

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

June 16, 2015
9:01 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
LESLIE BINGHAM ESCAREÑO, Member
T. TOLBERT CHISUM, Member
TOM H. GANN, Member
J.B. GOODWIN, Member

TIMOTHY K. IRVINE, Executive Director

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15400 Compass Pointe Midland
 15404 Darson Marie Terrace San Antonio

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P R O C E E D I N G S

1
2 MR. OXER: Good morning, everyone. I'd like to
3 welcome you to the June 16 meeting of the Texas Department
4 of Housing and Community Affairs Governing Board, and
5 we'll begin, as we do, with roll call.

6 Ms. Bingham is not here today; Mr. Chisum is
7 not here today.

8 Mr. Gann?

9 MR. GANN: Here.

10 MR. OXER: Mr. Goodwin?

11 MR. GOODWIN: Here.

12 MR. OXER: Dr. Muñoz?

13 DR. MUÑOZ: Present.

14 MR. OXER: And I am here, that gives us four,
15 we have a quorum, we're in business.

16 Tim, lead us in the salutes.

17 (The Pledge of Allegiance and the Texas
18 Allegiance were recited.

19 MR. OXER: Okay. We have a pretty strong
20 agenda today, so just as a housekeeping item, we're going
21 to keep a fairly close clock. Before we get to consent
22 agenda, there were a couple of things we want to do and
23 then we'll have the folks here from the representative's
24 office to speak.

25 We have the decidedly mixed emotion for me in

1 welcoming a new member to the dais up here, our new
2 attorney, Beau Eccles, and saying goodbye to one of our
3 own, Mr. Dorsey. So I'll leave it to Mr. ED to say a few
4 words about one or the other in sequence.

5 MR. IRVINE: I must say that Cameron Dorsey has
6 been a force of nature. I remember when Cameron was
7 tapped to become the director of multifamily, and Brenda
8 said, You're a risk-taker. And I thought to myself: Why
9 would anybody think that, if they know Cameron Dorsey,
10 they know that I am completely risk-averse.

11 Cameron is extremely knowledgeable, he's
12 extremely competent, he works hard, he gets it, he has
13 good policy in his heart, Cameron is just a complete
14 player. And when I looked for a chief of staff, I wasn't
15 so much looking for a person with knowledge and breadth
16 and ability as I was looking for a person who was a bridge
17 builder, a uniter, somebody who could really bring folks
18 together to forge quickly clear direction that people
19 understood and bought into, and Cameron did that.

20 He works tirelessly to communicate. I'm
21 guessing there's not a person in this room who hasn't, at
22 one time or another, had a long heart-to-heart with
23 Cameron in some issue about one of our programs, and found
24 him effective and fair. It's just amazing.

25 And one of the great things about the ability

1 to attract great people is they're multipliers, they make
2 you exponentially better, but also one of the things about
3 attracting great people is you never hang onto them
4 forever, and Cameron has decided that there are new
5 challenges and opportunities on his horizon and he's going
6 to get out there and tackle them with the same gusto that
7 he's tackled things at TDHCA. He's a forever friend.

8 (Applause.)

9 MR. OXER: Cameron, we can't let you get away
10 without having a last shot at us, so how about it, Pal.

11 MR. DORSEY: Cameron Dorsey, chief of staff.

12 MR. OXER: One last day.

13 MR. DORSEY: Right. I really appreciate
14 everything Tim said and every opportunity that Tim has
15 provided for me. You know, I started at the Department
16 almost nine years ago to the day -- well, no, it's nine
17 years and a month, I guess -- and I started as an
18 associate underwriter, being gouged in my pay by Tom, who
19 was highly effective at that with me.

20 (General laughter.)

21 MR. DORSEY: He knew that I was going to stay
22 around, no matter what, so anyhow.

23 You know, I never intended to be here nine
24 years. Frankly, I intended to be at the Department no
25 more than two, and then I was kind of worried that if I

1 stayed too long that government thing would attach to me
2 and I wouldn't be able to do something else. But you
3 know, I found just amazing people. Over the years I've
4 worked with a number of different groups and worked in the
5 HOME Division, worked in REA on two separate occasions,
6 director of Multifamily, and as chief of staff getting
7 involved in the community affairs stuff, working with
8 Michael DeYoung, working with Brooke Boston and Marnie.
9 And the people ultimately are the majority of what
10 contributes to whether or not your job is enjoyable,
11 whether or not you come to work every day and look forward
12 to what you're going to do, and I think ultimately it was
13 the people who kept me at the Department, you know,
14 consistently always trying to do the right thing, just
15 really wonderful people.

16 This Board has also been incredibly supportive.

17 I think I've gotten more than my fair share of accolades
18 associated with the success of the Tax Credit Program and
19 redevelopment of the rules and everything over the past
20 couple of years. I think both Jean and I got a lot of
21 accolades for that, but ultimately our efforts would have
22 been entirely in vain if it hadn't been for a Board who
23 was on the same page with really holding to those rules
24 and the integrity of that process and everything. So I
25 really also appreciate the Board's efforts.

1 So just wonderful opportunities at the
2 Department. I'm 32 years old and it's been quite a
3 whirlwind of a nine-year run. So really appreciative to
4 everyone, including you all up there and the development
5 community.

6 Let me say a couple of words about them.

7 MR. OXER: Say about them this time rather than
8 to them. Right?

9 MR. DORSEY: The development community takes
10 quite well to getting beat in front of the Board by me.
11 They have been very supportive of me over the years as
12 well, and I've always tried to be fair and everything and
13 I think ultimately those efforts have shown through. I've
14 got a lot of friends in the industry, really good friends,
15 and I'm just always really impressed with the product that
16 we produce. You know, you can complain about the data-
17 driven approach to the opportunity index and some of these
18 things, but the actual developments on the ground that
19 have been constructed over the past several years are just
20 incredible properties that are going to really provide a
21 launch pad for success for low income families in Texas.

22 You know, any time I have had a little weakness
23 for taking this action versus that action, or just
24 struggled with the daily difficulties of the job and
25 everything, I can't help but just think about the kids

1 that are being served in these properties by these
2 programs and everything like that.

3 Anyway, just really appreciative for what
4 everyone involved in this industry does. Thanks.

5 MR. OXER: Thanks from us, Cameron.

6 (Applause.)

7 MR. OXER: Okay, Mr. ED, let's introduce our
8 new counsel.

9 MR. IRVINE: Everybody, this is James "Beau"
10 Eccles who has become the Department's new general
11 counsel. He comes over from the Attorney General's
12 Office, chief of general litigation, and you know, the
13 state's best litigator, and I say that as a former client
14 when he was in that capacity. He's incredibly
15 knowledgeable, he's incredibly thoughtful, he's also kind
16 of fun.

17 So I think you're going to fit right in here,
18 and we are so glad to have you.

19 MR. ECCLES: Let me say that I'm very excited
20 to be here, and just a few seconds off of what Cameron
21 said, I think that a lot of folks will come into state
22 service and then expect that they'll be there a couple of
23 years until I used to call it for my younger attorneys who
24 would come in as you will hear the whispers, and that is
25 if you don't get out of state service now, you'll be stuck

1 there. And the truth is that's a fallacy. The good folks
2 who get into state service and stay there do so because
3 they are overwhelmed by a sense of mission and purpose.
4 And Cameron, I know you are one of those guys.

5 But this agency has a mission that I will say
6 is downright beautiful. It is a noble aim and I could not
7 be more excited than to be part of it. And these guys are
8 fun, it's true. And so I look forward to working with you
9 guys and getting to know you and getting to know this
10 Board, and I'm the new Barbara.

11 MR. OXER: Welcome aboard, Beau.

12 (Applause.)

13 MR. OXER: Well, since it doesn't take much to
14 be above our pay grade on this, we have to take our
15 compensation in entertainment, so that's why we're here.

16 I understand we have a resolution for June as
17 Homeownership Month. So I'm going to ask Michael Lyttle
18 to read this into the record.

19 MR. LYTTLE: The following resolution:

20 "Whereas, June 2015 is Homeownership Month in
21 Texas;

22 "Whereas, the goal of the Texas Department of
23 Housing and Community Affairs is to ensure that all Texans
24 have access to safe and decent affordable housing;

25 "Whereas, the Department reaffirms the

1 importance of homeownership in the lives of the Texans it
2 serves and in the Texas economy;

3 "Whereas, it is the policy of the Department to
4 support equal housing opportunity in the administration of
5 its homebuyer and homeownership programs and services;

6 "Whereas, the Department applauds all those who
7 work to achieve and maintain affordable responsible
8 homeownership and recognizes those who provide services
9 and resources to all homebuyers, regardless of race,
10 color, creed, place of birth, familial status or
11 disability; and

12 "Whereas, the Department encourages Texans to
13 explore the numerous homeownership resources available
14 during Homeownership Month and throughout the year.

15 "Therefore, be it resolved that in the pursuit
16 of the goal and responsibility of providing affordable
17 homeownership opportunities for all, the Governing Board
18 of the Texas Department of Housing and Community Affairs
19 does hereby celebrate and join Governor Greg Abbott in
20 proclaiming June 2015 as Homeownership Month in Texas, and
21 encourages all Texas individuals and organizations, public
22 and private, to join and work together in this observance
23 of Homeownership Month."

24 Signed this 16th day of June 2015.

25 MR. OXER: So we adopt this as a formal

1 resolution, as I understand.

2 MR. IRVINE: Correct.

3 MR. OXER: As chair I'll move the adoption of
4 the resolution.

5 MR. GOODWIN: Second.

6 MR. OXER: Second by Mr. Goodwin. There is no
7 public comment. Those in favor?

8 (A chorus of ayes.)

9 MR. OXER: Those opposed?

10 (No response.)

11 MR. OXER: There are none, and of course, it
12 passes.

13 With respect to the consent agenda, we're going
14 to hold on the consent agenda here right quick -- no,
15 let's go through the consent agenda because it shouldn't
16 take but a minute.

17 MR. IRVINE: We have two items to pull from the
18 consent agenda, 2(c) and 1(h).

19 MR. OXER: 2(c) and 1(h). Does the Board have
20 any comments on the consent agenda?

21 MR. GANN: I move we adopt the consent agenda.

22 MR. OXER: Okay. Motion by Mr. Gann to adopt
23 the consent agenda as presented. We're pulling items 1(h)
24 and 2(c). Do I hear a second?

25 MR. GOODWIN: Second.

1 MR. OXER: Second by Mr. Goodwin. There's no
2 public comment. Those in favor?

3 (A chorus of ayes.)

4 MR. OXER: Those opposed?

5 (No response.)

6 MR. OXER: There are none. It's unanimous.

7 The first thing we're going to do before we get
8 to this is have -- is your comment, sir, on an item on the
9 consent agenda? It's an action item. Okay. Well, give
10 us just a second to take care of these two and we'll get
11 right to you. Is that okay? Just checking on your clock
12 here to make sure we're all right.

13 So first thing we're going to do is let's take
14 1(h).

15 MR. IRVINE: 1(h) is being deferred until the
16 next meeting, Mr. Chairman. There was a posting issue.

17 MR. OXER: So it's pulled completely.

18 Okay. On 2(c), Jean.

19 MS. LATSHA: Jean Latsha, director of
20 Multifamily Finance.

21 2(c) is the report on challenges. I just
22 wanted to make a quick clarification to one. I was
23 reading this in some greater detail after we posted it.
24 Application number 15247, City Square Apartment Homes in
25 Garland, we indicated in the report that staff had

1 completed the review of this application, particularly
2 with respect to the community revitalization plan. We
3 haven't yet completed that review, so I'd just like to
4 point that out in here. There were some other aspects of
5 that challenge which we did point out we were still
6 reviewing, but included in that was the community
7 revitalization plan. Otherwise, we'd present the report
8 as it was in the Board book.

9 MR. OXER: So we still consider item 2(c).

10 MS. LATSHA: Yes, sir. It's simply acceptance
11 of the challenge report.

12 MR. OXER: Is that clear to the Board? Any
13 questions of Jean?

14 (No response.)

15 MR. OXER: Motion to consider?

16 MR. GOODWIN: So moved.

17 MR. OXER: Motion by Mr. Goodwin to approve
18 item 2(c), as presented by staff. Second?

19 DR. MUÑOZ: Second.

20 MR. OXER: Second by Dr. Muñoz. Is there any
21 public comment? There's none. Those in favor?

22 (A chorus of ayes.)

23 MR. OXER: Those opposed?

24 (No response.)

25 MR. OXER: There are none.

1 Okay. We're going to take a special exception
2 to the sequence here and allow public comment by a
3 representative of a legislator, so you're up. You still
4 represent the legislator, not the representative but a
5 representative of the legislator.

6 MR. SMITH: Yes, sir. My name is Curtis Smith,
7 and I'm chief of staff for State Representative Terry
8 Canales, and he asked me to come here today to read this
9 letter into the record.

10 "I write in reference to the 2015 application
11 for 9 Percent Low Income Housing Tax Credits submitted by
12 the DWR Bella Vista, LP, and a decision by the staff of
13 the Texas Department of Housing and Community Affairs to
14 deny two underserved area points for the proposed location
15 of the Bella Vista Apartments in a Colonia.

16 "It is my understanding that none of the
17 applications claiming underserved area points based upon
18 project location in a Colonia received the requested
19 points in the 2015 9 percent tax credit cycle, and I first
20 want to address that issue. Section 2306.127 of the Texas
21 Government Code instructs that: TDHCA shall give
22 priority, through its housing program scoring criteria, to
23 communities that are wholly or partly in (1) a federally
24 designated urban enterprise community, (2) an urban
25 enhanced enterprise community, or (3) an economically

1 distressed area or Colonia.

2 "Accordingly, as a policy matter it is of
3 significant concern to hear that despite the instruction
4 in 2306.127 to prioritize projects in Colonias, TDHCA has
5 decided that all requests for underserved area points
6 based upon the location of applicants provided in Colonias
7 be denied. This contravenes the intent of the legislature
8 when it passed Section 2306.127. To an extent, TDHCA
9 staff has promulgated Colonia criteria that cannot be met,
10 even by sites widely held to be located in close proximity
11 to Colonias. I ask for TDHCA to clarify how does working
12 to meet the legislative intent behind including Colonias
13 as criteria for low income housing tax credits.

14 "It is my understanding that in these
15 neighborhoods surrounding the Bella Vista project basic
16 utilities are not universally available. To that point,
17 and most importantly to the argument for reinstatement of
18 the points, Commissioner Joseph Palacios, the Hidalgo
19 County commissioner for Precinct 4, has informed TDHCA
20 that the subject neighborhood is within his precinct and
21 is in an area identified for targeted investment using
22 state and federal Colonia funding sources administered by
23 the county. In this instance the county has determined
24 that the area is a Colonia based on their knowledge of
25 installed infrastructure and the prioritization of the

1 expenditure of limited local Colonia funding.

2 "For this foregoing reason, I support the
3 project and I support the award of two underserved area
4 points to the Bella Vista project because based on the
5 agency's definition, I believe it is situated in a
6 Colonia."

7 Thank you.

8 MR. OXER: Great. Any questions from the
9 Board?

10 (No response.)

11 MR. OXER: Thank you very much, Curtis.

12 Michael, do you have another letter to read in?
13 We'll get that taken care of on behalf of the legislators
14 at this point.

15 MR. LYTTLE: Yes, sir.

16 Curtis, would your county commissioner like to
17 speak now on the issue that you referenced? And then I
18 can read this letter, if that's okay, Mr. Chairman.
19 Curtis had a county commissioner with him that wanted to
20 talk on the issue.

21 SPEAKER FROM THE AUDIENCE: Chairman and Board,
22 I'll reserve my comments when the item is brought up, if
23 that's okay with the Board.

24 MR. OXER: That's fine with me.

25 MR. LYTTLE: Okay. I'll go ahead and read the

1 other letter that we received, and this is from State
2 Representative Sergio Muñoz, Jr., addressed to the Board
3 on item 15005, Las Palmas on Anaya Apartments in Hidalgo.

4 "Dear Board Members, I am writing regarding a
5 decision by the staff of the Texas Department of Housing
6 and Community Affairs during the scoring of the 2015
7 9 Percent Low Income Housing Tax Credit application cycle
8 to deny two underserved area points claimed by TGO Housing
9 Anaya for locating Las Palmas on Anaya Apartments in a
10 Colonia.

11 "I represent District 36 in the State House of
12 Representatives and the Las Palmas project site is within
13 the boundaries of my district. Based on my familiarity
14 with the subject neighborhood and review of the relevant
15 documentation in connection with the denial of the points,
16 I believe that it is indeed within a defined Colonia as
17 set forth by 11.9(c)(6)(A) of the 2015 Qualified
18 Allocation Plan. Accordingly, I encourage the TDHCA Board
19 to award the Las Palmas project two points related to
20 underserved area for being located in a Colonia.

21 "First, it is my understanding that none of the
22 applications claiming underserved area points based on
23 location within a Colonia during the 2015 9 percent
24 application cycle have been awarded such points. As a
25 policy matter, this is deeply conceding. Section 2306.127

1 of the Texas Government Code instructs TDHCA to give
2 priority through its housing program scoring criteria to
3 communities that are located wholly or partly in (1) a
4 federally designated urban enterprise community, (2) an
5 urban enhanced enterprise community, or (3) an
6 economically distressed area or Colonia. By denying the
7 underserved area points to all applicants that claimed
8 such points for having sites located in a Colonia, TDHCA
9 is failing to meet Section 2306.127's directive to
10 prioritize such areas.

11 "Specifically with respect to the applicant,
12 agency staff cited three reasons for its decision that the
13 project site was not within a Colonia and the resulting
14 denial of the points. One, the lack of an apparent
15 inability in the neighborhood to access basic utilities;
16 two, the appearance that the neighborhood is well
17 developed commercially and residentially; and three, the
18 neighborhood's relatively high median household income and
19 low poverty rate. While these factors are persuasive,
20 they are not dispositive as to whether a neighborhood is
21 considered a Colonia.

22 "Additionally, as it relates to the Colonia in
23 which the Las Palmas project is located, basic utilities
24 are not universally available. Further, Eddie Cantu,
25 Hidalgo County commission for Precinct 2, who is

1 responsible for the area surrounding and including the Las
2 Palmas project site, and perhaps the elected official most
3 intimately familiar with such area, submitted a letter in
4 support of the Las Palmas project. The commissioner
5 described certain characteristics in the neighborhood in
6 which the Las Palmas project site is located that Hidalgo
7 County is spending Colonia designated funds to improve.
8 He commented that the neighborhood lacks some of the basic
9 utility infrastructure and drainage improvements commonly
10 seen in an urban area. He further stated that: Precinct 2
11 is focused on improving critical services in these
12 Colonias and has several initiatives underway in targeted
13 parts of my precinct, including your neighborhood.

14 "Commissioner Cantu has demonstrated two
15 elements that define a Colonia based on your rules. His
16 letter recognizes a geographic area and characteristics of
17 a Colonia based on the county's expenditure of Colonia
18 reserved funds and projects intended to improve the
19 conditions of those living in the subject neighborhood.

20 "Moreover, it is not just Commissioner Cantu
21 who deems the Las Palmas project neighborhood to be in a
22 Colonia. It seems that both the State of Texas and TDHCA
23 do as well. According to Commissioner Cantu, the Las
24 Palmas project site is located in a census tract eligible
25 under the 2014-2015 Texas Bootstrap Loan Program. This

1 loan program is administered by TDHCA and requires agency
2 staff to set aside two-thirds of the loan program funds
3 for building or rehabilitating homes in the most
4 underserved Colonia communities in Hidalgo County.

5 "According to TDHCA's website, the program is
6 only available to one of two types of groups: Colonia
7 self-help centers and certified nonprofit owner-builder
8 housing providers. And in the Las Palmas project's
9 neighborhood, the loan program is facilitated by the
10 Hidalgo County Colonia self-help center. I am not sure
11 that I understand how a site can be located in a
12 neighborhood that has recognized Colonia characteristics
13 that qualify it to receive loan proceeds administered by
14 TDHCA but does not meet the requirements of the QAP in
15 order to qualify for underserved area points for being
16 located in a Colonia. I urge the Board to rectify this
17 discrepancy.

18 "For the foregoing reasons, and in recognition
19 of the statutory directive of Section 2306.127 of the
20 Government Code, I support the award of two underserved
21 area points to the Las Palmas on Anaya Apartments because
22 it is situated in a Colonia.

23 "Very respectfully, State Representative Sergio
24 Muñoz, Jr."

25 MR. OXER: Thanks, Michael.

1 With that, I think we'll get into the action
2 items. Homero, I think you're up first.

3 MR. CABELLO: Good morning.

4 MR. OXER: Good morning.

5 MR. CABELLO: I'm Homero Cabello, the director
6 of Single Family Operations and Services. I must also say
7 that my intent was to be at the agency for two years and
8 here I am 22 years later still at the agency.

9 MR. OXER: Pretty sticky place.

10 MR. CABELLO: We are seeking authority for the
11 director of Single Family Operations and Services to deal
12 with delinquent loans foreclosed properties. We have a
13 portfolio of first and junior lien single family
14 residential loans of approximately 18,000 loans, of which
15 just under 3,000 are amortizing loans, and these are loans
16 to very low income borrowers that don't qualify through
17 the traditional lending markets, so these are a hard to
18 serve population. And the remaining 15,000 loans are
19 homebuyer assistance which are single pay and we really
20 don't deal with delinquencies on those.

21 But despite diligent efforts to work with these
22 families, we have foreclosed on some properties. We
23 currently own 15 properties that we would like to have the
24 authorization to secure, manage, maintain and dispose. So
25 we are seeking authorization to take the necessary action

1 to cure delinquencies which may include written repayment
2 plans, loan modifications, assignments, transfers, sales
3 of defaulted loans to nonprofit organizations or units of
4 local government. In addition, we are seeking authority
5 to take the necessary action to secure, maintain, dispose
6 of single family properties and single family lots that
7 have been acquired through foreclosure.

8 MR. OXER: These properties, are they occupied?

9 MR. CABELLO: The delinquent loans, yes.

10 MR. OXER: The delinquent loans would be, of
11 course. The ones that we're going to foreclose?

12 MR. CABELLO: We have four properties that are
13 occupied right now.

14 MR. OXER: Four that are occupied?

15 MR. CABELLO: And we've got to take action on
16 those properties.

17 MR. OXER: What's our typical process that we
18 do, or is each one of them sufficiently unique?

19 MR. CABELLO: They're unique. I mean,
20 obviously, the mission of the agency is to provide
21 affordable housing. These borrowers obtained a loan, they
22 didn't fulfill their obligations. The Department takes
23 extraordinary steps to try to work with the families on a
24 repayment plan, but when they're not acting in good faith
25 or not fulfilling their obligations, the last resort is

1 for the Department to foreclose. Once we foreclose, the
2 next step is to evict and then take possession of the
3 properties.

4 The other properties, we have four that are
5 vacant lots and then the remainder are houses. We have
6 secured them, changed the locks, we maintain them, and so
7 we're trying to figure out a course of action on how to
8 dispose of those properties.

9 MR. OXER: When were most of these -- when was
10 the loan made on these? How long have they been in
11 default and how long before that had they been in place?
12 Are they two years old and they missed it for a year, are
13 they ten years and they missed it for two years? What's
14 the general story here?

15 MR. CABELLO: We have delinquent loans that are
16 anywhere from 30 days -- we mainly focus on delinquent
17 loans from 120 days forward. We have some that are
18 delinquent up to seven years, and so we are trying to get
19 control of that portfolio and deal with these delinquent
20 borrowers.

21 MR. OXER: Seven years delinquency seems we
22 need to deal with that.

23 MR. CABELLO: We need to deal with it for
24 various reasons. One, they're not fulfilling their
25 obligation under the mortgage, we're paying for the taxes,

1 and then we're also putting insurance on the properties.

2 MR. OXER: Which puts us at risk in terms of
3 the management of the property.

4 MR. CABELLO: To protect our investment.

5 They're difficult decisions but once we feel
6 that we've done everything that we could to try to make
7 them successful.

8 MR. OXER: We've had a few difficult decisions
9 here in the last couple of years, if you'll recall.

10 Any questions of the Board?

11 MR. GOODWIN: Do I understand you correctly,
12 did you say we have 18,000 total loans and only 15 owned
13 properties?

14 MR. CABELLO: We have 18,000, but let me just
15 clarify, about 15,000 are homebuyer assistance loans which
16 is down payment, closing cost. A lot of those are in
17 partnership with our bond program. And then some of
18 those, like from our HOME program or our NSP program which
19 are not due and payable until sale or refinance. So we
20 have approximately 3,000 loans that are amortizing, and of
21 those 3,000 we have 15 that we've foreclosed on. Loans
22 that are over 120 days delinquent, we have about 125 out
23 of 3,000.

24 MR. GOODWIN: And I thought we were in the
25 housing business. How did we end up with lots? You

1 mentioned we had three lots.

2 MR. CABELLO: One of the programs that we've
3 done in years past was a contract for deed conversion.
4 When you foreclose, they move the manufactured home off.

5 MR. IRVINE: And I would like to say that one
6 of the things that we've tasked Homero with is developing
7 some policy-based approaches to bring back to the Board
8 for appropriate consideration so that we can deal
9 effectively with larger bodies of properties and
10 households on a fair and uniform basis.

11 Really, the fact that someone has not been
12 successful in homeownership does not alter the fact that
13 they still need safe, decent, affordable housing, and
14 we're looking at creative solutions, such as working with
15 local partners, to create appropriate rental structures
16 and things like that. But we want to get away from the
17 situation where the Department is, in effect, subsidizing
18 taxes and insurance and non-repayment.

19 MR. CABELLO: Correct.

20 MR. OXER: So the 125 out of 3,000 is about 4
21 percent, more or less, that we have that are delinquent
22 120 days, you said, and the 15 out of 3,000 is about a
23 half a percent, more or less. How does that fit within
24 the industry standard, Mr. Goodwin?

25 MR. GOODWIN: Very normal.

1 MR. OXER: So we're doing a better than average
2 job and what we're doing is trying to elevate our state of
3 play. Is that right, Homero?

4 MR. CABELLO: We want to keep loans from being
5 delinquent past 120 days, that's the ultimate goal.

6 MR. OXER: All right.

7 MR. IRVINE: We also want to explore the
8 possibility of more of a private sector model of recycling
9 loan proceeds through disposition and acquiring cash that
10 we can put out into new loan activity.

11 MR. CABELLO: I will say that in this new role
12 overseeing loan servicing, it makes you think about the
13 origination side. For example, if loans are going bad,
14 what do we do on the front-end to tighten up our
15 underwriting standards to make sure that these loans
16 aren't going bad on the back-end. Because we own those
17 loans for 30 years and so if they're going bad within the
18 first five years, we need to tighten up our underwriting
19 on the front-end.

20 MR. OXER: It's a classic pipeline problem
21 model where the issue with staff can usually be traced
22 back to something you missed in the initial interview.
23 That's going to be part of this effort that you have
24 underway?

25 MR. CABELLO: Correct.

1 DR. MUÑOZ: Homero, the only thing I'm just
2 going to mention is I guess as you look at maybe the
3 front-end underwriting, I don't know if it's one or 15 of
4 these particular loans that are seven years in, but that
5 can't be tolerated. It could be one, it could be ten, it
6 could be seven, I don't know, but that's just too long.
7 So when you come back with this policy, we can't be in a
8 situation where we're exposed. That's not 120 days,
9 that's not 365 days, that's a lot of days. I mean, we
10 should probably realize after, I don't know, year four and
11 a half that there's a chance that, you know, payment is
12 not forthcoming. So whatever you look at, there's got to
13 be a better way to more quickly identify that we will have
14 to disabuse ourselves of that situation.

