

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

June 27, 2019
8:00 a.m.

MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESÉNDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

DAVID CERVANTES, Acting Director

ON THE RECORD REPORTING
(512) 450-0342

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- g) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §11.101(a)(2) related to Applicant Disclosure of Undesirable Site Features

19238 Franklin Trails Franklin

- h) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19420 Pythian Manor, Dallas)

- I) Presentation, discussion, and possible action regarding changes to the capital structure for RBJ Phase I (HTC #18448/NHTF Contract #82700018448)

ASSET MANAGEMENT

- j) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

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- k) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

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- l) Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area

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RULES

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- n) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.24, Protected Health Information; and an order adopting new 10 TAC §1.24, Information Security and Privacy Requirements; and directing their publication in the Texas Register
- o) Presentation, discussion, and possible action on an order adopting an amendment to 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, and directing publication in the Texas Register

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P R O C E E D I N G S

1
2 MR. GOODWIN: Welcome to the June 27 Board
3 meeting of the Texas Department of Housing and Community
4 Affairs.

5 We'll start with a roll call. Ms. Bingham?

6 MS. BINGHAM ESCAREÑO: Here.

7 MR. GOODWIN: Mr. Braden?

8 MR. BRADEN: Here.

9 MR. GOODWIN: Mr. Goodwin, yes.

10 Ms. Reséndiz?

11 MS. RESÉNDIZ: Present.

12 MR. GOODWIN: Ms. Thomason?

13 MS. THOMASON: Here.

14 MR. GOODWIN: Mr. Vasquez?

15 MR. VASQUEZ: Here.

16 MR. GOODWIN: We have a quorum.

17 If you would, please stand and join as David
18 leads us in the pledge to the American flag and the State
19 flag.

20 (The Pledge of Allegiance and the Texas
21 Allegiance were recited.)

22 MR. GOODWIN: We'll start with the consent
23 agenda. Anybody have any items on the consent agenda that
24 they want pulled or discussed?

25 (No response.)

1 MR. GOODWIN: If not, I'll accept a motion for
2 approval of the consent agenda and report items.

3 MR. BRADEN: So moved.

4 MR. GOODWIN: Second?

5 MS. THOMASON: Second.

6 MR. GOODWIN: All in favor say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: The consent agenda is passed.

11 We'll move on to the action items. We are
12 pulling action item number 3 to be dealt with at our next
13 Board meeting.

14 Action item number 4, a report from Ms.
15 Thomason regarding Audit and Finance.

16 MS. THOMASON: Yes. Thank you, Mr. Chairman.

17 The Audit and Finance Committee, we met this
18 morning at 7:30. The Committee had a report from staff
19 leading the effort to develop the operating budget for the
20 first year of the biennium. The Committee had two
21 recommended actions for this Board. Because they come
22 from the Committee, no second is required. Staff is here
23 to answer any questions if we have any.

24 The first is approval of the annual operating
25 budget, a copy of which can be found at tab 4(i) of your

1 Board materials. This is within the appropriated
2 resources set forth in the General Appropriations Act. It
3 reflects a conservative approach to the use of the
4 resources that are entrusted to us. It addresses
5 continued management of the salary budget, provision for
6 updating equipment to ensure the information security, and
7 an increase in inspection services related to new IRS
8 regulations.

9 With that the Board can vote.

10 MR. GOODWIN: Okay. Any discussion?

11 (No response.)

12 MR. GOODWIN: All those in favor say aye.

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Okay. Moving to the next item.

17 MS. THOMASON: Yes. The next is approval of
18 the annual Housing Finance Division operating budget, a
19 copy of which can be found at tab 4(ii) of your Board
20 materials. This is a subset of the operating budget that
21 we just approved, addressing only resources tied to the
22 traditional housing finance activities of the Department
23 and are provided for in the Department's appropriation.

24 MR. GOODWIN: Any discussion?

25 (No response.)

1 MR. GOODWIN: All those in favor say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Opposed?

4 (No response.)

5 MS. THOMASON: We also had two report items
6 this morning. Mr. Mark Scott, the director of Internal
7 Audit, discussed the audit of the construction cost
8 certification section, and he also discussed any external
9 audits that are currently underway.

10 That concludes the report from our Audit and
11 Finance Committee.

12 MR. GOODWIN: Okay. Any questions for Ms.
13 Thomason?

14 (No response.)

15 MR. GOODWIN: Thank you for a wonderful job.

16 Moving on to item 5, Raul.

17 MR. GONZALES: Good morning, Chairman Goodwin
18 and Board members. For the record, my name is Raul
19 Gonzales, and I'm the director of the Office of Colonia
20 Initiatives, Housing Trust Fund, and Neighborhood
21 Stabilization Program.

22 The Texas Legislature established the Housing
23 Trust Fund in 1993 to provide state general revenue for
24 affordable housing activities. Rider 9C of the General
25 Appropriations Act requires the Department to provide a

1 biannual report to the Legislative Budget Board, the House
2 Appropriations Committee, and the Senate Finance Committee
3 no later than October 1, detailing the Department's plan
4 to expend funds from the Housing Trust Fund.

5 The General Appropriations Act, enacted by the
6 86th Legislature appropriated the Department with
7 \$10,443,402 of state general revenue for the 2020-2021
8 biennium, which includes an estimate of \$2.4 million per
9 year in interest earnings and loan repayments from
10 previous Housing Trust Fund projects.

11 Staff is recommending that the funding be
12 utilized as follows: out of the \$10,443,402, 10 percent
13 for administration for the Department of \$1,044,340, \$6
14 million for the Texas Bootstrap Loan Program, and the
15 remaining balance of \$3,399,062 for the Amy Young Barrier
16 Removal Program.

17 Staff is also recommending that the Board
18 continue to authorize the use of late fees collected above
19 the \$2.4 million from the Housing Trust Fund for single-
20 family asset management activities. Up to \$250,000 will
21 be reserved from interest earnings and repayments for
22 single-family workout activities. The maximum balance of
23 this account shall not exceed \$250,000 at any time. At
24 the beginning of each biennium only the amount of Housing
25 Trust Fund loan repayments and interest earnings needed to

1 reestablish a \$250,000 balance shall be added.

2 These funds will allow the Department to budget
3 for transactions that may arise through the course of
4 single-family asset management such as paying off first
5 lienholders on delinquent single-family properties on
6 which the Department is in the subordinate lien position,
7 paying off taxes to avoid tax foreclosure, securing and
8 repairing abandoned properties to return to the
9 marketplace. The Housing Trust Fund will utilize late
10 fees for single-family asset management activities only
11 when the appropriate solution cannot be addressed with
12 other funds.

13 Thank you.

14 MR. GOODWIN: Any questions for Raul?

15 (No response.)

16 MR. GOODWIN: Do I hear a motion to accept this
17 report?

18 MS. BINGHAM ESCAREÑO: Move to approve.

19 MR. GOODWIN: Second?

20 MR. VASQUEZ: Second.

21 MR. GOODWIN: It's been moved and seconded.

22 All those in favor say aye.

23 (A chorus of ayes.)

24 MR. GOODWIN: Thank you, sir.

25 Next we have item number 6, Patricia.

1 MS. MURPHY: Good morning. Patricia Murphy,
2 director of Compliance.

3 The next item on your agenda is presentation,
4 discussion, and possible action on a dispute of the
5 Compliance Division's assessment of the applicant's
6 compliance history to be reported to the Executive Award
7 Review Advisory Committee, also known as EARAC.

8 I believe this is the first time this Board has
9 heard this kind of dispute, so I'm going to give you a
10 quick background about the process before going into the
11 particulars of the disputes before you.

12 The Compliance Division monitors each property
13 once every three years. If there are findings of
14 noncompliance, the owner gets a written notice and 90-day
15 corrective action period, which can be extended to give a
16 total of a six-month corrective action period.

17 After the end of the corrective action period,
18 if there are any findings the owner has not corrected,
19 they get an additional ten days to kind of clarify what
20 they submitted and wrap things up. After all of those
21 corrective action periods, if there are any findings that
22 are still not corrected, those are the items that get
23 taken into consideration during future previous
24 participation reviews.

25 So for example, say we monitored a property in

1 2018 and we went out and they had ineligible households
2 and they were overcharging rents and they weren't doing
3 social services. They get a written notice that has 90
4 days or six months to fix that, and if they fix the rent
5 problem and they reoccupy the units with eligible
6 households but they don't fix the social services, then in
7 the next previous participation review we would consider
8 the social services finding only. The other events of
9 noncompliance are disregarded because they were fixed
10 during the corrective action period.

11 And if you're wondering why we do it his way,
12 it's rooted in 2306.6791, so it's statutory that we do not
13 consider events that were corrected during previous
14 participation reviews; we just look at things that were
15 not corrected. And the other thing to note is that events
16 that are on the applicant's track record, they drop off
17 three years after they've been corrected.

18 So what I want to make sure everyone
19 understands is that there's like nine applications in this
20 agenda item, and all of the events from all of these
21 applicants, everything at this time is now corrected.
22 None of these applicants have anything uncorrected, and
23 all of the corrective action periods, all of that has
24 passed, so this an end of the line kind of thing, we're
25 just waiting for the three years for the drop off.

1 Previous participation reviews are required by
2 2306.057. The Department has adopted a rule that provides
3 a process and procedure for this review. The rule takes
4 into account the size of the applicant's portfolio and the
5 number of events that were not fixed within that
6 applicable corrective action period and classifies an
7 applicant's portfolio as either Category 1, 2, or 3.

8 The rule then goes on to require the Compliance
9 Division to recommend denial of Category 3 applicants to
10 EARAC. In turn, EARAC, or that Executive Award Review
11 Advisory Committee, they're supposed to recommend denial
12 to the Board.

13 This rule was adopted December 30, 2018, the
14 current rule that we're operating under. The previous
15 rule did not have this hard and fast the Compliance
16 Division must recommend denial.

17 Under the old rule, EARAC and the staff could
18 work with the applicant to come up with conditions that
19 were meant to address their compliance problem and say,
20 We'll condition your award based on if you're going to do
21 these actions to take care of things. So these applicants
22 are in front of you today because there's this new rule.

23 So before I talk about these particular
24 applications, do you have any questions about the
25 monitoring process or the rule?

1 MR. GOODWIN: I just want to make sure I'm
2 clear. Are you saying that all the reasons that these
3 nine applicants are on here have all been corrected?

4 MS. MURPHY: That is correct.

5 MR. GOODWIN: One hundred percent?

6 MS. MURPHY: One hundred percent. At this time
7 these applicants have no uncorrected events of
8 noncompliance.

9 MR. GOODWIN: Okay.

10 MS. MURPHY: Any other questions?

11 MR. VASQUEZ: Can you clarify a little bit more
12 for us the Category 1, 2, 3 and what gets someone in any
13 of those levels?

14 MS. MURPHY: Yes.

15 MR. VASQUEZ: Generally speaking.

16 MS. MURPHY: I brought that rule with me in
17 case you asked.

18 Okay. So there's a number of things that could
19 classify you as a 1, 2, or 3. Like for example, you could
20 be considered a Category 3 if you owe us money or if you
21 have an agreed final order and you violated it, if you're
22 debarred, those kinds of things. So one of the things
23 that causes you to be a Category 2 or 3, which is what is
24 grouping in these applicants today, is the number of
25 events of noncompliance in relation to their portfolio.

1 So for a Category 2 you're considered a
2 Category 2 if the number of events of noncompliance that
3 were not corrected is at least three but it's less than 50
4 percent. But you're considered a Category 3 if the number
5 of events that were not corrected during the corrective
6 action period exceeds 50 percent of the number of
7 properties you control. So if you have 20 properties and
8 you have eleven events that get picked up because they
9 weren't fixed, you're going to be a Category 3.

10 Does that answer your question?

11 MR. VASQUEZ: Okay. So it's not necessarily
12 severity, it's accumulation?

13 MS. MURPHY: That is correct. There is no
14 distinction between your building is falling down and you
15 missed a paperwork requirement, it is the events of
16 noncompliance that were not corrected.

17 MR. VASQUEZ: Okay. So again, if you have 20
18 properties in your portfolio and one had a really severe
19 issue, that group would still only be in Category 1,
20 versus if they had eleven minor issues they'd be in
21 Category 3.

22 MS. MURPHY: If you had 20 properties and you
23 had one that was seriously out of compliance and was still
24 uncorrected --

25 MR. VASQUEZ: And being corrected.

1 MS. MURPHY: Right. That's correct.

2 MR. VASQUEZ: It's still got to be one versus
3 eleven minor accumulates to a 3?

4 MS. MURPHY: Correct.

5 MR. VASQUEZ: All right. Thanks.

6 MS. MURPHY: So this is about your ability to
7 be in compliance the day we show up, and if you're not,
8 get things fixed.

9 MR. VASQUEZ: Okay. Thanks.

10 MS. MURPHY: Any other questions?

11 MR. BRADEN: To the Chair.

12 Can you just describe a little bit what the
13 rule change was in terms of under the new rule? Hard for
14 you to say what the intent was, but was the intent for
15 these things to come to us, or is this through an
16 unintended consequence?

17 MS. MURPHY: I don't know what the intent of
18 this rule was.

19 MR. BRADEN: Can you describe what the rule
20 change was?

21 MS. MURPHY: Under the old rule applicants were
22 classified as a Category 1, 2, 3, or 4, and all of those
23 different categories, EARAC had the ability to recommend
24 award with conditions. EARAC also had the ability to
25 recommend denial under the old rule if you were a Category

1 4, but all of them, I don't think there was ever a
2 recommended denial under the old rule.

3 It was more we worked with the applicant to
4 say, hey, what's going on, why are you out of compliance
5 the day we show up, why can't you solve these things
6 within the corrective action period, why aren't you
7 responding to us, you know.

8 And then we worked with them to come up with
9 conditions that they would change something internally on
10 their side. And I've got to say it was really effective.

11 We had some very noncompliant portfolios and they took it
12 seriously and looked at why are we out of compliance,
13 what's going on, and they got their act together and now
14 they're okay.

15 MR. BRADEN: But under the new rule, EARAC
16 doesn't have that flexibility anymore.

17 MS. MURPHY: Correct.

18 MR. BRADEN: Thank you.

19 MS. MURPHY: Any other questions?

20 (No response.)

21 MR. GOODWIN: Go ahead and proceed.

22 MS. MURPHY: Okay. So in this agenda item 6
23 there are nine impacted applications. Seven of the nine
24 are applying for 9 percent housing tax credits and two of
25 them are applying for 4 percent credits. The nine

1 applications are from five different applicant groups, so
2 although there's nine, that's five different people
3 applying.

4 Staff is recommending that the Board approve
5 the applicant dispute for four of the applicant groups,
6 which affects five applications. Those are all 9 percent
7 applications, and the application numbers are 19094,
8 19095, 19179, 19228, and 19232. Although these
9 applications are classified as a Category 3, these
10 applicants have previously been approved by EARAC and the
11 Board with the exact same, or in some cases worse,
12 compliance history. The three years has come and their
13 stuff has dropped off. Since the time these people were
14 last approved, they have met all the conditions that the
15 Board and EARAC placed on them, and they have had no new
16 events of noncompliance.

17 So I think the Board could take action on these
18 as a group, or if you'd like more specific information or
19 if you'd like to hear from the owner representative, we
20 could go into detail about those.

21 MR. GOODWIN: What's the pleasure of the Board?
22 Do you want to make a motion to take these as a grouping?

23 MS. BINGHAM ESCAREÑO: I'll move to accept
24 staff's recommendation for the five that staff listed for
25 approval. I just actually will amend my own motion.

1 MR. GOODWIN: Okay.

2 MS. BINGHAM ESCAREÑO: Any conditions?

3 MS. MURPHY: No.

4 MS. BINGHAM ESCAREÑO: No conditions. Okay.

5 MR. GOODWIN: No conditions. Second?

6 MR. VASQUEZ: Second.

7 MR. GOODWIN: So it's moved and seconded. Any
8 discussion?

9 (No response.)

10 MR. GOODWIN: All those in favor say aye.

11 (A chorus of ayes.)

12 MR. GOODWIN: Opposed?

13 (No response.)

14 MR. GOODWIN: Okay. It passes.

15 Moving on to 19414, -15, -340 and -344.

16 Correct?

17 MS. MURPHY: Yes. The last group is the
18 Housing Authority of the City of El Paso, or HACEP. HACEP
19 partnered with Miller Valentine for 4 percent tax credit
20 applications of the DeWetter Apartments 19414, and Kathy
21 White Apartments 19415. HACEP partnered with Hunt
22 Companies for 9 percent tax credit applications for
23 Nuestra Sonora, which is 19340, and Patriot Place 19344,

24 HACEP has 43 events of noncompliance, and
25 unlike the other Category 3 applicants, seven of the 43

1 events are new events since their last approval which was
2 just in January of this year. As described in the Board
3 writeup, HACEP has requested that five of those seven new
4 findings be considered corrected during the corrective
5 action period and therefore disregarded.

6 Staff doesn't agree that those events should be
7 disregarded, and it should be noted that even if the Board
8 does say, okay, we won't consider those, they're still a
9 Category 3, and there are still two other times that they
10 failed to respond at all to a notice of noncompliance
11 since January of 2019.

12 The Board writeup also indicates that HACEP has
13 not satisfied past conditions, and I want to clarify that.

14 It's not that they have violated a past condition, it's
15 that they were to meet some requirements and they needed
16 an extension until June 30 of 2019, and so it's just the
17 deadline has not come up yet, and I believe last night
18 they did submit the materials that were due June 30, and
19 we'll take a look at that and see if that satisfies their
20 submission.

21 HACEP has acknowledged that they are
22 experiencing growing pains. It appears that this is
23 impacting their abilities to be in compliance on the day
24 of the monitoring visits, they're out of compliance when
25 we show up, and it's impacting their ability to correct

1 issues and respond in a timely manner in accordance with
2 statutes and rules.

3 Twenty-three of HACEP's past awards have been
4 conditions because of their compliance history. The
5 intention of those past conditions was to improve their
6 compliance, like it did for other people I've described;
7 however, the past conditions that they have suggested have
8 not produced the intended desired outcome.

9 Their most recent response indicates that
10 they've issued some requests for proposals so they're
11 going to get some help with compliance and asset
12 management, and we're certainly hopeful that this will
13 help them get into compliance and stay compliant, but
14 given that their past conditions that they suggested
15 didn't work, we're not confident that this is going to do
16 the trick and get them in compliance.

17 Staff recommends that the Board affirm the
18 Category 3 assessment and the compliance recommendations
19 of EARAC for denial of application numbers 19414, 19415,
20 19340, and 19344.

21 MR. GOODWIN: Questions?

22 I want to make sure I'm clear on this: 43
23 events of noncompliance over their entire portfolio, which
24 includes how many properties?

25 SPEAKER FROM AUDIENCE: Forty-five complexes,

1 6,400 units.

2 MR. GOODWIN: Forty-five complexes with 43
3 noncompliance events? And of those 43, Patricia, how many
4 have been cured?

5 MS. MURPHY: They're all corrected, everything
6 is now corrected.

7 MR. GOODWIN: Okay.

8 MS. MURPHY: But even since this past January,
9 they've missed three deadlines, which has given them seven
10 new events of noncompliance.

11 MR. GOODWIN: Okay. And can you talk about
12 those seven new events? Are any of those material or are
13 they forgot to dot an i or cross a t?

14 MS. MURPHY: In your Board writeup I wrote some
15 about the findings at Saul Kleinfield, I think is the name
16 of the property. And so when we went out to monitor that
17 property in 2018, one of the files that we selected and
18 said, Can we see the file for this household, they didn't
19 even have a file.

20 At minimum, before you move someone in you've
21 got to get an application and verify their income, have a
22 lease. They had nothing for this household to present for
23 us to review, which is really pretty egregious, that's not
24 a little paperwork problem. So they had a corrective
25 action period to get a file together, and when they did

1 they discovered they found that they were not able to
2 prove that this household was indeed low income, so they
3 moved in a household without regard for the procedures and
4 when they weren't eligible, I guess, they just said we
5 can't approve them.

6 And so that's why they requested an extension
7 to do this, which we granted. And then they did move a
8 household in in November of 2018 which solved the problem,
9 and their extension was until February 25, 2019. So they
10 solved the problem -- well, they sort of solved it.

11 They moved someone in in November, they didn't
12 actually execute the paperwork until January of 2019,
13 which shows there's still a problem there, but they had
14 everything done in January of 2019 and they just didn't
15 upload it. It's like preparing your tax return and not
16 filing it, like it was all done, they just needed to
17 upload it. So that's one of the things that I thought was
18 fairly significant.

19 The other two things were UPCS inspections, and
20 they actually scored pretty well, and we are pleased with
21 the condition of the rehab. They just did not respond in
22 time to get the paperwork to us.

23 MR. GOODWIN: Okay. Other questions?

24 MR. BRADEN: Again, I'm sure this is the case,
25 but everything has been corrected now?

1 MS. MURPHY: Absolutely. No uncorrected issues
2 at this time.

3 Any other questions?

4 MR. GOODWIN: Any other questions

5 (No response.)

6 MS. MURPHY: I think there's a few people who
7 might like to talk to you.

8 MR. GOODWIN: I think there are. Do we need to
9 take these individually is the pleasure of the Board or
10 take them collectively?

11 MR. BRADEN: Collectively is fine.

12 MR. GOODWIN: Collectively. It's all one
13 ownership group.

14 Is there anyone in the audience that wants to
15 speak in favor of staff's recommendation? Everybody is
16 opposed to staff's recommendation that plans to speak?
17 Okay. Since it appears that the front rows -- we're going
18 to put the hard three-minute rule on you, and I'm going to
19 ask that you not stand up here and repeat what the person
20 before you said, if you've got something new. Having 20
21 people talking isn't going to impact any more, only new
22 information.

23 Mr. Hance.

24 MR. HANCE: I'm Kent Hance, and I proudly
25 represent HACEP, the Housing Authority of the City of El

1 Paso, and I'm signing as fast as I can write.

2 We have the largest public housing authority in
3 the state of Texas, one of the largest in the nation.

4 We're making adjustments and we have 6,200 units that are
5 in public housing that are being switched over to tax
6 credits. They're being remodeled, they're being updated
7 and improving the living conditions that the people that
8 live there will have.

9 We had 53 deadlines that we had to make, and we
10 met 50 of them, we missed three so we're about 95 percent
11 complete, and the three missed, one was on the uploading
12 did not get through, and it was like on a Monday and the
13 next day we caught that, so it was one day. This was not
14 anything that was egregious.

15 The only one that would be of any significance
16 had to do with egress, and that's the one that would fall
17 under safety and health, and in each apartment unit -- I'm
18 sure you know this -- in each apartment unit you have to
19 have two methods to get out, and usually in most
20 apartments it's a door and a window, and sometimes
21 residents will move a bed over in front of a window,
22 you'll have a headboard blocking it. We solved those
23 within 24 hours.

24 And then we had some others that came in and we
25 were trying to get everything approved. We have a penalty

1 if we don't get the people in and out within a year with
2 HUD, and HUD's been very supportive of what we're doing,
3 and they're using this as an example around the country.
4 But with what happened timewise, they were going through
5 the punch list and we had things like sink stoppers were
6 not available and things like that, and the people wanted
7 to move back in. I will point out this, we have 100
8 percent of the people that we give them temporary housing,
9 they move back in, they're proud, they love the housing.

10 The person that was in charge of this has been
11 terminated. We hired Novogradac, a national firm, to help
12 us with this. We're making big changes you'll hear in a
13 minute.

14 But I think the significant thing, under the
15 old rules you probably would not have heard this, it would
16 go to EARAC, but it's the new rules and you're hearing
17 this. The significant thing is not the process -- process
18 is important and we've addressed that and we're in
19 compliance. The important thing is the housing for the
20 people, and that's what this whole program is about, and
21 we feel like that we're in good shape. If you do not take
22 our recommendation, we think the effect of this will be
23 the death penalty for us, and that will be addressed a
24 little later.

25 But this is very serious, we know it's serious,

1 we're in compliance now, and we feel like we have a good
2 method going forward.

3 Thank you very much.

4 MR. GOODWIN: Thank you.

5 In light of our previous vote --

6 MR. VASQUEZ: I have a question. Do we have
7 any kind of probationary status for a group, or is that
8 just part of that three-year wait period? I mean, putting
9 an organization like this on --

10 MR. GOODWIN: A short leash?

11 MR. VASQUEZ: A short leash. I mean, is that
12 acceptable or not?

13 MR. ECCLES: I have to say that -- and staff
14 out there, feel free to chime in on this -- but generally
15 speaking, you're looking at each application on its
16 merits, and statutorily there needs to be a report to the
17 Board on the compliance history of the applicant to the
18 Board. It's done through a couple of methods.

19 Compliance has reported compliance history, it
20 does that through the categorization process that's
21 spelled out in the rules. It then flows through EARAC,
22 which is a statutorily created committee, that makes its
23 recommendation on awards to the Board. So those sort of
24 merge, there are conditions that are presented through
25 that process, but obviously, if the conditions aren't met,

1 you'll hear about it, if there's worse compliance history,
2 you'll hear about it on the next one.

