCIA: We have been provided guidance from HUD that they consider TCAP funds as a federal source of funds.

MR. KEIG: That didn't surprise me, but it was worth a try. Right?

MR. OXER: So what do you need from us, Cari?

MS. GARCIA: So you could either approve my recommendation to repay HUD on these three transactions with non-federal funds that we've found within the organization and authorize us to use TCAP funds that are available to serve the same purpose as those funds that we're taking away, the non-federal funds. And then we can come back in April with

the remaining, hopefully it will just be four, it could be six -- I'm hoping four. Or you could decide to table it and bring it all back in April.

MR. OXER: And wrap it all up at once.

MS. GARCIA: However, they did give the April 30 deadline.

MR. IRVINE: And we would like to pursue a total resolution that addresses all of this, would likely include a request to HUD for a waiver of the requirement that future grant reduction be at that stated level.

MR. KEIG: So what's staff's recommendation then?

MR. OXER: Our best course of action is to delay it till April and take it all up at once.

MS. GARCIA: Maybe I'll have a poster then.

MR. GANN: Do you want a motion to table?

MR. OXER: Yes.

MR. GANN: I'll make the motion to table.

MR. KEIG: Second.

MR. OXER: Okay. Motion by Vice Chairman Gann to table this for consideration at the April Board meeting, since we don't have one in March, second by Mr. Keig. Is there any public comment on this?

(No response.)

MR. OXER: There are none. Is there any other

further Board comment on this?

(No response.)

MR. OXER: There is none. All in favor of the motion as described?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Thanks.

MS. GARCIA: Thank you.

MR. IRVINE: And I just would like to point out that we talk about the analogy of this organization to a bank, but unlike banks, we don't have capital, and Cari and her team and Tom, they are our capital, so their creativity and energy in resolving these transactions is really critical.

MR. OXER: Ms. Murphy.

MS. MURPHY: Good afternoon. Patricia Murphy, chief of Compliance.

Item 7 is a follow-up to last month's discussion about the 2013 income limits and how they relate to certain of our tax-exempt bond properties. At the Board's direction, staff is bringing this issue back for consideration.

We have developed a proposed action that is outlined in your write-up. The suggestion is, first of all, that staff would develop a rule that would provide for

monitoring rents calculated from the higher of the income limit that the property is using to qualify households to move in, or the income limit applicable because of the gross rent floor provided through Revenue Procedure 9457. Second, that when this rule becomes effective the bond regulatory agreements shall be considered amended to be consistent with the rule, but that owners could still request an alternative method for amending their regulatory agreement. And third, effective immediately, staff will monitor consistent with the guidance that this Board would adopt today.

There may be some public comment, but before you hear that comment, are there any questions I could answer for you?

MR. OXER: Okay. This is essentially a class action that you're in unless you opt out.

MS. MURPHY: Tim says yes.

MR. IRVINE: Yes. And I would also add that in fleshing out and proposing the rule for public comment, we would include not only the substance that Ms. Murphy has just described but we would also include procedural mechanisms to provide recordable memoranda so that it could be clear for the development owner and the public to be on notice of the application of this situation to each of the affected properties.

MR. OXER: And that would be on file in the county.

MR. IRVINE: In the county where the property is sited.

MR. OXER: The county property office.

Okay. Motion to consider?

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig to accept staff recommendation.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Are there any other questions of Ms. Murphy by the Board?

(No response.)

MR. OXER: We have public comment. Hi, Cynthia.

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord.

Just briefly, because I did testify before you all at the January Board meeting indicating that I was representing a great number of these property owners who had this concern, I wanted to follow up with you with regard to their feelings about this proposal. We believe that this will help resolve the problem. We talked about the tremendous economic risk that these properties had if there was not something done to fix this problem of sorts that was created when HUD changed the way that it looked at these income and

rent calculations.

So we believe that the rule will work, we hope that the rule will be simple, uniformly applied. Agree with Mr. Irvine that something recordable in the real property records will be important, and we will look forward to seeing the draft of the rule and commenting on it when it's available.

And we appreciate your support of this issue.

MR. MacDONALD: Briefly, Granger MacDonald, Kerrville, Texas. Are you ready for this? Our tractor is in the ditch, so we obviously support staff's recommendation and appreciate the work that's being done on this. If this did not happen, I suspect there would be numerous bond programs that would be in default because they wouldn't meet their loan covenants, and then they'd have to be facing either foreclosure or refinance, possible fall out of the affordable housing program, and this is extremely important. And I thank you for your time.

MR. OXER: Thank you, Mr. MacDonald.