15 MR. CABELLO: The ultimate goal, hopefully a
16 year from now, we won't have any over 120 days delinquent,
17 we would have addressed them. What we're seeing is a lot
18 of the old, like for example, the old Bootstrap, the self-
19 help construction. Back several years ago we were told
20 that families provide sweat, tears and blood in building
21 their own home and it's highly unlikely that they would
22 default on their loans. Well, that wasn't necessarily the
23 case. So we had to add underwriting criteria, pay off
24 collection accounts, couldn't be late on payments within
25 the last 12 months and things of that nature, because

1 those loans were going bad. So we've tightened up but we
2 probably need to tighten up a little bit more to ensure
3 that we're making good strong loans.

4 MR. OXER: I think I can speak for the rest of
5 the members of the Board, even for those that aren't here,
6 to say that even with the ones we tightened up, we wind up
7 where they're no longer in the home, but we always want to
8 make sure that they do have safe, decent and affordable
9 housing available. It is, the best I can characterize it,
10 just a consequence of the context that we're in that
11 owning a home is difficult for some people and is not for
12 everybody, but everybody deserves a shot at it. So once
13 they get the shot, then there are rules, everybody here
14 has rules. We have expectations of ourselves, we have
15 expectations of the development community out here in
16 terms of meeting the rules, and so the homeownership
17 program can't be any different.

18 Okay. Are there any other questions of the
19 Board?

20 (No response.)

21 MR. OXER: Okay. I'll entertain a motion to
22 consider.

23 MR. GOODWIN: So moved.

24 MR. GANN: Second.

25 MR. OXER: Motion by Mr. Goodwin to approve

1 staff recommendation on item 3, second by Mr. Gann.

2 There's no public comment. Those in favor?

3 (A chorus of ayes.)

4 MR. OXER: And opposed?

5 (No response.)

6 MR. OXER: There are none. It's unanimous.

7 MR. CABELLO: Thank you.

8 MR. OXER: Okay. Michael.

9 MR. DeYOUNG: Good morning. Michael DeYoung,
10 Community Affairs Division director.

11 Mr. Chairman and members of the Board, item
12 4(a) is the presentation of the Low Income Home Energy
13 Assistance Program state plan, commonly referred to as
14 LIHEAP. We'll submit that to HHS at the end of the
15 summer.

16 The recommended action allows staff to publish
17 in the Texas Register and seek public comment, and during
18 that comment period we'll also host a public hearing for
19 the LIHEAP state plan. At the conclusion of that comment
20 period, we'll make any necessary modifications to the
21 plan, and then come back to the Board for approval for
22 submission. We'll also come back with the awards at that
23 time, and those awards will go to what we anticipate is 41
24 utility assistance providers across the State of Texas,
25 many of them are community action agencies which you've

1 heard the names before. And then also in the LIHEAP side
2 we also have the Weatherization Assistance Program and
3 that's 24 subrecipients across the state that provide
4 those services.

5 LIHEAP represents an annual award of about \$130
6 million to TDHCA -- it's a very large, significant
7 program -- and this plan will continue the allocation of
8 15 percent for weatherization, which we are allowed to do,
9 and then 75 percent of the funding for utility assistance,
10 and then 10 percent for the administration of the program,
11 and we split that with our subrecipients, 6 percent goes
12 to our subrecipients and 4 percent is retained by the
13 state to administer the program across the state.

14 It's an annual award and staff is asking your
15 approval to go out for public comment.

16 MR. OXER: Is there anything unusual about this
17 one, Michael, or this is business as usual?

18 MR. DeYOUNG: The LIHEAP plan, actually there's
19 a model state plan, it's a fairly simple plan the way
20 they've laid it out. LIHEAP gives you broad latitude as a
21 state to design the programs the way the state desires to
22 be most effective to our clients. This one is relatively
23 unchanged.

24 MR. OXER: Okay. And just to clarify for the
25 edification of those that are new here, how long have we

1 had a LIHEAP program in place?

2 MR. DeYOUNG: Oh, LIHEAP, I think started in
3 1984.

4 MR. OXER: 19-a long time ago?

5 MR. DeYOUNG: Yes, 19-a long time ago.

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

7 (No response.)

8 MR. OXER: Okay. Motion to consider?

9 MR. GANN: I'll move staff's recommendation.

10 MR. OXER: Motion by Mr. Gann to approve staff
11 recommendation on item 4(a). Do I hear a second?

12 MR. GOODWIN: Second.

13 MR. OXER: Second by Mr. Goodwin. No public
14 comment. Those in favor?

15 (A chorus of ayes.)

16 MR. OXER: Those opposed?

17 (No response.)

18 MR. OXER: There are none. It's unanimous.

19 Okay. 4(b), Michael.

20 MR. DeYOUNG: Item 4(b) is the presentation of
21 the CSBG plan. CSBG is the Community Services Block
22 Grant. The state plan is also submitted to HHS at about
23 the same time.

24 The recommended action allows staff to again go
25 out for public comment. We publish in the Texas Register,

1 seek that comment, and during that same period we will
2 host a public hearing. The CSBG plan requires four public
3 hearings, we'll move them around the state to try and get
4 a good broad array of comment. At the conclusion of that
5 comment period we'll make any necessary modifications,
6 we'll come back to this Board in one of the July Board
7 meetings and also bring the awards at the same time, and
8 that will be the recommended awards for, at this point, 42
9 recipients of the awards, most of them are eligible
10 entities under the Community Services Block Grant. This
11 represents an award of about \$32 million annually when we
12 come back to the award, so we can anticipate that that
13 will be level funding for program year 2016.

14 This plan highlights the steps taken to prepare
15 the Department for the continued implementation of ROMA.
16 ROMA is Results Oriented Management and Accountability.
17 It's a tool that subrecipients use to analyze their
18 effectiveness in delivering services to low income
19 households. It helps them track performance, how have
20 they been doing, are they addressing the issues that are
21 present in their community. It's meant to give feedback
22 to both the board and the executive team at the local
23 level.

24 And then this plan also goes into what is a new
25 standard that's been developing over the years called the

1 organizational standards. Mr. Ozer, you attended a
2 session at the TACAA conference about the organizational
3 standards and how they will apply to our Subrecipients.
4 The organizational standards are meant to be a baseline
5 for all recipients of CSBG funding to say at minimum you
6 will meet these standards. We have been working with the
7 Texas Association of Community Action Agencies -- I think
8 Stella Rodriguez is here in the audience -- we've been
9 working together. We have identified trainers all across
10 the state, and we are implementing from the state side
11 some additional standards that we are going to work for
12 the next year to get all agencies across the finish line.

13 We need to have all this implemented
14 approximately a year and a half from now. We'll be
15 working with the subrecipients on an individual basis. If
16 they have areas where they don't meet the standard, we'll
17 either go out and do a training at their location or we'll
18 regionally address the issue and get everybody, hopefully,
19 across the finish line.

20 Staff is ready to go out for public comment and
21 we'll come back to you probably, again, at one of the July
22 meetings with any changes, and you'll see this item again
23 before we submit it. We get Mr. Irvine's signature and it
24 goes to the Federal Government before September 1.

25 MR. OXER: Do these things typically invite or

1 attract much public comment, or does everybody see what's
2 going on? With the newly escalated standards, the bar
3 seems like it's going up, which is good because we're all
4 going to have to work to a higher standard on all these
5 programs. Do you anticipate attracting a lot of comment?

6 MR. DeYOUNG: I don't anticipate a lot of
7 comment. The standards have been fairly widely discussed
8 throughout the network and across the nation. There's
9 been a lot of discussion, a lot of public input into the
10 standards before they were ever released. The department
11 that's in charge of all this is the U.S. Department of
12 Health and Human Services, specifically the Administration
13 for Children and Families. It's a wing that is dealing
14 with low income issues and deals with the LIHEAP as well
15 as the CSBG, and has an ear for what is a good process to
16 gain public comment prior to the implementation of these
17 issues. So I think if you would ask most of our
18 subrecipients, they would say we understand these
19 organizational standards.

20 We're working now to identify where those gaps
21 are and we've had little to no pushback. These standards
22 are fair. They're pretty widely regarded as if everybody
23 does this, we will at least have a baseline. As those
24 standards get modified throughout the years, we may invite
25 more comment, but I think it's fairly clear now to the

1 subrecipient agencies. They've looked at this, we've
2 looked at it, and as an agency the Department is not
3 adding to these organizational standards at this time.
4 This is merely taking what the Federal Government has
5 passed down to the states and we are saying this is the
6 standard, let's analyze everybody on this standard.

7 MR. OXER: So consistent with good management,
8 you don't get much pushback as long as you've had a lot of
9 good communication early on.

10 MR. DeYOUNG: Yes. And we've been working with
11 our partners, especially Ms. Rodriguez at TACAA, to work
12 with our subrecipients and those agencies who maybe aren't
13 members to say: Look, let's identify these issues up
14 front, we've got time to address this over the next 18
15 months, but let's jump on it early, let's make sure we can
16 actually test it and know before the formal date that it
17 takes effect that across the board 42 agencies have all
18 met the standards.

19 MR. OXER: You've got enough time?

20 MR. DeYOUNG: Yes.

21 MR. OXER: You've got enough staff?

22 MR. DeYOUNG: Absolutely.

23 MR. OXER: You've got enough tractor?

24 MR. DeYOUNG: I have enough tractor and
25 enough --

1 MR. OXER: Horsepower.

2 MR. DeYOUNG: Horsepower.

3 MR. OXER: That's the way you put it down,
4 check the box.

5 All right. No public comment. Any question?

6 (No response.)

7 MR. OXER: Motion to consider 4(b)?

8 DR. MUÑOZ: So moved.

9 MR. OXER: Motion by Dr. Muñoz to approve staff
10 recommendation on item 4(b). Do I hear a second?

11 MR. GOODWIN: Second.

12 MR. OXER: Second by Mr. Goodwin. No public
13 comment. Those in favor?

14 (A chorus of ayes.)

15 MR. OXER: Those opposed?

16 (No response.)

17 MR. OXER: And there are none. It's unanimous.

18 MR. DeYOUNG: Thank you.

19 MR. OXER: Okay. Into the big circus here,
20 Jean.

21 MR. IRVINE: As Jean comes up and prepares to
22 take the microphone, I'd just like to give you a little
23 bit of context and understanding of the process that we
24 bring to bear on every appeal, every waiver, every
25 challenge, pretty much everything that relates to the

1 Multifamily programs.

2 These are very complex rules, they're complex
3 in their number and they're sometimes complex in the way
4 that they interact with each other, but we've really
5 worked hard over the last few years to make them
6 straightforward at the level of each component piece.
7 We've worked through drafting and redrafting and refining
8 provisions, we've worked to educate the development
9 community in workshops and so forth. Then when we
10 identify an appeal or a challenge or a waiver or anything
11 that's out of the ordinary, a lot of things go into
12 action.

13 Certainly, the Multifamily staff digs in and
14 looks through them in depth, they visit with their
15 lawyers, they visit with me, they visit with others around
16 the agency, especially Tom and the folks in REA who have
17 got a lot of experience with multifamily activities. They
18 go out and make sure that they've got all of the necessary
19 information. They go out and perform site visits,
20 sometimes multiple visits to single sites. They have a
21 back-and-forth with applicants trying to obtain additional
22 information as necessary. They really try to build a very
23 complete record, and then these records go through
24 literally days of scrubbing, vetting and so forth that
25 ultimately reflects itself in things like letters from me,

1 letters from staff, and sometimes even Board action items.

2 The Board action items that you see have all
3 been around the table in which every single member of our
4 executive team has sat there, each with their own uniquely
5 colored pen, and make comment. We've had a lot of hands-
6 on input into every single one of these items, and I would
7 say that the typical appeal/challenge/waiver/variance,
8 whatever you want to call it, whatever is at hand,
9 probably reflects a week or more of total staff time
10 that's been put into that individual item.

11 So these are not things that are just slapped
12 off willy-nilly, there's a huge effort to make sure that
13 we get the right result, something that is consistent with
14 the rule as we drafted it and as we put it out. So enough
15 said.

16 MR. OXER: Good morning.

17 MS. LATSHA: Good morning. Jean Latsha,
18 director of Multifamily Finance. He's making my job sound
19 as difficult as it sometimes is.

20 (General laughter.)

21 MR. OXER: Well, as they say, grab a stick and
22 get in the fight.

23 MS. LATSHA: I have to admit I was thinking
24 this morning I was thankful for my kids, and the reason
25 being is that I think I woke up four times last night in a

1 panic that I was late for this meeting or about how my
2 presentation would go, and luckily I have two small kids
3 so I'm really used to functioning on no sleep, which is
4 what I'm doing now. But I think that's just piggybacking
5 on what Tim is saying, and I think that the development
6 community knows that too, that there is a lot of thought
7 that goes into all of this. So with that said --

8 MR. OXER: Hold on just for a second, Jean. A
9 housekeeping item here. Peggy can we get the volume
10 turned up here on this just a touch? I want to be able to
11 hear you more clearly. Please continue.

12 MS. LATSHA: Sure. With that said, item 5(a)
13 is our first probably difficult decision for the Board
14 today. We received a bond pre-application for Gateway on
15 Clarendon, and so they are seeking an inducement
16 resolution so they can proceed with a development that's
17 financed with tax-exempt bonds, our bonds, and 4 percent
18 housing tax credits.

19 So the rules call for applicants to disclose
20 information about a site if it has certain undesirable
21 neighborhood characteristics. This is in Subchapter B of
22 the rules. This particular site was required to make such
23 a disclosure because it is located in a census tract that
24 has a very high poverty rate, and as well, according to at
25 least one source, very high crime rate.

1 Some things to point out in the writeup,
2 Neighborhood Scout -- that's one of the crime statistics
3 that we do use -- indicated a little over 39 violent
4 crimes per thousand people annually. Just to give some
5 perspective on this, this is a census tract that's
6 relatively small for census tracts, it has about 1,100
7 people in it, so that translates into 34 violent crimes
8 per year, about three a month just in this census tract.
9 This tract has a median family income of only 13,558, and
10 a poverty index of 58.4 percent poverty rate. There is an
11 environmental factor there as well that part of the site
12 is located in a 100-year flood plain, although none of the
13 buildings would be located in that flood plain.

14 Some other things that aren't necessarily part
15 of the rule but are relevant to staff's assessment of the
16 site, the middle and high school ratings indicate that
17 improvement is required for both of those schools that the
18 students in this development would attend. The elementary
19 school has an index rating of 66, where the state average
20 is 77.

21 This is one of those applications where we did
22 do actually two site visits. One didn't give us a great
23 feeling about that site, we came back, we reviewed some
24 information, and then went back out again to make sure
25 that that assessment was correct. And there's pictures in

1 your Board book that were taken on that second site visit
2 of what I would consider blight in the area.

3 So obviously, when we take all of these things
4 together, we have a lot of concerns about this site, so we
5 did reach out to the applicant several times after doing a
6 lot of due diligence, the site visits plus a lot of
7 demographic research, and asked the applicant basically to
8 paint a different picture for us.

9 At least some of the Board members here I know
10 might remember some of the other sites in previous cycles
11 that were in similar situations where we needed a lot of
12 input from the applicant and from city officials to
13 explain to us what was happening in some areas because the
14 demographics were not painting the right picture, but then
15 we found out that there was a huge private and public
16 investment going on here, and so we were all able -- at
17 least this Board and all of us were able to get
18 comfortable with those sites because we felt that it was
19 part of a bigger revitalization plan.

20 We still haven't gotten there yet, I think,
21 with the applicant, and I believe some folks from the City
22 of Dallas are here to probably talk about some of the
23 things that are going on there. We to date just haven't
24 received enough information to convince us at the staff
25 level that there was enough of an effort going on there to

1 mitigate all of these negative factors.

2 So staff's recommendation is to find the site
3 ineligible, and therefore, the application is basically
4 terminated.

5 MR. OXER: Any questions from the Board?

6 (No response.)

7 MR. OXER: Hold on a second. So this is in the
8 competitive round this time?

9 MS. LATSHA: No, sir. This is a 4 percent,
10 also with our issuance of tax-exempt bonds as well.

11 MR. OXER: All right. In the event that this
12 is turned down, they'll have an option to come back.

13 MS. LATSHA: I suppose so, yes.

14 MR. OXER: If they wanted to, if they could
15 clarify any or all of this. Just clarifying. Just making
16 sure there's nothing limiting on the 4 percent program
17 because there's plenty of capacity in the 4 percent
18 program at this point. Is that right?

19 MS. LATSHA: That's correct.

20 MR. OXER: All right. Any questions from the
21 Board of Jean?

22 (No response.)

23 MR. OXER: Motion to consider?

24 MR. GOODWIN: So moved.

25 MR. OXER: Motion by Mr. Goodwin to approve

1 staff recommendation on item 5(a).

2 MR. GANN: Second.

3 MR. OXER: Second by Mr. Gann. We have public
4 comment.

5 Claire, you're up. First thing, we're running
6 a hard clock.

7 MS. PALMER: I've got it. My name is Claire
8 Palmer and I represent the applicant, Gateway on
9 Clarendon.

10 In order for this project to reach where we are
11 today, we had to go through a NOFA process with the City
12 of Dallas because for the first time ever the City of
13 Dallas NOFA'd their support and funding for 2015, 4
14 percent and 9 percent applications. It was a grueling
15 process in December and January. Nineteen applicants
16 submitted to the NOFA, we had to be interviewed by a board
17 made up of both private and city officials. Only six
18 projects received support and only four received funding.

19 We received both. That money is \$3 million which makes
20 this 4 percent application work better than anyone I've
21 ever seen because the city is so committed to this
22 project.

23 The development team is made up of a highly
24 respected nonprofit in Dallas named Family Gateway which
25 has a mission to eradicate family homelessness, and

1 Matthews Affordable Income Development which is a highly
2 respected developer in Dallas. Two years have gone into
3 the planning, plans are final, the contractor is selected,
4 and there are firm commitments from the equity provider
5 and the construction lender. Hudson Housing Capital has
6 agreed to price this at a \$1.03 a credit which makes this
7 project not need nearly as much funding as it otherwise
8 would.

9 We are nearly complete with the city HOME
10 funding requirements, including all environmental. A
11 portion for the site is in the flood plain, however,
12 during the most recent flooding when most of the city of
13 Dallas flooded, this site did not experience even any
14 flooding. Even so, when complete, the buildings will be
15 completely above the flood zone, and the portion within
16 the flood zone that remains will be a walking trail.

17 As you can see from your materials, the mayor
18 has provided a personal letter of support to this project.

19 The principal of Townview Magnet School, which is the
20 number one rated high school in the United States and
21 which sits in this census tract, has also provided a
22 letter of support for the project and has explained that a
23 prior elementary school, which used to be open in the
24 census tract and in this school zone will be reopening by
25 the time this project is open and it will be totally

1 available to the children who live in this project and
2 will be run by Townview.

3 Bernadette Mitchell, the director of the Dallas
4 Housing Department, has also provided a letter of support,
5 explaining the four community revitalization initiatives
6 targeting this area, including the mayor's Grow South
7 initiative, the Lancaster TOD TIF which has \$300 million
8 in it to provide revitalization around transportation
9 related projects, and this project is 500 feet from a DART
10 station.

11 The poverty rate is 58, however, we believe
12 it's high because of the public housing project which is
13 located in the census tract and the small census tract.
14 I've provided you with a map that shows that every census
15 tract around us is significantly lower. This one project
16 will totally change that demographic.

17 On the crime issue, I ran the City of Dallas
18 Police Department's crimes within a thousand feet of our
19 site and in the last two years there have been seven
20 burglaries, twelve thefts and three assaults. Those are
21 the only crimes. Neighborhood Scout shows it much higher,
22 however, there's a tax credit project located 500 feet
23 from our project, they share a creek border, we can see it
24 from our site, and Neighborhood Scout shows their crime
25 rate at 10.9 percent. I ran both sites and their crime

1 rates within a thousand feet of each other are almost
2 identical.

3 I find that to be troublesome about the
4 Neighborhood Scout site that it can show my crime rate as
5 39.83 percent and 500 feet away an address has a crime
6 rate of 10.9 percent. I believe the City of Dallas Police
7 reports and beat reports are significantly more accurate
8 than the Neighborhood Scout, taking into consideration the
9 area that is actually being involved in this project. As
10 well, there's a police substation directly across the
11 street, there's a DART rail station 500 feet away with
12 DART police at it. This is a very safe site. People can
13 walk to the DART station which is only two stops from
14 downtown.

15 Finally, if this project does not move forward
16 and begin construction this year -- Jean was talking about
17 can we come back -- that \$300 million of HOME funds that
18 we have from the city could be lost because we must be
19 under construction this year. We're going to start
20 running up against hard deadlines which makes that
21 impossible. That money is not going to go to another
22 project, it will be NOFA'd again in 2016.

23 And finally, Representative Eric Johnson has
24 sent you a letter which was mailed to the Department, and
25 we received an email copy of this morning, where he says:

1 Gateway on Clarendon is an ambitious project that will be
2 a catalyst for neighborhood transition in southern Dallas.

3 The proponents are committed to fostering community
4 revitalization. Nonprofit Gateway serves thousands of
5 homeless families and Matthews Affordable Income
6 Development is an experienced developer. The project is
7 crucial to support Family Gateway's mission to eradicate
8 childhood homelessness.

9 MR. OXER: Hold on, Claire.

10 DR. MUÑOZ: Do we have a copy of what you're
11 reading?

12 MS. PALMER: It has been sent to you.

13 MR. OXER: We don't have it now.

14 MS. PALMER: Tim has it on his email.

15 MR. OXER: That's not part of the record.

16 MS. PALMER: Okay. But we have support from
17 the city, the mayor has sent a personal letter, the
18 housing department has sent a letter.

19 DR. MUÑOZ: Do we have a copy of that personal
20 letter?

21 MS. PALMER: Those are in your book. The
22 Townview Magnet School principal has sent a letter in
23 support of the application, and we have provided proof
24 that there is significant community revitalization
25 activity and funds being committed by the City of Dallas

1 to this specific area. I think all in all --

2 MR. OXER: Wrap it up, Claire.

3 MS. PALMER: Okay -- we have proved that this
4 is an excellent project.

5 MR. OXER: Any questions from the Board?

6 (No response.)

7 MR. OXER: Jean, just as a clarification, I
8 have a question on this. I know we use the Scout program
9 for doing crime statistics. Do we run into occasions
10 where this is occasionally off by the degree that Claire's
11 numbers suggest that it might be? Or have we had any
12 other experience or encounters with that? Because it does
13 seem a little odd that something 500 feet away is four
14 times the crime.

15 MS. LATSHA: I don't know if that seems as odd
16 to me as maybe it seems. It doesn't seem odd to me that
17 you would have a census tract --

18 MR. OXER: For very small numbers that you
19 could have that wild variation in the percentages, of
20 course.

21 MS. LATSHA: Right, and it doesn't seem odd to
22 me that you would have a census tract that has a pretty
23 high crime rate and a pretty high poverty rate next to
24 another one that doesn't. You know, I think, if anything,
25 that would be a motivation to simply move a little bit

1 down the road.

2 MR. OXER: Put it over there.

3 MS. LATSHA: Tim and I were talking about this
4 a bit too, and I think anyone who's walked around any
5 especially large urban area can see how quickly a
6 neighborhood can change, and I think that is what we're
7 seeing here. I think this is where the neighborhood does
8 change, and this site is a little bit too far down the
9 road. It's right at the center of that concentrated
10 poverty and crime is what I'm seeing.

11 MR. OXER: And while it is, taking on its face
12 value the information that Claire provides, there's a lot
13 of redevelopment going on, but there's not a formal
14 redevelopment program that encompasses this site.

15 MS. LATSHA: So the letter that was submitted
16 on June 10 mentions some of these revitalization plans.
17 The plans themselves weren't included in the letter. I do
18 recall the Grow South plan because I reviewed it with
19 respect to another application like three years ago, so I
20 think it has existed and I'm not quite sure for how long.

21 But staff was not given that information in time to
22 review that in conjunction with this site. That's
23 information that was presented in this letter dated June
24 10 that mentions that it's part of those plans, but I
25 haven't seen the plan to see that it actually is

1 addressing the area around this particular site or not.

2 MR. OXER: Okay.

3 MR. IRVINE: I would like to just phrase it in
4 terms that I understand, anyway. Clearly, the site met
5 the tripwire for some disclosure requirements, and the
6 applicant fully complied and disclosed everything. And
7 the purpose of those disclosures is to give you a factual
8 basis for deciding does this particular application meet
9 your policy as enunciated in your adopted rules. I
10 understand that the City of Dallas has had a NOFA and
11 their NOFA presumably has carried out their policy, which
12 may or may not align with this Board's policy, and I think
13 where staff is right now is that we have not got a fully
14 developed record that clearly supports that it conforms to
15 our policy.

16 And I think that where that puts us you could
17 go ahead and adopt the resolution as under discussion, you
18 could defer it and give them an opportunity to expand the
19 record -- and I don't know if that works within their time
20 frame -- or if you believe that there is enough of a
21 record based on what you have heard, and only on the
22 actual record, that supports that this deal comports with
23 your policy, you can approve it. And those are pretty
24 much the choices.

25 MR. OXER: Any thoughts from the Board? I have

1 a though when we get finished with you guys.

2 DR. MUÑOZ: I just want to respond to the ED.
3 Presumably at least the staff believes certainly it
4 doesn't comport to our policy.

5 MR. IRVINE: We believe that we have not been
6 able to put together a record that supports approving it.

7 MR. OXER: Okay. This is a 4 percent deal,
8 there's plenty of money in the 4 percent program. Okay?
9 We're not under a competitive clock, we're under your
10 clock, Claire, and the City of Dallas's clock to get
11 something going on, which is an entirely different
12 exercise. Okay?

13 As you probably can recall, we tend to be
14 pretty sticky about rules around here. There's a purpose
15 of maintaining that rule and maintaining the effort, and
16 some of these beating these questions to dust just to make
17 sure we can maintain the integrity of our rules because
18 that provides a degree of transparency to the rest of the
19 community out there, all of you, know how things are going
20 to operate and you know what our expectations are, and
21 when you meet those you have a high probability of degree
22 of success.

23 So do you have another thought, Jean?

24 MS. LATSHA: Yes. So these particular site
25 visits -- usually I'm the one that does them and I didn't,

1 there were some other staff members that went on these two
2 site visits, and Theresa, I wasn't going to put her on the
3 spot but she offered it up, if you have questions about
4 the site visits and what she saw and possibly the
5 difference in those neighborhoods as well, she could speak
6 to that, but I think that they have some more comment too,
7 but obviously at your discretion, but I just wanted to
8 offer that as some additional information.

9 MR. OXER: In the interest of making sure we
10 get a decision that's fully informed by the facts, as far
11 as we can tell them, at the risk of being presumptuous
12 here, I'm going to offer up, as chairman, it might do us
13 good to defer this one at least till the next meeting, if
14 not until the first meeting in July, to reconsider this,
15 table this one to consider, give you a month to take care
16 of this, meet those deficiencies, come back and then let's
17 talk. That's what I would suggest.