3 There's not really a probationary status per
4 se, it's either with the compliance history, with EARAC's
5 recommendation or denial. The Board either accepts it or
6 says, you know, it's not good enough.

7 MR. VASQUEZ: And I guess we have that three-
8 year look-back period. If we know they've been in Level 3
9 in the past three years, I guess that is effectively
10 they're high on the radar at that point.

11 MS. MURPHY: So it's 2306.057 that requires the
12 compliance assessment. So you've received the report and
13 the statute does give you discretion to approve despite
14 the report but you have to fully document and disclose any
15 instances in which the Board approves the project
16 application despite the noncompliance. So they may
17 present something that would help you document and
18 disclose why you would do it.

19 MR. GOODWIN: Are you saying the Board has to
20 disclose we voted against your recommendation and in favor
21 of HACEP, what and why?

22 MS. MURPHY: Correct. You would document and
23 disclose.

24 MR. ECCLES: That is correct. This is the
25 process of documenting and disclosing HACEP's compliance

1 history so that the Board may utilize its discretion.

2 MR. GOODWIN: Okay.

3 MS. THOMASON: I have a question for Patricia.

4 If the rule had not been changed, what would have been
5 the outcome? If we wouldn't be hearing it, what would
6 have happened under the old rule?

7 MS. MURPHY: It would have gone to EARAC -- and
8 I'm not a member of EARAC; I police them. So both under
9 this new rule and the old rule there was the idea about
10 conditions, and the new rule has conditions kind of
11 written in, and HACEP has kind of already run through all
12 of the conditions that are in the rule and they still have
13 this position. So I'm not sure.

14 MR. CERVANTES: Patricia, would you just
15 clarify for the Board the distinction with these four
16 items in the sense of the response within the corrective
17 action period and new events of noncompliance and how that
18 has factored into a bit of a distinguishing characteristic
19 for these four, even though the Board will have its
20 discretion to document and possibly reach a point of
21 documentation that would be acceptable to allow these to
22 move forward into the EARAC component.

23 MS. MURPHY: So the seven new events, one of
24 them is at Saul Kleinfield, where they didn't respond
25 during the corrective action, they just missed it by one

1 day, but it brings in five new events. I think ineligible
2 households --

3 MR. GOODWIN: Brings in what? I'm sorry, I
4 couldn't understand you.

5 MS. MURPHY: So one of the properties was Saul
6 Kleinfield, and they missed the corrective action deadline
7 by just one day, but they missed it, and so that ends up
8 on their track record. So they have a utility allowance
9 finding, an affirmative fair housing marketing finding,
10 tenant selection criteria finding, noncompliance with
11 lease requirements, and an ineligible household. So
12 missing that by one day, that brings five new events into
13 their history.

14 The other two are Sherman Plaza, which scored a
15 95 on a CPCS inspection. I think that's what you were
16 addressing, so a 95 is a really great score, we're happy
17 with that. But the response was due March 3, and it was
18 not submitted until March 19 and March 20.

19 Another property they had an onsite in November
20 2018, corrective action was due February 13, it was
21 related to their tenant selection criteria, and it was not
22 received by the Department until March 18. So because
23 they didn't respond, it comes into bear.

24 And like the conditions that are considered in
25 the rule about having a centralized email system, having a

1 point person that's responsible for things, they've sort
2 of run through the list of things that EARAC kind of would
3 be able to recommend a variety of conditions there on
4 that. And the rule does contemplate that an applicant
5 could propose something that's not in the rule. The staff
6 can't say, well, what about if you -- you know, we make
7 something up off the cuff, but the applicant or perhaps
8 the Board could, but the staff can't.

9 MR. GOODWIN: Okay.

10 MR. VASQUEZ: But we have the ability to say
11 we're going to fine you \$500 for being late, for each
12 occurrence of being late, something -- I don't know,
13 obviously, the Board hasn't talked about this -- but in
14 the big scheme of things, I personally am fine with
15 approving -- giving them a bye on the noncompliance, but
16 at the same time it's really irritating to hear y'all
17 continuing to miss all these deadlines when everyone else
18 here -- well, most everyone else here in this room is
19 meeting those deadlines.

20 So I just hate to not give some slap on the
21 wrist, but at the same time, this doesn't sound like an
22 egregious -- they're obviously communicating with staff,
23 they're obviously trying to get it fixed.

24 MS. MURPHY: And they do have a good product.
25 Their rehabs, the staff has been very impressed with them.

1 They're a good rehab and the units -- I asked my staff
2 specifically, you know, are these a quality rehab, and the
3 answer is yes. They are experiencing growing pains with
4 other concerns.

5 MR. VASQUEZ: I just wish there was some
6 mechanism whereby we could have some sort of reprimand
7 beyond making them all come here and run up their legal
8 fees.

9 MS. RESÉNDIZ: Mr. Chairman, if I may make a
10 comment and a question just tying into Leo's.

11 Mr. Hance, you mentioned earlier that it would
12 be detrimental to the project, it would be like the death
13 penalty.

14 MR. HANCE: It would. We have applications in
15 the pipeline, and what it would do, it would kill these
16 and sort of put us off another year, and then that would
17 cause problems with HUD and everything. There are
18 violations, and I understand what you're saying, but these
19 were pretty insignificant.

20 One thing I would point out, there are other
21 developers in here that don't have that many, but look,
22 we're the largest in the state, we're huge. There's very
23 few that have this many. And we've done everything: we
24 fired the person that was in charge, we brought in an
25 outside firm, and I think that the CEO will address some

1 of that.

2 But we really hope that you approve this
3 because we are in compliance now. We feel like we've got
4 guidelines so it won't happen again.

5 Thank you.

6 MS. RESÉNDIZ: And I'd like to remind the
7 Board, the RAD program is new, you know, and there is a
8 large investment that's made to this new program, it's a
9 redevelopment, if I'm not mistaken, it's being built out
10 in three phases, and I don't know how many people it would
11 put out. I don't want to look at it in the sense of re-
12 gentrification, but it's re-gentrification just for a
13 year, and there's a plan and there's a process in place,
14 so I don't know exactly what that looks like. I mean,
15 there's corrective action that's been brought to all of
16 the issues that staff has had. I just wanted to make that
17 point.

18 MR. GOODWIN: Any other questions or comments?

19 MS. BINGHAM ESCAREÑO: I heard Patricia say
20 that the applicant can bring forth like recommendations,
21 not necessarily what Mr. Vasquez was talking about in
22 terms of some kind of consequence or punitive action or
23 whatever -- which I like that idea also -- but it sounds
24 like the applicant has already and has begun to articulate
25 that they've hired a third party, you know, subject matter

1 expert company to handle compliance issues moving forward,
2 that they've made some leadership changes within their
3 organization, so it sounds like some of those things are
4 already in place. But if the Board were so inclined to
5 document reasons or mitigation to ensure future
6 compliance, that the housing authority is putting things
7 in place already to do that. That's what it sounds like
8 to me.

9 MR. GOODWIN: It sure sounds to me like you
10 have the favor of this Board to not want to put the El
11 Paso Housing Authority in the penalty box, so I'm going to
12 ask, before you speak, Mr. Palmer, if there's anybody on
13 the Board that would like to make a motion to do that, and
14 that won't stop discussion but it will at least give you a
15 feel for how this Board is leaning and feeling about this
16 issue at this point.

17 MR. BRADEN: Mr. Chair, I'd be willing to take
18 a stab at a motion.

19 MR. GOODWIN: Okay.

20 (General talking and laughter.)

21 MR. BRADEN: I just want to make sure that the
22 record correctly reflects what we've heard and reviewed in
23 the backup to this item.

24 MR. ECCLES: Well, and let me just throw in
25 that if the direction is to take this applicant and their

1 applications in the same direction as the previous five,
2 it would follow the resolution very differently.

3 MR. BRADEN: So I'd make a motion, since the
4 Board has considered the compliance history of the
5 applicant to date, including that all incidents of
6 noncompliance have been addressed, and that the applicant
7 has demonstrated that corrective action processes have
8 been taken, including replacement of personnel and hiring
9 of a national firm, and the good work that this local
10 housing authority is doing in terms of reshaping the El
11 Paso community in terms of housing -- I'd make a motion
12 that the compliance history of the applicant to date is
13 acceptable and that Board determined for the four
14 properties listed, 19414, 19415, 19340, and 19344, that
15 the applicant's compliance history, as documented and
16 disclosed at this meeting should not preclude a positive
17 recommendation to EARAC and the application is authorized
18 to proceed through its remaining evaluation and scoring
19 and proceed to EARAC for review and consideration of
20 recommendation and possible conditions without being
21 precluded from a positive recommendation by EARAC because
22 of its compliance history.

23 MR. GOODWIN: Second?

24 MR. VASQUEZ: I would second that contingent
25 upon the applicant not having their representatives that

1 are still here talk more about this.

2 (General talking and laughter.)

3 MR. GOODWIN: We have a motion made and
4 seconded. Any further discussion?

5 (No response.)

6 MR. GOODWIN: All those in favor say aye.

7 (A chorus of ayes.)

8 MR. GOODWIN: Opposed?

9 (No response.)

10 MR. GOODWIN: Moving on to item number 7.

11 MS. HOLLOWAY: Good morning.

12 BOARD MEMBERS: Good morning.

13 MS. HOLLOWAY: Chairman Goodwin, members of the
14 Board, I'm Marni Holloway. I'm the director of the
15 Multifamily Finance Division. Today we're taking up a
16 number of items, so let's just try to get through them
17 swiftly and concisely.

18 Item 7(a) is report of a third party request
19 for administrative deficiency under 10 TAC 11.10 of the
20 2019 Qualified Allocation Plan for 19315 Hammack Creek
21 Apartment. This item was presented to the Board on May 23,
22 and as a result of public comment, the Board directed
23 staff to review its determination to ensure that the
24 applicant had provided sufficient evidence that it
25 maintained proper and unbroken site control.

1 The RFAD request stated that the site control
2 documents did not show continuous control from
3 pre-application through to full application. Staff had
4 identified this question prior to the receipt of the RFAD,
5 and we had issued a deficiency notice on April 23, the
6 response was received on the 29th, so just two days before
7 the RFAD deadline. Staff accepted the applicant's
8 response, which included documentation that both option
9 agreements had been extended so there was not a lapse in
10 site control.

11 MR. GOODWIN: Any recommendation?

12 MS. HOLLOWAY: That's just a report item.

13 MR. GOODWIN: Oh, just a report item. Sorry.

14 Do I hear a motion to accept the report?

15 MS. RESÉNDIZ: So moved.

16 MR. GOODWIN: Second?

17 MS. THOMASON: Second.

18 MR. GOODWIN: Any discussion?

19 (No response.)

20 MR. GOODWIN: All in favor say aye.

21 (A chorus of ayes.)

22 MR. GOODWIN: Opposed?

23 (No response.)

24 MR. GOODWIN: 7(b).

25 MS. HOLLOWAY: Item 7(b) is presentation,

1 discussion, and possible action on a request for return
2 and reallocation of tax credits under 10 TAC 11.65 related
3 to credit returns resulting from force majeure events for
4 application 18269 2400 Bryan.

5 This development was awarded \$1.5 million in 9
6 percent credits in 2018, and we have received a request
7 from the development owner to return and reallocate the
8 tax credits as the result of force majeure events.

9 The Department does not have authority to
10 extend federal deadlines for placement in service other
11 than with this force majeure. The rule allows a
12 development owner to return credits within three years of
13 award and have those credits reallocated to the
14 development if the requirements of the rule are met.

15 Force majeure events are sudden and unforeseen
16 circumstances outside the control of the development
17 owner, including changes in law, rules and regulations.
18 The rule requires force majeure events must make
19 construction activity impossible or materially impede its
20 progress.

21 This application was originally submitted and
22 found to be feasible with \$9.3 million of tax increment
23 financing funds from the City of Dallas. On May 9 -- so
24 after the application had been submitted to us -- the City
25 of Dallas passed a resolution adopting a new housing

1 policy, which took effect immediately, with no provision
2 for previous awards or commitments. The city issued a
3 NOFA on August 30. and the applicant for 2400 Bryan was
4 told that they would have to reapply under this new
5 policy.

6 The TIF funds originally committed by the city
7 carried very few restrictions. When the city made their
8 award -- their re-award to 2400 Bryan on February 9 of
9 2019, the development received HOME and CDBG funds which
10 carry multiple federal restrictions and requirements. The
11 applicant claims that Davis-Bacon requirements alone added
12 a million dollars to the development budget.

13 The new fund source also required changes to
14 the units, bedroom mix and set-asides originally presented
15 in the 9 percent application. In addition, the Texas
16 Department of Transportation denied an anticipated fire
17 lane easement, which triggered changes to the
18 architectural plans. You approved a material amendment
19 encompassing all the requirement changes at the April 25
20 meeting.

21 This development will have 217 units in a
22 single 15-story building with parking on the first six
23 floors. Construction will be far more complicated than
24 our typical three-story garden walk-up design, and it's
25 further impacted by its location in downtown Dallas.

1 The applicant's request for force majeure
2 relief has been submitted at this time so they have
3 assurance that they will be able to complete construction
4 prior to the placement-in-service deadline. The confirmed
5 construction schedule is 19 months, and while there would
6 seem to be sufficient time to meet the December 31, 2020
7 deadline, any delay would put the development's credits at
8 risk.

9 Staff recommends that the request for treatment
10 of application 18269 for 2400 Bryan under application of
11 the force majeure rule, and that except where otherwise
12 prohibited, the applicant must continue to follow the 2018
13 QAP except the 2019 program calendar will apply.

14 MR. GOODWIN: Any questions?

15 MR. VASQUEZ: Marni, so the additional one
16 million to the development budget, they're not asking for
17 more money.

18 MS. HOLLOWAY: No, they're not asking for more
19 money, they're asking for more time to make sure they can
20 complete their construction.

21 MR. VASQUEZ: Thanks.

22 MR. GOODWIN: Do I hear a motion?

23 MR. BRADEN: I make a motion to approve and
24 accept staff's recommendation.

25 MR. GOODWIN: Second?

1 MR. VASQUEZ: Second.

2 MR. GOODWIN: Any discussion?

3 (No response.)

4 MR. GOODWIN: All those in favor say aye.

5 (A chorus of ayes.)

6 MR. GOODWIN: Opposed?

7 (No response.)

8 MR. GOODWIN: Item 7(c).

9 MS. HOLLOWAY: You know, this time of year when
10 I'm doing all this talking is when my allergies go crazy,
11 every time.

12 (General laughter.)

13 MS. HOLLOWAY: Okay. Our next item is
14 presentation, discussion, and possible action on timely
15 filed appeals of material deficiencies and scoring of
16 housing tax credit applications.

17 This is 19013, Our Lady of Charity Apartments.
18 Staff determined that the application should be terminated
19 because the unit floor plans include three unit types that
20 fail to meet the minimum square footage per unit threshold
21 requirements and that the application does not qualify for
22 points related to unit sizes because ten unit types do not
23 meet the minimum square footage per unit requirements to
24 meet this rule.

25 We received an RFAD requesting that staff

1 review the unit plans and determine if the application
2 qualified for points related to unit sizes and whether the
3 application met the unit size threshold.

4 It is important to note that the application
5 proposes the adaptive reuse of an existing historic
6 structure. Our definition of adaptive reuse requires that
7 the development be considered as new construction and
8 therefore must satisfy the requirements for a new
9 construction application.

10 Upon review of the issues raised by the RFAD,
11 staff determined that the unit floor plans include at
12 least three unit types that fail to meet the minimum
13 square footage. There are three efficiency units, and
14 each is smaller than the minimum 500 square feet.

15 Staff sent a deficiency notice, and in response
16 the applicant provided documentation from the project
17 architect that stated square footage was measured from the
18 load-bearing masonry walls. This measurement would
19 include the thickness of masonry walls for this historic
20 building all the way out to the exterior of the building,
21 so that's how they're measuring their units. Our
22 definition of net rentable area says that it is to be
23 measured to the outside of the studs of a unit or to the
24 middle of walls in common with other units.

25 Staff also determined that the application does

1 not qualify for six points related to unit sizes because
2 of even larger number of unit types do not meet the
3 minimum square footage required for the scoring item. The
4 loss of six points means that the application will also
5 lose six points for pre-application participation, because
6 the application final score varies by more than four
7 points from what was reflected in the pre-app.

8 The applicant's response to the deficiency
9 notice included unit plans with a non-structural furr-out
10 for some of the units and changed the location of walls in
11 others. The appeal states that this information may have
12 been misinterpreted due to technical and design elements
13 presented in the drawings. It further states that because
14 the units will have no structural studs, the net rentable
15 area is measured in the floor plans to the existing wall.

16 The furr-out in this adaptive reuse takes the place of
17 studs. It's a different method of construction due to the
18 historic nature of the building.

19 MR. VASQUEZ: Marni, before you go past that,
20 they're saying the net rentable area gets measured --
21 they're trying to measure it on the outside of the masonry
22 wall?

23 MS. HOLLOWAY: Yes.

24 MR. VASQUEZ: The exterior or the interior of
25 the room?

1 MS. HOLLOWAY: So say this side is the drywall
2 or whatever in the building, and then there's a furr-out
3 wall, and then there's the masonry that is the exterior
4 structure of the building. They're measuring from this
5 side all the way over here.

6 MR. VASQUEZ: They're not measuring the floor
7 from this wall to that wall and this wall to that wall?

8 MS. HOLLOWAY: Right. They're measuring
9 from --

10 MR. VASQUEZ: From the outside of the
11 building.

12 MS. HOLLOWAY: Yes.

13 MR. VASQUEZ: I just wanted to clarify.

14 MS. HOLLOWAY: The appeal asserts that there is
15 a gap in the rules and that the QAP and multifamily rules
16 do not provide clear language or guidance in determining
17 net rental area for historic buildings, nor do they
18 provide for necessary preservation of existing
19 load-bearing walls in historic properties.

20 Staff does not agree that there is a gap in the
21 rules which clearly explain how net rental area is to be
22 uniformly measured and makes no exception for historic
23 projects. That walls will not have structural studs, as
24 the appeal claims, does not mean that the development is
25 absolved from having to comply with the calculation for

1 square footage.

2 Indeed, the definition of net rental area
3 specifically excludes other areas not actually available
4 to the tenants for their furnishings and does not include
5 the enclosing of walls for such areas. This clearly
6 disallows the inclusion of the exterior masonry wall.

7 The third set of plans submitted with the
8 applicant's appeal showed the units including the net
9 rental area, the furr-out walls, as well as the space
10 behind them, and the entire width of the masonry to the
11 exterior of the structure. The furr-out walls, regardless
12 of whether they are structural, would clearly define the
13 limits of the area that's available to a tenant for their
14 furnishings.

15 During the design phase of the development, it
16 could be that the interior adjoining walls of the units
17 could have been located so that the plans met the
18 minimums. Instead, the appeal asks the Department to
19 allow for a measurement that would deprive residents of
20 over 50 square feet of net rentable area.

21 The appeal cites staff treatment of a previous
22 historical project as an example of staff accepting this
23 kind of net rentable area calculation in the past. We
24 viewed the referenced application and found that the plans
25 did include this note: "Square foot measured outside

1 existing wall and new wall." And we missed it at the
2 time. The net rentable area may have been measured to the
3 outside of the existing wall. We observed that the units
4 were much larger than in this application so that the
5 measurement did not deprive the resident of that minimum
6 space. It's important to note that staff not catching a
7 mistake in a previous application does not mean that the
8 threshold and scoring rules no longer apply in the future.

9 Staff recommends that the threshold and scoring
10 appeals for 19013 Our Lady of Charity be denied.

11 MR. GOODWIN: Any questions?

12 (No response.)

13 MR. GOODWIN: We obviously have some folks that
14 want to speak. Is there anybody here speaking in favor of
15 staff's recommendation who wants to speak? One that wants
16 to speak in favor? The rest of you want to speak against
17 staff's recommendation -- three that want to speak in
18 favor. Okay.

19 We will start. Mr. Palmer, did you want to go
20 first?

21 Someone opposed to staff's recommendation --
22 we're going to start with someone opposed to staff's
23 recommendation. Who wants to be first? And again, we're
24 going to stick to the three minutes because we obviously
25 have a number of people that want to speak.

1 MR. WILSON: Yes, sir. And I'll sign in right
2 now as we're talking here. Thank you.

3 My name is Ryan Wilson. I'm with Franklin
4 Companies, and we're representing the co-developer, the
5 San Antonio Housing Authority, as well.

6 And I think we did bring some visual aids that
7 were contained in your Board packet so I'm going to refer
8 to those, if it's okay, during the presentation real quick
9 because it's easier to point at stuff. Okay?

10 And in all due respect to the staff, what they
11 told you earlier, I think essentially that's exactly
12 right. I think what it boils down to is two issues:
13 first, what the team intended when we submitted our
14 application, and second, how we handled the deficiency.
15 Both these issues clearly center around the definition of
16 net rentable.

17 And I think Marni said perfectly, NRA is
18 measured to the outside of the studs of a unit. So that
19 was written clearly for a regular garden style walk-in
20 apartment where you have a drywall, wall, a stud and the
21 exterior wall. The stud is acting as the structural
22 component of that structure. Okay?

23 Chip, do you have a visual edition of the furr-
24 out wall?

25 Which gets me back to my point one, the

1 application always assumed this calculation was to the
2 outside of the wall because the applicant doesn't have the
3 choice to pick an arbitrary place within this masonry
4 wall.

5 So if you look at the little reference here,
6 exhibit 2, this is what we're calling the furr-out. So
7 the furr-out was simply an attachment on the existing CMU
8 wall to be able to finish that space off. It has no
9 useful use other than to provide a drywall surface, as
10 opposed to a stud wall, as referenced in the QAP, that
11 does serve a purpose which is structural.

12 Which brings me to my point number two in the
13 deficiency. When we clarified that -- and staff is
14 exactly right, we didn't come back and change all the
15 floor plans, we still contend and we intended that we're
16 not allowed by the rules of the QAP to dictate where that
17 measurement is.

18 Where the stud wall is 3-1/2 inches, in our
19 case we don't have a stud wall, we have a masonry wall,
20 that is the only structural component we have. We can't
21 decide if it's 2 inches or 19 inches. In our case it's
22 larger. So we tried to be consistent in the manner in
23 which we approached it; right, wrong, or indifferent,
24 we're trying to be consistent in what our plan was to
25 begin with. And I think the precedent was established

1 earlier, which may or may not be correct, and I think Chip
2 will talk about that.

3 And I wanted you to know, and all due respect
4 to staff's interpretation, we never intended these furr-
5 outs -- as you see is a channel on top of dry wall -- to
6 be a stud wall because we don't need a stud wall, we
7 already have a structural component. The QAP forces us to
8 take, in the words of the QAP, the studs, in our case is
9 not studs, it's a CMU wall.

10 And finally, we've never changed how we
11 measured net rentable as it was and continues to be taken
12 from the outside of the CMU wall. So to wrap up my main
13 point here, the only way the application doesn't meet
14 scoring and threshold is if we take the measurement to the
15 inside of that CMU wall, not the outside, as we think the
16 QAP clearly defines it.

17 MR. GOODWIN: Thank you.

18 Michael, we have a couple of letters that you
19 want to read into the record?

20 MR. LYTTLE: The microphones over there aren't
21 working so I'll read from the podium here.

22 The first letter is addressed to David. It
23 reads as follows:

24 "Please accept this letter of support for San
25 Antonio Housing Authority's proposed renovation of the Our

1 Lady of Charity convent on San Antonio's east side. The
2 east side neighborhood has a longstanding of needing both
3 safe and affordable housing, and the proposed conversion
4 into a 72-unit multifamily development would go a long way
5 toward meeting these needs.

6 "As I understand it, SAHA has obtained a
7 resolution from city council and submitted an application
8 for the 9 percent low income housing tax credits offered
9 by the Texas Department of Housing and Community Affairs.

10 SAHA has indicated that their application has been met
11 with some resistance in its approval due to certain
12 program qualification requirements as applied to this
13 historic building. In defense of their argument, SAHA
14 referenced an historic adaptive reuse facility that
15 reportedly used similar methods of measurement for
16 determining qualification where TDHCA granted the
17 application.

18 "To be clear, I am not advocating that a
19 special exception be made, only that this project be given
20 the same consideration that similarly situated projects
21 have received. My office is appreciative of TDHCA's
22 diligence in upholding the program standards to ensure
23 that these scarce resources are appropriated towards
24 projects that legitimately meet the qualifications.

25 "SAHA has submitted an architectural opinion

1 that offers plenty to consider in regard to their
2 argument, that the referenced units actually do meet
3 threshold requirements. I trust that the Department will
4 take into consideration these and all other contributing
5 factors in making their application decision.

6 "I look forward to hearing how this process
7 turns out and appreciate all the time and effort that both
8 parties have put into considering this worthwhile
9 development.

10 "Sincerely, Senator Peter P. Flores, Senate
11 District 19."