Is there any questions of either of the speakers?

(No response.)

MR. OXER: Motion by Mr. Keig to accept staff recommendation, second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Thank you to the team, to the staff for putting that one together.

Hi, Michael.

MR. DeYOUNG: How are you doing?

MR. OXER: Good so far.

MR. DeYOUNG: Michael DeYoung, Community Affairs Division director. I promise to get through these probably within the next hour and a half, they should go fairly quickly.

MR. OXER: That's pretty thoughtful of you.

(General laughter.)

MR. DeYOUNG: No problem. The first item is 8(a), it is the DOE plan. Briefly, DOE each year asks us to file a plan, we have prepared that plan based on an estimated figure, we should receive the final figure in the next few days, we'll adjust the plan. We're asking you to give us the flexibility to adjust the plan to the final dollar figure. We've gone out for public comment. We received one comment in support of the plan as drafted. Again, it's an estimated figure.

Staff asks for your approval.

MR. OXER: One question. When you're saying it's an estimated number and you'll adapt it or adjust it to the final plan, is there any particular account out of it or is

it just the final number?

MR. DeYOUNG: It's just the final number. DOE will transmit to every state a final figure when an allocation is approved. We were under the impression after a DOE monitoring visit we would have that figure by Friday of last week, we have not received it yet. So it won't come from another account, it's just when we get the final figure that DOE will award to the State of Texas, we'll make all the technical adjustments to each award.

MR. OXER: So is that a total amount in several program components?

MR. DeYOUNG: Not program components. It would be to the individual subrecipient agencies that we would have adjustments, but we have to calculate an admin figure off of that, we have to calculate a T&TA figure, and then we make awards to the subrecipients.

MR. OXER: Okay, got it. So we're just giving you the authority to adjust that as needed when they give you the number.

Any questions of Mr. DeYoung?

(No response.)

MR. OXER: Okay. Entertain a motion to consider.

DR. MUÑOZ: So moved.

MR. GANN: Second.

MR. OXER: Motion to accept staff recommendation by Dr. Muñoz, second by Vice Chairman Gann. Is there any public comment? There appears to be none since there's nobody sitting in our front row.

All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

MR. DeYOUNG: I'm sure they're waiting for this next item. The next item 8(b) is very similar to item 8(a).

These are the actual weatherization awards. These awards will start on April 1, we bring them to you today. Again, the DOE figure will be adjusted.

For the first time we're coming to you with a slightly modified funding approach. Real quickly, we have weatherization awards from DOE and we have weatherization awards from LIHEAP, the Low Income Home Energy Assistance Program. Typically, every agency gets an award from DOE and an award from LIHEAP. Because we were successful at administering all those WAP funds, DOE kind of dropped off the radar at the federal level, we did not get a lot of funds at the federal level, so Texas got a very small award. We're now down to about \$1.3 million, or so. When we get the final

figure, we'll make adjustments. But that necessitates a different plan for the State of Texas because we would be making very small awards to very small agencies, so some agencies would have only two homes under the DOE program.

So as an approach, kind of a creative approach by staff, we said let's go ahead and concentrate these awards in the larger cities, in the larger agencies, and we'll make adjustments with the LIHEAP funds so that no area is affected disproportionately from a monetary status, it's just whether you get money from (a) DOE or (b) LIHEAP. Now, the Big Four will get (a) and (b) but 22 others will just get (b) LIHEAP money. And so we brought these awards to you as one action because they are so closely tied.

MR. OXER: So essentially, you get the same amount of money going to it but this facilitates management of the funds in terms of the blocks that are being handed out.

MR. DeYOUNG: Absolutely.

MR. OXER: Good. All right. You support staff recommendation on this, obviously. Motion to consider?

DR. MUÑOZ: So moved.

MR. OXER: Motion by Dr. Muñoz to accept staff recommendation on item 8(b). Is there a second?

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. There's no public

comment. Any other questions of the Board?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Any opposed?

(No response.)

MR. OXER: None. Thanks. That one is unanimous also.

MR. DeYOUNG: Item 8©. Staff gave me speaking notes that said it's back, it's ARRA WAP.

We were successful at spending 99.37 percent of our ARRA WAP award, about \$325 million; we left about \$2 million on the table. We closed our grant and got a phone call and an email that said you have a chance to go back and spend that last \$2 million. It's a nice opportunity. Again, we only probably are going to get \$1.1 million from DOE this year, it's \$2 million, it will help about 186 homes, so staff is recommending that we go ahead and access those funds.