18 So Mr. Goodwin, if you'd care to withdraw your
19 motion, and Mr. Gann, as a second?

20 MR. GOODWIN: I withdraw my motion.

21 MR. GANN: Yes.

22 MR. OXER: Then as chair I would move to table
23 this item.

24 MR. GANN: Second.

25 MR. OXER: And a second by Mr. Gann. Would

1 that satisfy those of you that want to speak? I gave you
2 another 30 days, and since we're not working on a shot
3 clock here for the 9 percent competitive program, it will
4 give you some more time to flesh out what they're looking
5 for. Can you do that?

6 MS. PALMER: Yes.

7 MR. OXER: So you're still welcome to make a
8 comment if you care to. Okay.

9 Motion by the chair, second by Mr. Gann to
10 defer item 5(a) until the second meeting which will be the
11 first meeting in July which will be 30 days from now on
12 July 16? July 16, that's correct. Those in favor?

13 (A chorus of ayes.)

14 MR. OXER: Those opposed?

15 (No response.)

16 MR. OXER: Okay. See you in 30 days.

17 And as a follow-up comment on this, with all
18 the things that are there, it does certainly seem like
19 this would be one that we'd be just generally inclined to
20 support, particularly with the value there and the
21 resources being put forward to it, but we're trying to
22 protect our rule here, Claire, so just remember that
23 that's a key consideration to what we're doing.

24 Okay. Jean, go ahead.

25 MS. LATSHA: All right. Item 5(b), this is an

1 item that's coming back to you. You might recall Royal
2 Gardens at Mineral Wells. This was a 2012 9 percent award
3 that in the middle of construction was basically destroyed
4 by a fire. So there was some discussion a couple of
5 meetings ago about the application of the force majeure
6 provision of the 2015 QAP, and this Board found that the
7 application of that rule was appropriate should the
8 applicant meet all of the requirements of the rule.

9 So Brent and his team in the Real Estate
10 Analysis Division worked with the applicant and concluded
11 that this deal is, in fact, financially feasible, and we
12 found that it met the remaining requirements of the rule,
13 so we're suggesting that the tax credits be awarded to
14 Royal Gardens at Mineral Wells. We will assign it a new
15 application number so that it's clear that these credits
16 are out of the 2015 credit ceiling, and therefore, will
17 have a placed in service deadline at the end of 2017
18 instead of their original character which was a 2012
19 credit award.

20 One thing I would note is that -- and I would
21 note it simply because I don't think it came up in the
22 previous discussions -- was that we are conditioning that
23 the award is made to a partnership structure which
24 includes a 51 percent nonprofit GP owner. Part of the
25 reason they got the award in the first place was that they

1 were in the nonprofit set-aside, so we are stipulating
2 that they remain so.

3 MR. OXER: You can't get out of those
4 characteristics by simply burning the place down. Right?
5 Is that what you're saying?

6 MS. LATSHA: Yes, sir.

7 MR. OXER: I didn't say it was easy, I just
8 said it was simple. Okay?

9 (General laughter.)

10 MS. LATSHA: There were some conditions listed
11 in the underwriting report but I don't think there were
12 any questions or concerns about those from the applicant
13 either, and so obviously, the award is conditioned on
14 those items in the report.

15 I don't know if there's any other comment, but
16 staff would move to award the credits to Royal Gardens at
17 Mineral Wells.

18 MR. OXER: We hope these continue to be rare in
19 the future. Is this a functional precedent for operation
20 for what TDHCA is going to do here in the future? We had
21 a fairly tight little line we had to map through this to
22 get to the point of being able to reconsider this, did we
23 not?

24 MS. LATSHA: We did. You know, I think that
25 any decision made by the Board always has potential for

1 precedent. I think there is an expectation that you're
2 going to have an applicant that's going to appeal some
3 decision at some point and come back and read a transcript
4 and provide that as a reason to get what they want.

5 MR. OXER: Well, we always have the that was
6 then, this is now argument too, you know.

7 MS. LATSHA: But at the same time, this is a
8 very specific situation, this is an entire development
9 that burned down to the ground at 50 percent construction
10 completion, so I think if there was going to be an
11 application of the rule, it would be in a situation like
12 this. Is it possible that we'll find an applicant that
13 claims they had a little bit too much rain and can't meet
14 a placed in service deadline? Yes. But do I think that
15 that could necessarily be compared to what happened to
16 this development? I think it would be pretty easy to
17 distinguish those two.

18 MR. OXER: Well, as we said last -- did you
19 have a comment, Tim?

20 MR. IRVINE: I would just say precedent is not
21 binding. It's interesting, it's illuminating, but
22 ultimately, each deal is your collective wisdom and
23 judgment applied under the rule to the facts at hand.

24 MR. OXER: And I think we discussed this at
25 length that there had been relatively few precedents that

1 informed that decision, so it's one of those times that I
2 think exercising the judgment of the Board in that made
3 sense.

4 Okay. Summarize your position, staff
5 recommends approval.

6 MS. LATSHA: Staff recommends the award of
7 credits in the amount of 697,774 to Royal Gardens at
8 Mineral Wells.

9 MR. OXER: Okay. Motion to consider staff
10 recommendation?

11 DR. MUÑOZ: So moved.

12 MR. OXER: Okay. Motion by Dr. Muñoz. Mr.
13 Gann, would you care to second that?

14 MR. GANN: I will.

15 MR. OXER: Okay. Motion by Dr. Muñoz, second
16 by Mr. Gann to approve staff recommendation.

17 Do you have any comments, Claire? Is this one
18 you're on? For the record, you're getting what you want.
19 Do you really want to talk? You're welcome to come up but
20 you've got three minutes max. Okay?

21 MR. JOOMA: Noor Jooma. I want to thank Brent
22 and his staff for working very hard in trying to navigate
23 these choppy waters. It's the first time something like
24 this has ever happened in TDHCA's history, and in mine
25 also, so I personally wanted to thank him for taking all

1 the time to make this work. Thank you.

2 MR. OXER: Thank you, Mr. Jooma.

3 Any other comment? Claire, do you have
4 anything on this one?

5 (No response.)

6 MR. OXER: All right. Motion by Dr. Muñoz,
7 second by Mr. Gann to approve staff recommendation on item
8 5(b) to award these credits out of the 2015 allocation.
9 There's no more public comment. Those in favor?

10 (A chorus of ayes.)

11 MR. OXER: Those opposed?

12 (No response.)

13 MR. OXER: There are none. It's unanimous.

14 Okay. We're at the point of having to get in
15 the big circle here for the circus, so as the chair I'm
16 going to take a quick break. It is now 10:17. Let's be
17 back in our seats at 10:30 even.

18 (Whereupon, at 10:17, a brief recess was
19 taken.)

20 MR. OXER: Let's get back to order, let's get
21 to work. Okay, Jean.

22 MS. LATSHA: Jean Latsha, director of
23 Multifamily Finance.

24 So item 5(c). This is an appeal of scoring
25 notices. It's separate from the rest of the appeals

1 because the seven applications that you see listed there
2 are all in a very similar circumstance. What happened
3 was, and just to give you a little history of why it was
4 treated differently, staff looked at the application log
5 when we first posted it and saw that ten applications
6 Urban Region 11 were tied for the same number of points.
7 So we took a look at all of those and saw that a number of
8 them had claimed points for being in a Colonia and decided
9 to address that particular scoring issue so that we could
10 basically move forward with a review process that made
11 sense. You know, we don't review every single application
12 on the application log, we review those that appear to be
13 competitive, so we needed to flesh out who was really
14 competitive here and who wasn't.

15 So the first thing we did was go down and
16 conduct some site visits, and this was very much to just
17 get a feel for did we think when we went to see these
18 sites that they were in a Colonia. And I'm going to back
19 up but I'm going to keep probably going back to this
20 point, the reason we wanted to do that too was we also
21 realized that the reason all of these folks were tied is
22 that every single one of these applications also claimed
23 points for being in a high opportunity area. So in order
24 to get points for being in a high opportunity area,
25 particularly in an urban area, you have to be in a census

1 tract that has a high income, low poverty rate and in an
2 attendance zone of quality schools.

3 MR. OXER: Isn't the high opportunity Colonia
4 sort of an oxymoron?

5 MS. LATSHA: Precisely, which is why we went
6 down to visit the sites. The criteria for being in a
7 Colonia is that you have a relatively low income
8 population. It's not as clearly defined as our first and
9 second quartile and poverty index that we use on the
10 opportunity index, but a relatively low income population,
11 and also no access to utilities. So the other thing that
12 we observed about all of these sites is that they're all
13 located within the boundaries of a municipality.

14 Yes, sir?

15 DR. MUÑOZ: Jean, is that our definition, the
16 state's definition, whose definition of those two
17 characteristics?

18 MS. LATSHA: Partially it's statutory. We
19 added some clarifying language to it to basically have the
20 applicants have a better understanding of what may or may
21 not qualify for points, but it's based wholly in statute.

22 And I can read it really quickly. One of the aspects is
23 that the area has a majority population that is low income
24 or very low income and meets the qualifications of an
25 economically distressed area under the Texas Water Code,

1 or that the area has the physical and economic
2 characteristics of a Colonia.

3 Now, all of these applicants are claiming that
4 or, that they have the physical and economic
5 characteristics of a Colonia, because they don't have the
6 demographics to support the other part of that definition.

7 So what happened was, I think -- and all of
8 these have unique circumstances around them but the
9 portion of the definition that we added was to say when
10 you're looking at a geographic area, we don't think that
11 that geographic area should be more than about two square
12 miles, so identify your geographic area and then show us
13 how it is that that area has the physical and economic
14 characteristics of a Colonia.

15 We did not say, and in fact, I went back to our
16 rulemaking and in our reasoned response we particularly
17 did not respond to comment that suggested that just
18 proximity to a Colonia should qualify an applicant for
19 points, we specifically actually said we don't think that
20 simply close to a Colonia should qualify an application
21 for points.

22 MR. OXER: Then there's what the definition of
23 "is" is or what the definition of "close" is.

24 MS. LATSHA: Well, I think that in the comments
25 to the rules there were folks that suggested that if you

1 are within a mile or X number of feet of a Colonia that
2 you should be eligible for the points, and staff's
3 response was no, we don't think that that's appropriate,
4 instead we think it's more appropriate to fine that
5 geographic area and tell me that that geographic area has
6 the physical and economic characteristics of a Colonia.

7 DR. MUÑOZ: Let me interrupt you. In your
8 summary when you say at length, that you discussed at
9 length with the development community this specific point,
10 like what do you mean at length. Because like if you
11 exhausted this point, then why are visiting this point?

12 MS. LATSHA: Well, I think we're visiting
13 because these folks all want their applications to be
14 competitive. They all know that their competitors were
15 going to claim those points, there's no point in not
16 claiming them, you can't have them at all if you don't
17 claim them, so you might as well give it a shot.

18 MR. OXER: We're not going to give them to you
19 unless you ask for them. Right?

20 MS. LATSHA: Right. I mean, quite frankly,
21 even after all of those discussions, had I been an
22 applicant, I might have done the same thing, you know.
23 These are all directly competing with each other, so it's
24 one thing to keep in mind too, all of these folks it's in
25 their best interest that you only find that their

1 application is eligible for these two points and that
2 nobody else is -- even though I find that they're all in
3 very similar situations. So they were hoping that maybe
4 we would grant the points for maybe just theirs, maybe all
5 of them and they go to a tie-break, but you certainly
6 can't get them if you don't give it a shot.

7 So what happened here was that applicants chose
8 sites that were in high opportunity areas and in areas
9 that also, by the way, gave them educational excellence
10 points, so they're in quality schools across the board,
11 elementary, middle school, high school, so they all got
12 the seven points, plus the three points over here for
13 being high opportunity areas and having educational
14 excellence. And then what happened was, for the most
15 part, is that they reached out and grabbed a Colonia that
16 was over here. My site is here, I'm going to reach out
17 and grab this Colonia and call this my geographic area,
18 and now I'm eligible for Colonia points as well. The
19 demographics of the census tract simply just don't support
20 that concept.

21 DR. MUÑOZ: Okay. What is the spirit, what is
22 the goal of the agency in awarding points for Colonias?

23 MS. LATSHA: So without speaking to legislative
24 intent or anything like that -- and this I put in my
25 writeup too -- we put this scoring item under what we call

1 the underserved area scoring item. There are a number of
2 ways to get those two points: one is being in a Colonia,
3 one is being in an economically distressed area, one is
4 being in a census tract with no other tax credit
5 developments. What staff felt the spirit of this was a
6 truly difficult to develop area that you wouldn't go to
7 develop otherwise unless you simply wanted those two
8 Colonia points, quite frankly.

9 There isn't a whole lot of other reason that
10 you would try to develop a site that didn't have access to
11 utilities. I mean, anybody in the real estate world, why
12 would you choose that site when you've got one over here
13 where you've got a waterline and sewer line at the
14 perimeter of your site, why would you do that? The only
15 reason that you would do that is because you wanted to
16 access these points, I suppose, or you really wanted to
17 serve the people that were maybe right over there and
18 wanted to develop that land and bring that piece of land
19 from something that is difficult to develop to something
20 that is not so difficult to develop. But it's a truly
21 underserved area and for that reason very, very difficult
22 to develop here. These sites not difficult to develop.

23 MR. OXER: So for the most part, the sites that
24 we're talking about have at least some services
25 preexisting.

1 DR. MUÑOZ: And/or significant services, and/or
2 high opportunity.

3 MS. LATSHA: Yes. And to go back to that
4 discussion that you were talking about, I used this
5 example in the application workshops when people were
6 asking about what staff was looking for. We weren't sure
7 exactly what we were looking for but we knew kind of what
8 we weren't looking for. And so I used this example in
9 Dallas and Austin and Houston, and I said, So if you have
10 a Colonia over here and your site is over here and there's
11 a Walmart right here, you're unlikely to get points.

12 So we have some sites that have precisely that
13 situation, actually several of them do. We have sites
14 that are located near regional medical centers, near a
15 Super Walmart, near a big Sam's Club, a McDonald's, have
16 good schools. These are not the kinds of sites that you
17 would, common sense wise, say that's in a Colonia. So we
18 are in a position where these two concepts are really,
19 really difficult to reconcile.

20 So that being said, I was asked the question
21 can you qualify for both. Right? Is there a magic site
22 out there that would qualify for both? And the rules
23 didn't preclude applicants from claiming points for both.

24 So for example, with community revitalization, if you
25 claim to be in a high opportunity area you can't even

1 claim those points. We didn't put that stipulation on
2 here partly because there are other ways to get those
3 points, so you might be in a high opportunity area and,
4 for instance, be in a census tract with no other tax
5 credit developments and be able to get those seven points
6 plus these two. Right? But the concepts of being in a
7 Colonia and in a high opportunity area, like I said, I
8 think pretty difficult to reconcile.

9 MR. OXER: I have a question. All of these
10 projects, all of these applications, they're competing
11 with each other. What other competition are they up
12 against?

13 MS. LATSHA: So I believe there are three other
14 applications in the region that were initially tied for
15 this same score. Two of them actually were awarded points
16 under this scoring category. They claimed them, I think
17 they partially thought that they qualified for the points
18 by being in a Colonia as well, but they qualified for
19 those points by being in --

20 MR. OXER: An underserved area of some variety.

21 MS. LATSHA: I don't think it was a census
22 tract without, I think it was because they were outside of
23 a municipality.

24 MR. OXER: ETJ?

25 MS. LATSHA: That's right, because they were in

1 a CDP and not in a municipality, and that CDP did not have
2 any other existing tax credit developments, so they
3 qualified for the points. And there is another one that
4 has claimed points for being in an economically distressed
5 area as well as a Colonia, but we haven't finished our
6 review of that application yet, so a slightly different
7 situation because they're claiming the points in a
8 different manner.

9 There was also an application in El Paso this
10 year but it wasn't competitive. I know that they claimed
11 Colonia points but we didn't review it since it wasn't
12 competitive at all.

13 MR. OXER: Were the ones listed in today's
14 agenda, let's just say there are some survivors, would
15 they be competing against anybody else in that region?

16 MS. LATSHA: Yes. Right now the circumstance
17 is -- I'm having to memorize a lot right now -- I believe
18 there are two applications that are scoring higher than
19 these seven, and I think by one point, so if any of these
20 seven were to get their two points.

21 MR. OXER: Is there enough available so that
22 you'd have more than one award?

23 MS. LATSHA: I think we're going to award three
24 or four in this region, so one of these is probably going
25 to get to be in the money anyway. Does that make sense?

1 MR. OXER: I am pondering a larger solution.

2 MS. LATSHA: I want to go back just for one
3 second to the kind of magic site. Right? I don't want
4 anyone to think that staff was misleading at all with
5 respect to being able to claim those sets of points. You
6 know, I did a little bit of research, I found a site that
7 was actually in a second quartile census tract at least,
8 that was in a second quartile but that had a median
9 household income that was lower than the MSA's and had
10 like a 48 percent poverty rate. Now, that's on the line,
11 right, so you're kind of getting into qualifying for some
12 opportunity index points but when you look at those
13 demographics, it's not the demographics that we're seeing
14 here, it's more akin to a Colonia. Now, that type of
15 demographic wouldn't afford you all seven points on an
16 opportunity index, it would probably be five, so you'd be
17 at five plus two instead of seven plus two, which is why
18 people aren't going to a site like that. Right?

19 Also, our criteria for rural developments and
20 being in the high opportunity area is different than for
21 urban, so maybe the expectation was more like that, that
22 you might be qualifying somehow for opportunity index
23 under the rural rules and then still maybe be qualifying
24 under Colonia. But that's not what happened here. These
25 are all urban sites, like I said, within municipalities,

1 very high incomes, low poverty rates and access to
2 utilities.

3 So everyone here has a slightly different story
4 about their site. We can certainly just continue on.
5 That was some general comments about all of them that they
6 do have in common.

7 MR. IRVINE: I wanted to add a very non-
8 technical perspective. When I think of a Colonia, I think
9 of an area that just does not have the infrastructure that
10 you typically associate with developable areas, and I
11 think that when you look at the language of 127 when it
12 talks about prioritizing development in Colonias, in such
13 an area development is virtually impossible. And if you
14 were to look at a traditional Colonia and look at
15 something that would be transformative, clearly putting
16 one of our projects in there would be transformative.

17 And I think if a Colonia has adjacent areas
18 that have this self same characteristics and you're going
19 to put affordable housing there, that in fact is changing
20 and lifting up the area, as opposed to putting something
21 in a high opportunity area that's nearby that might be an
22 attractive place for people from a Colonia to go and live,
23 it doesn't actually change the Colonia itself, and I think
24 that change is, in my mind, sort of the driver here.

25 MR. OXER: In the long run we've got to look at

1 the policy application of this for the nature of the
2 communities that we support on this, and while I'm
3 confident that every one of these projects with their
4 market research would be confident that they would be
5 fully subscribed early and soon and completely, not being
6 in what we formally define as a Colonia doesn't seem to me
7 to meet the policy expectation that we had in this
8 particular component of our rule.

9 Other thoughts from the Board?

10 DR. MUÑOZ: I concur.

11 MR. OXER: Thank you, sir.

12 So I'm wondering how to handle these because if
13 they're all the same, it's all the same question. All the
14 tigers out there in the zoo are going to say my stripes
15 are different, I can tell. We've heard most of you
16 before.

17 DR. MUÑOZ: I just want to add, Jean -- and
18 Homero, I might be getting it wrong, but when I was down
19 in the Valley a couple of months, six weeks ago down in
20 Weslaco, I think, I went to a Colonia, your colleague took
21 me, and I mean, it was awful. I mean, I didn't think
22 potholes could be 4-1/2 feet deep.

23 MR. OXER: That's not a pothole, that's a
24 basement somebody left on the road.

25 DR. MUÑOZ: And guyenas and pit bulls. So the

1 spirit of that sort of transformation that the ED is
2 referring to I think everybody is supportive of, but the
3 transformation of something in proximity that is already
4 transformed with the hope that it could have some
5 tangential effect on this Colonia seems optimistic and
6 ambitious, but I don't know if it's realistic and
7 consistent with what these points are supposed to
8 incentivized.

9 MR. OXER: Okay. Any other thoughts, Jean?

10 MS. LATSHA: No. I think we could probably go
11 on to the specifics of each application if the Board
12 chooses.

13 MR. OXER: Okay. We're going to take them one
14 at a time. And for the record, although we line up here
15 in order of how you'd like to speak, what we're going to
16 do is speak on your application number. That should be
17 pretty easy, so we'll take these in order and we'll act on
18 them in order one at a time. Just for the record, the
19 chair is going to have a couple of specific questions on
20 each one of them that will attend to these definitions,
21 and that is do you have water service, do you have sewer
22 service and is there transportation to and from the
23 facility and site.

24 Okay, Jean, let's take the first one and get on
25 with it, because what I want to do, it's a few minutes

1 before 11:00 right now and we've got a packed agenda, so
2 those of you who have come to speak, recognize this is
3 going to be a hard clock, we're going to cut you off at
4 three minutes because everybody deserves to speak but
5 we've got a lot of people that want to.

6 MR. IRVINE: Will then the Board form a motion
7 for each one of these before the speakers?

8 MR. OXER: Yes. So present each case, describe
9 the characteristics, we'll form a motion, we'll hear
10 comments and then act on each one of them. Okay?

11 MS. LATSHA: Yes, sir. First on the list is
12 Las Palmas on Anaya, number 15005. Representative Muñoz,
13 Jr., the letter read earlier was with respect to this
14 development. This development is located in the city of
15 Hidalgo. I don't know if you're familiar but that's very
16 close to the border, south of McAllen. So in the original
17 application submission there was a map with a circle
18 drawn around the site with a two-mile radius, which, by
19 the way, equates a little more than 16 square miles, not
20 two square miles. I think there was some misunderstanding
21 with respect to how to draw that geographic area and they
22 were drawn quite frequently that way as a circle with a
23 two-mile radius instead of two square miles.

24 Now, that being said, there are a few named
25 Colonias within a couple of miles of this site. This

1 site, however, is the Walmart site, it's right across the
2 street from a school, it has access to utilities, it's in
3 a census tract with a household income of 43,676. Just to
4 give some perspective there, the McAllen MSA household
5 income is 34,146, so it is above what the median household
6 income is for the MSA McAllen, and then a poverty rate of
7 about 17.9 percent which is relatively low. Also, access
8 to the city's eight-inch waterline and twelve-inch
9 sanitary sewer line collection all relatively close to the
10 site. A similar situation as to what I described earlier,
11 but I think that the applicant might have some words, and
12 staff recommends denial of the appeal.

13 MR. OXER: Okay. Motion by staff on item 5(c)
14 application 15005, staff recommendation to deny the
15 appeal. Is there a motion to consider?

16 MR. GOODWIN: So moved.

17 MR. OXER: Motion by Mr. Goodwin.

18 MR. GANN: Second.

19 MR. OXER: Second by Mr. Gann.

20 We have comments on 15005?

21 MS. RICKENBACKER: Good morning, Chairman Oxer,
22 Board members, Tim. This is my first opportunity to meet
23 you, Mr. Goodwin. Welcome to the Board and look forward
24 to working with you. My name is Donna Rickenbacker, I'm
25 with Marque Real Estate Consultants. I'm here in actually

1 two capacities: one on behalf of Texas Gray Oaks who has
2 two appeals before you today, and one for myself as a HUB
3 owner on another appeal.

4 If you would indulge me, please, Chairman Oxer,
5 I'd like to make some general comments, if you will, to
6 the rules, and allow me a few extra minutes to do so.

7 MR. OXER: We had that discussion. You'll get
8 five minutes.

9 MS. RICKENBACKER: Thank you, sir. I think
10 that will minimize some duplication as others step up to
11 the mic.

12 First, I want to recognize that we've done a
13 lot of work down in the Valley, we've been working down
14 there since 2007. Texas Gray Oaks was one of the three
15 applicants in 2014 that was awarded housing tax credits in
16 Alton, Texas, credits for his development, to a large
17 extent, because he was awarded points associated with
18 being recognized as a Colonia. So we are very familiar
19 with Colonias. Matter of fact, we're brining utilities
20 down to this area that service the Colonia in front of the
21 property and behind the site.

22 So I guess I first want to point out what is a
23 Colonia. Colonia is a Spanish word for neighborhood, and
24 according to the Colonia Initiatives Program that's
25 overseen by the secretary of state, there are actually

1 seven definitions of a Colonia. The definitions are used
2 to determine whether these communities qualify for federal
3 and state funding and vary because different agencies
4 consider different characteristics in determining the use
5 of their specific Colonia dollars.

6 TDHCA defines a Colonia -- and I want to read
7 this directly from the definition because it's a little
8 different than the way it was represented by staff -- it's
9 a geographic area that's located in a county, some part of
10 which is within 150 miles of the international border that
11 consists of eleven or more dwellings and it's located in
12 proximity to each other in an area that may be described
13 as a community or neighborhood, and that either qualifies
14 as an economically distressed area, meaning that has it
15 has a majority population composed of individuals and
16 families of low income or very low income, or has the
17 physical and economic characteristics of a Colonia as
18 determined by the Department.

19 And the Department this year, 2005, added some
20 factors that they would be considering in connection with
21 determining whether or not it met the physical and
22 economic characteristics, to include, without limitation,
23 access to basic utilities and boundaries that describe a
24 neighborhood. So everybody appealing today has sought the
25 points under subparagraph (b) for having physical and

1 economic characteristics of a Colonia, including ours
2 today.

3 I want the Board to understand that I reached
4 out to staff. Not only did I have comments to the QAP to
5 kind of tighten the definition, if you will, recognizing
6 in 2014 we were awarded the points for being in a Colonia
7 and that everybody was going to be looking at our
8 application and presenting the same level of evidentiary
9 information to support their deal and their points. So I
10 reached out to them. I also reached out to them at pre-
11 application and full application, again seeking their
12 guidance on what they were going to be looking for in
13 these areas.

14 The only guidance, to my understanding, was
15 given to us in the procedurals manuals, and that
16 procedural manual that staff released told the applicants
17 that they were to provide --

18 MR. OXER: One minute, Donna.

19 MS. RICKENBACKER: Yes, sir. That they were to
20 map Colonias in the area using the Attorney General's
21 website. So that's what everybody did, map those Colonia
22 communities within a defined neighborhood area.

23 So in this instance, and staff did go down, I
24 echo what Tim was saying about staff's making the effort
25 to go and identify these areas and look at it, but there

1 is a definition that I feel like we did comply with
2 specifically. There are elements that I don't think
3 there's any disputes on that I hope in connection with the
4 Board's determination today they will look at, which
5 includes three elements of the definition.

6 First, that the applicant describe a
7 neighborhood. The definition consistently states the
8 geographic area designated by the applicant be in an area
9 that may be described as a community or a neighborhood.

10 Second, did the applicant provide sufficient
11 evidence that the mapped Colonias within the described
12 neighborhood, and specifically those within the two square
13 miles of the development site are valid Colonia
14 communities, meaning do they consist of eleven dwelling
15 units and is such evidence as to the validity of the
16 Colonia based on something other than the fact that the
17 mapped areas are identified as such on the Attorney
18 General's website. And we'll get into that as to why.

19 Third, did the applicant describe
20 characteristics within the described neighborhood that
21 define a Colonia.

22 Those are the elements of the definition that
23 we feel like we did comply with.

24 So with that said, I'd like to address --

25 MR. OXER: Your time is up.

1 MS. RICKENBACKER: -- with respect to the
2 Hidalgo transaction.

3 MR. OXER: Your time is up.

4 MS. RICKENBACKER: Okay.

5 MR. OXER: So any questions of the Board?

6 DR. MUÑOZ: Just a question for Jean. I mean,
7 you know, the writeup talks about, again, at length and
8 presenting as opposed to a procedural manual. I mean, you
9 talked about in your comments and your examples and the
10 Walmart, et cetera.