12 The second letter is from State Representative
13 Barbara Gervin-Hawkins, addressed to Chairman Goodwin. It
14 reads as follows:

15 "I write in support of the San Antonio Housing
16 Authority and request the Texas Department of Housing and
17 Community Affairs reconsider staff recommendation
18 determining SAHA's application for Texas historic tax
19 credits and 9 percent low income housing tax credits for a
20 proposed 72-unit multifamily development on San Antonio's
21 east side.

22 "The monastery of our Lady of Charity was built
23 in 1899 and was added to the National Register of Historic
24 Places in 1999. It was designed by James Murphy.
25 Together with Alfred Giles and Jules Poincaré, Murphy was

1 one of the city's earliest trained practicing architects
2 and designed many of the oldest and historically
3 significant buildings in San Antonio.

4 "The monastery was built to house the Sisters
5 of Our Lady of Charity, who arrived in San Antonio from
6 Canada in 1897 to establish a facility to care for and
7 educate young unwed mothers. Over the years it has
8 changed owners but it has always served the community.
9 SAHA is now repurposing this structure to continue to
10 provide for those in need by providing housing with
11 supportive services.

12 "SAHA firmly believes in the importance of
13 respecting the historical value of this property and
14 preserving the landmark. To honor the historic structure,
15 SAHA's application indicates furr-out walls are intended
16 to be nonstructural walls with channels and drywall that
17 will not serve as a stud wall. SAHA clarified this
18 specification in their application and outlined the
19 historic structure of this property by presenting the
20 existence of masonry walls in replacement of stud walls.

21 "In addition, I would like to remind the TDHCA
22 Board of the Conrad Lofts application, where similar
23 circumstances were present and TDHCA staff used the same
24 methodology of calculating the net rentable area. The
25 application for Conrad Lofts used the typical efficiency

1 one-bedroom unit in their response as evidence of
2 consistent application of the Qualified Allocation Plan
3 rules. Their application clearly defined the unit was 573
4 square feet measured outside of existing and new wall.
5 TDHCA staff recommended the Conrad Lofts application meet
6 the scoring criteria.

7 "Given the parallels between our Lady of
8 Charity and Conrad Lofts, I am requesting the Board of
9 Directors use consistent calculation of NRA to reinstate
10 SAHA's application for our Lady of Charity.

11 "Lastly, I want to highlight that the existing
12 buildings incorporated into this adaptive reuse project
13 currently services 25 public housing units. The convent
14 not only serves as a landmark for the community but also a
15 tenant-occupied property in dire need of rehabilitation.

16 "We know the City of San Antonio's east side
17 neighborhood is in dire need of reinvestment with modern,
18 safe facilities to address the affordable housing needs in
19 the area, and the proposed Our Lady of Charity development
20 is an important stepping stone to achieve these housing
21 needs.

22 "I look forward to the Board giving its full
23 and fair consideration to this development and to bring
24 affordable housing to a growing and vibrant community in
25 San Antonio.

1 "Sincerely, Representative Barbara Gervin-
2 Hawkins, House District 120."

3 MR. GOODWIN: Thank you. You went over your
4 three minutes.

5 (General laughter.)

6 MR. GOODWIN: We have someone that wants to
7 speak that is in favor of staff's recommendation?

8 MS. BAST: Good morning. Cynthia Bast of Locke
9 Lord. We represent Legacy at Piedmont, which is an
10 applicant in this same region, competitive to Our Lady of
11 Charity.

12 I think that the rule really gives you
13 everything that you need here. We don't have to talk
14 about measurements, because the rule says the unit space
15 that is available exclusively to the tenant and is
16 typically heated and cooled by a mechanical HVAC system.

17 That is your guidance on what this rule about
18 net rentable area requires, and to take the wall out all
19 of these additional inches to meet a threshold requirement
20 is not consistent with this definition. And that's what
21 we just heard in these letters from these legislators, is
22 that they want you to be consistent.

23 There is no precedent here. Your staff was
24 very clear, and they are correct that there is no
25 precedent on this issue because in the prior case the

1 square footage, the way it was calculated didn't matter.
2 So we believe that in order to grant this appeal you would
3 actually need to waive your rule about net rentable area
4 and the square feet that are required, and you don't need
5 to waive that rule when there's another application in
6 east San Antonio, less than two miles away, that would
7 also serve the community.

8 So for those reasons, we support staff's
9 recommendation and I'd appreciate your consideration.

10 MR. GOODWIN: Thank you.

11 Anyone that is opposed want to speak? And I
12 would ask that those of you start speaking -- I mean,
13 we've defined two issues and we don't have to hear about
14 measuring over and over again and your way of measuring
15 versus how somebody else ought to measure and this other
16 that staff recommends is a mistake that you say set
17 precedent. I think those two issues have been -- if
18 you've got something new, I would encourage you to come up
19 and speak.

20 MR. COLLINS: My name is Chip Collins with
21 Alamo Architects.

22 So the definition in the QAP regarding
23 calculation new construction is to the outside of the stud
24 wall, so you're within your unit, the drywall is attached,
25 and you're calculating to the other side of the stud wall,

1 and so that is how the QAP defines the calculation.

2 So in our situation there is no stud wall, and
3 in many historic buildings subject to adaptive reuse,
4 there are no stud walls, so it's impossible to calculate
5 the net rentable square footage through a strictly literal
6 reading of outside of the studs.

7 We understand in a standard wood frame
8 construction it would be to the outside of your foundation
9 and to the outside of the stud. And in our situation
10 we've got a multi-width, load-bearing brick masonry wall
11 that serves as our stud.

12 As an example, the Conrad Lofts, you can see
13 that their calculation went to the outside of the existing
14 masonry load-bearing wall, and at 573 square feet, if you
15 were to reduce that and take out the existing masonry
16 wall, that would fall under the threshold for scoring.

17 So I think that's the main sticking point is
18 without a stud wall, there's no clear direction on how to
19 calculate this. And in the instance of when there is a
20 stud wall, you know, that area is not heated and cooled,
21 it is outside the sheetrock, and yet you're still
22 calculating outside a stud as part of the net rentable
23 area.

24 Thank you.

25 MR. GOODWIN: Any questions?

1 MS. THOMASON: I had a question. So what is
2 the size of a stud wall as opposed to your -- was it 19
3 inches?

4 MR. COLLINS: Eighteen inches. A stud wall can
5 be 3-1/2, 5-1/2 inches typically.

6 MS. BINGHAM ESCAREÑO: I have a question for
7 Marni. Just a couple of things just for my clarification.
8 You know, on Conrad did we miss it or did we expressly
9 approve it?

10 MS. HOLLOWAY: We missed it.

11 MS. BINGHAM ESCAREÑO: Okay. And so the last
12 speaker just said that even if you used Conrad as an
13 example that if you measured using the same kind of
14 expectation that we are with the Sisters of Charity, that
15 they would have missed the square footage minimum, which I
16 thought in your report you said that they wouldn't have
17 missed it.

18 MS. HOLLOWAY: Right. So that part of my
19 presentation was really about -- wasn't about going back
20 and looking at the plans, it was looking at the square
21 footages listed for the units, which was measured
22 incorrectly, but it seemed big enough that still with
23 those walls would still have that minimum net rentable
24 area.

25 MR. BRADEN: To the Chair?

1 MR. GOODWIN: Yes.

2 MR. BRADEN: So if furring strips were not
3 used, like they just put plaster on the masonry wall and
4 did whatever, how would we measure that?

5 MS. HOLLOWAY: Considering the definition that
6 talks about space that's available to the tenant, we
7 probably in that instance would measure to the plaster or
8 maybe just behind the plaster on the inside of the masonry
9 wall.

10 MR. BRADEN: How is the definition of available
11 to tenant consistent with the measure for stud walls where
12 we're measuring to the outside of that wall?

13 MS. HOLLOWAY: I am not able to answer that
14 question.

15 MR. BRADEN: I mean, I agree, if you think
16 about net rentable space you would think what's inside the
17 unit, but everybody seems to agree that on regular wood
18 construction we're measuring to the outside.

19 MS. HOLLOWAY: Yes.

20 MR. GOODWIN: Brent.

21 MR. STEWART: Brent Stewart, Real Estate
22 Analysis.

23 So the history of that definition has morphed
24 over time. At one point in time it was the inside, at
25 another point in time it was to the middle of the stud

1 which is still in place as it relates to walls between
2 units. There's a collision of two different rules here:
3 one is net rentable area available to the resident, and
4 the other one is a measurement of how you get to net
5 rentable area available to the resident. So that's kind
6 of some history of that based on public comment over the
7 years, working with the development community, how that
8 has morphed.

9 MR. GOODWIN: Further questions?

10 MS. BINGHAM ESCAREÑO: Are there any federal,
11 like HUD guidelines? Since our rules have kind of morphed
12 over time on this, are they in concert or conflict with --
13 are we are of any other rules that would kind of supersede
14 ours?

15 MR. STEWART: No.

16 MR. GOODWIN: So if we measured these units,
17 Brent, from the plaster or the inside of this furred wall,
18 would they meet the minimums?

19 MR. STEWART: I'm aware --

20 MR. GOODWIN: Or do you have to go to the
21 outside of the exterior wall for them to meet the
22 minimums?

23 MR. STEWART: So there are unit types that are
24 on the ends of some protrusions that come out from the
25 building, which those units have three of these walls that

1 are thick. There are other units that are interior of
2 that that have two walls because the wall in between those
3 units are there. I don't believe we've measured those
4 walls, and I'm not sure that that square footage meets the
5 rule simply because if you have three big walls, that
6 would add to that net rentable area calculation. So I
7 don't know the answer to that. But when we measure the
8 unit that has the three thick walls, that would meet the
9 square footage definition of net rentable area, the
10 minimum required to score.

11 MR. GOODWIN: How did you measure it that way,
12 those three walls?

13 MR. STEWART: From the outside of the three
14 walls.

15 MR. GOODWIN: The outside --

16 MR. STEWART: Yes, sir.

17 MR. GOODWIN: -- of the exterior wall, not the
18 inside of the exterior wall.

19 MR. STEWART: We measured it in multiple ways.

20 MR. GOODWIN: But you have to go to the outside
21 of the exterior wall to get to the minimum?

22 MR. STEWART: I don't recall what the
23 measurement is from the outside of the furring wall, the
24 non-structural furring. I can't answer that.

25 MR. GOODWIN: Any other questions for Brent?

1 (No response.)

2 MR. GOODWIN: Do we have anybody that wants to
3 add anything new that is in favor of staff recommendation?

4 Do you have something new you want to add?

5 MR. FLORES: Yes, sir, just a few comments.

6 MR. GOODWIN: Or are you going to educate us
7 again on measurement?

8 MR. FLORES: No, sir. I'm not going to deal
9 with measurements. My name is Henry Flores, and Mr.
10 Chairman and members, I appreciate the opportunity to
11 speak briefly on the subject.

12 As some of you know, I had the honor of being
13 the first executive director of this agency, appointed by
14 Governor Richards when the agency was created. I
15 continued to serve in Governor Bush's administration, the
16 only Democrat in his administration, and I worked for
17 Clinton and Bush at the national level, but I've been a
18 developer for 23 years.

19 This is not necessarily about measurement, this
20 is about the space. And I appear very reluctantly,
21 because before I moved to Austin I was in my hometown of
22 Corpus Christi in housing and community development 15
23 years, seven years as the director of the housing
24 authority.

25 I'm reluctant to speak today because the

1 developer of this transaction is a housing authority, one
2 of my first clients, SAHA. But this is not about SAHA,
3 this is about a developer who made a mistake. They had a
4 footprint of a building, they put too many units in there.

5 If you had a few less units, you wouldn't be having this
6 conversation.

7 These standards, minimum square foot standards
8 are there for a reason, they've been there for 20 years
9 and they've vacillated a little bit over time but they've
10 always been there. We talk about 50 square feet being
11 critical. Right now we have a minimum square footage, say
12 for the efficiencies, of 500 square feet. Why? Because
13 staff sat down and said this is reasonable bedroom, this
14 is a reasonable living area, this is a reasonable
15 bathroom, blah-blah-blah, and they came to 500. Then they
16 said this is a decent amount of space for any family, but
17 we want to enhance their living environment and give you
18 points if you add 50 square feet, so 550.

19 What they're asking you to do, because they
20 made a mistake, is to count those walls. Their
21 calculation suggests that is 573 if you count the exterior
22 walls. It's only 495 feet interiorly. That means they're
23 sacrificing 81 feet of space as well. That family is not
24 going to have 81 feet, it's a bedroom.

25 In the E6 is more egregious. In the E6 which

1 is a one-bedroom, the calculation is 132 square feet less,
2 132 square feet less. That means a bedroom and a bath that
3 that family is going to pay for that's not going to exist
4 because they're paying for that wall.

5 And as Mr. Stewart said, in some cases on those
6 E-1s, if you include all three walls, they meet the
7 qualification, and they provided documentation to that
8 effect. The E-1s in the inner corridor, they didn't
9 provide any documentation, and those only have two walls
10 and they failed to meet the standard, even applying the
11 wrong definition that they're trying to suggest is
12 correct.

13 MR. GOODWIN: Any questions?

14 (No response.)

15 MR. GOODWIN: Thank you.

16 MR. FLORES: Thank you, sir.

17 MR. VASQUEZ: I don't know who can answer this
18 best. We had a chart in here on page 673 showing the
19 units that are missing the mark, so there's ten different
20 types, I think, unit types?

21 MS. HOLLOWAY: Yes.

22 MR. VASQUEZ: And there's 72 units total in the
23 development.

24 MS. HOLLOWAY: I believe so, yes.

25 MR. VASQUEZ: So how many of those 72 -- how

1 many E-1s are there in the whole?

2 MS. HOLLOWAY: I don't know that we have that.

3 Do you have that information?

4 MR. VASQUEZ: These ones that come up short,
5 does it represent 10 percent of the units or does it
6 represent 80 percent of the units?

7 MR. ECCLES: And as she's looking for that
8 information, I think it's important to note that those are
9 just the ones that staff identified as being clearly under
10 because there's not enough information on anything that's
11 not a length times width assessment. Any sort of odd
12 shaping where they don't include what would be an interior
13 measurement versus an exterior measurement, and then the
14 notches for a cutout couldn't really be calculated of the
15 plans submitted. So it was just to show these are under
16 threshold, these are under the additional square footage
17 required to get the additional points.

18 MR. VASQUEZ: And again, I'm just trying to
19 understand, we have E-1 here. Is there also an A-1, B-1,
20 C-1, and D-1 that are the same size?

21 MR. COLLINS: No. And of the E-1 there are two
22 units total on the project.

23 MR. VASQUEZ: Okay. So again, there's only ten
24 out of the -- or eleven out of the 72 total units?

25 MR. COLLINS: Two.

1 MR. VASQUEZ: We have ten. We have E-1, E-3,
2 E-4, six, seven, eight, ten, eleven, and then C-1 and C-2.
3 Are there multiple copies of these units in the overall
4 development?

5 MR. COLLINS: Yes. There are, let's see, 16 --
6 17 unit types.

7 MR. GOODWIN: I think what's he's asking you on
8 our chart on page 673 it shows unit type E-1 shown on your
9 plan at 550, and I believe we've calculated it shows 495.
10 Are there five of those units?

11 MR. COLLINS: Two E-1s.

12 MR. GOODWIN: There are two. And the next one
13 is E-3, is there one?

14 MR. COLLINS: Six.

15 MR. GOODWIN: Six E-3 units.

16 MR. COLLINS: Yes.

17 MR. GOODWIN: E-4?

18 MR. COLLINS: There are three.

19 MR. GOODWIN: E-6?

20 MR. COLLINS: Four.

21 MR. GOODWIN: E-7?

22 MR. COLLINS: Three.

23 MR. GOODWIN: E-8?

24 MR. COLLINS: Three.

25 MR. GOODWIN: E-10?

1 MR. COLLINS: One.

2 MR. GOODWIN: E-11?

3 MR. COLLINS: One.

4 MR. GOODWIN: C-1?

5 MR. COLLINS: Two.

6 MR. GOODWIN: And C-2?

7 MR. COLLINS: Four.

8 MR. GOODWIN: Does that answer your question,
9 Leo?

10 MR. VASQUEZ: Yes.

11 SPEAKER: We're counting 29.

12 MR. GOODWIN: Twenty-nine total? Twenty-nine
13 out of 72.

14 MR. VASQUEZ: That's what I was trying to get
15 at.

16 MR. GOODWIN: Sharon.

17 MS. THOMASON: And those are on the units that
18 were easily calculated. That doesn't mean that there
19 aren't 50 more of them.

20 MR. GOODWIN: Others. Yeah.

21 MR. WILSON: Ms. Thomason, can I address that?
22 Because I think everyone is confused about what's going
23 on here.

24 I think the application of the net rentable
25 calculation was applied evenly through every unit in this

1 project, so I think it's incorrect to say it wasn't caught
2 on several. The application of these were caught -- or
3 staff focused on several, but the application of how we
4 calculated was all the same throughout the units. So
5 whether or not you agree with that, that's a different
6 story, but I think that's important to know.

7 Thank you.

8 MS. BINGHAM ESCAREÑO: Mr. Chair?

9 MR. GOODWIN: Yes.

10 MS. BINGHAM ESCAREÑO: I have a question for
11 Marni. So what's in front of us is points. Right?

12 MS. HOLLOWAY: Yes. Points and threshold.

13 MS. BINGHAM ESCAREÑO: I know. Right. So
14 remind the Board of the points that are for consideration,
15 and then so threshold consideration, my guess is the Board
16 can approve or not approve staff's recommendation on the
17 points. And then if we decided it wasn't a threshold
18 issue, then we would have to be able to articulate why it
19 wasn't a threshold issue? I mean, threshold is kind of
20 non-negotiable.

21 MS. HOLLOWAY: Correct. So if the Board were
22 to decide that the applicant has met that threshold
23 requirement, then your next action would be whether or not
24 they get the points for the unit sizes. One would have to
25 follow the other.

1 MS. BINGHAM ESCAREÑO: And then on the -- what
2 do we call it again, the pre-participation or the --

3 MS. HOLLOWAY: Pre-application?

4 MS. BINGHAM ESCAREÑO: So there's six points?

5 MS. HOLLOWAY: Yes.

6 MS. BINGHAM ESCAREÑO: So there's six points
7 that are under consideration for the actual unit size, and
8 then there's an additional six points that are at risk
9 because of?

10 MS. HOLLOWAY: Because the variance between the
11 score at pre-application and at application is more than
12 four.

13 MS. BINGHAM ESCAREÑO: Gotcha. And that's an
14 additional six, so that's twelve?

15 MS. HOLLOWAY: Yes.

16 MS. BINGHAM ESCAREÑO: And if the Board ever
17 were to consider that the application did not meet the
18 requirement to earn the six points for the unit size, does
19 the Board have any discretion to instruct not removing the
20 six points for the delta between the pre-application
21 points and the actual award?

22 MS. HOLLOWAY: That would be a Beau question.

23 MS. BINGHAM ESCAREÑO: I'm just trying to
24 figure out. I don't even know if this is the way that we
25 would go. I'm just trying to -- you know, what it sounds

1 like to me is -- and this happens, you know, regularly --
2 that if there's a significant material difference of more
3 than four points between pre-application and the actual
4 award that you're dinged those six points.

5 I'm just trying to figure out if we said the
6 Board decided that they don't get the points for the unit
7 size but we hate to ding them again for being off on their
8 pre-application, do we have the discretion to not hit them
9 with the six-point penalty for the difference in the pre-
10 app points and what's actually being awarded.

11 MR. ECCLES: I will say only that that is what
12 the rule requires, is if there is that difference between
13 those points sought and the points awarded, then they're
14 supposed to lose their pre-app points.

15 MS. BINGHAM ESCAREÑO: Okay.

16 MR. GOODWIN: Any additional questions?

17 MR. ECCLES: I have a quick clarification,
18 because the definition of net rentable area was
19 represented a couple of different phrasings about a stud
20 wall. The definition, as it relates to studs, is -- and
21 this is out of 10 TAC Section 11.1(d)(82), the second
22 sentence: "Net rentable area is measured to the outside
23 to the studs of a unit or to the middle of the walls in
24 common with other units." So it's not talking about a
25 stud wall or a structural wall necessarily, it's talking

1 about the studs that to which a wall is adhered.

2 MR. GOODWIN: Any other questions?

3 (No response.)

4 MR. GOODWIN: Anybody have anything they want
5 to add that's new?

6 MR. PALMER: Barry Palmer with Coats Rose,
7 speaking on behalf of the developer and oppose the staff's
8 recommendation.

9 So we have a situation here where the QAP
10 defines how you measure net rentable area to the studs.
11 In this case we don't have any studs, we've got a masonry
12 historic building, and so how do you measure the net
13 rentable area?

14 So what the developer did is looked to
15 precedent as to what had been done in the past, and in the
16 Conrad Lofts deal that was approved just three years ago,
17 it had been measured from the outside of the masonry
18 walls, so that's what they did.

19 And so because of that, it seems to me that
20 there is an ambiguity here. Staff is viewing Conrad Lofts
21 as a mistake, we viewed it as precedent. We had no idea
22 until today that they considered that it was a mistake.
23 But because of the ambiguity in the QAP as to how you
24 would measure a masonry building and the existence of this
25 precedent, I'd like to ask the Board to direct staff to

1 allow this to be treated as an administrative deficiency
2 and allow the developer to revise the site plan, the unit
3 plans to meet the minimum square footage as staff
4 recommend that it be measured.

5 MR. GOODWIN: Thank you.

6 Any questions?

7 MR. VASQUEZ: Can we do that?

8 MR. ECCLES: Well, let me just first respond to
9 the concept of precedent versus rules. An action taken by
10 the Board that happens to encompass that you have done in
11 a previous application does not create binding precedent
12 for the Board or staff on any action. Every applicant is
13 held to the rules in place at the time of the application.
14 That's what you have to follow.

15 MR. PALMER: I understand that. And here we
16 have a rule that's ambiguous when you're looking at
17 historic buildings, when it says measure it to the studs
18 and there are no studs.

19 So you've got to come up with something else to
20 measure it to, and so it's reasonable to look back at what
21 has been approved by the Department before. Even though
22 it's not binding, it certainly is a reasonable basis to
23 come up with something to measure it from when you have no
24 studs.

25 MR. ECCLES: Yes, but the Board didn't take any

1 action on Conrad Lofts about net rentable area. A project
2 was approved, but this is the first time the Board is
3 addressing what outside of the studs means.

4 And respectfully, you say there are no studs
5 but the wall is adhered to something, and you talked about
6 a furr-out wall, which I believe the discussion was MEP,
7 mechanical, electrical and plumbing is passing through
8 this wall space. What is the drywall adhered to? Why
9 wouldn't it be just as reasonable a conclusion to say it's
10 the back side of whatever the wall is adhered to, the
11 drywall before that space? That's another interpretation
12 that could be made off of this rule when it's talking
13 about the stud. It's anything that the drywall is adhered
14 to as opposed to presuming it's a structural member.

15 MR. PALMER: That's reasonable. Another
16 reasonable interpretation is that the stud serves the
17 function of load-bearing support and in concrete masonry
18 it is the masonry that's providing that support, the
19 structural support, as opposed to the studs, and so that's
20 the reasonable interpretation that the development team --
21 and the fact that there are two or three reasonable
22 interpretations of the rule as to how you would measure
23 it, points out that it's not clear, and that it was
24 reasonable for the developer to rely on how it had been
25 done before.

1 And how it was done in Conrad was measuring
2 from the outside of the masonry wall, staff accepted that,
3 recommended to the Board for approval, it was approved.
4 I'm sure it wasn't discussed or considered, but the Board
5 approved it, the staff recommended it, and so it was
6 reasonable for the development team to rely on that
7 interpretation. And so if that's not the right
8 interpretation of it, then allow them to change their
9 floor plans to meet the interpretation that the staff is
10 suggesting.

11 MS. THOMASON: Is that an option for the
12 project if they went back and didn't measure from the
13 outside of the masonry wall but whatever the typical stud
14 size or the furr wall or whatever it would be? Is that an
15 option for them at this point to redo their floor plan?

16 MR. GOODWIN: That would be a material --

17 MR. ECCLES: I can't really think of anything
18 more material than that.

19 (General laughter.)

20 MR. WILSON: Yeah. Practically, in all
21 reality, that would be tough for certain. It would be
22 definitely a material revision to what we've submitted to
23 date, and we agree.

24 MR. GOODWIN: I think we've pretty well hashed
25 this over. If everybody is comfortable, I think it's time

1 for us to get to a motion, and I'm inclined to accept one,
2 But I'd also would make comment that I agree with our
3 original executive director, having been in this game a
4 long time, this was trying to cram a little too much into
5 a little too little, and I hope that you'll come back in
6 the next round, if this doesn't pass, with maybe 70 units
7 instead of the 72, or 65 units if that's the way it
8 measures out.

9 But I think it's time for a motion from the
10 Board.

11 MS. BINGHAM ESCAREÑO: I'll move to approve
12 staff's recommendation.

13 MR. GOODWIN: A second?

14 MR. BRADEN: I'll second.

15 MR. GOODWIN: It's been moved and seconded.

16 Any other discussion?

17 (No response.)