One of the things we're going to do -- again, this is kind of an (a)/(b) pool thing -- is rather than spread this money out to 26 agencies and everybody has a little bit, makes it real hard to manage when we've got only six months to spend the funds, we're saying let's give these funds to three entities, the three largest entities: this would be

Houston, it would be Dallas and San Antonio areas.

For the other agencies that would have participated in DOE ARRA awards, we're going to go into TDHCA's LIHEAP admin. This is money that we haven't used yet and it's partially because we had a large balance of ARRA funds.

So a lot of activity spent on ARRA, we didn't spend as much LIHEAP admin in the last year as we expected, so we have this pool that we can make this adjustment to. So we're taking some of our funds at TDHCA, putting them out to the field to weatherize additional homes. Everybody in the state and every county will be covered and they'll be covered with a formula allocation amount, they're getting the right dollar amount. But again, three of them will get the ARRA award, the three big cities, and the other counties are going to get LIHEAP, so again, (a)/(b).

MR. OXER: The amount of funds that go out to the smaller areas, smaller subrecipients, are they materially useful?

MR. DeYOUNG: Yes. I'd have to do some quick calculations in my head, but I would say it's equivalent to what the DOE award would have been, that \$1.3 million, so it is a significant figure for those areas. They will get some homes done, they'll be able to continue to keep their staff there at the agency. The fear would be that they have

such low funding that they could do their weatherization work in three, four, five months and then have no funds to retain staff and you lose all your experience. So it is essential that we keep funds going to those agencies.

MR. OXER: Okay.

MR. DeYOUNG: Staff would recommend that you approve the plan for the ARRA WAP and the associated LIHEAP admin going to our subrecipients for weatherization work.

MR. OXER: Okay. Motion to consider?

MR. KEIG: So moved.

MR. OXER: Mr. Keig moves to accept staff recommendation.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. These guys need some coffee here.

MR. DeYOUNG: Everybody needs caffeine.

MR. OXER: And bourbon, I think, too.

(General laughter.)

MR. OXER: No public comment. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. Thank you. It's unanimous.

Is there anything else, Michael?

MR. DeYOUNG: Oh, I would just say motion to adjourn, but that's not my job.

MR. OXER: That's my job. Trust me, I know where that one is coming from.

We've arrived at the point of the meeting where the public has opportunity to present any comments that need to be made for the purpose of generating an agenda in the future. So, Michele, would you care to speak?

MS. ATKINS: Michele Atkins, Executive Division, TDHCA.

We had a witness that wanted to register an opinion on item 3(a), and we didn't get it in time to read it into the record, so I'm just reading this into the record that Steven Grubbs was in favor of the staff recommendation.

MR. OXER: Is there anybody else that has anything that they would like to say in public? Any of the staff at TDHCA -- which we always appreciate you being here -- any of the staff have anything else to say?

MR. IRVINE: I do.

MR. OXER: You're on the dais, hold on.

MR. IRVINE: I'm staff.

MR. OXER: Yes, but you're up here with us.

Tom wants to make some reference to a tractor,

I can tell already. I don't know. Brooke, get up here and say something.

(General talking and laughter.)

MR. OXER: Mr. Executive Director, was there anything you'd like to say, sir?

MR. IRVINE: Yes, I would.

I always strive to make sure that everybody that works on this team is smarter than I am and we really try to attract just the best of the best, and we do what we can to hang on to the best of the best, but we realize that sometimes people go and find great opportunities, and I'm proud to have a team that people want to pirate, and every now and then somebody succeeds.

And Nidia Hiroms, who has been just an incredibly valuable part of this team for so long and has done so much and has sat there on her birthday -- turned 21, she's old enough to go out and drink now -- and she didn't leave, she's going on to take another one of those opportunities. And I just want to recognize her. She's such a star and she's going to add a lot to somebody else's operation.

(Applause.)

MR. OXER: Okay. Thank you, Mr. ED. Anything else? Any comments from the Board?

(No response.)

MR. OXER: As the last man standing on this one, I get to say thank you to everyone that was here, for the effort that was put forth, we need you back again in two months.

There is no meeting in March. Our next meeting in April will be -- it's in April; it's on the calendar.

So entertain a motion to adjourn.

MR. GANN: So moved.

MR. McWATTERS: Second.

MR. OXER: Vice Chairman Gann moves to adjourn, second by Professor McWatters. All in favor?

(A chorus of ayes.)

MR. OXER: We stand adjourned. See you in April.

(Whereupon, at 4:04 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: February 21, 2013

I do hereby certify that the foregoing pages, numbers 1 through 211, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

02/27/2013

(Transcriber) (Date)

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