11 MS. LATSHA: So I remember some of these
12 conversations. Of course, I remember talking with Donna
13 about this. What happens a lot of times, as we lead up to
14 March 1 to application submission, for example, I probably
15 got a call that said, If we were to submit a letter from
16 an elected official or from an urban county program, the
17 Hidalgo County Urban County Program -- which a few
18 applicants did -- would that support our position? And
19 I'm sure my answer was it could, right, without knowing
20 exactly what site it is that the applicants are
21 contemplating.

22 Now, had the question been this is the site I'm
23 contemplating and I dropped my little Google guy down on
24 there and I saw the brand new school and the Walmart and
25 looked at the demographics of the census tract, I probably

1 would have said, Despite all the letters from Hidalgo
2 County Urban County Program or whatever, I think I would
3 probably have issue awarding points to this site. But the
4 conversations don't exactly happen that way, they're all
5 very hypothetical.

6 And so, yes, staff did respond in a way that
7 said present what you think is relevant to qualify for
8 these points. It should tell us that the site does have
9 the physical and economic characteristics of a Colonia.
10 And once again, I wasn't sure exactly what that was going
11 to be. I, like I said, had an idea of what it would not
12 be.

13 A lot of conversations like that. I'm sure I
14 talked with Donna and Sarah and a lot of folks coming up
15 to application submission in the same way.

16 MR. OXER: And in the end, the QAP, I think
17 everybody in this room recognizes that there is an
18 extraordinary amount of time that's put in trying to
19 clarify this very specifically so we don't have these gray
20 areas. We've cured most of the quirks in these things
21 over the last couple of years, chasing those down, and the
22 point is does it support, ultimately, the policy of this
23 Board in terms of developing in those areas that need this
24 housing. So yes, there's a definition in there, and the
25 question is is the exercise of the discretion of this

1 Board appropriate in this case, do we look at this or do
2 we say does it meet what our intent for the performance of
3 this component of the law, does it meet that or are we
4 parsing words trying to figure out what the definition of
5 "is" is.

6 MS. LATSHA: And one thought I had in the same
7 vein, these appeals, unlike the ones that we'll hear
8 later, this is not about a lack of information from the
9 applicants or a submission requirement that was missed,
10 they did a lot of work to try to make their case. This is
11 more philosophical, if you will. Does this meet the
12 spirit of the rule? And we're having trouble trying to
13 say yes to that question.

14 MR. OXER: Juan.

15 DR. MUÑOZ: Yes, I suppose I don't want it to
16 be a philosophical debate. I mean, they adhered to what
17 was required or they didn't to our satisfaction based on
18 our interpretation of the definition that was provided,
19 provided at length by staff. You know, the thing that
20 gets my attention is if we provide a certain direction and
21 people innocently or deliberately attempt to embellish or
22 extend, that's one thing, but if we provided misdirection
23 or misguidance, then I'm inclined to be graceful.

24 We're hearing we weren't exactly told this,
25 you're saying we did it at length, we were very specific,

1 and it doesn't comport to this definition. So I want to
2 remove the ambiguity.

3 MS. LATSHA: Sure. And I would stand by what I
4 said, that there was a lot of discussion, there was the
5 example that I gave at the workshops, there were those
6 conversations that, yes, that may or may not support what
7 you're trying to convey in your application, but without
8 the benefit of knowing exactly what site you're talking
9 about when I'm having those conversations, I can't make a
10 predetermination as to how staff is going to look at the
11 application once it's in house.

12 DR. MUÑOZ: The points are intended to
13 ameliorate or correct some deficiency in these underserved
14 communities, and these proposed sites, should they enjoy
15 the benefit of those points because those conditions exist
16 in the site that's being proposed. Right?

17 MS. LATSHA: Right. And I don't think that
18 those conditions exist in the sites being proposed.

19 MR. OXER: And while I concur with Dr. Munoz's
20 point that we don't want this to be philosophical, the
21 optimum situation is -- we've said this before, we never
22 great the easy stuff, you guys deal with that, we always
23 get the hard stuff, okay, which is because it fell through
24 the cracks, it's one of these quirks, and then it has to
25 rely on the philosophy that we had and the purpose and

1 intent.

2 So to the extent that in the evaluation or
3 continuing development of the QAP, which we refine every
4 year and buff and polish it and scrape off these edges and
5 these nicks and burs off of it to the extent that we can
6 do that, this is just one of those places that we need to
7 spend some more time to make sure that that clarification
8 is made. That said, we've got to make a decision now. We
9 think that the information was provided, there was a fair
10 interaction of the definition, even though it may not be
11 clear, there is a philosophical purpose to what we were
12 doing, we have a policy that we're trying to uphold.

13 So that said, does anybody else have any other?
14 Mr. Goodwin, did you have a question?

15 MR. GOODWIN: No.

16 MS. LATSHA: I think there might be someone
17 else on Las Palmas on Anaya.

18 MR. OXER: 15005, somebody want to speak on
19 that application, somebody else?

20 FEMALE SPEAKER: (Not at microphone). I'd like
21 to speak in support of staff's recommendation.

22 MR. OXER: Well, I suspect that every one of
23 you who is not the applicant on this is going to support
24 the staff's recommendation because it's going to knock
25 everybody else out.

1 FEMALE SPEAKER: (Not at microphone). We also
2 have an application that's in an award position today.

3 MR. OXER: So you're basically saying you're in
4 the money already.

5 FEMALE SPEAKER: (Not at microphone). And we
6 also qualify as a project that is a Colonias.

7 MR. OXER: You're speaking on which direction
8 on 15005?

9 MR. CANTU: On behalf of the project.

10 MR. OXER: I would remind everybody who comes
11 to speak, please sign in. Make sure you state who you are
12 and who you're representing, whether you're for or against
13 the project application.

14 MR. CANTU: I signed in. Thank you for the
15 time, Chairman, and thank you for the time, Board.

16 MR. OXER: Go ahead. I was going to say the
17 first thing you have to do is tell us who you are and who
18 you represent.

19 MR. CANTU: My name is Eddie Cantu. I'm a
20 county commissioner in Hidalgo for Precinct Number 2, and
21 this project falls within my precinct.

22 It is my understanding, obviously, that we've
23 been talking about that the developer of Las Palmas has
24 requested points for having a site located in a Colonia
25 neighborhood but these points were denied. With respect

1 to Las Palmas, I provided a letter to the developer for
2 inclusion in the application that recognized the
3 neighborhood that included the Las Palmas site and
4 confirmed that the county is using Colonia reserved
5 resources on projects to improve the quality of life and
6 outcome in the described area.

7 As I understand, based on the site visit TDHCA
8 staff determined that the neighborhood was manufactured
9 and did not have characteristics of a Colonia. Hidalgo
10 County is not in the habit of manufacturing neighborhoods
11 or spending limited Colonia resources in areas that are
12 not in the need of such resources. As a county we
13 continually struggle to find sources of funds to improve
14 Colonia areas, and these decisions are not made based on
15 the area's income or poverty rates or whether the area is
16 within a certain distance of a grocery store or a Walmart.

17 Finally, as described in my letter, this site
18 is in the census tract that is eligible under the Texas
19 Bootstrap Loan Program. The program is administered by
20 your agency and requires TDHCA to set aside two-thirds of
21 the funds for home development or redevelopment in
22 underserved Colonia communities. I suggest that TDHCA has
23 already determined that the area has characteristics that
24 define a Colonia and it should qualify for points.

25 I support the proposed Las Palmas development

1 and stand behind my letter provided to the developer. I
2 believe that this project will be beneficial to the
3 precinct, to the City of Hidalgo, represented here
4 today -- both the city manager and the EDC director are
5 here to support this project -- and we ask the Board to
6 grant these points.

7 From the precinct level, from the county level,
8 we are partnering with the City of Hidalgo and we have
9 drainage improvements of \$1-1/2- to \$2 million for this
10 specific area. Drainage has been pretty bad in the area
11 and so we're doing everything possible to send sources of
12 money that way.

13 MR. OXER: Probably going to be worse tonight.

14 MR. CANTU: It's been bad. We've had, as
15 Joseph will describe later, probably like a 100-year event
16 here recently. So we're spending as much money as we can
17 in developing those projects. We have park improvement
18 projects in the area of a million dollars, we have street
19 improvement projects that the county and the city is
20 working on in the amount of \$15 million, and lastly, one
21 of the things we want to do in the area is a Boys and
22 Girls Club that will cost about half a million dollars.
23 So we're committed to the area.

24 We have so many Colonias within this area.
25 Within this two-mile radius we have probably eight to ten

1 Colonias. I don't see how a Walmart is going to change --
2 what you discussed what you saw in Weslaco, a pothole 4-
3 1/2 feet deep, I don't see how a Walmart is going to
4 change that, or whether a new school is located next door.

5 Luckily, the state has allowed us to build new schools in
6 the area, we have a lot of beautiful new schools and a
7 great school district in the area.

8 So I think that this project is a much needed
9 project. It will allow people that work and serve that
10 area and that live in that area a better place to live.
11 And thank you for the opportunity.

12 MR. OXER: Thank you, Commissioner. We're glad
13 to have you here. As a comment to your position or your
14 statement, we concur that there's an obvious need for
15 projects and investment in these areas like this, but
16 owing to the extraordinarily competitive nature of our 9
17 Percent Tax Credit Program for the low income housing tax
18 credits which I would tell all of you here -- I don't
19 think anybody here doesn't know this -- it's considered
20 perhaps the most competitive program amongst all the
21 states, and we have competitors here in this program,
22 don't we, Jean, from Washington and from Florida, from
23 Pennsylvania to California, so everybody comes here to
24 compete because they recognize the transparency of this.

25 And while we're constantly recognizing that

1 there are more than -- we have more projects than we've
2 got money, okay, and it would be my extraordinary honor to
3 be able to provide tax credits to all of those that need
4 those, and I have yet to see anybody show up and make an
5 application for tax credits that didn't need them. So we
6 appreciate that everybody here needs them, and this is a
7 very difficult time of the year for us in terms of
8 dividing that.

9 That said, it is so competitive we go to
10 extraordinary lengths to make sure, or to try to be sure
11 that we have a very transparent and very specific, very
12 sharply defined set of rules in the competition for this
13 allocation that make up the QAP. And while having a
14 Walmart or having sewer service doesn't change the fact
15 that there's a four-foot pothole in there, we had to put
16 something in it to be able to differentiate one site from
17 another. So if anything, I hope everybody here will
18 recognize that if this was easy, anybody would be doing
19 this. It would be a whole lot more fun for us too.

20 But it's not easy and we sometimes have to make
21 some really hard decisions that, simply by virtue of
22 having to maintain the integrity of our rule, it sometimes
23 go in opposition to the way that people would prefer,
24 particularly the applicants. So that said, the good news
25 is this is not a one-time program and there's more money

1 coming next year and we'll look for other ways to improve
2 all of this.

3 With that, do you have anything else to add?

4 MR. CANTU: Just a last comment. I've been
5 there for four years and I'd appreciate staff calling me
6 next time they're in the area and also reaching out to the
7 city. We have a lot of pertinent information that we can
8 provide. Obviously, this is our job to provide resources
9 to this area, so next time they're making a site visit,
10 we'd appreciate the phone call or the opportunity to speak
11 to them directly.

12 MR. OXER: I think we could accommodate that
13 request, can't we, Jean, Kathryn? Okay. Got that logged
14 in so we can make sure when somebody is down there.

15 DR. MUÑOZ: I'll do it.

16 MR. OXER: Thank you, Commissioner.

17 DR. MUÑOZ: I just want to thank you,
18 Commissioner, and everyone interested in improving the
19 quality of life for families in the Colonias. I'm not
20 sure how this is going to settle here, but I tell you, I'm
21 prepared to work with the chairman and look at these
22 points and look at the possibility of even maybe
23 augmenting them. I've obviously not disclosed my
24 intention to anybody up on this dais but I am now publicly
25 to maybe get more activity in these areas that are clearly

1 unambiguously defined as Colonias so that those families
2 can benefit from some of this development.

3 So I just want to thank you and your servant
4 leadership as a commissioner.

5 MR. CANTU: I'll just make one more comment.
6 When you look at this area, Las Huipas, which is real
7 close to this area, northern Hidalgo and Las Huipas,
8 you're driving south, once you cross the levee you
9 consider that a Colonia. I live just north of the north
10 of the levee and when you look at the south side of the
11 levee, everybody understands it to be a Colonia. It's
12 still called Las Huipas and northern Hidalgo, it doesn't
13 even take the name of the city next door. I mean, Las
14 Huipas is Pharr, this area is Hidalgo, and yet it's still
15 treated and understood because of the Colonias that it has
16 as a big Colonia.

17 DR. MUÑOZ: Part of what we've got to do, Jean,
18 is try and capture some of that nuance in our
19 documentation to understand that a street may not
20 necessarily prescribe the sensibility of la gente en la
21 Colonia.

22 The only other question I have for Jean. Just
23 help me very quickly, maybe other Board members to
24 understand, you know, if the agency administers the
25 Bootstrap Program and Bootstrap funding is allocated to

1 Colonias, isn't that an a priori recognition of Colonia
2 status.

3 MR. OXER: Homero, come up here, please.

4 MS. LATSHA: I probably will defer to Homero.

5 DR. MUÑOZ: I mean, that's part of what the
6 position of some, I think, would be.

7 MS. LATSHA: My understanding -- and I'm sure
8 you can elaborate on this a little bit -- is that the
9 Bootstrap Program, while Colonia help centers are eligible
10 to apply for that funding source, so are other nonprofit
11 entities that might be in Dallas or Austin or Houston, so
12 not necessarily. And from a technical aspect, it's not
13 mentioned in the rule at all, a funding source being
14 indicative of a Colonia.

15 MR. CABELLO: Homero Cabello, director of
16 Single Family Operations and Services.

17 The Texas Bootstrap Program is not a Colonia
18 program, it's a self-help construction program. Two-
19 thirds of the funds are set aside for census tracts at 75
20 percent AMFI or below, so it's throughout the whole state
21 of Texas. Now, it's under the Office of Colonia
22 Initiatives because it's a self-help construction program.
23 Think of the Habitat for Humanity, the Bootstrap Program
24 are exclusively Habitat for Humanity. There's only one
25 organization that is currently under the Bootstrap Program

1 that is not a Habitat and that's an organization out of El
2 Paso, but because it's located under the Office of Colonia
3 Initiatives, it is not a Colonia program.

4 MR. OXER: Homero, is that just because it
5 happens to be that there are a lot of applicants and a lot
6 of opportunity there? Mr. ED, can you add any dimension
7 to this? Why is it under that, what is that Bootstrap
8 Program principally under the Office of Colonia
9 Initiatives?

10 MR. CABELLO: When the program was created,
11 Colonia advocates -- when you go to a Colonia you see
12 families building their houses piece by piece, and so they
13 created a program, the Texas Bootstrap Program, so they
14 can access funding to complete the house. It was intended
15 for Colonias. We've had some nonprofits along the border,
16 we've had a couple of self-help centers access the
17 program, but it's mainly become a program that Habitat for
18 Humanity affiliates utilize. For example, Habitat of
19 Laredo, they are building right behind the Webb County
20 self-help center and it's a brand new subdivision and
21 they're targeting Colonia residents. But the Bootstrap is
22 not a Colonia program.

23 DR. MUÑOZ: Just to simplify, receiving funds
24 from Bootstrap is not a de facto sort of certification of
25 being a Colonia.

1 MR. CABELLO: Right. And here's the other
2 issue, in order to participate in the Bootstrap Program
3 you have to be a nonprofit owner housing provider. You
4 must demonstrate self-help construction experience and
5 mortgage lending experience. Or if you're a self-help
6 center, you can participate in the Bootstrap Program
7 without having to go through these qualifications.

8 MR. OXER: Okay. Thanks, Homero.

9 Any other questions from the Board?

10 (No response.)

11 MR. OXER: Wait a second. Anybody else to
12 speak on application 15005? Make this one really short,
13 let's go three minutes on this one.

14 MS. BROWN: Very, very short. Thank you for
15 the opportunity. My name is Linda Brown. I am president
16 of Casa Linda Development Corporation, the developer for
17 The Heights, an application in Hidalgo County, and
18 presently in an award position.

19 While we did not need Colonia points to score
20 competitively, The Heights also received a letter from the
21 Hidalgo County Urban program which also manages the
22 Colonia self-help initiative, and in that letter we also
23 qualified -- the Heights site qualified as a site serving
24 Colonias in Hidalgo County. We believe that we actually
25 are a more economically disadvantaged area of Hidalgo

1 County with our site, as opposed to the following appeals.

2 I also would like to mention that The Heights
3 and another application that is also in an award position
4 are in Hidalgo County Commissioner Palacios's precinct.
5 We're very proud to be part of and in a position to serve
6 the people of Hidalgo County less fortunate than most of
7 us. I assure you our locations can lead to a more
8 transformative and economic development change than some
9 of these appeals that you'll be hearing today.

10 We also have an appeal for an application in
11 Brownsville that you will be hearing from us shortly, but
12 we support the staff's recommendation on this appeal. I
13 was born and raised in McAllen and Hidalgo County, not too
14 far from this site. During TDHCA's workshops prior to the
15 start of the round, staff was very specific about how they
16 would evaluate underserved Colonia, and Jean did say and
17 use the example about the Walmart. We knew going in what
18 the staff was going to be looking for in our applications
19 in order to qualify for these points. And then staff
20 traveled to deep South Texas and toured each of the sites,
21 the nearby Colonias, the development site areas to add
22 their experience to their final determination.

23 So I appreciate the opportunity to make comment
24 with you today. Those are general comments with respect
25 to the following appeals. Thank you.

1 MR. OXER: Thanks for your comments, Linda.
2 Any questions from the Board? I take it no?
3 Are you speaking on this one, Barry?

4 MR. PALMER: Yes. Barry Palmer with Coats
5 Rose, speaking on behalf of the appeal.

6 And I think we have to find a way to give
7 meaning to the Colonias points, and the legislature has
8 said we're going to give these points, all of the
9 applications were denied the points, and the idea that
10 these points would only go to an application that's not
11 going to get any other points because it's out in the
12 middle of nowhere or whatever doesn't make any sense
13 because then nobody is going to be able to use the points
14 to get funded. So how can we use these points in a
15 meaningful way to allow projects to get funded and to make
16 a difference in this area?

17 And the idea that you could have both the
18 points for neighborhood opportunity and Colonias points
19 are not mutually exclusive. Here we have a low income
20 area, so the project may get opportunity points for being
21 in the top quartile in income in that community but it's
22 still substantially below the statewide incomes. So you
23 should be able to get points in both areas and there's
24 nothing in the QAP that says that you can't.

25 But I think that the important thing to look at

1 is the local elected officials. Commissioner Cantu has
2 told you that they are putting their Colonias resources
3 into this community. They've made the determination that
4 this community qualifies for Colonias resources. So the
5 state should defer to the local elected officials and take
6 that into account that that is where the local officials
7 are putting their money, so that should be determinative
8 of the issue.

9 And the fact that it's in the Texas Bootstrap
10 Program, that this census tract qualifies for
11 participation certain lends credence to the idea that this
12 should be considered a Colonias area. We have three
13 Colonias within a short distance from our site and the
14 fact that there may be a Walmart a couple of miles away ,
15 as Commissioner Cantu said, that doesn't make a difference
16 as to the need for these Colonias to get support, improved
17 infrastructure and economic activity that this site could
18 bring to that area.

19 MR. OXER: Any questions of the Board?

20 (No response.)

21 MR. OXER: I'd echo a comment, Barry, that Tim
22 has made earlier. While we recognize that all of these --
23 and again, every one of these communities, every one of
24 these Colonias, every one of these projects and
25 applications are worthy of development. I can't imagine

1 that somebody would be here and not have one that would
2 not qualify. That said, it meets the local county's
3 definition of their policy, and much like we've just said,
4 the City of Dallas had its own application and policy for
5 where it was going to put its money, that's not the point
6 of the definition or the decision here. The question is
7 whether it meets our definition of the policy that we use
8 to allocate the resources that are available under this
9 program.

10 Given that those resources are in short supply
11 because we invariably have more projects that we have
12 money -- I've never been in the position to tell the
13 staff: Use all this extra money and spread it out amongst
14 all the projects because we didn't have enough projects.
15 So given that that's the case, we've got to decide whether
16 or not this meets the local definition of what their
17 policy position is but whether it meets our policy
18 position.

19 MR. PALMER: Right. But if you look at the
20 definition for the points in the QAP, this project meets
21 all of the criteria that are outlined in the QAP. So the
22 fact that it was mentioned at a workshop that if there's a
23 Walmart nearby that you don't qualify, that's not in the
24 QAP. This project meets the definition for the points in
25 the QAP.

1 MR. OXER: Thanks for your comments.

2 Any other thoughts from the Board?

3 (No response.)

4 MR. OXER: Anything else to add, Jean, on this
5 one?

6 MS. LATSHA: No, unless you have additional
7 questions for me.

8 MR. OXER: And just as a reminder for everybody
9 that comes up, make sure that you sign in because it's not
10 for us so much as it's for the court recorder to be able
11 to identify you in the transcript and on the audio portion
12 of this that we record.

13 With respect to item 5(c) application 15005,
14 there's been a motion by Mr. Goodwin, second by Mr. Gann
15 to approve staff recommendation to deny the appeal. We've
16 heard public comment, there's no other public comment.
17 Those in favor?

18 (A chorus of ayes.)

19 MR. OXER: Those opposed?

20 (No response.)

21 MR. OXER: There are none. It's unanimous.
22 Okay. 15006, Jean.

23 MS. LATSHA: All right. Solano Park
24 Apartments, number 15006. Let me get my bearings.

25 MR. OXER: Take your time.

1 MS. LATSHA: That's right, this one is located
2 in Edinburg. I happen to be relatively familiar with all
3 these areas because I did some development down in the
4 Valley before I came onboard here. The one that we were
5 just previously talking about, actually one of the tax
6 credit developments that I worked on was right down the
7 street, Hardenas de la Fuente.

8 But if you're familiar with Edinburg, you've
9 got 281 that runs north-south, and this site is located
10 just west of 281 and pretty near the main east-west drag
11 which is 107. And there's been a lot of development going
12 on there lately. Recently a new regional medical center
13 built, and this site is very close to that regional
14 medical center. I went on Google and dropped my little
15 guy down and there were some developments that existed
16 when we went on our site visit that weren't even there the
17 last time the Google car went around. So clearly stuff is
18 happening around here. It's kind of a booming little city
19 right now, it's a lot more traffic there than it was five
20 years ago when I used to be down there a lot.

21 This particular development is in the census
22 tract with a median household income of 74,000-plus and a
23 poverty rate of 15.8 percent. Again, right smack dab in
24 the middle of the city, access to waterlines, sanitary
25 sewer lines right in front of the site. Quite frankly, I

1 think a really great site, but not having the physical and
2 economic characteristics of a Colonia.

3 I think with that said that we've exhausted a
4 lot of this conversation, but I'm happy to answer any
5 other questions.

6 MR. OXER: There's a lot of dust over there
7 where we've beaten these things into power already.

8 MS. LATSHA: So staff recommends denial of the
9 appeal.

10 MR. GOODWIN: Motion to approve staff's
11 recommendation.

12 MR. OXER: Motion by Mr. Goodwin to approve
13 staff recommendation on application 15006 on item 5(c). Do
14 I hear a second?

15 DR. MUÑOZ: Second.

16 MR. OXER: Second by Dr. Muñoz.

17 Anybody here want to speak on 15006?

18 MS. RICKENBACKER: Donna Rickenbacker with
19 Marque, Solano Park, application 15006.

20 Staff did cite several reasons for determining
21 that this site did not qualify for the points. With all
22 due respect, we very much disagree with their position on
23 this matter. We submitted two letters in the application
24 to support the Colonia points: one from Diana Serna with
25 Urban County, the one that Linda was speaking to that was

1 received, she gave it to everybody that were in Hidalgo
2 County. It did map a two-mile radius area and staff
3 pretty much relied on that letter and focused on that
4 letter to determine ineligibility for the points because
5 the neighborhood described was much larger than the two
6 square mile radius that was required. And I would agree
7 with staff if that was the sole letter that we submitted,
8 but we didn't.

9 We also submitted a letter from Commissioner
10 Palacios, Precinct 4. He's the commissioner whose
11 precinct includes this development site. It did plot the
12 location of legitimate Colonias within two square miles --
13 actually, one Colonia that's adjacent to the property to
14 the south and it's in the ETJ of the city of Hidalgo. The
15 letter specifically says that the county is spending
16 Colonia reserved dollars in this neighborhood to improve
17 these Colonia communities. That is an element and a
18 requirement of our definition.

19 I'm sounded frustrated right now because I want
20 this Board to understand that we've been working in the
21 Valley for quite a number of years, we know what Colonias
22 are, we work with the local communities to try to improve
23 those Colonia areas with our developments, and we did
24 reach out to staff on several occasions to determine what
25 they were going to be looking for. So these were done

1 with great intent to make sure that we complied with the
2 rules as it's defined in the 2015 QAP.

3 The fact that this proposed development is
4 going to be located three-quarters of a mile from a
5 regional hospital is not a criteria. First of all, the
6 hospital is not in the defined neighborhood that we
7 supported in the application.

8 And those are all good things. I also want to
9 point out that all the various state agencies that
10 administer funding that's made available to Colonia
11 communities -- and there are several of them -- don't
12 distinguish whether they're going to use those Colonia
13 dollars as to whether it is or is not in a census tract
14 that's high opportunity under our rules.

15 DR. MUÑOZ: Donna, let me ask a question,
16 because you referred to the letter from Commissioner
17 Palacios as clearly indicating the use of Colonia dollars,
18 but when I read the letter I don't see that language. He
19 talks about Precinct 4 is focused on improving critical
20 services in these Colonias and has several initiatives
21 underway in targeted parts of Hidalgo County in and out of
22 the Colonia. He's not saying Precinct 4 is using Colonia
23 dollars for these improvements in the Colonia. And the
24 letter from Serna says in the second paragraph: This site
25 is not a Colonia itself.

1 Now, I don't understand the first paragraph
2 refers to this site is located in a Colonias plural area,
3 and in the second paragraph it says it's not in a Colonia.

4 I'm not sure how to interpret that, but I mean, you've
5 got a letter saying the site is not a Colonia.

6 MS. RICKENBACKER: Let me explain that, the two
7 letters. The one from Diana Serna is the one from Urban
8 County and the one that she says is not in a Colonia,
9 meaning it's not -- it meets the physical and economic
10 characteristics of a Colonia but it's not in a Colonia.
11 She is correct on that. The reason why we reached out for
12 that letter is because that is the identical letter that
13 we received in 2014 that qualified us for the Colonia
14 points. Recognizing that everybody is going to look at
15 our application and seek those letters, we provided that
16 as well.

17 What differentiates us, if you will, from the
18 other applicants is that we sought a letter from -- we
19 reached out to the county, please help us, here are some
20 areas that we're looking at and we're trying to determine
21 if any of these areas are where you're spending your
22 Colonia dollars.

23 DR. MUÑOZ: I don't read that. I don't see
24 this letter from the commissioner saying these dollars are
25 earmarked exclusively for the use in an area that we

1 identify as a Colonia. He goes on to say streetlights in
2 other parts of Hidalgo County. I presume not all of
3 Hidalgo County is identified as a Colonia, in which case
4 the same dollars are being used somewhere other than a
5 Colonia meaning that they're probably just generic
6 development dollars.