18 MR. GOODWIN: All those in favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: Opposed?

21 (No response.)

22 MR. GOODWIN: Moving on to item 19126.

23 MR. VASQUEZ: Mr. Chairman, if I could just
24 make a comment, I guess to Marni, on the QAP and the
25 rules. This sounds to me like something that we need to

1 clarify.

2 MS. HOLLOWAY: Absolutely.

3 MR. VASQUEZ: Although, just from my personal
4 opinion, I just think it's ludicrous that we're not taking
5 a commonsense approach that from interior wall to interior
6 wall, whether you put in a four-inch stud or a six-inch
7 stud -- that outside those interior walls is not the way
8 we should calculate actual rentable space.

9 MS. HOLLOWAY: Understood.

10 MR. VASQUEZ: Whatever space you can stand on
11 or put a piece of furniture on, that interior wall to wall
12 is how we should clarify the rules, which, again, it's
13 just amazing to me that we would consider any other
14 calculation.

15 MS. HOLLOWAY: Understood.

16 Our next item is presentation, discussion, and
17 possible action on timely filed appeals scoring on housing
18 tax credit application 19126. This is for 3104 Division
19 Lofts.

20 Our rules for the deficiency process for 9
21 percent applications require that unless an extension has
22 been timely requested and granted, if a deficiency is not
23 fully resolved to the satisfaction of the Department by
24 5:00 p.m. on the fifth business day following the date of
25 the deficiency, then five points will be deducted for each

1 day that the deficiency remains unresolved. After the
2 seventh business day, the application is subject to
3 termination.

4 Staff determined that because the applicant
5 failed to respond to a deficiency notice until the seventh
6 business day following the date of the deficiency notice,
7 ten points should be deducted from the selection criteria
8 score.

9 In their appeal the applicant states that the
10 reason why their response was late is that the deficiency
11 notice was not received. They note that the email form
12 that we use to issue deficiencies has a standard end note
13 that says, "Please respond to this email as confirmation
14 of receipt" and that the subject line contains the same
15 instruction, "Please reply immediately acknowledging
16 receipt." A staff person who does not receive an
17 acknowledgment from an application may call or email the
18 applicant to make sure that they received the notice.
19 This is a courtesy and it's not required by rule.

20 They also say in their appeal that none of the
21 items in the notice technically warrant a formal
22 deficiency notice, as the information was submitted with
23 the application. There was no lack of clarity or omission
24 of information in the application and all four questions
25 asked by staff can be answered from information in the

1 application as submitted.

2 We have verified through our Information
3 Services Division that the message left our servers, and
4 we either received a notification of successful delivery,
5 or more likely, simply did not receive any notification of
6 a bounce-back or error message from their mail server.

7 The evidence submitted with the appeal that the
8 applicant did not receive the deficiency is a spreadsheet
9 maintained by the applicant. It is not a report of
10 traffic from their email server or similar technical
11 evidence. It is important to note that based on the
12 applicant's deficiency tracking log submitted with its
13 response, other deficiency email notices from the
14 Department were successfully received before and after the
15 notice on May 13 was sent.

16 As to the issue of whether the administrative
17 deficiency should have been issued at all, staff is
18 clearly within the rules to request clarification of
19 matters expressed in the application. In fact, the best
20 response we can receive to a deficiency is explanation of
21 how the application meets the questioned requirement
22 through the original submission.

23 Staff recommends that the appeal for 19126 3194
24 Division Lofts be denied. I'll be happy to take any
25 questions.

1 MR. GOODWIN: Any questions?

2 MR. VASQUEZ: Marni, you said there were four
3 deficiencies that we notified them of, and it appears that
4 three were sufficiently responded to? Am I looking at the
5 right one?

6 MS. HOLLOWAY: This one we just did not receive
7 a response at all.

8 MR. VASQUEZ: On page 762 I see in this case
9 the following deficiencies were noticed, and one, two and
10 three staff determined the response was sufficient to
11 clear the deficiency. The one about title commitment
12 legal description, one on --

13 MS. HOLLOWAY: I don't have the Board item
14 right in front of me.

15 MR. VASQUEZ: The only one that wasn't,
16 according to these notes, right before you say, "Staff
17 recommends the Board deny the appeal."

18 MS. HOLLOWAY: So on all four items?

19 MR. VASQUEZ: Except for the accessible
20 carports.

21 MS. HOLLOWAY: It says, "The number of
22 accessible carports indicated on the site plan did match
23 the number on the calculation form." So yes, we accepted
24 it.

25 MR. VASQUEZ: So again, in the background

1 information the applicant's response was that their
2 original application, the data was there that answered the
3 questions.

4 MS. HOLLOWAY: Right, and with their response
5 they revised the calculation form to account for the two
6 additional amenities, so we accepted that response.

7 MR. VASQUEZ: So the bottom line, what the
8 Board is considering is just the timing on that response?

9 MS. HOLLOWAY: Correct.

10 MR. VASQUEZ: Okay. That clarifies my
11 questions.

12 MR. GOODWIN: And refresh me on we sent it out,
13 they were supposed to respond by what date and what date
14 did they respond by?

15 MS. HOLLOWAY: By 5:00 p.m. on the fifth
16 business day following the date of the deficiency, and
17 it's actually the matter has to be resolved. It's not
18 just send us the information, it has to be resolved under
19 our rule. So in general, we get the information before
20 that deadline and are able to respond that, yes, this is
21 sufficient.

22 MR. GOODWIN: Resolves it.

23 And when did they respond?

24 MS. HOLLOWAY: On the seventh business day.

25 MR. GOODWIN: The seventh business day.

1 MR. ECCLES: And have we gone into the
2 discussion of the emails? Because there was an email
3 notification, they hadn't responded and it was already two
4 days late, one day late?

5 MS. HOLLOWAY: Staff realized that the
6 deficiency response had not been received and reached out
7 to the applicant, and at that point they responded.

8 MR. ECCLES: Yes. And they claimed they had
9 never actually received it.

10 MS. HOLLOWAY: They claimed they had never
11 received the original email.

12 MR. GOODWIN: And their staff member
13 communicated with the applicant the fifth day, the sixth
14 day, the seventh day?

15 MS. HOLLOWAY: I think it was the sixth day.
16 Was it the seventh?

17 MR. GOODWIN: Seventh day. Okay.

18 MR. BRADEN: And they responded that same day
19 that we called them?

20 MS. HOLLOWAY: Uh-huh.

21 MR. BRADEN: Substantively?

22 MS. HOLLOWAY: They provided a response that
23 cleared all the deficiencies.

24 MR. GOODWIN: So this really gets down to the
25 issue of timeliness and did they receive this or not.

1 MS. HOLLOWAY: Yes.

2 MR. GOODWIN: And we have no evidence that they
3 didn't receive it, but we don't have any hard evidence
4 that they did receive it.

5 MS. HOLLOWAY: Correct.

6 MR. GOODWIN: Any other questions?

7 MR. VASQUEZ: And all the deficiencies were
8 addressed?

9 MS. HOLLOWAY: Yes, they were.

10 MR. GOODWIN: I assume we have someone here
11 that wants to speak against staff's recommendation. Would
12 you like to speak first?

13 MS. ANDRÉ: Yes, sir. Good morning. My name
14 is Sarah André. I'm the applicant for Division Lofts.
15 I'm here to ask for your favor in granting our appeal
16 regarding the points that were deducted from our
17 application based on the timing.

18 I believe we've reviewed this, but just
19 briefly, the crux of what happened here is that TDHCA sent
20 a deficiency, we did not receive it and, therefore, did
21 not answer it. I didn't know that it existed.

22 Only when the deficiency was two days past due
23 and the application as about to be terminated did TDHCA
24 staff reach out again. I think we had about five hours at
25 that point before termination. We answered them quickly,

1 and the application was docked ten points. We then
2 appealed that decision. Mr. Cervantes denied our appeal
3 because he said it lacked technical documentation of the
4 fact that the email was not received.

5 So then I reached out to almost everybody I
6 know to try to find someone qualified to look at that
7 situation. I did find two IT people who looked through
8 our folders and then they also looked through something
9 called log files, which I have barely any concept of what
10 that is. Neither of them found that email, and you have a
11 letter in your packet from one of the experts explaining
12 that the email was rejected by our system.

13 I've since learned that that's actually not
14 uncommon. Gmail apparently can work perfectly for most
15 people and thousands of other people can be experiencing a
16 complete outage at the same time. And there's a lot of
17 evidence about that on the internet, specifically on a
18 website called downdetector.com.

19 We're a really small company, there are only
20 four of us. I don't have a dedicated IT person; I'm
21 dependent on, for better or worse, the Genius Bar or
22 Computer Nerds when something is not working, and until
23 now I've really never seen a need for that kind of
24 service, but I've learned a lot in the past weeks.

25 In your packet you have an explanation of how

1 we track and respond to deficiency and a log showing how
2 we've implemented this system over the past three years.
3 I believe that that demonstrates our good track record
4 with the Department and our acute awareness that there's a
5 severe penalty for missing a deadline.

6 It also illustrates the fact that we're
7 cognizant of unless TDHCA receives our communication, our
8 communication didn't happen. And in fact, if TDHCA does
9 not acknowledge receipt from us, we reach out to them to
10 make sure they received our correspondence.

11 This is really a simple issue of something that
12 got lost in the mail, it happens all the time. You know,
13 UPS swears through their tracking system that a package is
14 at my doorstep and yet it's not. Just last week a title
15 company sent out a check; it never came. That just
16 happens.

17 I've been working on this project for almost a
18 year, I've dedicated a lot of resources to the project,
19 and there is no way I would knowingly avoid answering a
20 deficiency request.

21 Finally, all deficiency requests do ask the
22 recipient to acknowledge receipt, and I know that staff
23 cannot babysit applicants, but communication is a two-way
24 street, and I just think in this case the loss of ten
25 points is an outsized consequence for the crime of not

1 responding to something that I did not know existed.

2 MR. GOODWIN: Thank you.

3 MS. ANDRÉ: Thank you so much for listening.

4 MR. GOODWIN: Any questions or comments from
5 Board members?

6 (No response.)

7 MR. GOODWIN: It seems to me we're going to
8 have speakers on both sides say we didn't know and we
9 can't prove that you did know or we didn't know. Is there
10 a feeling of a Board member here to make a motion? It
11 doesn't have to stop discussion.

12 MR. VASQUEZ: I'd be comfortable with making a
13 motion. And again, being the Board member who most
14 distastes "gotcha" from our organization, again, based on
15 the information provided and the responses given and the
16 staff determination that responses were sufficient to
17 clear the deficiencies, I would recommend that we go
18 against the staff recommendation and approve the appeal.

19 MR. GOODWIN: Do I have a second for that?

20 MR. BRADEN: Second.

21 MR. GOODWIN: It's been moved and seconded.

22 Any further discussion?

23 (No response.)

24 MR. GOODWIN: Are you speaking in favor of
25 staff's recommendation or opposed to staff's

1 recommendation?

2 SPEAKER: Opposed.

3 MR. GOODWIN: Opposed to staff's

4 recommendation?

5 SPEAKER: Yes.

6 MR. GOODWIN: Is there someone who wants to

7 speak in favor of staff's recommendation?

8 MS. BROWN: Good morning. My name is Linda
9 Brown with Casa Linda Development Corporation based in
10 Dallas, and I'm here representing applicants a little
11 further down in the list. I just wanted to make a few
12 points about this situation.

13 You know, in today's environment we have to
14 rely on our email system as a primary method of
15 communication in so many different ways and for so many
16 different reasons. Particularly in this competitive
17 application process with TDHCA it's vitally important.

18 We've been receiving email appeals or requests
19 for information from TDHCA, deficiency notifications, you
20 name it, for years, and it seems to me that if the Board
21 sends a signal to the staff that that system is not
22 reliable, it really begs the question about -- and I'm not
23 disputing whether the applicant actually received it or
24 not, it's not about that, it's about the system itself.
25 And in this particular round the staff was actively

1 reviewing at least 65 applications, sending deficiency
2 notifications out just as business as usual and as the
3 guidebook and rules describe.

4 So there's so many of us that it seems odd that
5 this is the first time that we have a situation like this,
6 and if there is any system in your office -- we're a small
7 office too, we have two people in our office -- if there's
8 any system that you want to be working, it would be your
9 computer system and particularly your email system.

10 I want to also point out that in this case the
11 City of Arlington actually has three priority applications
12 that are set to be awarded within this same city. That's
13 kind of more of a side note, but I think that this vote is
14 more about a vote for reliance on the methodology and
15 system that's in place that is working for everybody else
16 up to now.

17 And so with that, I respectfully request your
18 due consideration to support the staff in this regard and
19 not set a new direction in forms of communication that
20 will even more troubling as we go down the road.

21 Thank you.

22 MR. GOODWIN: Questions?

23 MS. RESÉNDIZ: Mr. Chairman, I have a question
24 for staff.

25 What about read receipts, is that something

1 that's possible to make sure that this doesn't happen
2 again? Or is that too simple?

3 MS. HOLLOWAY: It is if whoever we are sending
4 the email to authorizes read receipts. My email, my
5 personal email and my work email do not authorize read
6 receipts.

7 MS. RESÉNDIZ: Could that be something we
8 include, the application must have an email that --

9 MR. GOODWIN: I think what you're talking about
10 in that situation is a rule, and that would be something
11 that would come in the future.

12 MS. HOLLOWAY: Yes, that would be a change.

13 MR. GOODWIN: Do you agree with that, Beau?

14 MR. ECCLES: Completely. I think the issue
15 here -- and I'll stress that whatever the Board votes on
16 does not become precedent -- but there was a letter
17 submitted by the applicant that said that "The email
18 initiated by Nicole Fisher on May 13, 2019, to both Sarah
19 André and Rebecca Broadbent at the @structuretexas.com
20 domain was rejected by the mail server, and as such, never
21 successfully delivered and received."

22 So the question here is the rejection by the
23 recipient's email server, whose fault is that, is there
24 responsibility for that in this instance only under the
25 current rules.

1 MR. VASQUEZ: And I'm sorry. Allow me to
2 clarify that. My motion to approve the appeal is not
3 based on whether the email went through or when it went
4 through, it's that as soon as we notified the applicant on
5 the phone, spoke to them, in a rapid response time they
6 responded to staff.

7 These aren't major deficiencies, these are all,
8 I think, kind of minor administrative deficiencies which
9 were approved. So it's not like, oh, we didn't really own
10 the property or something major like that, this is, well,
11 you didn't read the site plan right and the number of
12 accessible carports, well, it was okay on that.

13 These are minor issues. To me it has nothing
14 to do with the email. We're not setting precedent -- the
15 intent is not to set precedent about everyone saying, oh,
16 I didn't receive the email. It's more these are minor
17 deficiencies which the staff determined were cleared.

18 MS. HOLLOWAY: Were cleared with the response.

19 MR. ECCLES: So just as clarification, under
20 these unique circumstances you're saying that the phone
21 call constituted the notice of administrative deficiency?

22 MR. VASQUEZ: That the intent of the applicant
23 and the response time shows the good faith and the
24 intent --

25 MR. ECCLES: I'm trying to --

1 MR. VASQUEZ: --I'm trying to use whatever
2 satisfies your --

3 MR. BRADEN: The speed of the response
4 indicates they really didn't receive the email. I mean
5 provided third-party evidence that said they didn't
6 receive it and the speed in which they responded
7 substantively to the questions seems to indicate that's
8 the case.

9 I mean, if you actually got this email, why
10 would you sit on it for so many days. Plus, our process
11 which we typically have says acknowledgment requested, and
12 it says that typically when we don't get an acknowledgment
13 we call them. Not required to do so, right, but we do.

14 MS. HOLLOWAY: We may, depending on where we
15 are. As Linda mentioned, we're reviewing 65 applications
16 twice, so staff was going through and sending out their
17 deficiencies. It would be difficult to track whether or
18 not we received a receipt -- or whether or not we received
19 a response through that process. If we're reaching out to
20 someone saying, hey, did you get this, that's really a
21 courtesy.

22 MR. BRADEN: Because we never got a response
23 back by email. However, we wait -- if people email you
24 back saying message received, then you know you don't have
25 to worry about it. But at some point in time you realize

1 that some people we never got anything back one way or the
2 other so you make a phone call.

3 MS. HOLLOWAY: Because it was after the
4 deadline. Yes.

5 MR. BRADEN: After the deadline.

6 MS. HOLLOWAY: We also did not receive --
7 generally if an email is rejected, you get an email back
8 that says your email was rejected for whatever reason, and
9 we did not receive that notice.

10 MR. GOODWIN: Any other questions?

11 (No response.)

12 MR. GOODWIN: If not, we have a motion and a
13 second. All those in favor say aye.

14 (A chorus of ayes.)

15 MR. GOODWIN: Opposed?

16 (No response.)

17 MR. GOODWIN: Okay. 19158. Are you going to
18 take -158 and -215 together?

19 MS. HOLLOWAY: Yes.

20 MR. ECCLES: Mr. Chair, I think there's been a
21 request for a bathroom break.

22 MR. GOODWIN: Oh, okay. Let's take a ten-
23 minute restroom break. We'll come back at ten o'clock.

24 (Whereupon, at 9:50 a.m., a brief recess was
25 taken.)

1 MR. GOODWIN: We will reconvene and start with
2 item 19158.

3 MS. HOLLOWAY: This item is presentation,
4 discussion, and possible action on a timely filed
5 appeal --

6 MR. GOODWIN: Can we get quiet in the room,
7 please.

8 MS. HOLLOWAY: -- on a timely filed appeal for
9 tax credit application 19158 Pendleton Square. Because
10 the circumstances and request for this application and for
11 19215 West Ridge Apartments are identical, I would suggest
12 that we take them as one item, and the applicant has
13 agreed to that.

14 MR. GOODWIN: Okay.

15 MS. HOLLOWAY: All right. On the posted
16 application log dated April 26, 2019, both applications
17 were indicated as priority applications in Subregion 11
18 Urban. On the posted application log on May 29, the
19 application was not listed as a priority application.
20 This change is due to successful appeals by two other
21 applicants in the subregion.

22 The applicant acknowledges that they are
23 statutorily precluded from appealing the scoring of
24 another application. Our statute states: "An applicant
25 may not appeal a decision made under Section 2306.6710

1 regarding an application filed by another applicant." The
2 issue under appeal here is only the designation of
3 priority for Pendleton and West Ridge, that's the only
4 item that we're discussing right now.

5 Given that priority status is an internal staff
6 designation that is non-determinative of an award, it's
7 unclear that this is an appealable matter. Out of an
8 abundance of caution, we have continued to treat it as
9 such so that the applicant is provided all possible due
10 process.

11 Priority status in the log signals that the
12 application is under some stage of active review. Not
13 having a priority label means that the application either
14 has a lower score or is ineligible for some reason. The
15 label is not an assurance of an award, it's nothing more
16 than a signal of review status.

17 One reason that it can be important for
18 applicants to know that they have a priority label is if
19 they have claimed readiness to proceed points as these
20 applications have. Because of the tight deadline to close
21 for the readiness to proceed applications, a provision was
22 added to the rule that extends the closing deadline for
23 any application that is not in priority status for however
24 many days they didn't carry that label. This means that
25 for these applications their deadline to close, without

1 the potential readiness to proceed penalty if they go past
2 the deadline, is extended by the number of days that we've
3 had logs posted, minus the 33 days that they were in
4 priority status, should they receive an award.

5 So because granting the appeal and adding a
6 label of priority to these applications on the log
7 potentially damages the applicant, and because staff has
8 taken no action that lessens the applications' likelihood
9 to receive an award, staff recommends that the appeal be
10 denied.

11 MR. GOODWIN: So let me make sure I understand
12 and that the entire Board does. If we should -- we're
13 going to hear comments, I suspect, opposed to your
14 recommendation -- and should we come back and reclassify
15 these as priority, give them that label, we actually
16 lessen the number of days they have to be ready --

17 MS. HOLLOWAY: After the deadline.

18 MR. GOODWIN: -- after the deadline to close.

19 MS. HOLLOWAY: Yes.

20 MR. GOODWIN: So it seems that their
21 application, from a common sense perspective, would be
22 better off to not have the priority label than to have it.

23 MS. HOLLOWAY: Well, and I would add if the
24 appeal is granted and the Board directs us to put that
25 priority label on the log, it doesn't necessarily mean

1 that we're going to pick up those applications and review
2 them.

3 MR. GOODWIN: Okay.

4 MR. VASQUEZ: Are there priority points?

5 MS. HOLLOWAY: No.

6 MR. GOODWIN: Priority is just an internal
7 mechanism used to communicate with the people that are on
8 the list. Correct?

9 MS. HOLLOWAY: Right. To communicate to
10 whoever is looking at the log: These are the applications
11 that are at some stage of active review.

12 MR. GOODWIN: Okay. So now, I assume, John,
13 are we going to hear from you opposed to staff's
14 recommendation?

15 MR. SHACKELFORD: Yes, sir.

16 MR. GOODWIN: To lessen your number of days to
17 close? I'm sure you're going to explain to us why you
18 want this priority status.

19 MR. SHACKELFORD: Yes.

20 MR. GOODWIN: I will say, and I hope you can
21 understand we're not going to listen to any information as
22 it relates to the applications that were approved through
23 the appeal process that have moved you down the list.

24 MR. SHACKELFORD: I would ask your indulgence
25 if I can explain why I think that is extremely important

1 to our position, and also ask that since we've got these
2 two applications together that I be given six minutes as
3 opposed to the three minutes, because in order to explain
4 all the facts, I cannot do that in the three minutes.

5 MR. GOODWIN: Okay. Let me seek the advice of
6 legal counsel. I think we have to keep the comments to
7 the appealable aspect of this, not to the non-appealable
8 aspects of it. Is that correct?

9 MR. ECCLES: Well, time management is obviously
10 left up to your discretion. I will note that this action
11 item, as it's listed on the agenda, does not allow for any
12 other action but for the discussion of the priority status
13 on the applications, so any argument beyond that is not
14 going to be able to be voted on by the Board.

15 MR. SHACKELFORD: Well, in my opinion, I do
16 believe I have standing to speak about that to give more
17 background and context to the Board as to why we're
18 seeking what we're seeking because I'm not appealing the
19 substantive decision by the executive director to grant
20 the appeals of these other two applicants when he did of
21 the decision that turned and put those two applications
22 from being ineligible back into a priority status. That's
23 irrelevant to me. I'm not here to argue that. Okay?

24 I'm also not here to appeal what I think is
25 what the statute says is you cannot appeal a decision made

1 under Section 2306.6710. I don't believe I'm appealing a
2 decision made under 2306.6710. What I'm appealing is the
3 authority of the executive director, in my opinion, to
4 overreach to an extent that it violated the state statute,
5 and I think I have standing, as every citizen in this
6 room, that when they think a statute has been violated
7 that they have an opportunity to redress that to this
8 Board. So that's why I'm here today and why I think I do
9 have standing to give some background information as to
10 where I'm coming from.

11 MR. GOODWIN: It sounds to me from your
12 comments like you are not wanting to appeal the priority
13 label other than to give an opportunity to appeal this
14 other authority of the executive director and the decision
15 that he's made to grant an appeal to someone else.

16 Quite honestly, when we discussed this, one of
17 the discussions between Beau and I and Mr. Cervantes, as
18 the acting executive director, was is this an appealable
19 situation, should this even be on here.

20 And in all fairness, everybody wanted to give
21 you the due process and put it on here. I was kind of in
22 favor of saying if the priority status is not appealable
23 and this other is not appealable, maybe it should be
24 brought up in the form of the rules in the future, not
25 necessarily in this appeal format.

1 So, Beau, give me a little guidance and
2 counsel, or do we need to move into executive session, in
3 your opinion?

4 MR. ECCLES: Well, I will note that the appeal
5 letter to Mr. Cervantes was phrased as it being an appeal
6 of the removal of the priority designation of the project
7 owner's application.

8 MR. SHACKELFORD: And that is correct. That's
9 the outcome that we're seeking because if there was a
10 state statute violated, the appeals never should have been
11 taken up. They were ineligible, they were time-barred, is
12 my point. And so the state statute, in my opinion, was
13 violated in two different respects. By losing our
14 priority designation, we're out of the money, these two
15 clients are out of the money in these instances, so
16 they're fatalistic.

17 So I think what you're telling me is I don't
18 have an opportunity for redress to the Board if the
19 executive director or staff violates state statute. I
20 don't think that's correct. I think there has to be an
21 opportunity, if a statute is violated, to come to the
22 Board and seek an opportunity to correct that mistake, as
23 opposed to using the other statute 6715(b) is essentially
24 foreclosing an opportunity for any person to come before
25 the Board to correct a violation of state statute.

1 MR. ECCLES: Well, respectfully, I think you
2 may be leaving out one step, and that is the Board has
3 spoken through its rules as to how this situation is to be
4 addressed, and that's through its rules it's discussed
5 what is appealable, and it discusses the timing and what
6 constitutes a notice, there's a scoring notice, and all of
7 that was discussed in Mr. Cervantes's letter.

8 MR. SHACKELFORD: Which I would like to
9 discuss.

10 MR. ECCLES: But that's not what is before this
11 Board.

12 MR. SHACKELFORD: Well, in my opinion it is
13 before the Board through the priority designation. We
14 lost the priority designation because of what Mr.
15 Cervantes set out in his letter. That's where I'm coming
16 from.

17 And essentially what you're telling me is
18 there's no opportunity to anybody if you see that a
19 statute is violated, nobody even has an opportunity to
20 come before the Board and say, hey, I think staff may have
21 overstepped its bounds here in its interpretation of
22 rules, where I think statute takes precedent over an
23 administrative rule.

24 MR. ECCLES: And that is your opinion, and this
25 Board is dealing with its rules and its interpretation of

1 the rules.

2 MR. SHACKELFORD: Which I would like to
3 discuss.

4 MR. GOODWIN: And by the way, I guess it comes
5 to my mind of why that that you wanted to discuss wasn't
6 submitted as an appeal: I want to discuss that I feel
7 that the executive director has overstepped his statutory
8 authority. Why it's labeled as this priority kind of
9 seems like a backdoor way of having this discussion.

10 MR. SHACKELFORD: It was in our letter, in our
11 appeal letter. It was in there.

12 MR. GOODWIN: It was?

13 MS. HOLLOWAY: Yes.

14 MR. SHACKELFORD: All this was covered as the
15 basis for how we ended up being where we lost our priority
16 status and now we're seeking it back.

17 MR. GOODWIN: Okay. Six minutes.

18 MR. SHACKELFORD: Thank you very much.

19 Mr. Chairman, members of the Board, Mr.
20 Cervantes and Mr. Eccles.

21 Let me say at the outset that I think staff
22 does a great job, I enjoy working with them, I rely on
23 them a lot, they're wonderful, so nothing here is personal
24 by any means at all.

25 So here's my point, and I'll try to be as

1 succinct as I can, because I know you've had some long
2 discussions up here. I think the statute that we're
3 talking about is 2306.6715 that says, "An applicant must
4 file a written appeal authorized by the section with the
5 Department not later than the seventh day after the date
6 the Department publishes the results of an application
7 evaluation process." Right? It doesn't say the later of,
8 it says not later than. That's consistent in the QAP in
9 11.902(c) uses the same identical language, "not later
10 than the seventh day." All right?

11 To give you the background, Mr. Cervantes
12 granted two appeals. The decision of whether the two
13 applicants violated the 1,000 foot rule or not, that's
14 irrelevant to me, I don't have any qualm about that,
15 that's irrelevant to the discussion.

16 But one appeal was given a scoring notice on
17 April 22 and in that scoring notice staff told them your
18 appeal date is April 29. Okay? Log comes out showing new
19 scoring, mentioned by Ms. Holloway, on April 26. On May 1
20 LISTSERV notice goes out, an email on an electronic
21 mailing list that's a subscriber-based system, totally
22 voluntary for people to be on it, and it says
23 essentially -- I can read it to you -- but essentially it
24 just says to the subscribers: Hey, a new log has been
25 posted. That's essentially what it says. It didn't give

1 a decision about any particular application, it doesn't
2 give a decision about any scoring.

3 So one appeal that had April 29, and the letter
4 that came from the Department said that was their appeal
5 date, filed their appeal on May 6, not even close. The
6 other application filed their appeal on May 8, seven days
7 after the LISTSERV notice. That's not what statute says,
8 that's not what 11.902(c) says. It says not later than
9 the seventh day.

10 In order to harmonize, as Mr. Cervantes put in
11 his letter, the statute with the QAP rules, you have to
12 read 902(c) as saying the earlier of. It's seven days
13 from when the applicant receives notice, receives notice
14 by the log, receives notice on the scoring notice. That's
15 it, it's seven days from the earlier.

16 The Department had it right when it sent out
17 its scoring notice on one of these applications saying you
18 had until the 29th of April because we're giving you
19 notice here on the 22nd, you've got seven days. I don't
20 understand how it slid from the 29th all the way to May 6.

21 Okay? The scoring notice and also Mr. Cervantes's letter
22 says scoring notice is an undefined term. That's true.
23 I've got something better. It's a prescribed form by the
24 Department that they send to the applicants advising of a
25 scoring change, giving them notice.

1 In the scoring notice itself there's two
2 references to under an appeal that comes under 11.902(c);
3 it says that in two places. So to me, the basis upon
4 which the applicant had the time to file the appeal, you
5 have to harmonize 11.902(c) with the statute. In order to
6 do that, it's not later than the seventh day, it's not the
7 later of. In Mr. Cervantes's letter, he went to 11.1(b)
8 of the QAP and said essentially it's been interpreted
9 under 11.1(b) that it's the later of either the filing of
10 the log, the posting of the log on the website, or it's
11 the receipt of the scoring notice. Well, that's not what
12 statute says, that's not what 11.902(c) says. It's not
13 the later of, it's later than. Fundamental difference in
14 the timing.

15 Plus, in the scoring notice also there's no
16 reference to -- I'll concede 11.1(b) for a moment and say
17 but there it's limited to publication of the log on the
18 website and it's limited to the scoring notice.

19 Nowhere in the QAP, nowhere in the rules,
20 nowhere in statute does it reference LISTSERV. Again, the
21 LISTSERV is merely an electronic mailing list that's a
22 subscriber-based system, not everybody is on it, nobody is
23 compelled to be on it. So that date was the wrong date
24 for the applicants to key off of.

25 And I don't understand because the scoring

1 notice doesn't tell the applicant here's your date, in
2 this particular instance, April 29, oh, but however, that
3 can be extended if we file a new log, post a new log on
4 the website, oh, and it can be extended further if we turn
5 around then and send it out a new email on LISTSERV that
6 advises people who are subscribers to it that there's a
7 new log posted on the website.

8 The scoring notice doesn't tell anybody that.
9 The scoring notice is correct. Staff did what it was
10 supposed to do. They said here's what's happened to your
11 application, here's your time period to key off of.

12 So that's where I'm coming from is, and so
13 there's two violations, to me. One is the seven-day
14 period, that window, it's not the later of -- I mean, it's
15 not later than as opposed to not the later of. And then
16 the second argument is the LISTSERV does not constitute
17 notice under the QAP.

18 So I would ask that you, respectfully, overturn
19 staff recommendation and restore us being on a priority
20 basis, and I'll be glad to answer any questions.

21 MR. GOODWIN: Hearing none, you're welcome to
22 be seated.

23 Is there anybody in favor of staff's
24 recommendation?

25 MS. BAST: Good morning. Cynthia Bast of Locke

1 Lord. We represent one of the applicants that is now in
2 the priority position, and want to give a little bit of
3 color here ourselves.

4 The staff indicates in their writeup that
5 they're not even sure that this priority designation is
6 capable of an appeal, and that's correct. This is
7 something that's in Subchapter A.

8 Section 11.902 as it relates to appeals says
9 that you can appeal Subchapter B and Subchapter C, it
10 doesn't specifically call out appealing Subchapter A. But
11 the fact is once it became clear that this priority system
12 had changed, the designations had changed due to some sort
13 of change in interpretation, we felt like we had to talk
14 to the staff about how did this interpretation change and
15 why did it change.

16 We didn't receive a scoring notice. This isn't
17 about scoring. We didn't receive a termination for
18 threshold. This is not about threshold. This is about a
19 process, an internal process the staff uses. And when it
20 changed and when we became aware of that, we wanted to
21 talk to staff about their interpretation of that because
22 we felt like their interpretation was incorrect.

23 So yes, it was styled as an appeal because
24 that's what we typically do, if we disagree with staff, we
25 style something as an appeal. But we submitted it in that

1 light that we felt like there was a problem with the way
2 they were interpreting the rule and we wanted to
3 communicate that with them.

4 Once we engaged in that communication, they did
5 advise us that an appeal was a good way to do this, and
6 they advised us on the dates and the deadlines that we
7 should utilize in communicating with them, and so that is
8 what we did.

9 At the end of the day, this is going to get
10 down to the substance of the rule. Right? And we believe
11 that staff has interpreted it correctly and we appreciate
12 them. We're sorry for all this trouble, but we appreciate
13 them looking at our concern and addressing it. And as you
14 know, and as staff has said, one applicant cannot appeal
15 a result for another applicant, and so we think that
16 things need to just lay where they are.

17 Thank you.

18 MR. GOODWIN: Anyone else that is opposed to
19 staff's recommendation? Anyone else that's in favor of
20 staff's recommendation?

21 MR. SHACKELFORD: I'd like to make a rejoinder
22 to Ms. Bast.

23 MR. GOODWIN: We're not going to have a debate.

24 MR. SHACKELFORD: Okay.

25 MR. GOODWIN: If somebody else wants to speak,

1 they're welcome to speak.

2 MS. MYRICK: This is against staff
3 recommendation.

4 Good morning, my name is Lora Myrick, and I am
5 with BETCO Consulting, and I am the consultant for
6 application 19158, and I would kind of like to go over
7 some of the things that Mr. Shackelford went over.

8 The fact that there was a decision that was
9 already made on two other applications, how that
10 determination came about, whether we agree with that or
11 not, is irrelevant. It's not, frankly, an important issue
12 for us.

13 What is an important issue for us, when we
14 first looked at this, we asked the question about the
15 1,000-foot rule, we were told that they were looking into
16 it. We saw a log posted on April 26 that showed that
17 there was a 1,000-foot rule violation by two other
18 applicants. I understand what Ms. Cynthia Bast said. She
19 called staff, she wanted to get clarification, how do we
20 do this, you file an appeal. We're okay with that and we
21 understand that.

22 What I started looking at, sir, was that it is
23 April 26 that is the log. I looked back at statute, and
24 statute clearly says that it is seven days from the
25 publication. That is a log.

1 And so when I started counting, I started
2 thinking about, okay, seven days, April 26, that's May 3.

3 You need to have your appeal in to the Department in
4 writing by May 3. The evidence is in your Board books on
5 page 830 and on page 843. Those are the appeals that were
6 submitted, and they are clearly after the May 3 date.

7 So what I wanted to kind of go over is that our
8 stance here is that the Department violated statute when
9 they accepted those appeals after the May 3 date, as
10 required by statute. The law requires that those appeals
11 be submitted on the seventh day.

12 The Department claims that the applicants met
13 the appeal deadline because the Department sent out an
14 email to the Department's LISTSERV subscribers on May 1.
15 The LISTSERV email does not fit the statutory requirements
16 or the statutory language or the language in the QAP as to
17 what event is going to trigger that seven-day clock, it
18 just doesn't.

19 2306 says, again, the written appeal. The log
20 published on 4/26 is the result of an application
21 evaluation process. A LISTSERV email does not constitute
22 a publication of the result of the applications status.
23 The QAP specifically outlines what items constitute a
24 result of an application evaluation process that starts
25 that seven-day clock, because that's what we're talking

1 about at the end of the day, the timing of the appeals and
2 what triggers that seven-day clock.

3 So what you have is, number one, the
4 publication of the results of any stage of the application
5 evaluation process, and that's in 11.902, that's your log;
6 notification to applicant or development owner or a
7 decision subject to appeal .902 --

8 MR. GOODWIN: Your three minutes are up.

9 MS. MYRICK: I'm almost there -- or number
10 three, publication on the Department's website of scoring
11 log is 11.1, and transmittal of a scoring notice. A
12 LISTSERV is not on there.

13 So I would say that the filings of these
14 applications that were appealed, although they may have
15 good arguments, were ineligible because they came in after
16 the seventh day as prescribed by statute.

17 Thank you very much, and if you have any
18 questions, I'm happy to answer.

19 MR. GOODWIN: Okay. So Marni, let me make sure
20 I understand one thing correctly. If we grant this appeal
21 and give them priority status on the list, that doesn't
22 mean any money, that doesn't mean they get any extra
23 points.

24 MS. HOLLOWAY: Correct.

25 MR. GOODWIN: That doesn't mean you're

1 necessarily going to review their applications as it
2 relates.

3 MS. HOLLOWAY: Correct.

4 MR. GOODWIN: But it grants them what they've
5 asked for, which is the status of priority status and that
6 they've appealed for it. Is that correct?

7 MS. HOLLOWAY: That's correct.

8 MR. GOODWIN: Any other questions that anybody
9 might have of Marni?

10 Beau.

11 MR. ECCLES: I just want to say that I'm
12 concerned that given that this appeal has stretched out
13 into an argument about this Board's statutory authority to
14 interpret statute through its rules, I'm wondering if
15 that's expanded the scope of what it would mean to
16 actually grant their appeal beyond just saying priority
17 status on the application log.

18 MR. VASQUEZ: I think a question/comment. My
19 understanding of this situation is that we're looking at
20 it from two different ways that get to the same end result
21 for these applicants that we're considering.

22 It's that they lost their priority status and
23 these other two projects gained priority status, so we get
24 to everyone being back on equal footing if these two
25 applicants regain their priority status, then everyone has

1 priority status and all is equal, all the points are
2 equal, and everything.

3 MS. HOLLOWAY: Right. There's no impact on
4 points or anything else. Having priority status is not an
5 assurance of an award.

6 MR. VASQUEZ: Correct. But in the letter that
7 Mr. Cervantes wrote said, Where the designation of
8 priority is relevant is in the case of --

9 MS. HOLLOWAY: Readiness to proceed.

10 MR. VASQUEZ: -- readiness-to-proceed points.
11 So there could be points under 10 TAC 11.9(c)(8).

12 MS. HOLLOWAY: There could be.

13 MR. VASQUEZ: There could be, but they're not
14 yet, but when we get to that other scoring down the line.

15 MS. HOLLOWAY: There could be impact later on
16 if for some reason an application further up the list in
17 this subregion falls out, so if one of these applications
18 winds up receiving an award, their closing deadline would
19 not be extended as far if they go back to priority status
20 now.

21 MR. VASQUEZ: And just to address, I think,
22 Beau's biggest concern, the Board's concern, if we don't
23 address the appeals granted to the other applicants giving
24 them priority status, just setting that aside because we
25 debate whether that's even appealable here, but we can

1 address the fact that these applicants are appealing for
2 their own priority status and we can address that question
3 here today. Correct, Counselor?

4 MR. ECCLES: As long as it is explicit what you
5 are granting is just the notation of priority status on an
6 application log and it's not affecting the scores of
7 others in the subregion.

8 MR. SHACKELFORD: May I, Mr. Chairman?

9 MR. GOODWIN: We'll hear from somebody that is
10 in favor.

11 MR. PALMER: Barry Palmer with Coats Rose, and
12 I represent the other developer whose appeal was granted
13 by the executive director and who is now in the money, and
14 they followed the guidelines and the deadlines that they
15 were given by staff on when to appeal.

16 Now, it's been raised by Mr. Shackelford that
17 the wrong date was given. I don't think that that's
18 right, but we shouldn't even be considering that, and all
19 this stuff about the dates and everything is confusing,
20 but what is crystal clear is what's happening here is an
21 attempt to violate state law by appealing the applications
22 of one of your competitors that was granted an appeal by
23 the executive director. That's what's going on here, and
24 we shouldn't allow that.

25 This would set a terrible precedent if we

1 allowed applicants to appeal every time something was
2 granted to some other application above them. I mean,
3 this would go on forever. You think this is long. This
4 is just not appropriate. It shouldn't have even been put
5 on the agenda, in my opinion, but here we are, so I don't
6 think we should be encouraging this kind of activity.

7 So I would recommend or ask that you support
8 staff on this.

9 MR. GOODWIN: Anyone else that's opposed?

10 (No response.)

11 MR. GOODWIN: A point of clarification, I'll
12 give you 30 seconds.

13 MR. SHACKELFORD: That's fine. I just wanted
14 to tell the Board, Mr. Vasquez, I appreciate you trying to
15 find an attempt to split the baby, I appreciate that, but
16 we're actually better off if you just denied the appeal on
17 these two applications because saying everybody is
18 priority doesn't do any good. So we're better off either
19 going back to the 4/26 log showing where everybody stands
20 on that date, or denying our appeal and just agreeing with
21 staff's recommendation.

22 MR. GOODWIN: Do I hear a motion from a Board
23 member?

24 MR. BRADEN: I'll make the motion to approve
25 staff's recommendation and deny the appeal.

1 MS. BINGHAM ESCAREÑO: Second.

2 MR. GOODWIN: Moved and seconded. Any further
3 discussion?

4 MR. BRADEN: The two that we're considering.

5 MR. GOODWIN: Sorry, Paul. I didn't mean to
6 step on you.

7 MR. BRADEN: That's all right. I just want to
8 make sure the two that we're taking together.

9 MR. GOODWIN: The two that we're taking
10 together, which are 19158 and 19215.

11 All those in favor say aye.

12 (A chorus of ayes.)

13 MR. GOODWIN: Opposed?

14 (No response.)

15 MR. GOODWIN: Moving on to 19307.

16 MS. HOLLOWAY: This item is presentation,
17 discussion, and possible action on timely filed appeal for
18 application 19307 Briarwest Apartments.

19 As the result of an RFAD, staff determined that
20 the application did not disclose the development's
21 proximity to a high-voltage transmission line as required
22 by our rule related to undesirable site features. There
23 is a substation across the street from the development
24 site with high-voltage lines running along the western
25 border of the site, and application materials called for

1 buildings and designated recreational areas to be located
2 within 100 feet of the nearest line or structural element
3 of the overhead high-voltage transmission line. The
4 threshold requirement is everything has to be more than
5 100 feet.

6 The appeal claims that the rule does not
7 require the applicant to disclose an undesirable site
8 feature and that the only place this issue is raised in
9 the application itself as part of the owner's
10 certification.

11 They assert that where the application requires
12 the development owner to certify that the development is
13 not located in an area with undesirable site features, the
14 development owner is actually not certifying fact but
15 intention. This is what their appeal has said to us.

16 So the selection that states that the proposed
17 development is located in an area with an undesirable site
18 feature and mitigation to be considered by staff and the
19 Board is included in the application is only applicable if
20 the development owner intends for it to do so.

21 The argument concludes that the application did
22 not disclose an inability to meet the threshold
23 requirement of 100 feet from any high-voltage structure
24 because the buildings were never intended to be located
25 within that 100 feet of the high-voltage structure. This

1 logic departs dramatically from their response to the RFAD
2 last month when the applicant seemed to acknowledge that
3 the development site's close proximity to overhead power
4 transmission lines and a substation but had concluded that
5 they were not high-voltage and did not need to be
6 disclosed in the application.

7 As to the applicant's current argument that its
8 intention was not to develop the site within 100 feet of
9 the high-voltage structures, we rely on the materials
10 submitted with the application. In this case the
11 applicant a site plan that clearly shows the development's
12 proximity. This is the crux of the problem. The
13 applicant submitted a site plan that would require
14 disclosing its proximity to high-voltage lines and
15 providing us with mitigation, and they did not. If it
16 hadn't been for the RFAD, it seems reasonable to presume
17 that the site would have been developed as proposed, in
18 violation of the rule.

19 Some measurements in the rule are to the
20 residential building instead of the development site
21 boundary due to the type of feature it considers. The
22 appeal claims that the rules inherently allow for
23 flexibility of site design as an opportunity to avoid
24 ineligibility. It then admits that the application as
25 submitted did not meet the requirements of the rules, but

1 because a new site plan has been submitted -- which the
2 staff did not request -- to bring the development into
3 compliance, that there is no need to provide any
4 mitigating information or seek a Board determination of
5 site eligibility.

6 The rule requires that the Board be provided
7 information regarding mitigation of the applicable
8 undesirable site features sufficient so that you can make
9 a determination regarding site eligibility. None of this
10 information was included in the application, and the ease
11 with which the applicant has produced it now is
12 immaterial. Disclosure of the undesirable site feature,
13 along with a site plan that proposed mitigation for the
14 Board to consider should have happened on March 1.

15 Lastly, the development owner's certification
16 is not just a form in the application, as the appeal
17 claims. Requirements for certification are found in our
18 application submission rules which state: "A
19 certification of the information in this subchapter, as
20 well as Subchapter B of this chapter, must be executed by
21 the development owner and addresses the specific
22 requirements associated with the development. The person
23 executing the certification is responsible for ensuring
24 all individuals referenced therein are in compliance with
25 the certification and that they have given it with all

1 required authority and with actual knowledge of the
2 matters certified."

3 The appeal's assertion that the certification
4 represents the applicant's intentions rather than the
5 application's facts presumes flexibility in meeting this
6 requirement, trivializes the importance of what applicants
7 are certifying to the Board about the nature and details
8 of the application.

9 Staff recommends that the Board deny the
10 appeal.

11 MR. GOODWIN: Any questions? I might have one.
12 Did you say they changed their story three times? Is
13 that what I heard?

14 MS. HOLLOWAY: So there was the original
15 application, and then the response to the RFAD was they
16 didn't think it was high-voltage so they didn't think that
17 they needed to disclose or design their site
18 appropriately.

19 With the appeal, it's now talking about
20 intention, that they did not intend to violate the rule,
21 and they provided a site plan that does not violate the
22 rule, but that's not the site plan that was in the
23 application.

24 MR. GOODWIN: All right. I think we're ready
25 to hear those. Do we have people that are opposed to

1 staff's recommendation? Two.

2 What about in favor of staff's recommendation.

3 Do we have anybody on that second row? One? Okay.

4 We'll take somebody who's opposed to staff's
5 recommendation first.

6 MR. BIBBS: Good morning, Chair, Vice Chair and
7 members. I'm Ryan Bibbs with the City of Houston Housing
8 Department.

9 The City of Houston is in full support of the
10 proposed 9 percent housing tax application for Briarwest
11 Apartments located at 12976 Westheimer Road within
12 Houston's District G.

13 The development meets several of the goals and
14 priorities the Houston Housing Community Development
15 Department strives to meet when supporting and financing
16 affordable housing opportunities within Houston.

17 HCDD prioritizes applications for new
18 construction within areas of low poverty concentration and
19 high-performing schools. The proposed location for the
20 Briarwest Apartments meets these standards. The census
21 tract reflects a lower than average poverty rate at 11.3
22 percent. In addition, Daily Elementary, West Briar Middle
23 School, and Westside High School meets HCDD's standards
24 for high-performing schools.

25 HCDD has continually noted a lack of financing

1 affordable housing opportunities in this cost-prohibitive
2 area. In February 2019 HCDD issued a notice of funds
3 available securing proposals to finance multifamily
4 developments utilizing its disaster recovery funds to
5 administer up to \$100 million of CDBG disaster recovery
6 allocation. The NOFA closed on April 12, and HCDD
7 received 59 applications representing eleven council
8 districts. Briarwest Apartments was the only application
9 within District G applying for funds.

10 Due to the applicant meeting the Department's
11 priorities, HCDD has issued a conditional recommendation
12 to award the development \$2.5 million of CDBG DR 17
13 proceeds, subject to the issuance of 9 percent housing tax
14 credits allocated by the Texas Department of Housing and
15 Community Affairs.

16 District G has experienced tremendous growth
17 throughout the last decade and has exposed some of the
18 highest increases to housing costs. Creating and
19 preserving affordable housing in highly appreciating areas
20 continues to be the priority for the Department to prevent
21 displacement of LMI households. These efforts are part of
22 a citywide initiative to improve the overall neighborhood
23 quality, reduce poverty concentration, preserve affordable
24 housing.

25 The city fully supports the Briarwest

1 Apartments application and appreciates the agency's
2 consideration in this matter. Thanks.

3 MR. GOODWIN: Someone in favor? We had
4 somebody that said they were going to speak in favor.

5 Are there any questions for this gentleman?

6 (No response.)

7 MS. ANDRÉ: Good morning. Once again, I'm
8 Sarah André.

9 I am in favor of staff's determination
10 regarding this application. You are supposed to disclose
11 at the beginning of the process if your site -- not your
12 buildings, not your playground -- if your site is within
13 100 feet of any of the undesirable features.

14 I feel that the applicant changed their plans
15 after the fact. The argument that they've used is their
16 intent, and I would argue that intent was evident with the
17 first submittal in which they violate the rule by having
18 buildings and amenities within 100 feet of a high-voltage
19 line. Even if they didn't know it was a high-voltage
20 line, you could have disclosed and said we don't think
21 this is a high-voltage line but we want to keep our
22 options open.

23 So in my mind, I think they've just missed an
24 opportunity and have put us all in this position.

25 Thank you.

1 MR. GOODWIN: Thank you.

2 Any questions?

3 (No response.)

4 MR. GOODWIN: Another party opposed?

5 MR. KELLEY: Good morning, Chair, members of
6 the Board. My name is Nathan Kelley with Blazer. I'm
7 here to ask that you grant our appeal and direct staff to
8 find the issue resolved during the administrative
9 deficiency process, reinstating our application.

10 Our development site is the only application
11 submitted in Houston City Council District G. The site
12 lies between Beltway and 610 along Westheimer, obviously a
13 dense area, highly trafficked corridor, and historically
14 deals in this district, District G, have not been able to
15 get the neighborhood or political support necessary to
16 achieve a successful tax credit application, but our
17 development has.