7 MS. RICKENBACKER: Well, first of all,
8 Commissioner Palacios is here and he can address his
9 letter if you'd like for him to do so. But Colonia
10 reserved dollars can't be used just on any project in any
11 areas, they've got to be restricted to uses that benefit
12 those particular Colonias described. So I don't think the
13 county or any of these state agencies can designate and
14 use those dollars just for general improvements around the
15 county.

16 DR. MUÑOZ: The letter I'm looking at dated the
17 19th I don't see -- I mean, it's small print but I don't
18 see that verbiage "Colonia reserved dollars."

19 MS. RICKENBACKER: Well, again, he's here, he
20 can visit with you.

21 DR. MUÑOZ: All right. Okay.

22 MS. RICKENBACKER: He can better explain the
23 letter that he provided for the application.

24 MR. OXER: Anything else you want to say?

25 MS. RICKENBACKER: We do feel like that we met

1 the requirements of the rules. Bringing all of these
2 other -- this is what we thought we should be looking for
3 is really not defined in our rule, and we as applicants
4 went out there, have spent a great deal of dollars to make
5 sure that we complied with the requirements of the rule,
6 and we feel like we did and we feel like we should be
7 granted the points.

8 MR. OXER: Thanks for your comments, Donna.

9 Kathryn, I have a quick question. Did you
10 handle the statistics on this one, either one, you or
11 Jean? She has the advantage there of being able to look
12 through the numbers, I was going to give her the benefit
13 of the doubt getting to the facts here.

14 MS. LATSHA: I'll give it a shot.

15 MR. OXER: The question is how many applicants
16 applied for or made appeals for the Colonia points last
17 year and how many made the same application this year?

18 MS. LATSHA: So last year the rule was
19 different, and I believe we awarded Colonia points to two
20 applications, but I don't recall how many applications in
21 total actually applied for those points. Those may have
22 been the only two that actually did apply for those
23 points. I think they were probably challenged and so there
24 was some discussion about that point item last year as a
25 result of those challenges. I'm not sure about my memory

1 here, I think that's how it happened.

2 MR. OXER: It's a generic question to get a
3 sense.

4 MS. LATSHA: But there was some discussion
5 about those two applications last year.

6 MR. OXER: Did you tighten down on this on any
7 particular location in the rule, any place there's a soft
8 spot. Obviously, you know, you're smart people, you're
9 good developers so you're going to try to find those where
10 you have a competitive advantage, and I expect you to do
11 that. The bad news is it surfaces those places where we
12 don't have a sharp edge on our rule and we wind up having
13 to do this.

14 DR. MUÑOZ: Jean, and again, you said that the
15 rules have changed. I'm just curious, do you recall this
16 letter that seemed to satisfy last year? Is that an
17 accurate statement that this letter was sufficient last
18 year? And again, the rule may have changed in which case
19 the letter is no longer adequate this year.

20 MS. LATSHA: And if I recall, it was
21 something -- and it must have been a challenge because it
22 caused staff to go back and look at these more thoroughly
23 last year, and I think that's when the letter might have
24 come in, maybe it was with the original submission. Did
25 it influence the decision? Yes, I'm sure that it did.

1 But I think that's exactly why we did change the rule
2 because although it influenced that decision in the
3 application of that 2014 rule, we didn't feel like just
4 grabbing that letter should necessarily equate to points
5 in the future.

6 You know, this is exactly why I was awake four
7 times last night. Right? I don't usually disagree with
8 this entire group of folks sitting here and so I do feel
9 like I should be taking some responsibility for that, but
10 at the same time I'm up here listening to this -- I mean,
11 I've been in the same spot and I'm going to be in the same
12 spot in the future but it's just greedy. I mean,
13 honestly, this one item does have meaning, it has two
14 points worth of meaning. Now, had you paired that with,
15 say, a community revitalization plan, you know, then maybe
16 then things start to make sense.

17 But you know, you're talking about applicants
18 who are trying to grab every single point that they could
19 possibly grab, and because they're in Region 11 and we all
20 know that there's Colonias in Region 11, it was let's get
21 seven plus three plus two. And it just doesn't make any
22 sense. And it's not that there was not access to those
23 two points by being in a Colonia, it's just that access to
24 those two points plus the seven plus the three, again,
25 magic site that I don't know where that exists and I don't

1 think it exists here.

2 MR. OXER: We can sense your frustration, and I
3 understand that, and I'll speak for myself on this, but I
4 suspect that there's at least some confluence with the
5 other members that there's a certain amount of frustration
6 in this because the rule is, unfortunately, insufficiently
7 clear, perhaps, in places to be able to be able to sharpen
8 this so that there's a sharp edge to it and one side
9 you're in, one side you're out.

10 That said, I would give credit to every
11 developer out there, the fact that you're going after
12 every point, I recognize that. This is an incredibly
13 political -- competitive, it's not political -- in fact,
14 we do everything we can to take the politics out of it --
15 this is an incredibly competitive exercise. And that
16 said, you would be remiss in your duty to your client, to
17 the community that you serve not to go after every point
18 you can possibly subscribe to.

19 That said, we have an obligation to support the
20 policy that we have, the purpose that we have, and whether
21 or not we can define this. The fact that that letter
22 supported the Colonia reference or location last year,
23 we're back to as the QAP evolves over time and gets
24 sharper and clearer and that sort of thing, we're back to
25 that was then, this is now. So our fundamental purpose

1 here is to determine whether or not these things meet the
2 policy that the Board wants to have to support, and our
3 fundamental feeling is, mine certainly is, is that any of
4 these that are in the locations that have been defined so
5 far, I was not compelled to vote in favor to support the
6 appeal, I'm totally in favor of the denial.

7 That said, we'll sharpen the rule, we'll make
8 this rule far more clear. When we develop the QAP, we're
9 going to have a whole lot of things to in this new QAP.
10 In fact, after next week, based on the legal implications
11 of next week, this may be the least of the things that
12 we're worried about, we're going to have a whole lot more
13 adventures than these. So with that, Jean, we understand
14 your frustration.

15 MS. LATSHA: And I apologize for expressing it.

16 MR. OXER: Absolutely not. I expect you to
17 express it, because passion is one of those things that
18 makes you good at your work and we appreciate that you do
19 it so well. So that said --

20 DR. MUÑOZ: I concur.

21 MR. OXER: Or as he says: I, Juan. Me too.

22 All right. That said?

23 MS. LATSHA: Staff recommends denial of the
24 appeal.

25 MR. OXER: Okay. Is there any other public

1 comment?

2 MR. PALACIOS: Commissioner Palacios, Hidalgo
3 County commissioner, Precinct 4.

4 MR. OXER: Three minutes, please.

5 MR. PALACIOS: Vote in favor of this project.
6 Chairman, Board members, I appreciate the opportunity to
7 be here.

8 I understand the difficulty in the process of
9 trying to determine whether or not something was followed
10 or not, trying to identify the ambiguity between all the
11 rules and laws that we're all governed by. We at the
12 county, we're exposed to the same thing. I've been in
13 office for five years now, I've been a public servant for
14 24 years, I've served federal, state, municipality and
15 county. I've only been in office for five years so I've
16 been more of a worker in the trench, a chief
17 administrator, a city manager and all, I've been there,
18 done that, and I understand the processes to most things.

19 My argument is obviously the definition of a
20 Colonia. Obviously, there's probably seven or more
21 definitions of a Colonia, and I'll tell you what, I
22 remember the words of Senator Lucio when I first entered
23 office, and he said, County government is the closest
24 government to the people. And I didn't understand what
25 that meant until I actually was there in county office

1 because Hidalgo County, our rural population represents
2 about 40 percent of our population. We've got
3 developments going outside of city ETJ. More developments
4 are happening outside of the cities than in the cities.
5 Once the developments happen, cities are obviously
6 expanding their jurisdictional boundaries, bringing them
7 in. They don't do that until they see certain
8 infrastructure in place with the streets, drainage and
9 all.

10 But in this case I can defend the historical
11 investment that the county has made in Colonias. Back in
12 the day we had Proposition 2 that the state had passed for
13 Colonia funding for roads, drainage, infrastructure.
14 We're currently in those years of utilizing the
15 proposition. This project sits in proximity to one of
16 those projects, and this is earmarked funding for that.
17 And I'm going back to my letter that was referenced. I
18 didn't issue it specifically because I could have given
19 you three or four pages of a letter and I'd rather just
20 generally stated it. I did have every intention to be
21 here to address that issue.

22 Now, the other issue, we're Colonia advocates
23 because our population is in the rural area. We just
24 passed House Bill 3002 which is going to allow us to bring
25 lighting into Colonias. Obviously, if anybody lives in a

1 Colonia, probably the kids that reside in those areas are
2 the first picked up on the bus routes, and so we found it
3 was critical that we start partnering and advocating.
4 This is the first time I've ever been exposed to this
5 program and the developers and I had the opportunity to at
6 least address and hear out the petition for letters of
7 support and all. My position is without pride or
8 prejudice, mine is simply objectiveness. The question was
9 asked: Are you investing in these areas? Absolutely,
10 yes, we are investing Colonia earmarked funding in these
11 areas.

12 Now, obviously, the eyes of the beholder, it
13 just depends. You might have other developers say no, my
14 argument and my project is better. Mine is simply the
15 objective part that we do more in partnerships than
16 anything else. It's been the equation to success. We
17 find it on the state level when we're fighting for state
18 infrastructure dollars for roadways. We're finding that
19 the more we build on partnerships, we're beneficiaries of
20 great developments, great progress, great everything.

21 And in this case I found myself very objective
22 in my letter and support. I did offer a letter because I
23 felt that because we did, in fact, invest with Proposition
24 2 dollars that this, in fact, qualified. The other issue
25 is that we were successful in lighting. That's the basic

1 grounds of my support for this particular project. But I
2 do respect your position and I do respect staff's position
3 in trying to determine whether or not it does or not.

4 I was available when they did their field
5 visit. I did not get contacted. I hope that will change.

6 I hope to God that in the near future we will be -- we're
7 the local government there and we're there, we're
8 investing dollars. We can quantify, we can defend the
9 investments in the area.

10 And the other thing is the differences between
11 what is a Colonia, what isn't a Colonia. If you go by the
12 Attorney General's website, I can argue that it's not a
13 current description of our Colonias in our area. Some
14 already have public utilities, some already have all the
15 benefits that would declassify them to be a Colonia. But
16 unless we go to the rigorous process of validating that or
17 not, I think you're left in a very ambiguous position,
18 even at this point even while you're rendering your
19 judgment. You're making positions on things that might
20 not be clear that some of these other projects might be in
21 areas that they're declassified Colonias. Hence, the
22 reason why I believe that the onsite visit should have an
23 element that they sit down with whether it's municipal
24 government, county government, to assure that at the end
25 of the day it's objective and subjective.

1 And so that's my reason for being here is for
2 that simple argument. We can defend the fact why we
3 believe that some of these projects do, in fact, qualify
4 based on our perspective on how we've allocated certain
5 Colonia Initiatives dollars. But that is my position.

6 I'm grateful for your time that you're giving.

7 I wish you the best of luck in your judgments and your
8 votes on what you find adequate and look forward to
9 working with you and all the developers. And I'm happy
10 that we're in this position that there is developments
11 coming to our area and that we are beneficiaries, whether
12 or not that's three or four projects, I hope more than
13 less. We are a border county, we have hundreds and
14 hundreds of Colonias. I look forward to working with any
15 developers that end up having successful projects in our
16 area. And thank you for your time.

17 MR. OXER: Thank you for your comments.

18 Any questions from the Board?

19 (No response.)

20 MR. OXER: Barry, one more comment.

21 MR. PALMER: Barry Palmer with Coats Rose.

22 I just wanted to point out it seems as though
23 staff has made the determination to deny the Colonias
24 points to all these applications primarily because the
25 also got points for being in a high opportunity area or

1 having good schools. But that's not in the QAP. There's
2 no rule that says you can't get a combination of those
3 points. In other areas in the QAP there are provisions
4 saying if you claim these points, you can't claim these
5 points, but we don't have that in this situation. And if
6 people think that's what the rule should be, then let's
7 make that the rule for next year. But that was not the
8 rule this year, that's not the rule these applicants
9 applied under. If they had known that, they might have
10 applied somewhere else. But here you were allowed under
11 this year's QAP to claim high opportunity points, to claim
12 points for the school district, and to claim Colonias
13 points.

14 Here we have a county commissioner coming and
15 telling you that he's putting funds into this area that
16 are specifically reserved for Colonias. I think that we
17 need to give some deference to the local elected public
18 officials who are charged with investing Colonias dollars
19 in this county. And if we want to make a rule change
20 let's do that next year, but let's not come up with a
21 different rule than what's in the QAP and say that you
22 can't get these points because you also claimed high
23 opportunity points.

24 MR. OXER: Your point is recognized, Barry, and
25 I, for one, am not founding my judgment or decision on

1 anything that says those two are mutually exclusive. I
2 don't see that as being the case because some of the best
3 schools I've ever seen are in some of the poorest areas
4 because there was an impassioned leader who was there who
5 was dedicated to the idea that they were going to bring
6 education to those students irrespective of their economic
7 circumstances. That said, my definition of Colonia does'
8 include twelve-inch sewers and a waterline there with
9 streetlights.

10 And again, to reinforce the point,
11 unfortunately, while I concur that these every one of
12 these sites and every one of these applications is for a
13 project that needs the money, they need this investment,
14 the entire area needs it, the whole state needs this, the
15 issue is we have to make a judgment about some mechanism
16 to separate these things out to make them competitive.
17 I'm not trying to change the rule, I'm trying to apply a
18 rule that we see in some fashion, even if it's somewhat
19 ambiguous and potentially obscure, to be able to make some
20 decision that supports a policy for what would be a fair
21 outcome or as best we can do on this outcome. There are
22 simply projects that are going to fall through these
23 because those are the ones that surface the areas that
24 need to have the work done and clarification on the QAP.

25 That said, we've got to make a decision and

1 there's got to be some foundation for it, so the rule that
2 we have is the best we can do right now. We'll sharpen
3 that up and we'll deal with it.

4 MR. PALMER: And I'm just suggesting that in
5 making that decision, the tough decision as to which of
6 these projects qualify for the points, because in my mind
7 it doesn't make sense to say that none of the projects
8 qualify for the points or that all of them do. You've got
9 to have some criteria for making a differentiation. And
10 here we've got local officials putting in local dollars
11 designated for Colonias improvements into this specific
12 area. That, to me, would be the basis that you make a
13 decision that yes, okay, that sure sounds like a Colonia.

14 And granted, we've got our definition and they've got
15 theirs, but they're so much closer to it, they live there,
16 they live this every day.

17 You know, we sent down a staff person to look
18 at it one day, and that's great but that's all that you
19 all have time to do at the state level. But the local
20 elected official, he's there and he knows what areas they
21 need to put their funding in and what not, and he's made
22 that decision to invest money, Colonias dollars into this
23 area, and we should respect that.

24 MR. OXER: Okay. Thanks, Barry.

25 You had a comment, Tim?

1 MR. IRVINE: Yes. I just wanted to say as the
2 person who upheld staff's recommendation, I didn't uphold
3 it because these deals qualified for HOA points or
4 educational excellence points, I upheld it because in my
5 belief they did not establish that the proposed sites had
6 the physical and economic characteristics of a Colonia as
7 defined in 19(a), and that's it.

8 MR. OXER: Okay. Anything else, Juan? Did you
9 have another comment?

10 DR. MUÑOZ: No.

11 MR. OXER: With respect to item 5(c),
12 application number 15006 on the Solano project, Solano at
13 the Sports Park, motion by Mr. Goodwin, second by Dr.
14 Muñoz to approve staff recommendation to deny the appeal,
15 those in favor?

16 (A chorus of ayes.)

17 MR. OXER: Those opposed?

18 (No response.)

19 MR. OXER: There are none.

20 We're going to have a full boat this afternoon.

21 We're going to take a break for lunch here, that will
22 give you some breathing room. We'll have an executive
23 session. It is 11:59 here, essentially twelve o'clock.
24 We're going to -- sit still for just a second.

25 MR. IRVINE: Clarifying that that vote was only

1 on 15006.

2 MR. OXER: I said that in the motion. What did
3 I say? Oh, I'm sorry. I did say it's 15006, Solano Park
4 Apartments, not Solano at the Sports Park. That's
5 correct.

6 Everybody just sit still for a second because
7 this has got to go formally into the record. Quiet in the
8 back, please. The Governing Board of the Texas Department
9 of Housing and Community Affairs will go into closed
10 session at this time, pursuant to the Texas Open Meetings
11 Act, to discuss pending litigation with its attorney under
12 Section 551.071 of the Act, to receive legal advice from
13 its attorney under Section 551.071 of the Act, to discuss
14 certain personnel matters under Section 551.074 of the
15 Act, to discuss certain real estate matters under Section
16 551.072 of the Act, and to discuss issues related to
17 fraud, waste or abuse under Section 2306.039(c) of the
18 Texas Government Code.

19 The closed session will be held in the room
20 immediately behind us in the small front room, so we
21 request that all members of the public remove themselves
22 from this room -- is lunch going to be here or is it going
23 to be in the very back -- okay, everybody can stay here.
24 The time is 12:01, let's be back in our chairs at 1:15.

25 (Whereupon, at 12:01 p.m., the meeting was

1 recessed, to reconvene this same day, Tuesday, June 16,
2 2015, following conclusion of the executive session.)

3 MR. OXER: It is 1:16, we're back in order. We
4 met, we had counsel from our General Counsel concerning
5 litigation, no decisions were made and nothing is pending
6 before this Board, it was only informative.

7 Jean. She'll be right back.

8 So Kathryn, Jean didn't abandon ship. Right?

9 You know, you've got to be careful, there's a
10 couple of Navy guys up here driving this boat and when we
11 say 1315 hours, we mean it.

12 MS. LATSHA: I apologize. I got stuck in a
13 couple of conversations. Jean Latsha, director of
14 Multifamily Finance.

15 We left off still on item 5(c) regarding the
16 appeals with respect to points for being located in a
17 Colonia, and with number 15031, and I believe it's Solana
18 at the Sports Park, not Solano, as the other one.

19 So this development site is located in the
20 northern part of Brownsville, right along 79 or 83, I
21 think it's the same highway right there, and across the
22 highway from the Olmito Colonia, however, again, the
23 actual development site is located in a tract with a
24 median household income of almost 50,000 and a poverty
25 rate of just under 26 percent. Also, as with the other

1 applications that we've discussed, access to a waterline
2 and twelve-inch sewer line directly in front of the
3 property. It is in the city limits of Brownsville, while
4 the Colonia that is across the highway is, I believe, in
5 the ETJ of Brownsville.

6 I think the argument is similar to some of the
7 other ones that we've heard, that the proximity to this
8 Colonia -- and this is a rather large Colonia -- warrant
9 it the same physical and economic characteristics of a
10 Colonia, and staff again disagrees in general. Staff
11 recommends denial of the appeal, and I know that we have
12 some words from the applicant.

13 MR. OXER: Okay. With respect to item 5(c),
14 application number 15031, Solana at the Sports Park, I'll
15 have a motion to consider before we hear public comment.

16 MR. GOODWIN: So moved.

17 MR. OXER: Motion by Mr. Goodwin to approve
18 staff recommendation to deny the appeal. Is there a
19 second?

20 MR. GANN: Second.

21 MR. OXER: Second by Mr. Gann.

22 Yes, Linda.

23 MS. BROWN: Honorable Chairman Oxer and members
24 of the TDHCA Board, my name is Linda Brown and I'm
25 president of Casa Linda Development, the developer and

1 general partner for Solana at the Sports Park in
2 Brownsville, Cameron County. I was also born and raised
3 in the Rio Grande Valley.

4 Today's appeals for Colonia points reminds me
5 of the old Sesame Street puzzler: One of these things is
6 not like the other. We are the one appeal that is not
7 like the others. Beginning on page 461 in your Board book
8 is response to the three reasons staff denied our two
9 points for underserved area. Please turn to page 463 and
10 464. Solana at the Sports Park is located within three-
11 quarter mile from the seventh largest Colonia along the
12 Texas-Mexico border. The Olmito Colonia is approximately
13 800 acres with a population of 4,044 and is classified as
14 yellow.

15 Three reasons staff denied our points. First,
16 staff concluded the recently designated Interstate 69,
17 formally Highway 77, is a reasonable boundary separating
18 the two sides of the highway as two distinct communities
19 or neighborhoods. We, of course, disagree. The highway,
20 as the only north-south corridor in and out of
21 Brownsville, is not a barrier, it is a connector. On page
22 479 is a letter from the City of Brownsville assistant
23 city manager, Ruth Osuna, confirming that the community
24 exists on both sides of the highway. In addition, she
25 adds, two east-west roads directly connect the development

1 site and the Olmito Colonia.

2 The people in this area acknowledge the
3 relationship, by naming the elementary school Olmito, the
4 single family subdivisions are Olmito Estates I and II,
5 and the Olmito Water Support Corporation. All of these
6 places are located east of the highway. Children who
7 reside in the Olmito Colonia will attend the same middle
8 school and high school as the children residing in our
9 development. Staff says we are in two communities because
10 the census uses the highway to create two census tracts,
11 yet the Olmito Colonia is in four census tracts, two on
12 the west and two on the east. Census tracts do not create
13 communities but people do identify their communities by
14 name.

15 Secondly, staff's second reason is the
16 development site does not have the economic and physical
17 characteristics of the Olmito Colonia. Staff concluded
18 median household incomes for the development site census
19 block group was twice as high as the census block group
20 where staff believes most of the Colonia is located. We
21 engaged the University of Texas Rio Grande Valley,
22 formerly UTPA, economic and development research group to
23 review staff's analysis and perform their own analysis
24 which is reflected beginning on page 469. As a result
25 UTRGV's analysis for the east and the west side of the

1 highway are virtually the same. See page 471. After a
2 telephone conference between UTRGV staff, Jean and
3 ourselves, Jean agreed that the UTRGV analysis was
4 reasonable and reliable.

5 Also, the Colonia and the development site are
6 located in the 2010 state-designated enterprise zone which
7 is defined as a severely distressed area of the state.
8 The Attorney General's website says the Olmito Colonia has
9 access to water, sewer and has paved streets but still
10 lacks in health clinics and healthcare providers. The
11 shortage of health-related services is also true for our
12 development site. Here, too, staff agrees. In staff's
13 summary of our appeal, staff states: The area lacks in
14 services such as healthcare providers, grocery stores and
15 pharmacies. We are the only applicant appealing these
16 points that has no significant commercial or service
17 businesses within two miles of the development site and
18 Olmito Colonia.

19 The third reason was based on staff's
20 observations during the staff site visit that concluded
21 that even though the area lacks in services, there is new
22 commercial activity and a single family residential
23 subdivision north of the development site. The new
24 commercial activity is a Toyota dealership. We submit
25 this is a real estate improvement and will create job

1 opportunities. It does little to provide any new retail
2 or services to benefit the Colonia residents or
3 development site directly.

4 In response to the single family subdivisions
5 north of the site, Osuna's letter confirms the City of
6 Brownsville has invested over \$600,000 in HOME funds for
7 housing assistance in Los Pinos and Olmito Estates. The
8 city has also worked with the CDCB and TSAHC to develop 40
9 single family lots in Olmito Estates. A picture of one of
10 the homes is on page 485. An addition 40 lots in Olmito
11 Estates has a LURA dated 4/20/2011 between TDHCA and
12 TSAHC.

13 Solana at the Sports Park is uniquely
14 positioned, as staff so perfectly described, as that rare
15 occurrence where one site can possess both sets of
16 physical and economic characteristics of a Colonia. We
17 respectfully urge the Board to recognize our differences
18 and reinstate our two points for Solana at the Sports
19 Park.

20 MR. OXER: Thanks, Linda.

21 Any questions of the Board?

22 (No response.)

23 MR. OXER: Quick detail, Jean, please. So this
24 one does have, with respect to back to our definition
25 again, it's not a matter of what everybody else's

1 definition is, it's what our definition is?

2 MS. LATSHA: Yes, sir. And so I did speak with
3 Linda and Sarah and the folks at UTRGV about the data
4 that they presented, and part of that conversation also my
5 reply was: I understand what you're showing me here is
6 that you've drawn a neighborhood and let's say we concede
7 that that's what the neighborhood should be considered,
8 the Olmito Colonia across the highway plus this community,
9 and their own data indicates that when you average that
10 median household income that you're still at around 50
11 grand which is considerably higher than the Brownsville
12 MSA which is around 33 grand.

13 Also, that Colonia, which has been in existence
14 for a while, does have access to basic utilities, meaning
15 water and sewer. Now, do they have access to all of those
16 other amenities? Not necessarily, not as much as some of
17 the other sites, but that's not what we were focusing on
18 in the rule. We were pretty well focused in all of these
19 discussions and we were talking about the physical and
20 economic characteristics being a relatively low income
21 population and lack of access to basic utilities which,
22 once again, even when you take this entire area on both
23 sides of the highway is not the case for that area.

24 I would concede that this isn't smack dab in
25 the middle of Edinburg or smack dab in the middle of

1 Brownsville, like the other sites, but outside of that, I
2 wouldn't concede that they actually met the requirement of
3 the rule.

4 MR. OXER: Okay. Any other questions of the
5 Board?

6 (No response.)

7 MR. OXER: With respect to item 5(c),
8 application number 15031, we have a motion by Mr. Goodwin,
9 second by Mr. Gann to approve staff recommendation to deny
10 the appeal. Those in favor?

11 (A chorus of ayes.)

12 MR. OXER: Those opposed?

13 (No response.)

14 MR. OXER: It's unanimous.

15 Okay, 15115, Jean.

16 MS. LATSHA: 15115 is Bella Vista Apartments.
17 This one is also in Edinburg, also west, although a little
18 bit further west than the previous site we talked about,
19 of 281 and right on that main drag 107. Again, we're
20 talking about a tract with a median household income of
21 46,000, poverty rate of 31.6, a little bit higher than
22 some of the other sites.

23 I did look at the block group on this one just
24 because it's a relatively dense area, so sometimes block
25 groups, although they have large margins of error in some

1 instances, might give you a better picture of what's going
2 on in the immediately surrounding are. The block group
3 household median income was actually 68,000, the block
4 group directly south of the site was at 85,000 annual
5 income. Another situation where we have access to a water
6 main and the sanitary sewer collection right there on the
7 highway because the site is basically located right there
8 on 107.

9 Again, staff recommends denial of the appeal,
10 but we might have some additional comment.

11 MR. OXER: Is there anyone here to speak on
12 this item? Okay. Hold on just a second. Any questions
13 of the Board? Motion to consider?

14 MR. GOODWIN: Motion to consider.

15 MR. OXER: Motion by Mr. Goodwin.

16 DR. MUÑOZ: Second.

17 MR. OXER: Second by Dr. Muñoz to approve staff
18 recommendation to deny the appeal.

19 Now public comment. Good morning. How are
20 you, Tamea?

21 MS. DULA: Good, thank you. Tamea Dula with
22 Coats Rose Law Firm.

23 MR. OXER: And just as a housekeeping item -- I
24 won't start your clock yet -- I had given Linda an extra
25 two minutes because she was speaking for two other persons

1 on her, so I would like you, if you would, please, to keep
2 it to three minutes.

3 MS. DULA: Actually, I think that the
4 commissioner will be speaking on this and possibly
5 somebody else.

6 MR. OXER: I mean on yours only.

7 MS. DULA: Okay. Thank you. I'm here today
8 speaking on behalf of the developer, the applicant for
9 Bella Vista Apartments.

10 The staff, denying this point request, made a
11 number of unusual operations. One reason for denial was
12 that the area that was defined by the applicant did not
13 follow natural boundaries. There is nothing in the QAP
14 that says natural in connection with boundaries.

15 Number two, the staff denied the points because
16 at least one Colonia in the area was shown as green on the
17 Attorney General's database of Colonias. It is fairly
18 well accepted that that database has problems. The green
19 Colonia is the Milyca Colonia, an although it's shown as
20 green which is in the AG's database supposed to show that
21 it has all requisite utilities. They have to have a
22 septic field because they have no access to sanitary
23 sewer.

24 The next item included within that, really, and
25 part of the development in the area that the staff said

1 that they noted was the question of whether or not there
2 is access to the basic utilities. And I point out to you
3 that you can't develop in an area where you can't find any
4 basic utilities. Okay? If you're going to build a
5 development, there has to be some utilities available
6 elsewhere or you're going to have to drill a well, you're
7 going to have to buy a generator, this is not the way we
8 develop affordable housing. The developer in this case is
9 going to have to spend \$200,000 to bring water, sanitary
10 sewer, drainage and paving to the perimeter of the
11 property as shown in the application.

12 The development in the area, staff observed
13 commercial and residential development in the area but we
14 point out that that development is south of the West
15 University Road which is a major highway and it's in a
16 different census tract and it is not within the
17 neighborhood defined by the applicant.

18 Finally, the census block group information
19 that was cited against this project had to do with it
20 being within a census block group, which is not something
21 that we customarily use in the TDHCA application process
22 for identifying income for a household, but the statement
23 was made that it was in too high a census tract group and
24 a census tract group to the south on the other side of the
25 West University highway and in an area that is not

1 considered part of the boundaries established by the
2 applicant, that that particular census tract group had a
3 median household income of 85,557. Well, this one has a
4 median household income of 46,190 and the poverty rate is
5 31.6 percent.

6 This is distinguishable. If you intend to
7 abide by the directive in 2306.127, this is the one to
8 pick because the is the one that most closely comes to
9 your concept of what constitutes a Colonia. A Colonia is
10 a defined area on the AG's database. You can't develop in
11 that, it's already defined, it's already developed,
12 improperly too. But having Colonias in the area that is
13 defined as the neighborhood implies that there is going to
14 be similarities to the Colonias in that neighborhood.
15 Colonias are not built in glass bubbles and they don't not
16 fail to affect the surrounding area. So if you've got a
17 Colonia on the west and the a Colonia on the east and one
18 in the north, it is quite likely that the area in between
19 where this site is located is going to have similar
20 characteristics.

21 Thank you.

22 MR. OXER: You're welcome.

23 Any questions from the Board?

24 (No response.)

25 MR. OXER: Any other comments on this item?

1 MR. PALACIOS: Again, Chairman, Board members,
2 Commissioner Joseph Palacios, Hidalgo County Precinct 4,
3 in favor of this project.

4 No sense in regurgitating my arguments of
5 earlier, but in this case I'd like to take this project as
6 an individual project to validate the argument about
7 what's on the Attorney General's website on decertifying
8 and certifying what is a Colonia and not a Colonia. We
9 can easily argue that in this case the adjacent Colonia
10 does not have sanitary sewer, valid point.

11 When you talk about projects like this
12 catalyzing and going back to the statements of change,
13 monumental change, well this in fact will lend itself to
14 that argument, stating the fact that if this project goes
15 through, now we have a cooperative deal on a public-
16 private partnership to pretty much tackle the sanitary
17 sewer argument there.

18 And I'll give you an example. If you don't
19 understand the topography of South Texas, or even Hidalgo
20 County, we are considered a valley but the truth of it is
21 we're not necessarily a valley, there's pockets of high
22 and low points. Developers in the past on how Colonias
23 were developed, they were looking at cheap land, so hence,
24 they would buy the lowest lying areas, and hence, here
25 comes the subdivision. In this case you could easily see

1 that on higher ground, which is maybe less than half a
2 mile or maybe a quarter of a mile you'll find a
3 development that may have 80,000 income, better home
4 sites, larger home sites, and then just adjacent to it
5 you'll find a low-lying area and you'll pop up a
6 development because they were able to buy it at such a
7 cheaper price because of being in a low-lying area and the
8 lack of access to utilities.

9 And also, just hear this site we had a
10 cooperative deal with the City of McAllen. Here's another
11 why I advocate partnerships, whether public-private or
12 public-public. The worst area in our precinct is
13 literally no more than a mile from this point. Low-lying
14 area and the recent rainfalls, it could rain less than an
15 inch and all their septic systems are backed up, they're
16 out of their bathrooms, out of their showers and literally
17 it takes us about a month just to get in there.

18 It's been a humanitarian project for us to work
19 with McAllen Public Utility Board just to get them sewer,
20 and we're not in the sewer business but we're there trying
21 to be advocates for our Colonia groups. And so in this
22 case we applied for an EDAP project, got it, successfully
23 have EDAP funds and the McAllen Public Utility Board gave
24 us half a million dollars just to be able to improve their
25 lift station and bring in sewer into this area.

1 I envision this project as one of those
2 potential chances for us to take a Colonia adjacent to the
3 area that has septic and be able to catapult ourselves to
4 bringing in sanitary sewer into an area that's needed.
5 This area was affected by the recent rainfalls and so when
6 I look at this one project, it kind of lends itself to a
7 good project to change the outcome of the neighboring
8 Colonias within that area.

9 One of the other things I didn't make in the
10 earlier argument is when we talk about Colonia funds
11 specifically designed to help Colonias, we did pass a
12 recent bond issuance in drainage and drainage is one of
13 the things that's our highest priority down in the Valley.

14 We allocated about \$4 million per precinct that goes
15 directly just to Colonias for drainage infrastructure.
16 And so the combination of Prop 2 money and the bond
17 dollars that the county is doing, it has been a goal for
18 us to try to advocate as much as we can to improve
19 infrastructure for Colonias.

20 We were looking forward for this public-private
21 partnership to be able to see the project come up and
22 hopefully catapult some of the needs that we have in the
23 neighboring Colonia. Thank you very much.

24 MR. OXER: Thank you, Commissioner.

25 Any other questions from the Board?

1 (No response.)

2 MR. OXER: Jean, summary on 15115. So it
3 didn't meet the physical and economic characteristics is
4 the staff's contention. Correct?

5 MS. LATSHA: That's correct. I know that Tamea
6 talked about some reasons for denial. I want to be clear
7 that the reason for the denial of the points is that it
8 didn't meet the requirement of the rule which was to
9 exhibit those physical and economic characteristics. Some
10 of the statements that we made regarding the area around
11 there and the fact that some of those Colonias were
12 classified in green was simply our way of explaining what
13 we saw in the area and that it wasn't what met the
14 requirement of the rules, that it did have the physical
15 and economic characteristics of that Colonia.

16 What was presented in this application
17 initially, and the reason that we brought up the
18 geographic area itself, this was another one of those
19 applications where a big circle was drawn around the site
20 that essentially constitutes 16 square miles, and so we
21 said, well, we don't want to look at that as the
22 geographic area when we're assessing the site because it's
23 too large per our rule. And so we tightened up that
24 geographic area and said, well, what seems reasonable to
25 us, we took a look at that and there's sewer and water

1 lines all along Highway 107 so seemingly anyone that would
2 develop along 107 about two miles would have access to
3 those very lines.

4 And that's why we also kind of dialed down to a
5 block group. It's true that that's not a statistic that
6 we typically use but we wanted to see if maybe it was
7 going to give us the opposite result. Right? Maybe we
8 are looking at a census tract that is large with a median
9 income of 50,000 and we dialed down to the block group and
10 it's showing us 30,000, and instead it showed us the
11 opposite which is why we put it in the report. It wasn't
12 the specific reasons for the denial, just support for the
13 ultimate denial of the points.

14 MR. OXER: Okay.

15 MS. DULA: Chairman, can I respond to one
16 comment?

17 MR. OXER: Sixty seconds, please, Tamea.

18 MS. DULA: Tamea Dula, Coats Rose.

19 The letter from Urban County Program that had
20 the two-mile radius, that two-mile radius map was provided
21 by Ms. Serna, Diana Serna, on all of the letters that she
22 provided. That was not intended to establish the
23 neighborhood for the applicant. I just want to make that
24 clear. The neighborhood for the applicant is shown on the
25 county commissioner's map.

1 MR. OXER: Okay. All right. Thanks very much.

2 Any other questions of the Board? Dr. Muñoz.

3 DR. MUÑOZ: Hey, Jean, I'm just curious. You
4 know, I get the three sort of criteria, including the
5 physical and economic characteristics of a Colonia. I'm
6 just curious, so many people are referring, and I tried to
7 go on to see the Attorney General's website and to see
8 that sort of definition, sort of like a newsletter. Was
9 there any kind of thought in your office, your staff of
10 kind of looking at that and reconciling some of the
11 language of sort of deprived, underdeveloped, no paved
12 roads are in that Attorney General's website?

13 MS. LATSHA: Yes. So part of our assessment of
14 each of these areas was to look at that very website and
15 see what they did have to say about some of the
16 neighboring Colonias. It was more just to help us
17 understand what was going on in the area in general. This
18 particular site, the Hacienda del Blanco -- I think it's
19 called -- is the Colonia that's right down the street that
20 is actually on 107, and if I remember correctly -- can't
21 believe I can even remember this -- it was actually not
22 classified, and so we couldn't tell just from our own
23 online research what kind of access or not it had to
24 anything else, but it's relatively small compared to the
25 geographic area that we were assessing. And there was

1 another Colonia nearby that was classified as green and
2 did have access to those utilities and things.

3 And so we were trying to take a picture of this
4 entire area, and while it does appear that within that
5 neighborhood there are a few roads that don't have that --
6 or at least haven't been able to take advantage of that
7 access yet. I have to admit I don't really understand
8 that, they're literally on 107, so they haven't been able
9 to take advantage of the access to that system. And
10 that's true, but I don't know that the fact that those few
11 streets in that Colonia haven't been able to take
12 advantage of that access is really indicative of the
13 entire area when you're driving around it.

14 DR. MUÑOZ: Just something for your team to
15 think about is several places and several occasions the
16 sort of Colonias, plural, area versus Colonia singular.
17 It's located in a Colonias area which sort of intimates it
18 has some of the possible economic and physical
19 characteristics of being depressed but it's not an actual
20 one. As we think about how to improve some of our
21 language, otherwise people will make this argument we're
22 in proximity to this sort of lack of services, resources,
23 infrastructure, and this sort of vague line doesn't
24 prevent that exposure of that limited sort of service to
25 this place 15 feet away, just as we think about it.

1 MS. LATSHA: Yes, sir.

2 MR. PALACIOS: Chairman, may I add to that,
3 just 60 seconds?

4 MR. OXER: Please.

5 MR. PALACIOS: Chairman and Board members, this
6 is specifically why --

7 MR. OXER: You have to re-identify yourself for
8 the transcript.

9 MR. PALACIOS: Commissioner Joseph Palacios,
10 Hidalgo County commissioner, Precinct 4.

11 MR. OXER: Great. Thank you.

12 MR. PALACIOS: To identify utilities off 107
13 and there's neighboring Colonias north of that, a Colonia
14 is already a developed subdivision that has a lack of, and
15 in this case there are Colonias in lack of utilities. No
16 one is going to move utility lines up in that area unless
17 there's a reason for it. This development would be a
18 reason and which would signify a monumental change to have
19 the ability to connect sanitary sewer into this area in
20 need. And I just want to clarify that.

21 Going down to the Attorney General's website
22 still it's not boots on the ground, you're not entrenched
23 into the dire need of the immediate area. And that's the
24 difference, that's the argument I want to make within the
25 application. That is why we're there, we're there to try

1 to guide in these processes of validating the need, the
2 concern, and so we were hoping to try to make it much
3 easier on you to try to give you good quantitative data,
4 mapping and actual utility lines and showing the
5 difference between one versus the other.

6 In this case I think this project really lends
7 itself and I think the points should be reinstated for the
8 mere fact that a Colonia is never going -- the residents
9 of that area are never going to pull the utilities in
10 there, it's either going to be the incorporated city or
11 the service city or it's going to be a project that will
12 catalyze the utility into that area. And so that's my
13 argument that's what sets this one apart, and I just hope
14 that you reconsider. Thank you.

15 MR. OXER: We appreciate your comments,
16 Commissioner.

17 Did you have a thought, Tim?

18 MR. IRVINE: No.

19 MR. OXER: Anything else, Jean?

20 MS. LATSHA: No, sir.

21 MR. OXER: Okay. With respect to item 5(c),
22 application 15115, motion by Mr. Goodwin, second by Dr.
23 Muñoz to approve staff recommendation to deny the appeal.
24 Those in favor?

25 (A chorus of ayes.)

1 MR. OXER: And those opposed?

2 (No response.)

3 MR. OXER: And there are none. It's unanimous.
4 Okay, 15122.

5 MS. LATSHA: 15122 is Casa Toscana. This is
6 also in Brownsville. This is located off West Alton Grove
7 Road, and to give you some perspective, there's a map in
8 there for you, but again we're looking at 83/79 north-
9 south highway. This is on the west side of the highway,
10 there's a rather large Colonia called Hacienda Gardens on
11 the east side of the highway.

12 Again, we're looking at a relatively high
13 median household income for the tract, a little over
14 43,000, a poverty rate of 27.3 percent. But I think what
15 was a little bit more compelling was the actual
16 characteristics of the development around this site. It's
17 a pretty well developed road, new school, and this is all
18 west of the highway, a well developed couple of single
19 family neighborhoods, I think there's a Sam's Club and a
20 McDonald's, and it's a relatively vibrant community.

21 There's an interesting argument made in this
22 appeal with respect to the off-sites associated with this
23 development, substantial, I think 1,200 feet of sanitary
24 sewer line and 700 feet of sewer, 1,200 feet of sanitary
25 sewer, something like that. Anyway, significant off-sites

1 associated with this, but before those numbers sway you
2 too much, it should be understood what is going on with
3 this site and the reason for those numbers, so this site
4 is proposed to be about 600 feet behind proposed retail
5 that's going to go on the frontage road, and so they chose
6 to put the site behind the proposed retail, for a good
7 reason, that's probably going to help them out quite a bit
8 in the long run. This is an area that is developing.

9 Again, it was really difficult for staff to
10 look at this site and determine that it had the physical
11 and economic characteristics of a Colonia just because of
12 everything else that was going on around it. Staff
13 recommends denial of the appeal.

14 MR. OXER: Okay. Item 5(c), application 15122,
15 motion to consider?

16 MR. GOODWIN: So moved.

17 MR. OXER: Motion by Mr. Goodwin to approve
18 staff recommendation to deny the appeal. Is there a
19 second?

20 MR. GANN: Second.

21 MR. OXER: Second by Mr. Gann.

22 Anyone here wish to speak on this particular
23 item? Is there any public comment?

24 (No response.)

25 MR. OXER: With respect to item 5(c),

1 application 15122, motion by Mr. Goodwin, second by Mr.
2 Gann to approve staff recommendation to deny the appeal.
3 Those in favor?

4 (A chorus of ayes.)

5 MR. OXER: Those opposed?

6 (No response.)

7 MR. OXER: And there are none. It's unanimous.
8 Jean.

9 MS. LATSHA: All right. Am I on 282?

10 MR. OXER: 249, Anaqua.

11 MS. LATSHA: Excuse me. Yes. Number 15249,
12 Anaqua. This site is actually located I think about a
13 block and a half from a site that we talked about earlier,
14 Solano Park, just west of 281 in Edinburg, right around
15 the corner from the new regional medical center. Again,
16 census tract with a median household income of almost
17 75,000, poverty rate of 15.8 percent, and access to
18 waterline that runs along the property line and sewer
19 about 660 feet from the property.

20 Again, an area that, like I said earlier, there
21 was development that we observed on our site visit that
22 didn't even exist on the Google map yet, so an area that
23 is being developed rapidly right. And staff recommends
24 denial of the appeal.

25 MR. OXER: Item 5(c), application 15249.

1 Motion to consider?

2 DR. MUÑOZ: So moved.

3 MR. OXER: Motion by Dr. Muñoz to approve staff
4 recommendation to deny the appeal. Is there a second?

5 MR. GOODWIN: Second.

6 MR. OXER: Second by Mr. Goodwin.

7 Does anybody care to speak? Is there public
8 comment on this item?

9 MR. VERMA: Hello. I am Manish Verma with
10 Versa Development.

11 I think this issue has been discussed in great
12 detail today, I don't have anything to add our appeal
13 request. I think the staff has been very diligent in
14 their analysis on this issue for all the applications, and
15 I appreciate that and I respect that and respect their
16 decision here today and respect the Board's decision as
17 well. And that's all I have to say. Thank you.

18 MR. OXER: Thank you very much for your
19 comments.

20 This is a hard time of the year so we like to
21 recognize that the staff is doing a remarkable job trying
22 to put all this together and I know there's been extra
23 time put on this, so our thanks to the staff also.

24 With respect to item 5(c), application 15249 on
25 Anaqua, motion by Dr. Muñoz, second by Mr. Goodwin. Those

1 in favor?

2 (A chorus of ayes.)

3 MR. OXER: Those opposed?

4 (No response.)

5 MR. OXER: And there are none. It's unanimous.
6 Last one on item 5(c), Jean.

7 MS. LATSHA: Yes, sir. Orchard View at
8 Mirabella, number 15282. This development is located at
9 the corner of Trenton Road and Weir Road in McAllen.
10 That's kind of north McAllen; Trenton is a major east-
11 west.

12 Again, we are in a census tract with median
13 household income of over 70,000 and a poverty rate of 11.4
14 percent. Water and sanitary sewer provided by the McAllen
15 public utilities and available at the perimeter of the
16 property. Staff's site visit didn't reveal anything about
17 this particular site that would make us think that it had
18 the physical and economic characteristics of a Colonia.
19 Staff recommends denial.

20 MR. OXER: So it's essentially 1.7 of this
21 whole issue, meaning seventh replication of our same
22 problem.

23 MS. LATSHA: Yes.

24 MR. OXER: 7.0, maybe.

25 MS. LATSHA: Sorry, my brain is a little fried.

1 Yes, sir.

2 MR. OXER: That's okay.

3 Item 5(c), application 15282, motion to
4 consider?

5 MR. GANN: I so move.

6 MR. OXER: Motion by Mr. Gann. Is there a
7 second?

8 MR. GOODWIN: Second.

9 MR. OXER: Second by Mr. Goodwin.
10 Is there any public comment? You've been very
11 patient sitting there, so we're happy to have you.

12 MR. FLORES: And I will try to be brief. Mr.
13 Chairman, members, thank you for your time. My name is
14 Henry Flores and I represent this transaction.

15 Like Mr. Verma, I agree that Jean and
16 especially Mr. Irvine spent a lot of time reviewing this
17 matter. I can't necessarily argue with their logic, but I
18 did want to make a few observations, first by saying that
19 I can't possibly in good faith ask you to approve this
20 appeal. What I would suggest to you is that all seven
21 appeals should have been approved because the rules
22 clearly establish in the procedural manual what tests need
23 to be met. There was no ambiguity, there was no
24 philosophic discussion, the rules were clear. Seven
25 developers, or at least seven groups of developers, all

1 very qualified individuals, came to the same conclusion.
2 Clearly, if the training was that clear, we would not have
3 had this situation occur.

4 I understand the Valley. My mom and dad were
5 born and raised in Mercedes, Texas, they were migrant
6 workers. Mercedes is a very small community between
7 McAllen and Harlingen. No one has done more transactions
8 in the Rio Grande Valley than our company. We did the
9 first ones in 1996 in Harlingen, San Benito and Mercedes,
10 my mom and dad's hometown, at a site cater-corner from the
11 cemetery where all my grandparents and three of my great-
12 grandparents are buried. We didn't just arbitrarily
13 choose that site, we went there because we wanted to serve
14 our community. We've done deals in Alton and McAllen,
15 Brownsville, Alamo, Donna, Weslaco. We have a deal under
16 construction in Brownsville, we're about to break ground
17 in Alton. I'm not a novice to this industry, I'm not a
18 novice to that area. We absolutely made the right
19 decisions.

20 Again, having denied all of them, you have to
21 deny me, that's the only fair thing and I would expect
22 this Board to do the fair thing. I'm an advocate of good
23 government and that's one of the reasons I want to address
24 this. One of the criticisms is the average income of the
25 census tract, what is not taken into account is that the

1 Rio Grande Valley is the poorest part of the United
2 States, with the exception of the Mississippi Delta. Down
3 there you can be in front of a gated entrance of million
4 dollar houses and drive a mile down the road and there's a
5 Colonia. That is the facts and that's why you have census
6 tracts that have high incomes but they have the presence
7 of Colonias.

8 In the training, a methodology was established
9 that draw a two-mile square around your site. We did
10 that. There's 13 Colonias within that two square miles,
11 including one that's red and one that's yellow, which
12 means we have no services, we have no medical care. We
13 absolutely met the test.

14 Again, I cannot ask for you to support us, but
15 I do want to say that it's important for next year that
16 this issue be given some clarity because it's unfair to
17 both the political supporters of these transactions, for
18 developers who have spent time, energy and resources
19 sponsoring applications to find ourselves in this
20 situation.

21 You know, my parents were very, very poor --
22 again, they were migrant workers -- but they had great
23 faith in God and a belief in this country, and they
24 insisted that education was the key to our success.
25 Because of them and because of some very good teachers and

1 some very man nuns, I had the opportunity to go to Yale.

2 MR. OXER: My knuckles still hurt. Okay?

3 (General laughter.)

4 MR. FLORES: Absolutely.

5 I had the opportunity to go to Yale University
6 for my undergrad degree and Harvard for my master's. My
7 master's is in public administration; I spent 19 years in
8 public service. Transparency and clarity is a key
9 component, and unfortunately, it was missing on this
10 issue.

11 I appreciate the opportunity to address this
12 Board. I understand this is a difficult discussion, and
13 again, I appreciate Jean and Mr. Irvine giving us the
14 opportunity to discuss this with them. Thank you.

15 MR. OXER: Good timing, Mr. Flores. I
16 appreciate your thought and comments on that. I think
17 it's apparent we'll deal with this issue and then we'll
18 have some summary comments on the whole item.

19 Is there any other public comments on item
20 15282?

21 (No response.)

22 MR. OXER: With respect to item 5(c),
23 application 15282, motion by Mr. Gann, second by Mr.
24 Goodwin to approve staff recommendation to deny the
25 appeal. Those in favor?

1 (A chorus of ayes.)

2 MR. OXER: Those opposed?

3 (No response.)

4 MR. OXER: There are none. It is unanimous.

5 Okay. I think it's fair to say that we've got
6 a lot of work to do on this item because while the
7 developer community, the development community, the
8 community of developers out there are particularly good at
9 looking for ways to garner an advantage in this
10 competition -- because it is such a competitive
11 allocation, competitive process -- one of the things that
12 your comments do is surface those places where we need to
13 make considerably more effort to clarify what we wanted to
14 have happen, irrespective of what the definitions are. So
15 I will suggest that the QAP development team and revision
16 team is going to spend a lot of time on this one.

17 Just remember, we're going to rewrite it for
18 you when you come back too, Jean.

19 (General laughter.)

20 MR. OXER: Okay. Owing to the fact that we've
21 got a full agenda, let's keep going on item 5(d), get a
22 few of those out of the way, and we'll take a break here
23 at 2:30. So the people can schedule themselves, we'll
24 work on taking a break towards 2:30, but let's get a few
25 out of the way on item 5(d).

1 MS. LATSHA: Sure. I'm going to let Kathryn
2 give some details with respect to the other appeals, but
3 just as an introduction to them, a lot of these appeals a
4 lot of times the question here winds up being should the
5 applicant have been able to correct the issue via an
6 administrative deficiency. So as we work through them,
7 we'll go over some of the rules with respect to
8 administrative deficiencies and why some things can be
9 cured and some things can't. That rule does allow staff
10 to make some determination as to whether or not items that
11 are missing or needed clarification in an application
12 should be considered administrative and can be corrected
13 that way.

14 We do treat three parts of the application in a
15 different way and we do that in the rule. There are
16 threshold items which, in a sense, are expected to be
17 needing clarification or there might be some minor
18 omissions that we do allow applicants to correct. I think
19 that, in my estimation, those are all on the same playing
20 field in a way. You have, let's say, 40 exhibits, all of
21 which everybody has to provide in their application
22 submission, so while one person might not have some
23 information regarding the zoning of their development and
24 another person might have inadvertently forgot to submit a
25 title commitment, we kind of treat those things as the

1 same thing and we do allow for some correction via
2 administrative deficiency.

3 While on the other hand we have scoring items,
4 and we make this clear in the rule as well, where if you
5 fail to submit documentation with respect to a scoring
6 item, we don't allow that to be cured via administrative
7 deficiency, and the reason for that is that those are
8 items that applicants elect in order to make their
9 applications competitive. Those elections require a lot
10 of work and time and effort on the applicants, and so
11 those who put in that work and time and effort and
12 attention to detail and submit that documentation are
13 awarded those points, while those fail to are not awarded
14 those points. We do look at that differently and we look
15 at that differently in the rule.

16 Also, we look at third party reports
17 differently. If your third party report is not submitted
18 in its entirety -- and this is in the rule -- then your
19 application is terminated. That is to prevent folks from
20 basically not having their third party reports finished
21 and complete and in reference to the relevant development
22 in time.

23 So that being said, I'm going to allow Kathryn
24 to present the next couple of details.

25 MR. OXER: So what you're essentially saying

1 there, if I can have some clarification for my own
2 edification, some of these that are more the product of
3 defining the nature of the project or the application can
4 be defined through the administrative deficiency process,
5 where those that are in competitive pursuit of the points
6 that are available cannot.

7 MS. LATSHA: That's correct, and that's
8 actually in the rule.

9 MR. OXER: Okay.

10 MR. GOODWIN: And Jean, all nine of these are
11 on scoring points, these are appeals on scoring points?

12 MS. LATSHA: No, because some of them are
13 related to third party reports which is cause for
14 termination.

15 And just to give a little bit of perspective
16 too, I know that Beau came on and we were talking about
17 the process and everything, and it sometimes comes to
18 surprise what actually happens in real life when we review
19 these applications. On average, a typical application has
20 about 15, maybe, administrative deficiencies, so without
21 allowing for any correction at all, we wouldn't have any
22 eligible applications.

23 MR. OXER: Can we put that in the QAP for next
24 year?

25 (General laughter.)

1 MS. LATSHA: And so I think it's appropriate
2 that we actually look at some of these issues as
3 correctable and some of them as not, because if we had no
4 leniency at all in that process, we would wind up with 60
5 million in tax credits at the end of July and nobody to
6 give them to. So I just want to make sure that there's
7 some understanding about the practical implications of
8 that process.

9 MR. OXER: So the complexity of these
10 applications simply provides that it's extraordinarily
11 difficult to be complete on the first shot through.

12 MS. LATSHA: It does, and we appreciate that.

13 MR. OXER: All right. Kathryn, have at it.

14 MS. SAAR: Good afternoon. Kathryn Saar, 9
15 Percent Tax Credits.

16 The first appeal that we're looking at today is
17 on Lometa Pointe. It is the appeal of a scoring notice
18 that was denied the point under 11.9(e)(7) which is
19 related to the funding request amount.