18 It's a major accomplishment, we're proud of it,
19 and this is the same district that a couple of years ago
20 NIMBYism resulted in the denial of a no-objection
21 resolution that put the city into a voluntary compliance
22 agreement with HUD.

23 The issue here deals with the undesirable site
24 feature rule, under certification of the proposed site
25 plan that was provided in the application, and our ability

1 to address these application consistencies through the
2 administrative deficiency process.

3 I would state that it was our argument all
4 along that it was not our intent to build these buildings
5 within the 100-foot setback and that our application
6 preliminary site plan laid out a four-story connected
7 corridor building design that was centrally located in the
8 site, keeping all of the buildings off the site perimeter.

9 This was done to ensure a significant buffer
10 from the adjacent electrical substation and nearby power
11 lines, and that our site plan met all of the applicable
12 QAP requirements with respect to architectural drawings.
13 And it states on its face that it is preliminary and
14 subject to change.

15 As was noted in our RFAD response, we were
16 aware of electrical facilities located; however, none of
17 our expert reports indicated an issue with building
18 location and the actual voltage of the lines. This is
19 critical, because we rely on those reports for guidance.

20 The site investigation study was especially
21 significant, because it shows the adjacent tracts and
22 assists with site development and development feasibility,
23 ensuring all applicable ordinances, building codes, local
24 design requirements were met. And our architect relied on
25 this who has built countless numbers of affordable housing

1 deals in the City of Houston.

2 Based on our actual knowledge at the time of
3 the application, we believed our preliminary site plan
4 provided adequate setback in compliance with the
5 requirements relevant to the buildings, and our engineer
6 is here today to attest to the fact. It's never our
7 intention to sneak these things past the department,
8 there's no logical reason for us to try and do so.

9 But after receiving the RFAD we surveyed the
10 lines. We realized we were 15 feet too close to the power
11 line relevant to our building, so we simply shifted the
12 building 15 feet, shifted a recreational amenity to
13 accommodate the requirements relevant to transmission
14 lines.

15 A small edit put our site plan in compliance
16 with the undesirable feature rule, which was always our
17 intention to begin with. The adjusted site plan was
18 submitted to staff in response to the RFAD, acknowledged
19 that it had the appropriate distance requirements and the
20 minor modification made no material changes that were
21 barely discernible at the site plan level.

22 Staff states that if not for the administrative
23 deficiency, then the issue would have gone undiscovered,
24 but I would contend that's the entire point of the
25 administrative deficiency process.

1 We respectfully ask the Board to grant our
2 appeal and direct staff to accept the corrected site plan
3 as is.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MR. GOODWIN: Is there somebody else that wants
7 to speak in favor of staff's recommendation?

8 MR. NORTH: Mr. Chairman, Board, I'm Joel North
9 with Bridge Shore Development.

10 We affirm support of the staff's recommendation
11 of denial of the Briarwest Apartments on the grounds that
12 they did not properly disclose the presence of an
13 undesirable site feature within the statutory proximity of
14 the development's buildings and recreational areas. I
15 mean, the statute is clear -- disclose, disclose,
16 disclose -- and they failed to do that.

17 MR. GOODWIN: Any questions?

18 (No response.)

19 MR. GOODWIN: Anybody else that wants to speak
20 that's opposed that's got something new to say?

21 MS. STEEL: Andrea Steel with Coats Rose on
22 behalf of Blazer regarding Briarwest Apartments.

23 Just to address a couple of things that have
24 been mentioned just now, the rule says you measure from
25 the boundary line of the site unless otherwise noted, and

1 it's clear here that when it comes to high-voltage
2 transmission lines, you measure to the building, so you
3 don't measure to the boundary line of the site in this
4 instance.

5 Also, this is not a change in the story at all.
6 The certification is the heavy factor in the application,
7 that is the intent, not the site plan. You don't put the
8 weight on the preliminary site plan that's subject to
9 change, you put the weight on the certification, and that
10 was our intent all along to make sure that that
11 certification was complied with.

12 And then finally -- well, not finally but to
13 the other point you just heard somebody mention this is a
14 statutory requirement, this is not a statutory
15 requirement, this is a Department-created rule that
16 establishes a certain distance from undesirable features,
17 so if you're within the stated distance you come to the
18 Board with mitigating factors and ask the Board to deem
19 our site eligible. Otherwise, your site is eligible.

20 So again, with the high-voltage transmission
21 lines, we're talking about the boundary from the feature
22 to the building, so this is critical because site designs
23 are flexible, site designs can change, site designs can
24 shift, and that happens commonly throughout the
25 development process.

1 So the only reason why an applicant would
2 disclose that there was undesirable site features if they
3 could not comply with the rule or if they had a desire for
4 some reason not to comply with the rule. There's no
5 reason to intentionally conceal being closer to the
6 distance, especially with high-voltage lines, because
7 almost every single time that I'm aware of that that's
8 come before the Board with mitigating information, the
9 Board always approves it. It's not a deal killer. So the
10 applicant couldn't have known that it was high-voltage,
11 that had to have intended that it be far enough distance
12 away. It doesn't make sense otherwise.

13 We provided in the RFAD response a site plan
14 that makes the site eligible, it's 100 feet away, and
15 there's no reason to provide mitigating information. If
16 you come with the argument that we're here to provide
17 mitigating information, that means we want the buildings
18 to be closer to the high-voltage lines, and that's just
19 not what the rule wants you to do, you want to be far
20 enough away.

21 The 15 feet is not material in nature, it's
22 just a shift. You want to match the certification, so
23 your shift in the site plan, the minor shift, matches your
24 certification. That's what you want to have your facts
25 based on, your certification.

1 So the applicant here meets the threshold, and
2 I ask that you please determine that this was already
3 resolved at the administrative deficiency level.

4 Thank you.

5 MR. GOODWIN: Thank you.

6 Any questions?

7 (No response.)

8 MR. GOODWIN: Anyone else in favor? Don't be
9 bashful, come on up.

10 MR. FOSTER: Mr. Chairman, my name is Claude
11 Foster. I'm here to speak because both of these projects
12 have an impact on the projects that we came here to speak
13 about.

14 My name is Claude Foster. I'm a former city
15 council member, and the gentleman who spoke earlier, he's
16 right about one thing, HUD did find that the City of
17 Houston discriminated in terms of the siting of these low-
18 income housing tax credit developments. In fact, HUD
19 found that 97 percent of these developments are located in
20 majority minority census tracts.

21 I support this project. I'm kind of uneasy
22 about supporting it because it's in a bad location, they
23 could have done better.

24 MR. GOODWIN: So you're actually opposed to
25 staff's recommendation.

1 MR. FOSTER: District G is the only district
2 out of eleven city council districts that has no low-
3 income tax credit developments, the only one, and so I
4 think it needs to be built in District G, but I'm also
5 against building it in an undesirable location that's
6 going to be unhealthy for the residents that are going to
7 reside there.

8 MR. GOODWIN: So you're in favor of staff's
9 recommendation. I'm a C-plus student, I want you to
10 understand that. Just trying to figure out which side of
11 the line.

12 (General talking and laughter.)

13 MR. FOSTER: My point is District G needs
14 affordable housing.

15 MR. GOODWIN: Needs a project like this.

16 MR. FOSTER: They need a project.

17 MR. GOODWIN: You're in favor of putting it in
18 a different location.

19 MR. FOSTER: It's sad that the powers to be in
20 Houston, if they really wanted this project in District G,
21 would have been here to defend it, and they're not here,
22 and I think that speaks volumes.

23 MR. VASQUEZ: Excuse me, Mr. Foster. You said
24 you were a former city council member?

25 MR. FOSTER: Former city council staff member.

1 MR. VASQUEZ: Okay. All right. Thank you.

2 MR. GOODWIN: Anybody else opposed that wants
3 to speak? Do you have something new to say, emphasis on
4 something new?

5 MS. DULA: I understand. Tamea Dula with Coats
6 Rose on behalf of the developer.

7 And I think that the point needs to be made
8 that this undesirable site feature is differently drafted
9 than most of the others which measure from the boundary
10 lines. Instead, this site feature measures from high-
11 voltage transmission lines to the buildings, not your site
12 boundary.

13 The site plan was submitted, but the project
14 had not been surveyed for that site plan, nor had they
15 surveyed to the transmission wires, because that's
16 somebody else's land. The project building was located on
17 that site plan but it was designed intentionally to keep
18 it from infringing upon any setback lines.

19 Now, when it was presented to the TDHCA, when
20 looked at with, I guess, a micrometer or something, the
21 RFAD proposer indicated that the site plan showed that the
22 building was too close to the transmission lines.

23 In response, the applicant said, okay, you
24 know, we don't intend to infringe upon this undesirable
25 site feature issue, we will simply slide the building over

1 15 feet to the east. That's all that was needed.

2 Now, the Department has a past history of
3 accommodating things like this in the administrative
4 deficiency. 2017 was a very big year for high-voltage
5 transmission wires, and there were three that came up
6 during that year.

7 For the Villa Americana in Houston, no
8 disclosure was made, and the staff asked them about it,
9 and the applicant was permitted to provide evidence of an
10 exemption. Fine and dandy, no disclosure needed. They
11 should have provided the exemption when they turned in the
12 application, however.

13 Medina Springs Ranch in San Antonio also had an
14 issue and did not disclose it, and through an
15 administrative deficiency, the staff permitted it to be
16 resolved.

17 Finally -- and those were 4 percent deals -- in
18 a 9 percent deal, Provision at Wilcrest had a similar
19 situation where an RFAD, again, raised the question of
20 whether the buildings as designed were more than 100 feet
21 from a high-voltage transmission line, and the staff
22 raised this question and reported to the Board that the
23 applicant -- and I am quoting Marni's testimony in the
24 Board book -- "claimed that the buildings were placed so
25 that they meet the regulation and rule of being more than

1 100 feet from the high-voltage transmission lines."

2 That's what Marni presented to the Board.

3 MR. GOODWIN: I hate to be rude, but we've held
4 everybody else to three minutes.

5 MS. DULA: I understand.

6 We ask that you grant the appeal.

7 MR. GOODWIN: Thank you.

8 Any questions?

9 (No response.)

10 MR. GOODWIN: Opposed? Anybody else in favor
11 of staff's recommendation that hasn't spoken?

12 I can count on this to be something new, or the
13 whole Board can count on this to be something new that
14 hasn't been said already?

15 MR. FUQUA: Good morning, Chairman Goodwin and
16 members of the Board. My name is Matt Fuqua with Blazer.

17 I'm here to ask that you grant our appeal for
18 the application 19370 Briarwest Apartments. With all due
19 respect, direct staff to find that the issue was resolved
20 during the administrative deficiency process.

21 I've worked with our company for 18 years with
22 focus in construction project management and the last 12
23 years as one of our directors of development. I've worked
24 on over 25 projects in Texas, most of which in Greater
25 Houston.

1 And one consistent item with these developments
2 is the site plan changes. It's modified through design,
3 in the permitting process, and into the construction
4 phase. This is a relevant point with our Briarwest
5 Apartments for a couple of important reasons stated
6 earlier.

7 The Board has consistently stated it does not
8 want to support "gotchas" by terminating applications over
9 technicalities, and instead wants to take a commonsense
10 approach. That is exactly what we have done and are
11 asking for here.

12 I respectfully ask the Board to grant our
13 appeal and direct staff to accept the revised site plan as
14 submitted.

15 Thank you.

16 MR. GOODWIN: Thank you.

17 MR. PALMER: I'm going to be very brief.

18 MR. GOODWIN: I'll believe it when I hear it.

19 (General laughter.)

20 MR. PALMER: Barry Palmer with Coats Rose.

21 I just wanted to make a point, because Tamea
22 was starting to make this point when the buzzer went off,
23 that previous precedent on this has been to allow the
24 applicants to meet the rule, including the last one, the
25 Wilcrest deal in 2017, to change their site plan to move

1 to be more than 100 feet.

2 We're talking about moving 15 feet on our site
3 plan. There are site plan changes approved
4 administratively all the time. I mean, it happens a large
5 percentage of the time there are changes to a site plan
6 from the time you file an application till when you
7 actually build it. Most of those changes are approved by
8 staff and don't even come to the Board. They only come to
9 the Board when it's considered a major amendment, and even
10 then it's always on the consent agenda.

11 So if you look back over the last number of
12 years, staff and the Board has approved countless numbers
13 of site plan changes. Here we're moving a building by 15
14 feet to be in compliance, and this would be consistent
15 with how the Department has treated this issue in the
16 past.

17 MR. GOODWIN: Thank you. And that was brief.

18 MR. PALMER: Thanks.

19 MR. GOODWIN: Are you in favor or opposed?

20 MR. DUNCAN: Opposed. But I'm not going to
21 talk about a rule, I'm going to talk about fair housing,
22 if I could. I get where staff is coming from. I'm
23 Charlie Duncan with Texas Housers. Good morning,
24 everybody.

25 Mr. I believe it was Foster, the former council

1 member staff who got up here touched on this, and I want
2 to provide a little context here. Affirmatively
3 furthering housing is an obligation both of this agency
4 and the City of Houston, and the City of Houston is
5 subject to a voluntary compliance agreement being enforced
6 by HUD.

7 The genesis of that was that Houston had a
8 history of segregating affordable housing into racially
9 segregated high-poverty areas that had lower-performing
10 schools, infrastructure issues and the like, and when an
11 attempt was made to put housing in West Houston where
12 there are much greater opportunities, that opportunity was
13 thwarted by the city.

14 Here we've got an effort by the city and the
15 developers here to put something into an area that has a
16 great deficiency of affordable housing, and it's been very
17 difficult to get affordable housing in that area, and we
18 applaud that effort. You know, are there better sites in
19 District G? Yeah.

20 But nonetheless, this site, let me put into
21 context what would happen should this appeal be denied and
22 what would happen next. The next deal on the list is
23 going to add yet another affordable housing site to the
24 Fort Bend County area of Houston, an area that there's
25 been a growing concentration of affordable housing in the

1 area. And as I talked to a couple of I think neighborhood
2 residents who are here, there are indeed infrastructure
3 issues and the like that they I think they would like to
4 see addressed in the community.

5 Deconcentration is something that this agency
6 has rules about in its provision of affordable housing and
7 should be considered when exercising the discretion that
8 the Board has in making y'all's decision.

9 So less about the rule but more, you know,
10 y'all's discretion does set a pattern that others will
11 operate upon, and I think if that precedent is furthering
12 the obligation to further fair housing, that's a good
13 precedent to set, so I'd ask y'all to consider that in
14 y'all's decision.

15 MR. GOODWIN: Okay. Thank you.

16 Any questions?

17 MS. THOMASON: I have a question for Marni.

18 Comments have been heard this morning that
19 there have been previous situations where we have, through
20 administrative deficiencies, I guess, allowed applications
21 that were in similar situations. Can you speak to why
22 this one was different from the staff perspective?

23 MS. HOLLOWAY: I frankly don't recall whatever
24 the one was that Tamea mentioned, but I would remind you
25 that there are actually two issues here. One is the

1 undesirable site feature, the transmission lines and
2 rearranging the site plan and all that. The other issue
3 was the certification -- was the lack of certification in
4 the application. So it could very well be that whatever
5 other thing you had had a different set of circumstances.

6 And I would say on the 4 percent applications
7 we have a lot more flexibility to make corrections because
8 it isn't competitive.

9 MS. THOMASON: Okay. Thank you.

10 MR. GOODWIN: Do I hear a motion from a Board
11 member?

12 We're not having a debate.

13 SPEAKER: In response to --

14 MR. GOODWIN: Do I have a motion from a Board
15 member?

16 We're going to be here all day if we're going
17 to rebut everything everybody says.

18 MR. VASQUEZ: I'd be willing to make a motion
19 here and see if it gets seconded.

20 Just to understand, right now the staff's
21 recommendation is to deny the appeal?

22 MR. GOODWIN: That's correct.

23 Right, Marni?

24 MS. HOLLOWAY: Yes.

25 MR. VASQUEZ: Based on not accepting the

1 movement of shifting of 15 feet on the site plan.

2 MS. HOLLOWAY: Staff is recommending denial of
3 the appeal based on the lack of certification of the
4 undesirable site feature.

5 MR. VASQUEZ: And just to clarify, does the
6 staff recognize or accept that a 15-foot shift --

7 MS. HOLLOWAY: Could happen? Yes.

8 MR. VASQUEZ: And that would mitigate, that
9 would address the distance requirements.

10 MS. HOLLOWAY: Had the application been
11 submitted with a certification indicating that there was
12 an undesirable site feature, the appropriate mitigation
13 would have been here's our site plan that moves the
14 buildings outside of that 100-foot range. That would have
15 been the appropriate way to handle it.

16 MR. VASQUEZ: And they've submitted and here in
17 our Board book they've submitted revised plans that go
18 outside that 100 feet.

19 MS. HOLLOWAY: They sent us a revised plan; we
20 did not request it.

21 MR. BRADEN: I have a question -- and I'm
22 sorry, J.B., maybe it was already answered -- in these
23 precedents that they have cited was the undesirable
24 feature declared in those? Because I think your issue is
25 they didn't disclose it.

1 MS. HOLLOWAY: Right.

2 MR. BRADEN: These precedents they're citing,
3 was it disclosed in these other ones?

4 MS. HOLLOWAY: In these other ones, so as Tamea
5 mentioned, the first two that she mentioned were 4 percent
6 applications, so 4 percent applications --

7 MR. BRADEN: Put those aside. I understand.

8 MS. HOLLOWAY: On that other 9 percent, I don't
9 recall.

10 MR. BRADEN: Do the applicant's lawyers know or
11 does anyone know?

12 MS. HOLLOWAY: Sharon is looking it up.

13 MR. VASQUEZ: Regardless, I'd like to make a
14 motion to uphold the appeal so the Department is accepting
15 the revised site plan so that the development will meet
16 the criteria of being 100 feet from the undesirable site
17 feature. Does anyone second that?

18 MR. GOODWIN: Do we have a second?

19 MR. BRADEN: I'll second that.

20 MR. GOODWIN: It's been moved and seconded.

21 Any further discussion?

22 (No response.)

23 MR. GOODWIN: Did you want to speak, ma'am?

24 MS. ATKINSON: Good morning. My name is
25 Isabelle Atkinson, and I just want to provide a point of

1 clarification that wasn't previously mentioned.

2 This is more than just shifting the building by
3 15 feet. At the time of application there was a
4 playground that was situated along the western edge of
5 this site, so you have your playground, a fence, and then
6 the substation, and according to the rules, you should be
7 more than 100 feet from any buildings or recreational
8 areas.

9 And so while I appreciate the conversation
10 about intent, I think common sense would tell you that
11 placing a playground and recreational areas within 100
12 feet and, in fact, adjacent to an undesirable site feature
13 would be a poor judgment call.

14 So I would advocate for upholding staff's
15 recommendation. Thank you.

16 MR. GOODWIN: Thank you.

17 MR. VASQUEZ: Noting on the revised drawings,
18 the playground is moved way outside the 100 feet now.

19 MR. GOODWIN: Okay. Is that what you were
20 going to clarify?

21 SPEAKER: Yes.

22 MR. GOODWIN: All right. Any other discussion?

23 (No response.).

24 MR. GOODWIN: All those in favor of the motion
25 which is to accept the appeal, deny staff's

1 recommendation, signify by saying aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Opposed?

4 (No response.)

5 MR. GOODWIN: Okay. Moving on to 19368.

6 MS. HOLLOWAY: This one is presentation,
7 discussion, and possible action on timely filed appeal of
8 tax credit application 19368 Sweetwater Springs.

9 The building site for this application as
10 submitted is currently two blocks of single-family lots
11 with the right of way for Coke Street running between the
12 blocks. The street is not constructed, but there is a
13 right of way between these lots.

14 The site plan submitted with the application
15 includes the right of way as part of the development site,
16 even though there was no documentation presented that
17 shows the City of Sweetwater would vacate the right of way
18 in favor of the development.

19 The application does include a purchase
20 agreement for the residential lots which, of course, does
21 not include the right of way.

22 In response to a deficiency regarding the Coke
23 Street right of way, the applicant submitted a temporary
24 use easement from the city for Coke Street. They also
25 provided an amendment to the purchase agreement that

1 states that the LURA, the land use restriction agreement,
2 can be recorded on the land underlying the easement.

3 The seller of the residential lots -- this is
4 to the purchase agreement amendment -- has no authority to
5 encumber the city's right of way. Both documents are
6 dated after the application was submitted and clearly were
7 created in response to the deficiency.

8 The applicant has submitted an alternate site
9 plan which shows Coke Street as a completed public
10 thoroughfare with developments on either side. While this
11 is potentially a solution should the city not vacate the
12 right of way, it creates a scattered-site development, and
13 the site plan doesn't address issues created when a road
14 is between those two developments.

15 For instance, the residents in the two
16 buildings on the eastern development site would not have
17 accessible access to the playground on the western side.
18 Similarly, residents on the western side would not have
19 accessible access to the community center. The
20 application submitted for Sweetwater Springs does not
21 contemplate this scattered-site development.

22 In an email responding to the deficiency, the
23 applicant states, "We did contact the city prior to
24 submission of the application; however, we were not able
25 to set up an appointment to speak with them until after we

1 submitted the application. Our Realtor was aware of a
2 recent vacated plat and was pretty sure we could get the
3 plat vacated since there has been no activity with the
4 property in many years." Note that the response is
5 talking about a plat which I believe would be the single-
6 family lots, vacating that plat.

7 In short, the application did not address the
8 transfer or ownership or interest in land from the City of
9 Sweetwater that is at the heart of the proposed
10 development. This raises a fundamental site control issue
11 under our rules and a related easement issue for the
12 ingress and egress to the property via the Coke Street
13 portion of the proposed development.

14 Site control is required at application by our
15 rules. It is defined as: "Ownership or a current
16 contract or series of contracts that meets the
17 requirements of 11.204 of this chapter that is legally
18 enforceable, giving the applicant the ability, not subject
19 to any legal defense by the owner or anyone else, to
20 develop and operate a property and subject it to a LURA
21 reflecting the requirements of any award of any assistance
22 it may receive from the Department." So that's how we
23 define site control.

24 The definition of material deficiency includes:
25 "Inability to provide documentation that existed prior to

1 submission of an application to substantiate claimed
2 points or meet threshold requirements is material and may
3 result in denial of the requested points or a termination
4 in the case of threshold items."

5 The applicant's lack of site control at
6 application cannot be cured with documentation that did
7 not exist when the application was submitted, including
8 the correspondence from the city and the purchase
9 agreement amendment.

10 Staff recommends denial of the appeal because
11 the application did not include the required documentation
12 of site control, the lack of documented site control that
13 existed prior to application is a material deficiency, and
14 they did not have control of the development site at
15 application.

16 MR. GOODWIN: Any questions for Marni?

17 (No response.)

18 MR. GOODWIN: Do you want to speak in favor or
19 opposed to staff's recommendation? Opposed? Okay.

20 Does anyone want to speak in favor of staff's
21 recommendation? You're speaking in favor. Okay.

22 MS. MEYER: My name is Robbye Meyer. I'm with
23 Arx Advantage. I represent the applicant.

24 First of all, I, of all people, have the
25 greatest respect and utmost respect for staff and what

1 they go through in this process of reviewing these
2 applications. Being on that side of the development
3 process for over ten years, I know you sit out there going
4 why can't these developers get these things done right the
5 first time, why do you have all these deficiencies.

6 Now that I've been on this side of the podium
7 and I understand all the variables that go into these
8 things and all the movement and moving parts, there's a
9 greater respect out here, and I know why deficiencies are
10 caused and all the moving parts. There's great difficulty
11 on both sides.

12 Real estate is inherently built on Murphy's
13 Law, I believe. You know, if something can go wrong, it
14 probably will. We sometimes have rules, though, that
15 cause unintended consequences, and this year some language
16 was put in the 29 rules for site control and that concerns
17 ingress/egress and rights of way and easements.

18 And they're unreasonable to have those things
19 actually resolved by the time you're going through
20 contract negotiations and application submission. Those
21 things are normally worked out through due diligence, and
22 that's not worked out by the time you submit an
23 application. There's other applicants doing this process
24 that have had similar issues, and those things just aren't
25 worked out through the contract process, and I think

1 Chairman Goodwin can probably attest that those things
2 aren't worked out when you're drawing up a contract.

3 When we designed this site plan, as Marni
4 stated, there was a street, a plat that is in the middle
5 of our property, and we designed the best use of the
6 property and what we thought we would bring forth through
7 this development and put our site design with that street
8 in place -- well, on top of that place, knowing and
9 expecting, every expectation, that we would have that plat
10 vacated, because the city had just a few months prior to
11 this a few blocks from our site vacated a similar plat for
12 another landowner, so we had every expectation that they
13 would do the same here.

14 That proposed street had been with the city for
15 many years, they had no intention of putting in that
16 street in the foreseeable future, so we had no expectation
17 that they wouldn't approve that, so therefore, we designed
18 our site to do exactly what we had there. We could go
19 back and use the second ingress that we had as a plan B if
20 we had to do it that way, but that wasn't our intention,
21 and that's not what we wanted to do.