20 So the QAP has two mechanisms by which we limit
21 the amount of credit that can be awarded to any particular
22 application. The first is 11.4(b) which is related to a
23 cap on the credit per application, and that limits
24 applicants to 150 percent of what's available in a sub-
25 region, or a million and a half for the general 13

1 regions, or two million for the at-risk set-aside. So
2 it's 150 percent of what's available in the sub-region or
3 the lesser of that, the \$1.5- or \$2 million cap.

4 So this particular scoring item was introduced
5 in 2014 and it was actually modified slightly in response
6 to public comment that we received on those rules. It
7 originally had to do with capping the number of units in
8 the development size, and it was restructured during that
9 public comment to its current form which caps a request at
10 100 percent to get that additional point. That was
11 something I meant to make a little clearer. So the 11.4
12 is a cap in general that you can't exceed; if you exceed
13 it, we'll cut your request. The 11.9 with 100 percent of
14 what's available is an incentive to reduce your credit
15 request. So if you stay within that 100 percent of what's
16 available, you're eligible for an additional point.

17 MR. OXER: Why would anybody apply for more
18 than what was available?

19 MS. SAAR: What's that?

20 MR. OXER: Why would someone apply for more
21 than what was available?

22 MS. SAAR: It's possible that your deal
23 wouldn't work. In some of these smaller sub-regions where
24 there's only \$500,000 available during the RAF process, a
25 lot of deals might not be feasible with just \$500,000 in

1 credit, and I believe that's probably the case here. The
2 amount available in this particular sub-region in the case
3 of Lometa Pointe was \$560,730, so if you were under that
4 amount, you were eligible for the extra point. The cap
5 for that sub-region was about 845,000, something like
6 that. The requested amount in this case was 839,000. So
7 the applicant did not exceed the maximum request and it
8 appears that there was a misunderstanding between those
9 two different categories, the 150 percent actual cap and
10 the 100 percent or less of the available in the sub-
11 region.

12 The RAF has both limits listed, the Regional
13 Allocation Formula that we publish has columns for both of
14 those amounts, so in Rural Region 8 there was only 560,000
15 available, but if you went over to the final column where
16 it showed the maximum request which is in relation to that
17 11.4, it showed the request of 850-, we'll call it, as
18 being the maximum. So it just appears that the applicant
19 looked at the wrong column when sizing the particular deal
20 and claimed the point with that misunderstanding.

21 MR. IRVINE: But going back to the chairman's
22 question, they would apply for it on the theory that there
23 would be more available in the collapse.

24 MR. OXER: In the collapse. Okay. So even if
25 it's 560-, 150 percent of that would be 840-, so the whole

1 point was they could apply for the 840-.

2 MS. SAAR: Correct, and that's often what
3 happens. If you couldn't make your deal work at that
4 lesser amount, the 100 percent or less, then if you're in
5 first place in the region, the way the funding falls
6 through is we wouldn't award anyone. If the first place
7 applicant is exceeding the amount available, the whole
8 amount available gets put into the pool.

9 MR. OXER: The statewide collapse.

10 MS. SAAR: Correct. And then that region would
11 be 100 percent underfunded and would be at the top for the
12 collapse.

13 MR. OXER: So whatever credits were available
14 out of the collapse, since they were at the top at 100
15 percent underfunded, they get first shot at the 150
16 percent.

17 MS. SAAR: Correct.

18 MR. OXER: Just wanted that on the record.

19 MS. SAAR: Thank you for the clarification.

20 So I think that kind of explains maybe how we
21 got here. I'd like to hand it over to the applicant.
22 Staff recommends denial of the appeal.

23 MR. OXER: Are there any questions of the
24 Board? We'll have to have a motion to consider to begin.

25 MR. GOODWIN: So moved.

1 MR. OXER: Motion by Mr. Goodwin with respect
2 to staff recommendation to deny the appeal for item 5(d),
3 application 15028. Do I hear a second?

4 MR. GANN: Second.

5 MR. OXER: Second by Mr. Gann.

6 Do we have public comment? Sarah, nice to see
7 you back.

8 MS. ANDRE: Thank you. Of course I have some
9 public comment. Hi. My name is Sarah Andre. I'm here on
10 behalf of Whitman Investments, that's the developer for
11 Lometa Pointe, application 15028. I'm here to appeal
12 staff's decision to rescind the point and as Kathryn said,
13 under item (e)(7) of Section 11.9 an applicant may receive
14 one point if you reflect a funding amount that's no more
15 than 100 percent of the amount available within the sub-
16 region or set-aside, as estimated by the Department as of
17 December 1, 2014.

18 We have heard quite a few discussions today on
19 the efforts that the staff has made to make the rules
20 transparent, straightforward, reduce quirks and ambiguity,
21 and I believe there's been great strides in those areas.
22 Unfortunately, this is not one of them, this is a place
23 where there is still some ambiguity.

24 This is the attached chart, and it is included
25 in your packet, where it shows the amount available, and

1 the amount available for Region 8 Rural, if you look over
2 here, is \$841,095. We requested \$839,000 which is clearly
3 less than the amount available.

4 In the QAP it states: When a term is not
5 specifically defined, terms are to be read in context and
6 construed according to common usage. The term "available"
7 is not defined anywhere in the QAP or in the Multifamily
8 rules. I used Webster's and Dictionary.com to look up the
9 common definitions. "Available" means suitable or ready
10 for use, accessibly. The antonym is "limited".

11 "Maximum" -- and I'm using "maximum" and "limited" because
12 that's the column I read from -- "maximum" is the greatest
13 quantity or amount possible. "Limit" is a prescribed
14 maximum or minimum amount, quantity or number. So using
15 these common definitions, a value that falls within the
16 maximum funding request and the award limit would be an
17 available value.

18 When staff presented me with their
19 determination, first I was shocked, and then I started
20 researching, and I looked into the QAP, the Multifamily
21 rules, the Multifamily application training workshop
22 materials, the Multifamily Program procedures manual, and
23 the FAQs for this cycle. The term "available" is not
24 mentioned anywhere in any of those documents, nor is there
25 any reference to it or any guidance on the scoring item.

1 The only reference that was made available by the staff is
2 here on this chart down in the sub eight-point font that I
3 have to use a magnifying glass to read, you can't even see
4 it.

5 MR. OXER: That's why they call it small print.

6 MS. ANDRE: The note is appreciated but it's
7 not a definition. And we aren't the only people that
8 followed this interpretation. I assessed all of the 2015
9 full applications in sub-regions where they had more than
10 roughly 1.5 million, since that's the other cap, and in
11 those 20 sub-regions there were 19 applicants who
12 requested funds that would exceed staff's determination of
13 available. Of those 19, eight, or almost half, requested
14 the point the same way that we did in this application.

15 We don't normally request points for things
16 that aren't available. Some people do that; I'm not one
17 of them and I don't advise my clients to do that. If we
18 had understood the interpretation the way that staff
19 asserts that it is, we would never have applied for that
20 point, and in fact, would have restructured the deal to
21 fit within the 560,000 that they say is available.

22 I'm only saying that really to show you that
23 this isn't a plea for leniency in something where we maybe
24 didn't follow the rules, it's really a plea for you to
25 find that a strict interpretation of the written rules as

1 presented by staff should be upheld.

2 MR. OXER: Thank you.

3 Any questions of the Board for Sarah?

4 (No response.)

5 MR. OXER: Kathryn, any response?

6 MS. SAAR: Well, I agree with Ms. Andre that a
7 strict interpretation of the rules is absolutely required,
8 and her appeal actually talks about -- she quotes the QAP
9 and says: When a term is not specifically defined, terms
10 are to be read in the context and construed according to
11 common usage. And the context of that chart is spelled
12 out in the footnote. Yes, it is tiny font, but on a
13 computer screen it can be made larger, and that footnote
14 specifically talks about which column to use when
15 determining the amount available in the sub-region, and it
16 reads: The column labeled final funding amount is the
17 column an applicant can reference to determine the amount
18 of credit allocation that is estimated to be available for
19 the 2015 cycle. I mean, the plain language of the
20 footnote indicates which column is to be used.

21 And one other point is I don't believe that
22 this particular application could have been structured
23 differently given the number of units that is being
24 proposed. I don't think that this particular development
25 would work at a lower credit amount, so it would have

1 meant completely resizing the deal and new site plans and
2 whatnot.

3 MR. OXER: All right. But that constitutes
4 speculation and we'll leave that for later.

5 Any other questions of the Board?

6 MR. GOODWIN: Did you say the comment was that
7 half of the other applications got it right and half
8 didn't?

9 MS. LATSHA: Jean Latsha, director of
10 Multifamily Finance.

11 It does appear that some other folks did make
12 the same mistake this year. I, quite frankly, don't know
13 why. The rule was in place in 2014 and nobody made the
14 same mistake. I'm sure that when we were at the
15 application workshops, since this is something that never
16 came up in the past, we probably said: Hey, everybody,
17 this is the exact same as it was last year; any questions?
18 No, let's move on.

19 Just really quickly to put this in perspective,
20 you have an award limit, this is for everyone, nobody in
21 that region could possibly be awarded more than 840,000 in
22 credits, that's basically a threshold. There would be no
23 reason for being under 840,000 to afford you a point, you
24 have to be under that 840,000. So in order to be eligible
25 for the point, you'd have to be under a lower threshold.

1 That makes sense. It's in order to, if you will, not
2 avoid the collapse but to incentivized deals to fit within
3 what is available in their region so that we don't have to
4 go through this rural collapse and statewide collapse.
5 But it would be nonsensical to award points for something
6 that is essentially a threshold item.

7 MS. SAAR: And then to address the point of
8 other applicants making a similar mistake, I think the
9 applicant's appeal points out that there were eight other
10 applicants. I identified seven and most of those weren't
11 competitive so we haven't even looked at their
12 application. Three of the applicants that we have looked
13 at and assessed, all three had the point denied, and this
14 is one of those three; the other two did not appeal.

15 MR. OXER: Okay. You have a comment, sir?

16 MR. RHODES: My name is Dave Rhodes. I'm the
17 developer for Lometa Pointe, and I want to speak in favor
18 of our application.

19 Like any developer, you do a due diligence in
20 the very beginning and when we did our original due
21 diligence, we sized this deal based on what we thought we
22 could apply for in credits. Had we known that we were
23 being restricted to the \$560,000 in credits, because
24 relied on that chart given to us by this agency, we would
25 have restructured our deal in the very beginning in the

1 pre-application for 54 units rather than 78 units. This
2 senior project is supported by the market study, and
3 therefore, we went ahead and applied for the 78 units.

4 That, in a nutshell, we would not have applied
5 and it was financially feasible to work at 54 units versus
6 the 78 units, we would have just resized our deal.

7 MR. OXER: Thank you, Mr. Rhodes.

8 And the interpretation of that -- stay up here,
9 Kathryn, because you're going to be busy for a while --
10 the 840,000 was not a restriction on that, you were able to
11 apply up to the 150 percent, it's just that to qualify for
12 the point in the competition, you had to stay under the
13 100 percent that was made available. The 840,000, with a
14 couple of dollars on that, was simply the total
15 allocation, even removing this application through the
16 process and back into the statewide collapse.

17 MR. RHODES: I don't believe that was clear in
18 what was made available.

19 MR. OXER: Was it made clear last year,
20 Kathryn?

21 MS. SAAR: I looked at 2014 applications and it
22 doesn't appear that anyone claimed the point and that was
23 ineligible for it.

24 MR. OXER: Okay. Thank you, Mr. Rhodes.

25 MR. RHODES: Our argument is why did so many

1 people this year.

2 MR. OXER: That's a good question.

3 MS. SAAR: Well, as Jean said, at the workshops
4 we got to the slide, we said this is exactly the same as
5 last year, does anyone have any questions, and we didn't
6 get any comment.

7 MR. OXER: Okay. Any more questions from the
8 Board?

9 (No response.)

10 MR. OXER: With regard to item 5(d),
11 application 15028, motion by Mr. Goodwin, second by Mr.
12 Gann to approve staff recommendation to deny the appeal.
13 Those in favor?

14 (A chorus of ayes.)

15 MR. OXER: Those opposed?

16 (No response.)

17 MR. OXER: There are none. It's unanimous.
18 Okay, 15040.

19 DR. MUÑOZ: Kathryn, before we come off this
20 subject, I guess in your notes, obviously a number of
21 people --

22 MS. SAAR: We will definitely make that
23 footnote more visible next year.

24 DR. MUÑOZ: Yes, that's right. We shouldn't
25 have people coming up with magnifying glasses.

1 MR. OXER: Larger font.

2 MR. IRVINE: I would also like to point out
3 that if read the whole QAP under 11.6, subsection (1), it
4 does say we will make available the amount in the sub-
5 regions that's calculated under the RAF. So the words
6 "make available" is used elsewhere in the rule.

7 MS. SAAR: So the next item on your agenda is
8 the appeal of the termination for the application
9 Leatherwood. This application was terminated because a
10 submission requirement was not met related to a capital
11 needs assessment.

12 The application submitted the capital needs
13 assessment which is required under the third party reports
14 section of the rule, however, when staff reviewed the
15 application, it was identified that the CNA provided was
16 actually for a different development site. So what we
17 actually received was a cover page that said Leatherwood
18 Apartments, and then behind it there was a twelve-page
19 narrative which was clearly for a different application,
20 different number of units, different location, and then
21 behind that twelve-page narrative were some pictures and
22 charts of an apartment complex and it was not immediately
23 clear if it was the apartment complex for the application
24 or for the other application that the narrative was for.

25 So an administrative deficiency was issued

1 asking the question: How does the CNA provided meet the
2 requirements of the rule? The applicant responded with
3 the corrected capital needs assessment with the twelve-
4 page narrative that was for the correct development site.

5 They indicated that the pictures and charts that were
6 included with the original submission were, in fact, for
7 Leatherwood, but without the narrative there's really no
8 meaning to those pictures and charts because there's a
9 level of analysis that the provider does based on those
10 charts, and that is what the narrative is all about, it
11 explains what the charts and pictures mean. So because
12 the entire CNA was not submitted with the application by
13 the delivery deadline, the application was terminated.

14 So the third party reports require a capital
15 needs assessment and for USDA deals it's actually a
16 capital needs assessment so it's a slightly different
17 report but it's the same idea. We're assessing on a
18 rehabilitation what actually needs to be done. There's a
19 high level of analysis that takes place with the systems
20 that are in place, how much life they have left, what the
21 status of the actual development looks like so that an
22 applicant can determine how much rehab is needed in that
23 development. That's why we have to have a property needs
24 assessment.

25 So the third party reports section of the rule

1 talks about how the CNA needs to meet the requirements
2 under 10.306 which is our underwriting rules. Our
3 underwriting rules then reference the USDA guidelines and
4 those USDA guidelines require a narrative, because as I
5 said, there's an analysis done on the development and
6 without that twelve-page narrative, or however many pages
7 it is, there's just no way for staff to determine what
8 they're looking at with those pictures and charts.

9 So this is one of those unfortunate mistakes
10 that simply can't be corrected because the rules require
11 that third party reports be delivered with the
12 application. I would be no different than if that twelve-
13 page narrative that was for a different development site
14 had been twelve blank pages. The fact that a narrative
15 was submitted that was for a different development doesn't
16 help.

17 It's similar probably to how we looked at the
18 bookmarks last year. If you have an application process
19 that requires certain things and only one person doesn't
20 comply with those rules, it feels like a simple fix, like
21 we should allow them to correct it, but when you start to
22 apply that to 171 applications, it becomes unmanageable to
23 allow so many things to be corrected after the fact that
24 weren't in place on the date that the application was due.

25 It would also be a mechanism by which an

1 unscrupulous applicant could manipulate the system and
2 gain additional time for a report to be completed. If
3 they didn't have their CNA completed by the deadline, they
4 could insert blank pages or insert a narrative for a
5 report that was completed and then try and correct it
6 through an administrative deficiency. I'm in no way
7 suggesting that that's what this applicant is doing, I'm
8 simply showing that that's the reason why we don't allow
9 these types of things to be corrected.

10 MR. OXER: One of the reasons we have
11 deadlines.

12 MS. SAAR: Yes.

13 MR. OXER: It's like being late.

14 MS. SAAR: Yes.

15 MR. OXER: Here's a clock, date certain, time
16 certain, this side is good, that side is not.

17 MS. SAAR: Correct.

18 MR. OXER: Summary?

19 MS. SAAR: Staff recommends denial of the
20 appeal.

21 MR. OXER: Okay, thanks.

22 Any questions of Kathryn from the Board?

23 (No response.)

24 MR. OXER: Motion to consider?

25 MR. GOODWIN: So moved.

1 MR. OXER: Motion by Mr. Goodwin to approve
2 staff recommendation on application 15040. Do I hear a
3 second?

4 MR. GANN: Second.

5 MR. OXER: Second by Mr. Gann.

6 Do we have public comment? Anyone wish to
7 speak?

8 MS. LINDSEY: Good afternoon. Emily Lindsey
9 with Hamilton Valley Management. I would like to thank
10 you gentlemen on behalf of our firm. We very much
11 appreciate the essence of what you strive to accomplish
12 here today with the Board.

13 It is not my intent today to convince you that
14 the Leatherwood Terrace application did not contain error,
15 because it did, as have all of the applications that all
16 of the developers here today have submitted. We have yet
17 to acquire completely tax credits without having to
18 resolved some sort of deficiencies along the way. But
19 having been a part of the Tax Credit Program since its
20 inception -- and I'll kind of regurgitate a little bit of
21 what Jean said -- we're well aware of the level of
22 competition and the intensifying scrutiny under which
23 these applications are reviewed in an attempt to delineate
24 between applications with tying scores.

25 And with so many applications coming in the

1 door, we also understand that threshold criteria was
2 created as a means of expediting the review process for
3 staff, so the applications who are missing pertinent items
4 or have problems that would require substantial
5 remediation don't even compete against those applications
6 that met those basic requirements. We understand that.

7 But the application under review today we feel
8 met those basic requirements. The application was
9 submitted to the Department on time and contained all of
10 the necessary items, and as of yet, nothing has been
11 discovered within the application that does require
12 substantial remediation, causing it to have what is
13 described under 10.379 of the 2015 rules as a material
14 deficiency, which is described as any deficiency in an
15 application or other documentation that exceeds the scope
16 of an administrative deficiency. The Department did send,
17 initially, an administrative deficiency and the corrected
18 CNA was able to be turned in immediately. No substantial
19 remediation was required.

20 The initial report, just to give you a little
21 bit of backup information for those of you who may be
22 unfamiliar with the CNA, is provided to us from the CNA
23 reporters in an Excel format, and the narrative, the
24 twelve-page narrative that Kathryn described, is a section
25 of that report. And yes, I completely agree with her in

1 that the report in its entirety is not able to be made
2 sense of without that narrative, completely agree. But
3 those providers submit that report to us and then we in
4 turn have to convert it into the PDF format that is
5 required for application submission, and when that
6 conversion was happening, the wrong narrative was
7 inadvertently inserted into that and submitted. But as
8 was stated before, it was corrected immediately as soon as
9 it was noted by the Department.

10 Section 10.205 of the Multifamily rules under
11 required third party reports states that the Department
12 may request additional information from the report
13 provider or revisions to the report as needed. As was
14 stated before, these CNAs are allowable to the USDA
15 properties in place of a PCA, property condition
16 assessment, and with that a change and shift in the
17 Department's rules recently has allowed us to utilize
18 these reports but we are also not required to make
19 transfer application with USDA until after we have
20 received our tax credit commitment. And USDA is still the
21 agency who will be approving that report, so it kind of
22 goes without saying when we submit these they're not
23 exactly in their final stages, they're still subject to
24 USDA review, correction and all those sorts of things.

25 Additionally, if reinstated the application

1 would qualify for funds in the USDA set-aside and scores
2 at the top of its bracket, having received the most points
3 under opportunity index than any other application with a
4 tying score which has been the Department's and the IRS's
5 focus of allocation for the last several years which is
6 high opportunity areas. We feel the deficiency did not
7 warrant termination and we request that you grant
8 reinstatement. Thank you.

9 MR. OXER: Thanks for your comments, Emily.

10 Any more questions from the Board?

11 (No response.)

12 MR. OXER: Any response, Kathryn?

13 MS. SAAR: I would just like to read one
14 section from the rule. 10.204 in the introduction states:

15 If any of the documentation indicated in this section is
16 not resolved through either the original application
17 submission or the administrative deficiency process, the
18 application will be terminated. 10.205 which reads: If
19 the report in its entirety -- this is with relation to
20 third party reports -- if the report in its entirety is
21 not received by the deadline, the application will be
22 terminated.

23 Staff doesn't feel that there's any room in the
24 rules to grant the appeal.

25 MR. OXER: Okay. Thanks for your comments.

1 Claire, if you want to comment.

2 MS. PALMER: Claire Palmer, representing
3 Hamilton Valley Management.

4 I just want to make clear a couple of things
5 that maybe get lost in the shuffle. The CNA that's
6 required here is based on a rural development and a USDA
7 rule, and that's who sets the guidelines for this
8 particular report. We actually talked to USDA and asked
9 them what they would do if the summary was not in their
10 report, and they said they would just ask for it. They
11 don't have a rule that says that all the report has to be
12 together at the same time.

13 The fact is what the rule requires is that
14 there be a CNA. A complete CNA was submitted. Whether
15 you have a summary or not, a complete CNA for the project
16 was, in fact, submitted timely; the only thing that was
17 wrong was that the wrong summary was attached. And if the
18 CNA rule is based on a USDA rule and USDA's rule would
19 allow for change, it seems to me that TDHCA should follow
20 that same process and treat this one as an administrative
21 deficiency. Thank you.

22 MR. OXER: Thanks for your comments.

23 And for the record, the CNA rule, while it
24 depends on some of the things that come from the USDA,
25 it's not based on their rule, it's based on our rule about

1 the information that's provided.

2 DR. MUÑOZ: Is the narrative necessary?

3 MS. SAAR: Yes. Under USDA rules there has to
4 be a narrative.

5 DR. MUÑOZ: So I can't appreciate the earlier
6 statement then. If it's required, then the CNA and the
7 narrative that's required, the associated narrative is
8 part of its entirety and its entirety was deficient.

9 MR. OXER: Okay. Any other comment? Anything
10 else to fill out, Kathryn? Any other questions of the
11 Board?

12 (No response.)

13 MR. OXER: With respect to item 5(d),
14 application 15040, motion by Mr. Goodwin, second by Mr.
15 Gann to approve staff recommendation to deny the appeal.
16 Those in favor?

17 (A chorus of ayes.)

18 MR. OXER: Those opposed?

19 (No response.)

20 MR. OXER: There are none. It's unanimous.

21 MS. SAAR: I do have good news for you.
22 Several of the appeals have been withdrawn; 121, 125, 126
23 and 179 have all been withdrawn.

24 MR. OXER: And what about 242?

25 MS. SAAR: 242 will be postponed to the next

1 meeting.

2 MR. OXER: That's just delayed.

3 MS. SAAR: Correct.

4 MR. OXER: Okay. It is now 2:38. Everybody
5 hold still because we've got something important to note
6 about the weather. Michael, would you jump into this?
7 We're going to take a quick break here and get back into
8 it till we get to the end.

9 MR. LYTTLE: We've received a note here that a
10 number of agencies locally are shutting down at three
11 o'clock due to the tropical storm conditions rolling into
12 Austin, and that the Austin Police Department and local
13 authorities are basically advising everyone to try to get
14 off the roads as soon as possible because they're
15 expecting some pretty bad weather to move in.

16 MR. OXER: So that means that anybody that
17 shows up at the Austin City Club is going to pretty much
18 have downtown to ourselves. Right?

19 Okay. It's 2:39, let's be back in our chairs
20 at 2:50 sharp, two five zero.

21 (Whereupon, at 2:39 p.m., a brief recess was
22 taken.)

23 MR. OXER: All right. Let's get after it,
24 let's get back in the business here. There's some fairly
25 inclement weather so we're going to make an effort to get

1 through our last two items on the agenda and give
2 everybody a shot to drive home through a tropical storm.
3 That should be a thrill a minute.

4 Let's summarize here. We've dealt with 15028,
5 15040. 121, 125, 126 and 179 are all pulled; 242 was
6 tabled until next meeting. Is that correct?

7 MS. LATSHA: That's correct.

8 MR. OXER: So we're on 277?

9 MS. LATSHA: Yes, 15277 the Veranda Apartment
10 Homes.

11 So the situation here is that we received an
12 environmental site assessment -- that's a requirement for
13 all of our applications -- we did receive it timely. It
14 was for about a four-acre site. The problem is the site
15 contemplated throughout the rest of the application was
16 for about five acres. I'm trying to be quick so I don't
17 know if my numbers are exact, but essentially, the ESA
18 submitted did not contemplate the whole site. Again, it's
19 a report that was not submitted in its entirety.

20 We did deficiency the application in the same
21 manner requesting some clarification, and they basically
22 submitted a new ESA. It had a statement in it from the
23 ESA provider basically stating that they didn't
24 contemplate the whole site the first time around. They
25 submitted new information and it was dated a little bit

1 later. An ESA will have information that is not just
2 about the site but about various radiuses, depending on
3 what it is that they're evaluating, and we noticed right
4 off the bat, first off, that there was a significant page
5 difference between these two reports. I think the
6 applicant can provide some sort of explanation as to why
7 there was 94 pages difference between the first report
8 submitted and the second. I think that was our first
9 glaringly obvious this is a new report but then we
10 actually did dig into it a little bit, found that there
11 were additional sites that were included in that radius
12 search that weren't included the first time around.

13 Now, in this particular case, it didn't really
14 matter, it was a CVS that didn't have an environmental
15 impact on the site, but it's the very reason why we do
16 want to make sure that the entire site is contemplated in
17 the ESA. Had this been something other than a CVS, then
18 it may have triggered disclosure or a number of other
19 factors that could have affected the application.

20 Because it was a third party report that was
21 not submitted in its entirety, the application was
22 terminated, and the applicant is appealing that
23 termination. Staff recommends denial.

24 MR. GOODWIN: So moved.

25 MR. OXER: Motion by Mr. Goodwin to approve

1 staff recommendation. Do I hear a second?

2 DR. MUÑOZ: Second.

3 MR. OXER: Second by Dr. Muñoz.

4 MS. BROWN: Mr. Goodwin, that was fast.

5 Good afternoon. My name is Shanette Brown.

6 I'm the community services manager for the City of Plano.

7 I was sent here on behalf of the city to
8 reinforce the letter that you all received, possibly by
9 email today, that our mayor, Mayor Harry LaRosiliere, sent
10 to you all in support of this project and the need for
11 affordable housing.

12 The City of Plano, in our 2015-19 consolidated
13 plan, we say that a priority need is affordable housing,
14 focusing on rental at that. When you're looking at our
15 population, our households, we have 12,000 households in
16 Plano that have an annual income of at or below 50 percent
17 of the area median income, and we only have 3,100 units
18 that are affordable to them. That is a huge gap. The
19 positive thing that we need is affordable housing, and
20 this project helps us close in on that gap that we have.

21 We don't have enough funding. You've heard
22 people talk today about HOME funds to the tune of millions
23 of dollars. We don't get that at the City of Plano. We
24 do not have enough federal funds to even balance a project
25 of this magnitude. So the money that you all give in the

1 form of tax credits really does help our community, it
2 helps our residents, and we are in dire need. I can't sit
3 here and tell you the need enough, but the data that I
4 just told you speaks to the reason why we're all the way
5 here from Plano.