22 MR. GOODWIN: Thank you.

23 MS. MEYER: Anyway, we're asking you to grant
24 our appeal and allow us to move forward.

25 MR. GOODWIN: Okay.

1 Mr. Shackelford, you wanted to speak in favor
2 of staff's recommendation?

3 MR. SHACKELFORD: I will.

4 Mr. Chairman, John Shackelford, representing
5 another applicant in connection with this year's round.

6 And I wholeheartedly agree with staff, I think
7 that they're brilliant, and I think they applied the rules
8 exactly as they are written, which I appreciate. And
9 hearing Ms. Meyer -- and she's a very accomplished
10 consultant and does a great job, but I heard her speaking
11 about expectation, and that would be a slippery slope if
12 we start going down that where somebody expected, in this
13 case a municipality, to end agreeing to doing something
14 prior to them doing it.

15 We could have every developer come in here and
16 say, I don't have site control because I expected my
17 prospective seller to make a deal with me and put my
18 property in the contract but I couldn't quite get it done
19 by the date to meet threshold, and so my expectation was I
20 was going to get it done and I ended up getting it done
21 after that date.

22 (Telephone ring tone sounded; general
23 laughter.)

24 MR. SHACKELFORD: House of the Rising Sun. I
25 hope that doesn't cut into my time.

1 MR. GOODWIN: No, but I would say to you and
2 everybody else, we all up here appreciate our staff, and
3 y'all waste a lot of your three minutes complimenting
4 them. You could just stand up and say, Same feelings
5 about our staff, and then move on.

6 (General laughter.)

7 MR. SHACKELFORD: I think I did.

8 Anyway, I think the rules need to be followed
9 here. It's just unfortunate Ms. Meyer was unable to get
10 that agreement. But site control is site control.

11 Every developer knows they've got to have under
12 control, when they submit their application, 100 percent
13 of the property, under contract, they've already acquired
14 it, easement, whatever they've got to have control.

15 In this instance the rules was not followed.
16 And you've had some difficult situations you've had to
17 listen to and make decisions on. I don't think this is
18 one of those, in my opinion, for the Board in upholding
19 staff's recommendation.

20 Thank you.

21 MR. GOODWIN: Thank you.

22 MS. BAST: Still morning. Good morning.

23 Cynthia Bast of Locke Lord, representing the applicant for
24 this appeal.

25 You heard from Ms. Holloway the definition of

1 site control, and I really just want to condense it. It
2 says the ability to develop and operate a property. That
3 is what is inherent in the definition of site control.
4 And the applicant has shown through its responses to the
5 deficiencies that it does have site control regardless of
6 what happens with Coke Street.

7 If Coke Street is not vacated, the applicant
8 has shown that it has a development site with ingress and
9 egress where it can develop and operate a property. If
10 Coke Street is vacated, the applicant has a development
11 site with ingress and egress where it can develop and
12 operate a property.

13 And we have a letter from the city manager of
14 Sweetwater that says, "We expect the existing plat will be
15 vacated and the requested plat will be accepted after
16 completing the proper procedures."

17 Furthermore, we believe that this applicant
18 should be treated consistently with another appeal that
19 was granted recently by the executive director. In that
20 appeal an application was terminated for lack of site
21 control that related to ingress and egress, and the
22 applicant showed in its contract with the seller that it
23 was drafted to maintain flexibility for the location of
24 the entrance and exit to accommodate the city's
25 development requirements.

1 The executive director accepted an amendment to
2 the purchase contract which was executed after the
3 application submission deadline to clarify that. Despite
4 the efforts of the seller and purchaser to remain as
5 flexible as possible in the location of this ingress and
6 egress, the parties intended to guarantee the availability
7 of ingress and egress, so the applicant had site control.

8 In this situation ingress and egress is not an
9 issue because our applicant has always shown that there is
10 ingress and egress available, but it is similar to that
11 successful appeal I just mentioned, because what is
12 creating the problem here is the applicant's need to
13 maintain flexibility as to whether Coke Street is vacated,
14 and that's what Ms. Meyer was getting to in her remarks is
15 that sometimes in the development process you need to have
16 that flexibility.

17 But as long as the applicant has been able to
18 show the ability to develop and operate the property,
19 which we believe they have, then site control exists, and
20 we believe you should grant this appeal.

21 Thank you.

22 MR. GOODWIN: Thank you.

23 Any questions?

24 (No response.)

25 MR. GOODWIN: I'll entertain a motion.

1 MS. RESEÑDIZ: Mr. Chairman, I'd like to make a
2 motion to accept staff's recommendation and deny the
3 appeal.

4 MR. GOODWIN: Second?

5 MS. BINGHAM ESCAREÑO: I second.

6 MR. GOODWIN: It's been moved and seconded.
7 Any further discussion?

8 (No response.)

9 MR. GOODWIN: All those in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Opposed?

12 (No response.)

13 MR. GOODWIN: Moving on to item (d).

14 MS. HOLLOWAY: 7(d) is presentation,
15 discussion, and possible action on staff determinations
16 regarding neighborhood risk factors for 19227 Reserve at
17 Risinger. You'll recall this item was presented to the
18 Board initially at the May meeting, and as a result of
19 public comment, the Board tabled the discussion of this
20 item.

21 The proposed development site falls within the
22 attendance zone of J.A. Hargrave Elementary School, which
23 was rated Improvement Required in 2018, 2017 and 2016.
24 Our rule regarding schools rated Improvement Required says
25 in part, "Any school in the attendance zone that has not

1 achieved Met Standard for at least three consecutive years
2 and has failed by at least one point in the most recent
3 year, unless there is a clear trend indicating imminent
4 compliance, shall be unable to mitigate due to the
5 potential for school closure as an administrative remedy
6 pursuant to Chapter 39 of the Texas Education Code."

7 The rule clearly states the site should be
8 found ineligible if a school to which its residents are
9 zoned has been rated Improvement Required for three
10 consecutive years unless there is a clear trend toward a
11 Met Standard rating by the time the development is placed
12 in service. If there is a clear trend, evidence presented
13 in the application may be considered in making a
14 determination regarding sufficient mitigation for the site
15 to be found eligible.

16 The application includes TEA accountability
17 summaries for the past three years. Using the Index 1
18 scores for 2016 and 2017 and then the overall score for
19 2018, the results are 2016 at 55, 2017 at 54, 2018 at 58.

20 The 2018 information is presented differently by TEA, but
21 it's interesting to note that in 2018 the school is rated
22 Improvement Required across all categories. In the
23 previous two years they Met Standard for two other indexes
24 even though they were rated Improvement Required overall,
25 so they made it on a couple in previous years. The

1 measurements may not exactly correlate, but there clearly
2 is an evidence across three years of an improvement trend.

3 The applicant included a letter from the deputy
4 superintendent of school improvement for the Crowley
5 Independent School District. The letter describes the
6 district and school's commitment to moving J.A. Hargrave
7 Elementary to a Met Standard rating using the school's
8 campus turnaround plan.

9 In addition, students will receive additional
10 support from the district. The letter states that it is
11 intended to ensure TDHCA that the campus will receive a
12 Met Standard rating by the time the Reserve at Risinger
13 development is placed in service. "In addition, our
14 applicant will be providing an education center space in
15 the community building with programming to support the
16 students."

17 Staff recommends against the eligibility of
18 this site due to a lack of evidence supporting a clear
19 trend indicating imminent compliance for a school that has
20 been rated Improvement Required for the last three years.

21 If the Board determines that there is a clear trend
22 indicating imminent compliance, the Board should also make
23 a determination about the sufficiency of mitigation to
24 render the site eligible.

25 MR. GOODWIN: Any questions?

1 (No response.)

2 MR. GOODWIN: Opposed and in favor? Opposed,
3 hands up. In favor of staff's recommendation. One?
4 Okay. We'll hear from the opposed first.

5 MS. DULA: I always have to stop and figure out
6 whether I'm opposed or in favor. It's difficult with that
7 negative.

8 Tamea Dula with Coats Rose, here on behalf of
9 the developer, which is MVAH, and as Marni said, the
10 second time we've appeared before you on this matter as to
11 whether the Reserve at Risinger development site can be
12 considered eligible because the elementary school was
13 judged to need improvement in 2016, '17 and '18.

14 We're here to show you that there is a clear
15 trend of improvement which can reasonably be expected to
16 result in the imminent resolution of this matter, and
17 therefore evidence of mitigation which was presented in
18 the application may be considered by the Board in deciding
19 whether or not the site should be considered eligible.

20 In the application the disclosure package
21 presents as mitigating factors the campus turnaround plan,
22 the campus improvement plan, the 21st Century Community
23 Learning Center, the anticipated Accelerating Campus
24 Excellences initiative, or ACE, and the education center
25 to be located on the development site and operated at a

1 minimum of 15 hours per week.

2 If you wish to hear more about the mitigating
3 information that was in the application, we have people
4 here to discuss that with you and provide more information
5 to supplement and clarify the material that was in the
6 application, but first we need to address the clear trend.

7 To help demonstrate the clear trend, if you
8 turn to pages 71 through 83 of the supplemental Board
9 book, you will see the indications of progress made in the
10 J.A. Hargrave Elementary School's turnaround program.
11 They have notations there, big green circles, that show
12 the degree of progress that has been made on a quarterly
13 basis. And if you look at that, you will see that there
14 has been substantial progress in meeting the goals that
15 have been set out in the turnaround program, and this
16 turnaround plan was provided in the application.

17 We have here today, also, as a speaker, Dr.
18 Isaac Carrier, who will talk to you about the changes that
19 have taken place at Hargrave Elementary and how they
20 demonstrate a clear trend of improvement.

21 Thank you.

22 MR. GOODWIN: Thank you.

23 Somebody in favor of staff's recommendation?

24 MS. BAST: Cynthia Bast of Locke Lord. I
25 represent a developer with three competing applications in

1 this region, and they do support the staff recommendation.

2 I've looked at a number of neighborhood risk
3 factors and talked to you about neighborhood risk factors
4 many times over the years, both in support and opposition.

5 I think education is perhaps one of the hardest ones for
6 us to navigate.

7 So in modifications to the 2019 QAP, staff
8 tried to give us a roadmap of the kind of things that they
9 would expect in circumstances where an applicant chooses a
10 site with neighborhood risk factors.

11 Because of the three years of improvement
12 required, the key to this analysis really is imminence,
13 and rules state that when mitigation documentation is
14 provided by someone who's authorized to speak on behalf of
15 the school district, it should include actual data from
16 progress already made which supports a reasonable
17 conclusion that the school will successfully meet
18 standard.

19 As your staff has pointed out, the
20 documentation provided, some of which was not in the
21 original application, talks about programs and plans but
22 does not adequately provide the data to back it all up.
23 The data, we know, is this: in 2016 and 2017 when had TEA
24 had four performance indices, the school failed two of
25 them, or 50 percent; in 2081 when TEA had three

1 performance indices, it failed all of them, or 100
2 percent; the student achievement index in each of those
3 years was 55, 54, and 56, respectfully. So that data does
4 not show a significant upward trend.

5 In its most recent campus turnaround plan,
6 which was part of the application, the school admitted
7 that continual changes in personnel, including those in
8 leadership over recent years, have resulted in
9 inconsistency in the quality of their instruction and
10 damaged the climate and culture of the campus.

11 Those are big hurdles to overcome, but
12 indications are that the school is implementing new
13 programs to improve its performance, but the data that
14 would lead us to a reasonable conclusion just isn't there
15 yet for meeting that imminent standard. So this may be
16 one of those situations where the development site needs
17 another year for all of this to play out.

18 For those reasons, our client supports the
19 staff recommendations.

20 Thank you.

21 MR. GOODWIN: Opposed?

22 DR. CARRIER: Good morning. It is still
23 morning. Right?

24 I'm Dr. Isaac Carrier. I've been a public
25 school educator for the past 20 years, primarily in school

1 and district leadership roles. I'm currently an assistant
2 professor at the University of Louisiana in Monroe in the
3 College of Education, and I hold a PhD from Texas A&M
4 University in curriculum instruction with a emphasis in
5 urban schools.

6 I'm happy to be here this morning to speak with
7 you about the encouraging progress that J.A. Hargrave has
8 made over the past three years. If you look on page 42 in
9 7(d) of your document, you'll find the 2016 school report
10 card, the service data for the first year of being
11 Improvement Required.

12 In that year, Index 1 -- and the prior speaker
13 was exactly correct, there are four indices and so it's
14 not just one that is taken into account -- Index 1,
15 student achievement, and Index 2, student progress, those
16 were the two reporting categories that they did not meet
17 standard. However, they came very, very close, a scoring
18 55 with a target score of 60 in Index 1, and scoring 27
19 with a target score of 32 in Index 2.

20 So as we move to the next school year, page 43
21 of your document, the 2017 school report card, J.A.
22 Hargrave had significant progress in Index 2, the student
23 progress measure. They exceeded the minimum score of 32
24 by accomplishing a score of 37 in that year. That's
25 substantial improvement over the previous year where their

1 score was 27.

2 In 2018, again to the previous speaker's point,
3 the way the reports were constructed did change. STAAR
4 performance and college and career readiness standards
5 were now included for the first time in the overall
6 student achievement category when they were previously
7 individual categories, and in that year they did score an
8 overall scale score of 58 but the target was 60, so it's
9 up from the previous years, so they did maintain three
10 years of Improvement Required, however, they did make
11 incremental and substantial trending progress towards
12 meeting standard.

13 One thing to take in account that not everyone
14 knows: It's a moving target. From '16 to '17 to '18, the
15 passing standard increased each of those years, so it's
16 something that isn't always talked about, but it is a
17 relevant factor which to consider. So it's clear that the
18 school has maintained Improvement Required, but they've
19 also made significant incremental progress, and there's a
20 clear trend in academic progress for this school.

21 A couple of other things I'd like to mention is
22 that to Cynthia's point -- let me just say this because
23 we've been here a long time, I would say there is a trend
24 and although it's not been released yet so I cannot stand
25 on this, but on my expert opinion and what my experience

1 has been, when the official 2019 scores come out, we will
2 find that the school will have Met Standard based on this
3 current year's reporting expectations, and that data can
4 be accessed by the TEA website, there's a link there that
5 will guide you to that point.

6 Any questions?

7 MR. GOODWIN: Any questions?

8 (No response.)

9 MR. GOODWIN: Anybody else that wants to speak
10 in favor of staff's recommendation?

11 MR. HUTH: Tom Huth. I'm the president and CEO
12 of Palladium USA.

13 Last year we looked at this site. Because of
14 the elementary school we passed on it. So we went to
15 Crowley right down the street, and Crowley is a great ISD,
16 but our site in Crowley has a great elementary school.
17 Our kids need to go to schools that are great today. It's
18 not about where they're going to be in two years. Where
19 the schools are great today, that's where we need to be
20 building these developments.

21 So I go along with staff and recommend that you
22 follow staff's position on this and deny this application.

23 Thank you.

24 MR. GOODWIN: Any questions?

25 (No response.)

1 MR. GOODWIN: Someone opposed?

2 MR. SMITH: I'm Darren Smith with MVAH
3 Partners.

4 Again, I think a lot of people debate. This
5 school district has made a lot of changes, it's got a new
6 superintendent, it showed incremental increase, and
7 there's data on the TEA website that shows that it passes.

8 Our development in itself, we've reached out to the
9 Crowley ISD, we've worked with the superintendent, we're
10 actually putting in an educational center that will have
11 15 dedicated hours, we're actually partnering with the
12 school system to provide additional training. That's a
13 part of your Board supplement, that was a part of what we
14 talked about last month.

15 So the issue is incremental increase. This
16 school district has made those changes, and we're actually
17 providing additional mitigating factors. So I would say
18 it would be great if all of our schools are great, it
19 would be super, but if we're going to be able to help our
20 schools, we're going to be able to provide quality
21 housing, a good environment and give them additional
22 assistance, that's important.

23 But they've made a ton of changes: new
24 principal, new ACE program, after school program, food,
25 rides, you name it. They're making the commitment. This

1 school is not under imminent capture by the TEA.

2 Thank you.

3 MR. GOODWIN: Okay. Anyone in favor of staff's
4 recommendation?

5 MS. BROWN: Hi. Linda Brown, Casa Linda
6 Development Corporation.

7 I'm here representing several other
8 applications that are all further down the list, but I
9 wanted to remind the Board that there's six applications
10 behind this one that have schools that have all Met
11 Standard, and the whole purpose behind this type of a
12 neighborhood characteristic report that's due in the
13 application at submission is to provide all relevant data,
14 all pieces of evidence that the staff is very clear about
15 so that that determination can be made.

16 We all are very hopeful -- my mother was an
17 educator for 40 years, and so we have education that runs
18 through our family at all different kinds of levels, and
19 we're all very hopeful that this school will actually have
20 Met Standard this coming August, we look forward to that.
21 However, what if it doesn't? And now if it doesn't, you
22 still have four years of Improvement Required at this
23 particular site.

24 So just keep in mind that in order to make the
25 best decision for applications and sites for housing,

1 affordable housing, that the schools are already
2 performing or can show that there is an actual direct
3 trend towards improvement.

4 Thank you.

5 MR. GOODWIN: Do I hear a motion from a Board
6 member?

7 MS. BINGHAM ESCAREÑO: Mr. Chair, I lost my
8 place, but it's not under appeals. I'm going to move
9 staff's recommendation, but I want to articulate what it
10 is. Is it to deny a closure?

11 MR. GOODWIN: To find the site not eligible.

12 MS. HOLLOWAY: Staff is recommending that the
13 site be found ineligible.

14 MS. BINGHAM ESCAREÑO: I'll move staff's
15 recommendation to find the site ineligible.

16 MR. GOODWIN: Second?

17 MS. THOMASON: Second.

18 MS. RESÉNDIZ: Second.

19 MR. GOODWIN: Okay. Any further discussion?

20 MR. PALMER: Barry Palmer with Coats Rose. I'm
21 in favor of the developer and opposed to staff's
22 recommendation.

23 We heard some speculation from lay people as to
24 what's going to happen at the school, but the testimony
25 that we've heard from experts, from Dr. Isaac here today

1 and also from the superintendent of the Crowley School
2 District -- and her letter was included in the
3 application -- have said that they expect the school to
4 meet the standard rating maybe by just this coming year.
5 So with that being imminent, we'd request that you listen
6 to the experts on this and rule the school as eligible and
7 deny staff's recommendation.

8 MR. GOODWIN: Any questions for Mr. Palmer?

9 MS. BINGHAM ESCAREÑO: Just a comment on mine.

10 So to me it doesn't -- the expert that would have made a
11 huge difference here would have been somebody from the
12 school district. The letter does not just for me -- my
13 motivation for making the motion, because I'm all in
14 support of the school trending in the right direction, but
15 I didn't have my questions answered in that letter, and
16 even though I respect the testimony of the folks that
17 presented, lots of lawyers, but I think for me to have a
18 level of confidence, I would have really needed to ask
19 questions and get specific answers from somebody in
20 leadership at the school district.

21 MR. GOODWIN: Any other questions?

22 (No response.)

23 MR. GOODWIN: If not, we'll call for the vote.

24 All those in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. Moving on to item 7(e).

4 MS. HOLLOWAY: This one is presentation,
5 discussion, and possible action on staff determinations
6 regarding application disclosures related to undesirable
7 site features, this is on 19180 St. Elmo Commons.

8 The proposed development site is located within
9 500 feet of two concrete batching plants. Centex
10 Materials is located approximately 470 feet from the
11 development site, Custom Crete is located approximately
12 100 feet from the development site.

13 There are two parts of our undesirable site
14 features rule to be considered. First, our rule states
15 that a development site will be found ineligible if the
16 site is located within 500 feet of heavy industry. Staff
17 believes that a concrete batch plant constitutes heavy
18 industry.

19 Second, through previous application reviews,
20 we know that the Texas Commission on Environmental Quality
21 has jurisdiction over the location of concrete plants.
22 This brings in the second part of our rule: "If a state
23 or federal cognizant agency would require a new facility
24 under its jurisdiction to have a minimum separation from
25 housing, the Department will defer to that agency and

1 require the same separation."

2 So TCEQ requires that the central baghouse of
3 any new concrete plant be located at least 440 yards from
4 any residence, school, or place of worship if the area is
5 not subject to local zoning.

6 This site is in Austin, and zoning for both the
7 development site and the concrete batch plant allow those
8 uses on those sites. Though zoning regulations may
9 constitute a municipal ordinance, zoning regulates what
10 purpose or use may be developed on a zoned area of land.

11 For instance, the zoning for the batch plant
12 sites is one of the few uses that also allows for
13 veterinary services, it allows art galleries and business
14 or trade schools. Zoning does not regulate the proximity
15 of an offsite feature to the zoned property, it is a poor
16 proxy for specific intent on the part of the local
17 government due to its very broad nature. It is not a
18 local ordinance which regulates the proximity, that is
19 allowed as mitigation under our rules, but staff believes
20 that zoning does not qualify as that local ordinance.

21 These overlapping rules and requirements leave
22 the issue of the development site being within 500 feet of
23 heavy industry. Heavy industry is described as facilities
24 that require extensive use of land and machinery, produce
25 high levels of external noise, such as manufacturing

1 plants, or maintain fuel storage facilities, excluding gas
2 stations.

3 The applicant has responded to the description
4 of the Custom Crete facility as heavy industry by
5 including an aerial photograph and map of the two nearby
6 concrete batching facilities in relation to the proposed
7 development.

8 That photograph is at page 941 of your Board
9 book. It's noted that the truck entrance for the Custom
10 Crete site is less than 500 feet from the development.
11 The aerial photograph shows dozens of large trucks, all of
12 which would use at least a part of Terry-O Lane, which is
13 also the entrance road to the development site.

14 The extensive use of land and machinery is
15 compounded by the fact that there are two concrete
16 batching plants next to each other. Lastly, there is no
17 residential development closer to these facilities than
18 the proposed site.

19 Our rules also allow staff, if they identify
20 something that could be an undesirable site feature not
21 listed in the rule, to bring that feature to the Board for
22 an eligibility decision. We found this statement in the
23 environmental site assessment: "Phase Engineering, Inc.
24 has the opinion that based on laboratory results from the
25 user provided Phase II report, the subject property

1 exhibits impact from arsenic and lead in the soils
2 evaluated. This represents a recognized environmental
3 condition."

4 They conclude that "the user provided prior
5 Phase II ESA identified elevated minerals in the near
6 surface soils at concentrations greater than appropriate
7 state environmental regulatory agency reporting limits."

8 The elevated arsenic and lead are likely the
9 result of surface runoff from adjacent properties. The
10 ESA states that the testing conducted in 2014 used an
11 incorrect standard but is not clear on the levels detected
12 or mitigation requirements. The ESA does not state that
13 no mitigation is necessary and recommends further testing.

14 There is no mention in the application or site
15 design and feasibility report of soil contamination,
16 further testing or potential remediation costs. We
17 requested a copy of the ESA conducted in 2014. The
18 applicant provided us with that report, along with an
19 addendum from the current ESA provider, which staff did
20 not request. The 2014 Phase II ESA confirms the
21 information summarized in the current report that
22 describes testing four samples taken from the site.

23 The applicant has stated that the testing was
24 about groundwater and should not be a concern because the
25 development will be served by Austin Water. While it is

1 clearly true that residents' water would not be impacted
2 by the arsenic and lead in the soil, the presence of
3 reportable levels is not addressed.

4 We do not know if the source has been
5 mitigated, if more has been deposited since 2014, or the
6 extent of the contaminated soils. Staff believes that
7 lead and arsenic in the soil constitutes an environmental
8 factor that may adversely affect the health and safety of
9 residents.

10 Staff recommends that the site for St. Elmo
11 Commons be determined ineligible due to the proximity to
12 heavy industry and the potential negative impact of soil
13 contamination.

14 I'll be happy to take any questions.

15 MR. GOODWIN: Any questions?

16 (No response.)

17 MR. GOODWIN: We've got somebody who wants to
18 speak. I assume you're opposed to staff's recommendation?

19 MR. GUTTMAN: Correct. My name is John
20 Guttman. I'm with the developer, JES, and I'd like to use
21 my time today to really hammer on three points that I
22 believe demonstrate that either these actually do not rise
23 to the level of an undesirable site feature or can be
24 resolved through mitigation.

25 I'd like to first focus on the soils. The

1 letter that I presented from Phase Engineering that's not
2 present in your Board materials, I do have enough copies
3 for the Board and would like to present those to you, if
4 allowed, but basically it was a clarification from Phase
5 Engineering, going through the deficiencies that the staff
6 noted with the soil. The letter provided clarification
7 and context about the soil.

8 Summarizing the letter, Phase believes that the
9 levels of arsenic and lead discovered in the 2014 limited
10 Phase II would not present an exposure concern that has no
11 potential to affect the health and safety of the
12 residents. This is because the standard that they were
13 using in the 2014 Phase I was for groundwater. So as
14 staff mentioned, this is basically unpotable groundwater.