6 I'm available to answer any questions. And I
7 do want to add quickly that it's been 22 years since we've
8 had a tax credit project for the general population in
9 Plano. Obviously, we have grown over those 22 years and
10 our need continues to grow. So I'm hoping that you don't
11 go with staff's recommendation and that you allow the
12 applicant to go ahead and further on this process. Thank
13 you so much.

14 MR. OXER: Thanks for your comments.

15 Are there any comments from the Board?

16 (No response.)

17 MR. OXER: And I would underscore we recognize
18 that you're here representing an area that needs the
19 applications. In fact, I haven't seen anybody show up at
20 the podium yet that didn't need these credits and want to
21 speak, so with that understanding, Bill, you're next.

22 MR. FISHER: Good afternoon, Board members.

23 Bill Fisher, Sonoma Housing for Plano Housing Corporation,
24 who is the applicant here.

25 We are unique, and I know it's been a long day,

1 but please, this is unique. This is an urban in-fill site
2 and Plano is built out. Ninety-two percent of the land in
3 Plano is already fully developed so there is a very small
4 amount of acreage and so this is a very small site. It's
5 a single family attached development. We originally hoped
6 to put it on five acres. We provided a survey to the ESA
7 guy and he wrote a report that he claims in the letter is
8 a scrivener's error, that he saw the site, and it's
9 attached to it, it's a little flag lot that sticks out on
10 the main four acres that is now already entitled for town
11 home lots and there are 40 of them and there's room for
12 the 43 lots that we originally contemplated.

13 So we don't disagree that the report submitted
14 said 4.175 acres. The report provider says, look, you
15 can't do a legally compliant, professionally compliant
16 study on this site without covering all the acreage, and
17 he said that and he submitted a correction as part of the
18 review. If we want to get into why there's additional
19 pages, that's really just part of showing the staff that
20 it didn't matter, either way we had a good ESA. I don't
21 believe they disagree that the 4.175 acres submission is
22 complete, professionally compliant, and if we were
23 building on only 4.175 acres, this would not be an issue,
24 so I guess subject to reviewing the study.

25 So where are we at this point? We have two

1 arguments. The report provider says it's a scrivener's
2 error. The rules clearly allow for these reports to be
3 corrected. As you may or may not know, the market studies
4 that are submitted routinely go through a thorough review,
5 not only by staff but then later on by underwriting, and
6 they are routinely changed or corrected, primarily to
7 comply with TDHCA's rules, so this is certainly not
8 unprecedented.

9 Our second argument is, okay, fine, we only did
10 a fully compliant ESA study on four acres, so the only
11 thing in our application, the market study, the number of
12 units, the square footage, the parking spaces, everything
13 else in the application all ties together. So now we have
14 an administrative issue. We've got a 5.4 acre site plan
15 and we've got a four acre ESA. We believe we should
16 simply be allowed to reconcile that difference in the
17 administrative process, and we actually went ahead and
18 submitted a revised site plan that showed all the town
19 homes that we promised in our application, that were
20 covered in the market study on the site that the ESA
21 clearly covers, and our application is viable at that
22 point.

23 We are in Region 3, we are a general set-aside
24 application, we're unique. We're 50 percent market rate,
25 50 percent affordable, very unusual. Again, individually

1 platted lots, single family attached product in an urban
2 in-fill environment. So we are asking you to either
3 accept the scrivener's correction that the ESA provider
4 submitted, or simply make it an administrative issue where
5 we can submit the site plan -- which site plan corrections
6 are not uncommon, I think staff would agree with that --
7 and simply let us submit the site plan that is on the ESA
8 acreage which, of course, is the bulk of the development.

9 If you're looking in your book on page 634,
10 you'll see the issue. It's a large rectangular site,
11 that's where all the town homes are going, and there's a
12 little flag lot that allows us to come in and out on the
13 main road. I think it's page 634 in the Board book.

14 So that's the issue. We need your help here.
15 We got a letter of support from the incredibly
16 conservative representatives. We are in the Frisco
17 Independent School District, they did not object. We got
18 a letter of support from the state representative, as well
19 as the required support resolutions. To get the state
20 rep's resolution, we had to get a support letter from all
21 of the homeowners associations within about a mile and a
22 half radius, there were five of them, and before he would
23 write the letter, he asked us to get the homeowners to buy
24 in.

25 So I think we are unique, I think we're unique

1 because of the urban in-fill, I think you have the
2 authority to do this. We're asking you to do one of those
3 two things and allow this general population affordable
4 mixed income development best practices go forward in
5 Collin County, the richest county in the state. And with
6 that, I'll answer any questions you might have.

7 MR. OXER: Thanks, Bill.

8 Any questions from the Board members?

9 (No response.)

10 MR. OXER: Do you have a response, Jean or
11 Kathryn?

12 MS. LATSHA: The only thing that I would point
13 out with respect to the comment of this being a
14 scrivener's error is we actually did have a very similar
15 situation with another application in this cycle, a
16 similar deficiency where we had an ESA that on one or two
17 pages didn't look like it was quite the right acreage. So
18 in that instance, same deficiency, they came back and
19 said, oh, no, that actually was a scrivener's error. Not
20 another word was changed. Right? This was supposed to
21 say .3 not .1, and this was also supposed to say .3 not
22 .1.

23 MR. OXER: Basically a typo.

24 MS. LATSHA: So quite frankly, what we were
25 hoping was going to happen here, which is why we did issue

1 the deficiency, and instead what we got in return was
2 clearly an ESA for clearly a different site, so I would
3 say more than a scrivener's error.

4 I don't think I have any other comments, unless
5 there's some questions for me.

6 MR. OXER: Any questions of the Board?

7 (No response.)

8 MR. OXER: Any other public comment?

9 (No response.)

10 MR. OXER: Okay. With respect to item 5(d),
11 application 15277, motion by Mr. Goodwin, second by Dr.
12 Muñoz to approve staff recommendation to deny the appeal.

13 Those in favor?

14 (A chorus of ayes.)

15 MR. OXER: And opposed?

16 (No response.)

17 MR. OXER: There are none. It's unanimous.

18 We are to the Terraces, the last one.

19 MS. LATSHA: Terraces at Arboretum. This is
20 application number 15310.

21 Let me explain what happened here really
22 quickly. Two separate scoring items. We have scoring
23 item over here that is related to a commitment of funding
24 from a local political subdivision. Separate from that, a
25 scoring item that is support from the local government.

1 If you're located in an ETJ, in order to gain maximum
2 points, that's 17 points, you need a resolution from both
3 the city and the county, each worth 8-1/2 points. Those
4 are due on April 1. Over here, due with the application a
5 resolution from the local political subdivision that's
6 providing funding for your application.

7 So in this case, in order to maximize points on
8 both fronts we need one over here on March 1 from the HFC,
9 Fort Bend Housing Finance Corporation. I'm sorry, I have
10 zero notes in front of me. And then over there, one from
11 Fort Bend County, one from the City of Houston, both due
12 on April 1. So what happened here was on March 1 they
13 turned in the application from the HFC, on April 1 they
14 turned in, instead of these two, the one from Houston and
15 then this one again. So what they're asking is to be able
16 to submit the resolution, that was not submitted on April
17 1, late and still be afforded those points.

18 You know, I'm going to go back to what I was
19 talking about at the beginning here, and Kathryn alluded
20 to some of this in one of her previous presentations. In
21 10.204, this is what is related to threshold items, things
22 like title commitments and zoning letters and what-have-
23 you. 10.204: If any of the documentation indicated in
24 this section is not resolved through either the original
25 application submission or the administrative deficiency

1 process, the application will be terminated. Clearly we
2 think that those things are going to require some
3 administrative deficiency. 10.205, third party reports,
4 obviously termination if not submitted in their entirety.

5 11.9, this is related to scoring criteria:
6 Applicants that elect points where supporting
7 documentation is required but fail to provide any
8 supporting documentation will not be allowed to cure the
9 issue through an administrative deficiency. We clearly
10 look at these three issues very differently in the rule.

11 I will say this about this one particular
12 situation. One of the many reasons that we are so
13 stringent with respect to scoring items is because it is
14 difficult to know if that documentation that was required
15 to date certain was actually available by date certain.
16 And I know that they're going to argue that, hey, this is
17 a resolution from Fort Bend County, you can look it up on
18 our website, it was clearly available before date certain.

19 And I would offer up this: in a case, and
20 especially in this program -- which this happens quite
21 often -- where you have two applications that are very
22 similarly situated, they've got tie scores, they might
23 even be within two miles of each other -- we just had ten
24 that were tied in Region 11, right? -- and the only
25 difference between those two applications is that one guy

1 submitted their resolution on time and one guy didn't,
2 then who do you give the points to. Right?

3 I think that's where staff has to stand here,
4 and therefore, we recommend denial of the appeal.

5 MR. OXER: Any questions of the Board?

6 MR. GOODWIN: So moved.

7 MR. OXER: Motion by Mr. Goodwin to approve
8 staff recommendation on item 5(d), application 15310. Do
9 I hear a second?

10 MR. GANN: Second.

11 MR. OXER: Second by Mr. Gann.

12 Is there anyone here who would like to make
13 public comment? Mr. Flores.

14 MR. FLORES: Mr. Chairman, for the record, my
15 name is Henry Flores, and I represent the development
16 team.

17 My dear friend, Jean, has provided an
18 assessment of the rule which is a bit too simple for a
19 more complicated issue, and I'm going to rely on an expert
20 on the rules to actually speak to that, but I do clearly
21 think that we will make a compelling argument.

22 Now, I gave you a bit of my background earlier.

23 I've been a developer for 20 years, we've been involved
24 in 39 transactions, \$430 million of transactions. But
25 before that I was actually the first executive director of

1 this agency. I was appointed by Ann Richards and I ran
2 the agency for Ann Richards, and then I was reappointed by
3 George Bush, so I ran the agency for both governors. I
4 left the governor's staff to work for President Clinton as
5 chairman of the Federal Home Loan Bank, and then when
6 Governor Bush became President Bush, I was appointed to
7 that slot.

8 And I say that just to explain that I have a
9 great deal of experience of looking at these issues from
10 both the private and the public sector, and it's critical
11 that you have an administrative deficiency process that
12 allows for the cure of administrative deficiencies within
13 the rules. And again, Ms. Bast will explain why this is
14 in within the rules.

15 Jean talked about how you're not allowed to
16 correct scoring items if there isn't any documentation,
17 and again, Cynthia will provide some insight into why we
18 provide documentation and why we think that suffices to
19 meet the tests for administrative deficiencies.

20 You know, early in this meeting, Chairman Oser
21 talked about the integrity of the scoring, and this is
22 where, again, you have rules and the spirit of the rules.

23 This is a situation where the spirit of the rules clearly
24 indicates that the administrative deficiency oversight
25 should allowed to be cured. You know, essentially we

1 submitted a file, an electronic file that was named Fort
2 Bend County resolution of support. That document was
3 intended to show our overwhelming support, and
4 unfortunately, it had four of the five pages that we
5 intended to submit. We think the fact that there was a
6 placeholder, that there was documentation submitted is why
7 we're allowed to cure this under a very strict
8 interpretation of the rules, and again, taking into
9 consideration the spirit of the rules.

10 You know, essentially we believe that
11 misinterpretation of the rules is the true issue at hand.

12 Where staff is constrained by the interpretation of the
13 facts or the circumstances, that's why legislation creates
14 governing boards to review these matters. I was going to
15 joke when I first walked up here that obviously you left
16 the best for last because I'm the last presenter, but I do
17 clearly believe and can honestly say that I think we've
18 met the spirit of the rule, that we've complied with the
19 QAP requirements, and that an administrative deficiency
20 should be allowed to be cured.

21 And with that, I will turn to Cynthia, unless
22 there's any questions.

23 MR. OXER: Thank you, Mr. Flores.

24 MR. GOODWIN: I have a question.

25 MR. FLORES: Yes, sir, of course.

1 MR. GOODWIN: If you represented the
2 application that is going to get bumped because we approve
3 this, what would your argument be?

4 MR. FLORES: Good question, Mr. Goodwin. You
5 know, I would suggest that we were correct and walk away.
6 I didn't mean to be a little facetious. You know, I
7 think we meet the spirit of the rule and we can show that
8 we meet the letter of the rule. If I were oppositional to
9 that and trying to make an argument, I would say that
10 failure to provide that one page was sufficient to dismiss
11 the argument. Again, the placeholder in the rules and the
12 rules adopted by this Board through the Qualified
13 Allocation Plan gives a definition of administrative
14 deficiencies, the three types, and explains when those can
15 be cured, and again, I think Ms. Bast will be able to
16 explain why this can be cured.

17 Thank you, sir. Thank you, everybody.

18 MR. OXER: Thank you, Mr. Flores.

19 MS. BAST: Good afternoon. Cynthia Bast from
20 Locke Lord.

21 MR. OXER: We did, in fact, save the best till
22 last.

23 MS. BAST: Thank you.

24 We saw, and Ms. Latsha very clearly identified
25 that there are different ways administrative deficiencies

1 are handled in scoring situations, in threshold situations
2 and in third party reports. And I really want to focus on
3 what the rule says about how you can address an
4 administrative deficiency in a scoring situation. It
5 says: Applicants that elect points where supporting
6 documentation is required but fail to provide any
7 supporting documentation will not be allowed to cure the
8 issue through an administrative deficiency.

9 I think that word "any" is so very important
10 because it is the crux of the situation that we have here.
11 It directly implies that if you provide some documentation
12 then you're allowed to cure this by administrative
13 deficiency. And it makes sense within the overall policy.

14 The policy is that if an applicant submits something,
15 puts TDHCA on notice, puts the other applicants on notice
16 that they're trying to achieve these points, but if they
17 make a mistake or if there's something omitted from what
18 was submitted as their supporting documentation, then the
19 applicant is allowed to make a correction to preserve the
20 integrity of the scoring process.

21 In this case the applicant did not fail to
22 provide any documentation. As you heard, the applicant
23 filed a PDF file entitled Fort Bend County resolution.
24 That file contained four pages which was the resolution
25 for the Fort Bend County Housing Finance Corporation. It

1 was a resolution by which the housing finance corporation
2 showed its support for this development financially. We
3 believe that is evidence of supporting documentation.
4 What the applicant failed to do is they failed to also
5 provide the one-page resolution that they had in hand from
6 the Fort Bend County Commission supporting the
7 transaction.

8 Now, I think you have to remember the Fort Bend
9 County Housing Finance Corporation is an instrumentality
10 of Fort Bend County. It's not like we put something in
11 there from Harris County, it's not like we put something
12 in there from a city, we put in something from an
13 instrumentality of Fort Bend County, and I believe that
14 constitutes some documentation. In fact, in Mr. Irvine's
15 response to our appeal he acknowledged that it would be
16 unlikely for Fort Bend County to not support the
17 development if their HFC was supporting the development
18 financially.

19 And in their writeup the staff acknowledges
20 that they initially made an error and thought that the
21 resolution that was provided from Fort Bend County Housing
22 Finance Corporation was actually the resolution from Fort
23 Bend County, and they initially awarded the points. So
24 they saw the connection there. There's a real causal
25 link. You just simply cannot say that this applicant did

1 not provide any documentation for support from the county.

2 This may seem like one of those optical
3 illusions where one person sees one image and another
4 person sees another image, but here I think you can rely
5 upon what your eyes are telling you and know that we fit
6 firmly within these rules. The dress is blue and black,
7 it is not white and gold. The applicant provided some
8 documentation that Fort Bend County was supporting this
9 application. Therefore, the rule allows for an
10 administrative deficiency to cure the omission.

11 So we respectfully ask that you reverse your
12 motion and grant the appeal so that the points may be
13 reinstated. And I thank you very much.

14 MR. OXER: Thanks, Cynthia.

15 Got a response?

16 MS. LATSHA: Jean Latsha, director of
17 Multifamily Finance.

18 I do find it funny that I saw white and gold, I
19 totally did. And Cynthia and I agree on a lot of stuff,
20 but it was white and gold.

21 MR. OXER: As I would hasten to suggest to
22 everybody, as a Georgia Tech graduate, I saw white and
23 gold.

24 MS. LATSHA: But that's a longer discussion
25 than this even, as we all know.

1 MR. OXER: Exactly.

2 (General laughter.)

3 MS. LATSHA: You know, I think there probably
4 are two ways to see this. The way that staff sees this
5 scoring item is there are a few other scoring items that
6 are structured in a similar where you have multiple
7 components within a scoring item. For example, we have a
8 community input scoring item that allows applicants two
9 points per letter for a total of four points. Now, if
10 someone were to submit just one letter of community
11 support, we would only evaluate that one letter as to
12 whether it was worth two points or not, and we wouldn't
13 allow the applicant then to submit another letter so that
14 they could get the four points.

15 Similarly, with local political subdivision
16 funding, the very resolution that they did submit. So you
17 can have just on your application, hey, I want some money
18 from the HFC and that could get you up to eleven points,
19 but for another one point you have to have that resolution
20 saying not only do I want the money but I already have the
21 commitment for the money. So if you were to submit your
22 application with evidence that you want the money, we'd
23 give you your eleven points, but we wouldn't give you your
24 one point and we wouldn't allow you to bring that
25 resolution in later for that one point either. So we

1 treat these very, very consistently.

2 Cynthia and I actually went through this kind
3 of hypothetical with each other when we were talking about
4 this appeal. Let's say let's take it one step further and
5 I had a community letter but all I had also was a
6 placeholder or something, or some evidence that it seemed
7 as though I was going to have another community letter of
8 support, maybe it was some documentation of their
9 nonprofit status or something like that, but still no
10 letter. Still, again, I would argue staff would not
11 accept that letter late.

12 I appreciate the difficulty in obtaining the
13 resolution that they obtained and it is a truly
14 unfortunate mistake, but I think one that unfortunately
15 does result in our not being able to award those points.

16 MR. OXER: And the total points that they would
17 lose on this is the 8-1/2 points.

18 MS. LATSHA: Eight and a half.

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

21 MR. IRVINE: May I offer another comment?

22 MR. OXER: By all means.

23 MR. IRVINE: We began item 5 with me talking
24 about the lengths to which we as a team go to vet these
25 issues, and before we finish up on this and move on to

1 item 5(e), one thing I would say is there are appeals and
2 challenges and waivers and all these things that are just
3 clear and those are easy to write, and there are some that
4 are hard and we go to incredibly lengths. I tried to
5 write this appeal response both as an approval and as a
6 denial, and I just couldn't get there in my capacity
7 writing it as an approval. The standard that I believe
8 staff must operate under is we can do what's clear and
9 unambiguous but where ambiguity creeps into the matter
10 does become matters to be decided in public by our
11 Governing Board.

12 As a result, my letter was pretty nuanced. It
13 wasn't that I didn't find that there wasn't any
14 information, it was that I could not clearly say that what
15 was provided got me to where I needed to be. So I just
16 say that as a parting shot at how incredibly complicated
17 this is and how much we agonize over it.

18 MR. OXER: As is consistent with what we've run
19 into in the QAP before, we're constantly parsing words.

20 Any other questions or comments from the Board?

21 (No response.)

22 MR. OXER: We have a motion by Mr. Goodwin,
23 second by Mr. Gann on item 5(d), application 15310, to
24 support staff recommendation to deny the appeal. Those in
25 favor?

1 (A chorus of ayes.)

2 MR. OXER: Those opposed?

3 (No response.)

4 MR. OXER: There are none. It's unanimous.

5 Okay, Tom.

6 MR. FLORES: Mr. Chairman, members, thank you
7 very much.

8 MR. OXER: Thank you, Mr. Flores. We
9 appreciate you being here. We hope the decisions we made
10 today won't keep you from coming back.

11 Tom, let's go.

12 MR. GOURIS: Last item. I'm Tom Gouris, deputy
13 executive director.

14 This item is with regard to a Houston Trust
15 Fund LURA that is being asked to be modified so that it
16 can be removed. The company LaSalette, LLC purchased a
17 property called Oaks of LaSalette in October of 2013 after
18 a bank foreclosure. The property was then and has
19 remained in a distressed situation with many down units.
20 Prior to the acquisition, the new owner was made aware of
21 the Housing Trust Fund LURA and indicated that they
22 understood the requirements of that LURA, but upon closing
23 they did not execute or record the agreement to comply
24 with the LURA. The new owner then commissioned an
25 analysis of the cost to rehabilitate or reconstruct the

1 property and found that the rehabilitation would be
2 economically infeasible.

3 The Department's Administrative Penalties
4 Committee has met with the owner, as has our Compliance
5 Division, as has executive staff in attempts to obtain
6 compliance. The city has also begun the process of
7 forcing the property to shut down and the property
8 currently is without life safety certificates.

9 The immediate concern to staff and executive is
10 for the current residents and trying to get them into a
11 place where they can have safe, decent and affordable
12 housing for the remainder of the LURA period. We worked
13 out a solution that we think will address that situation.

14 We're in the final stages of negotiating that solution,
15 and we wanted to get your approval of pursuing that course
16 of action.

17 MR. OXER: So how much time is left on the
18 LURA?

19 MR. GOURIS: Five years.

20 MR. OXER: That's five out of thirty?

21 MR. GOURIS: Yes.

22 MR. OXER: So they were pretty close toward the
23 end, anyway.

24 MR. GOURIS: Yes. It had changed hands many
25 times, but yes, this is the last of it.

1 MR. OXER: Had it changed hands because of some
2 economic difficulty?

3 MR. GOURIS: Yes.

4 MR. OXER: So we're trying to get this
5 rectified and take care of those folks that are currently
6 in the facility. Is that correct?

7 MR. GOURIS: That's right.

8 DR. MUÑOZ: You need a motion?

9 MR. OXER: To modify the LURA.

10 MR. GOURIS: To modify the LURA.

11 MR. OXER: So the modification would represent
12 what?

13 DR. MUÑOZ: For the next five years.

14 MR. GOURIS: For the next five years the
15 current owner would ensure that the people that are living
16 in the property now are moved, relocated immediately, as
17 soon as possible to a new place or places of their
18 choosing -- there are a couple of options that we're
19 creating for that -- and that they'd ensure that they'd
20 have funding, a rent subsidy that would allow them to stay
21 in their new location based on their current rent versus
22 the new rent.

23 MR. OXER: Any escalation that they might face
24 by having moved.

25 MR. GOURIS: That's right. It also allows for

1 a substitute tenant. If someone leaves or isn't able to
2 move forward, it allows them to either provide a
3 substitute tenant so we get some other affordability or
4 provide the Housing Trust Fund with a lump sum payment
5 equal to the amount close to what the remainder of the
6 value of that subsidy for five years would be.

7 MR. OXER: So we're essentially giving you
8 authority to negotiate on our behalf.

9 MR. GOURIS: That's right.

10 DR. MUÑOZ: So moved.

11 MR. GOODWIN: Second.

12 MR. OXER: Motion by Dr. Muñoz, second by Mr.
13 Goodwin to approve staff recommendation on item 5(e). Is
14 there any other comment from the Board? Any public
15 comment?

16 (No response.)

17 MR. OXER: With respect to item 5(e), those in
18 favor?

19 (A chorus of ayes.)

20 MR. OXER: Those opposed?

21 (No response.)

22 MR. OXER: And there are none, of course. --

23 MR. GOURIS: Thank you.

24 MR. OXER: Okay. That's it, we're at the end
25 of our formal agenda. We're at the point where we request

1 public comment on matters other than those items that were
2 on the agenda. I would advise you that we cannot take
3 action, you can give only comments. We'll take those down
4 to record for development of future agendas, but those who
5 wish to speak, please do so.

6 MR. KEEN: Thank you, Mr. Chairman. Good
7 afternoon, Board. I'll make this very brief. My name is
8 Breck Keen. I represent Presswick Companies, and we are
9 the development team behind application 15014, the
10 Overlook at Cibolo Park, located in Boerne, Kendall
11 County.

12 And I want to bring to your attention what I
13 contend is an underwriting error within the underwriting
14 report of application 15281, Cayetano Villas located in La
15 Vernia, Wilson County. Both applications are competing in
16 Region 9 Rural. The error is related to tax exemption and
17 the resulting determination of feasibility.

18 Application 15281 claimed 100 percent tax
19 exemption at full application. The underwriting staff
20 adjusted the real property taxes to 51 percent within
21 their report that was posted to your website on June 3. I
22 have to assume the justification of that adjustment was
23 that the nonprofit entity owned 51 percent of the general
24 partner entity. Now, based upon my review of the
25 documentation presented in the application and a very

1 clear reading of Texas Tax Code 11.1825, which is the Tax
2 Code that governs tax exemption, I conclude and contend
3 that both are incorrect, and application 15281 does not
4 and cannot qualify for partial or full tax exemption.

5 Now, I'm no expert in ad valorem tax
6 exemptions, so we engaged one that is. We engaged Mr.
7 Michael Eaton of the Eaton Law Firm, to render his opinion
8 on the application and their claim to tax exemption. Mr.
9 Eaton's opinion states that Cayetano Villas of La Vernia,
10 LLC does not and cannot qualify for a property tax
11 exemption pursuant to Texas Tax Code Section 11.1825 or
12 any other provision of the Texas Tax Code.

13 The issue at hand, gentlemen, is financial
14 feasibility. The full impact of real estate taxes must be
15 included within the underwriting analysis, and when they
16 are, application 15281 will fail the financial feasibility
17 test outlined in the rules. It fails because the deferred
18 developer fee exceeds 50 percent and cannot be repaid over
19 the 15-year compliance period. If it is financial
20 infeasible, the application must be terminated.

21 So I respectfully request the Board to instruct
22 staff to review this matter and confirm application
23 15281's ineligibility for tax exemption, and if necessary,
24 place on the agenda for future consideration. Thank you.

25 MR. OXER: Thanks for your comments, Mr. Keen.

1 Do we have any other public comment for the
2 creation of our future agendas?

3 MR. LYTTLE: J. Paul.

4 MR. OXER: Yes, sir.

5 MR. LYTTLE: I have a note if there's no other
6 comment.

7 MR. OXER: Okay. Any other comment from the
8 staff? And by the way, I can speak for the Board, I'm
9 confident that the Board, even for those who are not here,
10 we fully appreciate in ways you cannot measure how much
11 effort you put into doing this. I know there are
12 difficult decisions you have to make and we appreciate
13 that you do those as hard as you can. We're here to make
14 sure that there's a fair process and I'm confident that it
15 has been and we continue to expect high performance from
16 the staff in the future.

17 Any other comment from the staff? Any comment
18 from anybody on the Board?

19 (No response.)

20 MR. OXER: Michael, do you have a comment to
21 make?

22 MR. LYTTLE: Yes. The folks from TAAHP wanted
23 me to let everyone know that the reception for Cameron
24 Dorsey tonight is going to be moved to another date when
25 there's not a tropical storm and natural disaster

1 threatening all of us.

2 MR. OXER: Wimps.

3 All right. I get the last word as chairman.
4 It's a good thing that we do, it's a hard thing that we
5 do. We appreciate the work that everybody does, not only
6 on the staff but in this community, to make affordable
7 housing available to all Texans.

8 So with that, I'll entertain a motion to
9 adjourn.

10 DR. MUÑOZ: So moved.

11 MR. OXER: Motion by Dr. Muñoz to adjourn.

12 MR. GANN: Second.

13 MR. OXER: Second by Mr. Gann. Those in favor?

14 (A chorus of ayes.)

15 MR. OXER: See everybody in three weeks -- or
16 two weeks, it will be two weeks on the 30th.

17 (Whereupon, at 3:28 p.m., the meeting was
18 concluded.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: June 16, 2015

I do hereby certify that the foregoing pages,
numbers 1 through 209, 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.

(Transcriber) 6/22/2015
(Date)

On the Record Reporting
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