15 If you were to put a well on the site and pull up the
16 groundwater, these levels would not work.

17 But if you're looking at standards, the arsenic
18 and lead levels found in the 2014 study are below TCEQ and
19 EPA standards for residential properties, meaning there's
20 no exposure to you if you were going to go roll around in
21 the soil. Basically, the levels are below that. So
22 that's what I would ask that the Board and staff look at
23 is the correct measurement of those 2014.

24 The other thing, and the reason, I guess, no
25 mitigation as staff requested, we did certify that we

1 would provide a Phase II upon award to look into the
2 matter more. It's a 2014 Phase II performed. We don't
3 know what the soil conditions are like on the site now.
4 It's not expected for an applicant to go to a Phase II at
5 this stage, so we agreed that upon award we would go to
6 the Phase II and take mitigation measures that were
7 necessary at that time. So that's, I think, our argument
8 for mitigation, or actually because the levels don't reach
9 TCEQ or EPA requirements, there may be no mitigation
10 required on the site.

11 Regarding the concrete batch plants defined as
12 heavy industry, you're looking at environmental concerns
13 and noise. I'd like to start off with the noise. We did
14 a 24-hour noise study on site that's a microphone on site.

15 That found levels below 60 decibels, so that is below the
16 HUD required day and night noise levels of 65 decibels.
17 If you look at sites near highways, as noted by our sound
18 engineer, you would find levels of 70 to 75. These types
19 of sites have been approved by the Board before and have
20 had mitigation matters.

21 Lastly, the health and safety concerns of air
22 quality. The TCEQ, as staff said, you would go to those
23 standards. As per the health and safety code referenced
24 by staff, it says outside of a municipality with zoning.
25 TCEQ standards, this permit and any other, the two permits

1 that provide for a concrete batch plant allow for this to
2 be built. If you were to reverse it --

3 MR. GOODWIN: You had three minutes.

4 MR. GUTTMAN: I'll wrap up. If the apartment
5 complex were to be there today and the batch plant would
6 be submitting to TCEQ for a permit, that permit would be
7 approved.

8 MR. GOODWIN: Any questions?

9 (No response.)

10 MR. GOODWIN: Anybody that wants to speak in
11 favor of staff's recommendation?

12 (No response.)

13 MR. GOODWIN: I'll entertain a motion from a
14 Board member.

15 MR. BRADEN: I'll make a motion to approve
16 staff's recommendation.

17 MR. GOODWIN: Second?

18 MS. THOMASON: Second.

19 MR. GOODWIN: Any further discussion?

20 (No response.)

21 MR. GOODWIN: All those in favor say aye.

22 (A chorus of ayes.)

23 MR. GOODWIN: Opposed?

24 (No response.)

25 MR. GOODWIN: Okay. Moving on to 19185.

1 MS. HOLLOWAY: This is presentation,
2 discussion, and possible action on staff determinations
3 regarding application disclosure related to undesirable
4 site features for 19185 Edgewood Villas.

5 The applicant has disclosed neighboring noise
6 associated with military exercises at Fort Hood. Edgewood
7 Villas is a proposed elderly development that would be
8 proximate to training areas on Fort Hood. Per the ESA,
9 the Phantom Run range is located just to the north of the
10 subject property and impacts the property.

11 According to the ESA, the Army uses a different
12 but comparable noise measure to HUD's day/night noise
13 levels. Fort Hood has both a larger-caliber noise contour
14 map and a noise measurement pertaining to small-caliber
15 firing ranges, commonly referred to as small-arms PK15.
16 Because these two military noise measures are comparable
17 to HUD standards, we can rely on the more familiar
18 requirements.

19 For HUD all sites whose environmental or
20 community noise exposure exceeds 65 decibels are
21 considered noise impacted areas. The normally
22 unacceptable zone includes community noise levels that
23 range from 65 decibels to 75.

24 Proposed development sites that fall within
25 this zone must mitigate that excess noise with

1 construction methods or other measures. Locations with
2 noise levels above 75 decibels have an unacceptable noise
3 exposure. In unacceptable noise zones, HUD strongly
4 encourages conversion to land uses compatible with the
5 high noise levels and not to develop residential housing.

6 The proposed development site is outside of the
7 65 to 70 CDNL noise contour, so that's the large-caliber,
8 meaning that the proposed development site is acceptable
9 for housing under that measurement, but according to the
10 ESA, the proposed development site lies within a zone
11 where decibels can range from 87 to as high as 104
12 decibels. This is 60 percent above the acceptable HUD
13 noise levels.

14 The ESA notes that residents will hear gunfire
15 when military training is occurring. It states, "The
16 noise environment for the subject property is likely to be
17 considered normally unacceptable due to the proximity of
18 Fort Hood and would benefit from noise mitigation measures
19 such as an increase in sound attenuation within the
20 proposed building envelope."

21 To reduce the high estimate of possible
22 decibels of 104 to the acceptable level of 64, the
23 applicant would have to achieve a noise level reduction of
24 40 decibels. This may be unfeasible, given that the
25 applicant's ESA states that the normal permanent

1 construction can be expected to provide an NLR of 20
2 decibels.

3 The purpose of the Phantom Run training
4 facility is to replicate real world battles. Staff has
5 determined that the edge of the proposed development site
6 is approximately 1,440 feet from the first notable
7 structure of Phantom Run, it is approximately 1,750 feet
8 from the center of the training facility.

9 Staff is recommending that due to the risk of
10 excess noise associated with gunfire and explosives, the
11 Board determine that the site be found ineligible.

12 MR. GOODWIN: Any questions?

13 (No response.)

14 MR. GOODWIN: I assume you want to speak
15 opposed to staff's recommendation?

16 MR. KROCHTENGEL: Yes, sir. Zachary
17 Krochtengel, here representing the developer.

18 I think you've got to kind of look at many
19 different ways that noise is being measured. So when we
20 look at HUD noise level calculators, it's the HUD DNL, the
21 day/night noise level calculator, and that takes every
22 source of noise and it averages out over time to give a
23 constant of that noise. So if a train goes by twice a day
24 at 100 decibels, averaged out over time is very low. A
25 train that's 100 decibels goes by 15 times a day --

1 because the HUD takes in that occurrence and the amount of
2 occurrence -- it's very high.

3 So there are three different contour maps that
4 are involved with this project. There's the airport, the
5 military airport, which we're outside of that contour,
6 there's the large-caliber arms, and we're outside of that
7 contour, and then there's the small-caliber arms.

8 Now, the small-caliber arms 87 to 104 range is
9 called peak decibel, so that is not a weighted decibel
10 measurement, that's a peak decibel measurement. So one
11 gunshot, yes, at our site you might hear that at 104
12 decibels, but there is no information and there are no
13 contour maps available to show how that would be at a
14 constant, how often it's being used, how many rounds are
15 being fired.

16 So when we disclosed this, we disclosed this
17 and we used the Department of Defense guidelines for land
18 use in proximity to these kinds of installations, and what
19 they do is they create these contour maps, and we're in
20 what would be called a Zone 2. Zone 3, there is no
21 housing that's being proposed there. In Zone 2 the land
22 use Zone 2, they do say that you can have housing there
23 but they say that's a local decision. They say that we
24 don't necessarily encourage housing to be there; however,
25 that's a local decision.

1 And when you start looking at Killeen, Killeen
2 borders Fort Hood, Fort Hood and Killeen work together all
3 the time. They have a thing called the joint land use
4 study, the JLUS, which was a years-long study of how to
5 use land and how to work together to create land
6 development. The land is currently zoned for residential
7 use right now. The land is also surrounded by single-
8 family residential homes, including homes that butt up
9 right against the base itself.

10 So when we looked at that DOD guideline, we
11 looked at that and we said, okay, DOD says this is a local
12 decision, so what we're asking is that this site be found
13 eligible and we work through Killeen, which works with
14 Fort Hood all the time to discuss these matters, and see
15 how that local decision takes place and how that will
16 affect our development.

17 And we've also used certain strategies, such as
18 putting all of our amenities in our courtyard to try and
19 shield it from the noise for the outdoor amenities;
20 however, we believe that when you look at the noise
21 categories, we believe that we're in a noise category by
22 the DOD standard that would allow us to use this and the
23 permanent construction would allow for a 20-decibel
24 decrease and we think that that would be sufficient.

25 Thank you.

1 MR. GOODWIN: Thank you.

2 Anyone that wants to speak in favor?

3 (No response.)

4 MR. GOODWIN: If not, do I hear a motion from a
5 Board member.

6 MR. VASQUEZ: I'm trying to figure out how to
7 say this politically correctly. Hearing what's been
8 presented, it seems to me that anyone in the Killeen area
9 would understand Fort Hood is right there and you're going
10 to hear occasional gunfire or a tank or artillery booming
11 off somewhere in the distance. You wouldn't move into
12 this area if you didn't understand that Fort Hood is your
13 neighbor.

14 MR. GOODWIN: Is there a motion in there? Just
15 curious.

16 MR. VASQUEZ: And I just want to mention that
17 it's an elderly development.

18 MR. GOODWIN: Being the elder on this Board, I
19 take great offense.

20 (General laughter.)

21 MR. VASQUEZ: So I would like to make a motion
22 to find the property eligible so grant the appeal.

23 MR. GOODWIN: And deny staff's recommendation?

24 MR. VASQUEZ: Deny staff's recommendation.

25 MR. GOODWIN: Is there a second to that?

1 (No response.)

2 MR. GOODWIN: Hearing no second, do I hear
3 another motion?

4 MR. BRADEN: I'll make a motion that the Board
5 determine that the site is ineligible in accordance with
6 staff's recommendation.

7 MR. GOODWIN: Do I hear a second to that?

8 MS. BINGHAM ESCAREÑO: I'll second that.

9 MR. GOODWIN: Okay. Any further discussion?

10 (No response.)

11 MR. GOODWIN: If not, all those in favor say
12 aye.

13 (A chorus of ayes: Members Bingham-Escareño,
14 Braden, Goodwin, Reséndiz, and Thomason.)

15 MR. GOODWIN: Opposed?

16 MR. VASQUEZ: Nay.

17 MR. GOODWIN: Okay. Moving on to item 7(f).

18 MR. GOODWIN: 7(f) is presentation, discussion,
19 and possible action on staff determinations regarding
20 application disclosures under 10 TAC 11.101 related to
21 undesirable site features, 11.101(a)(3) related to
22 neighborhood risk factors, and 10 TAC 1110 related to a
23 request for administrative deficiency --

24 MR. GOODWIN: Let me interrupt you for just a
25 moment and let the record reflect that Board Member

1 Bingham and Board Member Reséndiz are off the dais.

2 Go ahead.

3 MS. HOLLOWAY: This is for application 19301
4 Prince Hall.

5 In the original application the applicant
6 provided disclosure that the Prince Hall site is located
7 within two miles of refineries capable of refining more
8 than 100,000 barrels of oil daily and requested an
9 exemption from the undesirable site features rule because
10 the project has a continuing project-based Section 8
11 contract.

12 An aerial photograph provided by the applicant
13 is on page 163 of the supplemental Board book showing that
14 the operations of both the Motiva and Valero refineries
15 are well within the two-mile radius. They disclosed that
16 the poverty rate for the census tract is over 40 percent.

17 They also disclosed blighted structures in proximity to
18 the site.

19 Given the recent damage to this community by
20 Hurricane Harvey, staff is not prepared to recommend
21 ineligibility for blight, but we're still going to discuss
22 the refineries and the poverty.

23 The application does not provide any further
24 details regarding the undesirable site features, and no
25 mitigation was suggested by the applicant for the

1 refineries, likely because they're relying on the request
2 for exemption.

3 We received two RFADs for this application.
4 The first suggests that the environmental site assessment
5 in the applicant's disclosure consists of an insufficient
6 assessment of the development site's environmental risks,
7 and there are undesirable site features located within
8 unacceptable distances to the proposed development, and
9 that the subsequent exposure to environmental factors
10 cannot be adequately mitigated.

11 The second cites the proximity of the
12 development site to the refineries, the poverty rate in
13 excess of 40 percent, and the two-times-per-capita average
14 concentration of units as reasons why the Department
15 should not grant the requested exemption from the rule.

16 Due to the comprehensive nature of the RFADs,
17 staff did not believe that additional information was
18 needed from the applicant about these issues. We did not
19 send them an administrative deficiency, as is allowed by
20 the RFAD rule. Nonetheless, on June 10 the applicant
21 uploaded a 229-page response to the RFADs.

22 In the cover letter for the RFAD response, the
23 applicant claims that the Prince Hall site should be found
24 eligible for multiple reasons. First, the application
25 received support from the city and state representative.

1 As you are aware, these are documents that the applicant
2 solicited from the city and the representative in order to
3 score. They are not remarkable; they are in all
4 applications.

5 Second, they claim that because this
6 50-year-old development is on property with zoning that
7 allows it, the smaller distance and local ordinance part
8 of our rule would exempt the site. We just discussed
9 previously how zoning is not the same as a specific
10 municipal ordinance regarding distance from the
11 undesirable site feature.

12 Third, the response describes single-family
13 housing and community resources within proximity to Prince
14 Hall. They provide Lamar State College as providing
15 course work that leads to jobs with local petrochemical
16 facilities. The academic and technical programs web page
17 for the school makes no mention of petroleum.

18 Regarding single-family housing, if you zoom in
19 a bit on the aerial photo on page 163 of the supplemental
20 Board book, the open spaces between homes are not large
21 lots, they are vacant lots that were left when the homes
22 weren't reconstructed.

23 Fourth, they describe investment by Motiva in
24 revitalization efforts for downtown Port Arthur. The
25 article that was included in the response to support this

1 point states that Motiva had purchased the building as
2 part of its in-lieu-of-taxes agreement with the city.

3 The response seeks to link HUD's continuing
4 Section 8 contract to our rule regarding deferral to a
5 state or federal cognizant agency, saying basically that
6 because HUD continues to fund the contract, the site
7 should be accepted. In just a moment we'll discuss HUD
8 action on a neighboring property that belies that
9 assumption.

10 The cover letter also includes an extensive
11 discussion of the applicant's disagreement with some of
12 the statements in the RFADs. Unfortunately, the
13 information provided in the applicant's response does not
14 change staff's assessment of the development's
15 eligibility.

16 Starting with neighborhood risk factors and
17 poverty, the applicant states that in 2016 the census
18 tract's poverty rate was 66.3 percent, in 2017 it was 59.6
19 percent, in 2018 it was 49.2 percent, and in 2019 it is
20 now 44.7 percent. They claim based on this trend it is
21 reasonable to expect that the poverty rate will be below
22 40 percent by the time the development is placed in
23 service. They do not provide information about why this
24 change has happened or why it can be expected to continue.

25 Staff believes that the downward trend in the

1 poverty rate is likely due to the demolition in 2014 of
2 two Port Arthur Housing Authority properties with a total
3 of 204 units and the relocation of those low income
4 residents out of the census tract.

5 The housing authority relocated many of the
6 residents to Edison Square, a new-construction senior
7 development in a census tract with a poverty rate of 38
8 percent, and Park Central, which is a general population
9 in a census tract with a poverty rate of 21.6 percent.

10 The applicant for Prince Hall, for this
11 application that we are discussing, partnered with the
12 housing authority to develop Park Central and continues to
13 be listed as the general contractor for that development.

14 Regarding undesirable site features, our rule
15 says that rehabilitation developments with ongoing and
16 existing federal assistance from HUD, USDA, or Veterans
17 Affairs may be granted an exemption by the Board. This
18 development has ongoing and existing federal assistance
19 from HUD in the form of a Section 8 Housing Assistance
20 Program contract and has requested this exemption.

21 The applicant did not provide information
22 regarding mitigation relating to the refineries likely
23 because they were relying on this exemption. The two
24 RFADs provide an understanding of the refineries and their
25 impact on the existing development and the neighborhood at

1 large.

2 Much of the information comes from documents
3 related to violations assessed by federal and state
4 environmental agencies and descriptions of the
5 neighborhood provided in communications between HUD and
6 the Port Arthur Housing Authority as they were demolishing
7 Carver Terrace and Lincoln Square.

8 One of the RFADs documents significant
9 violations at the Valero and Motiva sites. EPA
10 enforcement provided with the RFADs shows that they have
11 been out of compliance for three years, and both have been
12 subject to multiple formal enforcement actions in the past
13 five years.

14 There are also reports from TCEQ of
15 unauthorized emissions and agreed orders for penalties.
16 It also points to a third potential undesirable site
17 feature that was not disclosed as the Air Products of Port
18 Arthur plant, which shares the Valero Refinery site. This
19 company supplies industrial and specialty gases.

20 The RFAD raises the following concerns. The
21 applicant did not adequately disclose the health and
22 safety risks of the proposed site, nor did the applicant
23 make any mention of mitigation efforts to reduce these
24 risks to residents.

25 Second, the current violations assessed against

1 Premcor/Valero and Motiva indicate that mitigation is not
2 underway and that public health is at risk any time the
3 facility is out of compliance.

4 The applicant's response, that 229 pages,
5 includes extensive documentation of continuing efforts to
6 improve air quality in the area. I've not made a side-by-
7 side comparison of the claims in the RFAD to the claims in
8 the response. I think it's telling that there is so much
9 documentation out there to support either position. I
10 think it's also telling that much of the response is about
11 air quality continuing to get better, which implies that
12 there is a continuing need for improvement.

13 Another concern raised by the RFADs are the
14 circumstances and documentation about the Port Arthur
15 Housing Authority's demolition of Carver Terrace and
16 Lincoln Square. These two developments were immediately
17 adjacent to Prince Hall, they're on either side. The
18 housing authority initial plan was to sell the properties
19 and use the proceeds to develop single-family housing
20 units.

21 As part of its disposition application to HUD,
22 the housing authority board passed a resolution that says,
23 "Whereas, the Port Arthur Housing Authority desires to
24 dispose of 240 units at Carver Terrace and Lincoln Square,
25 consisting of approximately eight acres, more or less, due

1 to adverse neighborhood conditions that affect the quality
2 of life for residents."

3 In its fair housing and equal opportunity
4 checklist, the housing authority described the area:
5 "Carver Terrace and Lincoln Square are two properties
6 located near two oil refineries. The census tract and
7 public housing properties are about 99 percent minority,
8 there is a lack of employment for those with limited
9 skills, and businesses have moved out of the area.

10 "There are limited retail stores and social
11 services. There is poor air quality and safety and
12 environmental hazards due to the petrochemical industry.
13 There is deteriorating infrastructure, an increase in
14 crime, decay and blight. The west side location is not
15 conducive to a residential development."

16 HUD approved the disposition request, and the
17 housing authority issued an invitation for bids to sell
18 the property at \$1,670,000. A year later they requested a
19 modification of the terms of the agreement because they
20 had received only one bid for \$800,000 from Premcor
21 Refining Group, which is now Valero.

22 In explaining the low bid, the housing
23 authority said, "The expansion of the refineries over the
24 years has caused process units, pipelines and storage
25 tanks to be placed much closer to the property,

1 threatening the safety and health of the residents.

2 "In fact, the Phase I environmental assessment
3 for the property, dated March 17, 2014, indicates that the
4 property has been associated with 191 upset emissions
5 events since January of 2007, largest of those occurring
6 in September 2013.

7 "The property is now located in a distressed
8 area plagued by limited employment opportunities, a lack
9 of major investments and commercial activity, increases in
10 crime rates, serious health and safety concerns. For
11 these reasons, the housing authority seeks to dispose of
12 he property."

13 HUD responded: "As part of the environmental
14 review process" -- and that's the federal environmental
15 review process, that's not a Phase I review -- "HUD
16 determined that due to the health and safety threats
17 caused by the close proximity of the refineries, certain
18 mitigation efforts must be implemented to protect the
19 neighboring residences."

20 As mitigation, HUD required that the properties
21 that were being sold, the public housing authority
22 properties, be converted to vacant land to create an
23 environmental buffer between refineries and adjacent
24 residences in perpetuity, enforced as a condition of sale
25 through a deed restriction, and that the property be

1 fenced off. This requirement caused Premcor to rescind
2 its bid.

3 In their response, the applicant claims that
4 Carver Terrace and Lincoln Square were demolished because
5 of the conditions of the properties rather than the
6 surrounding neighborhood. They have produced 15 letters
7 written by residents of Carver Terrace that describe the
8 poor condition of their apartments and the development to
9 support their claim. If this were the case, it seems
10 unlikely that HUD would impose such draconian conditions
11 on the site.

12 ITEX Development completed the demolition of
13 Carver Terrace and Lincoln Square and partnered with the
14 housing authority to develop Park Central, where many of
15 the residents moved. ITEX is the applicant for the
16 current 19301 Prince Hall application. As a contractor
17 for the housing authority, the applicant would presumably
18 be aware of the environmental concerns that led to the
19 demolition of Carver Terrace and Lincoln Square and
20 relocation of those residents. Staff believes that the
21 information in the application about the surrounding
22 neighborhood provides an incomplete view of conditions in
23 the area.

24 In the housing authority disposition
25 application to HUD, they describe employment opportunities

1 at the refineries. Many west side residents worked at the
2 plants and many workers rode their bicycles to work. At
3 one time more than 8,000 people worked for these
4 refineries.

5 These companies have invested billions in Port
6 Arthur, but the combined permanent workforce is estimated
7 at approximately 2,500. The engineering and technical
8 employees of these companies are among the highest paid in
9 America but there are no opportunities for those with
10 limited skills or those with skills in construction or
11 turnaround trades.

12 The loss of ready access to local employment
13 and merchants such as large retailers on US 69 and
14 increases in crime rates has caused steep declines in the
15 population and businesses on the historic west side and
16 downtown area. The Port Arthur Housing Authority's Carver
17 Terrace/Lincoln Square housing developments are now
18 located in a dilapidated and declining area of Port Arthur
19 with no job opportunities, limited retail stores, and
20 social services.

21 In addition, the petroleum industry seeks to
22 expand in the area. Per the December 2018 edition of the
23 Beaumont Enterprise, Motiva is considering adding
24 petrochemical to the refinery. The article quotes an
25 official: "One of the potential locations for the new

1 facilities is unimproved land located within the Motiva
2 Port Arthur Refinery complex."

3 Per our rule, rehabilitation developments with
4 ongoing and existing federal assistance from HUD may be
5 granted an exemption by the Board. Staff believes that
6 the existing project-based Section 8 HAP contract meets
7 the eligibility requirement for this rule for the Board to
8 consider the exemption, but given the close proximity of
9 the two oil refineries to the development and the
10 documented concerns regarding the area surrounding the
11 development site, mitigation beyond the presence of a HAP
12 contract should be required.

13 Given the additional information provided by
14 the RFADs, staff is not convinced that there is a
15 reasonable expectation that the poverty rate will be below
16 40 percent by the time the development is placed in
17 service.

18 Staff recommends that the Board find the
19 development site for application 19301 Prince Hall
20 ineligible.

21 Happy to take any questions?

22 MR. GOODWIN: Could you repeat that?

23 (General laughter.)

24 MS. HOLLOWAY: I cut this so far back.

25 MR. GOODWIN: Michael has a letter to read into

1 the record.

2 MR. LYTTLE: I will be much shorter than Marni.

3 This is a letter from State Representative Joe
4 Deshotel to Chairman Goodwin and the Board.

5 "Please accept this letter as my additional
6 statement of support for application 19301 Prince Hall
7 Apartments and my request for the Governing Board of the
8 Texas Department of Housing and Community Affairs to find
9 Prince Hall eligible for an award of 9 percent housing tax
10 credits.

11 "It is my understanding TDHCA staff is
12 recommending Prince Hall be found ineligible for an award
13 of housing tax credits. I am very concerned TDHCA would
14 take action to prevent the revitalization of this existing
15 housing development which was damaged by Hurricane Harvey,
16 especially in proximity to Port Arthur's revitalizing
17 downtown.

18 "During my tenure as state representative, I
19 have worked consistently to bring resources to my district
20 in order to redevelop Port Arthur, and this staff
21 recommendation runs counter to these efforts. The
22 residents of Prince Hall deserve to benefit from a
23 rehabilitation of this existing 50-year-old development,
24 and Port Arthur is in need of quality housing in proximity
25 to downtown.

1 "Prince Hall is located in proximity to Port
2 Arthur's downtown area which is currently benefitting from
3 an approximately \$150 million investment by Motiva. This
4 kind of private development will bring jobs to the area
5 and create a positive domino effect of opportunity.

6 "It is essential for safe, decent and
7 affordable housing options are available in proximity to
8 downtown. In the past five years the poverty rate in the
9 census tract including Prince Hall has decreased
10 approximately 33 percent, demonstrating a significant
11 improvement in the area.

12 "During my term I have worked with area leaders
13 and government and industry to successfully improve all
14 aspects of the environment, including air quality. Air
15 quality in Port Arthur has significantly improved over the
16 last 20 years, and emissions from local industry have
17 decreased significantly.

18 "Industry has made material investments in
19 pollution control and laws and rules have become more
20 stringent. The staff's assessment of environmental
21 impacts and air quality in the vicinity of the proposed
22 development is not correct.

23 "The TCEQ actually monitors air quality in Port
24 Arthur, including by the proposed development. These
25 monitors show the air quality is safe. In fact, all of

1 Jefferson County meets federal air quality standards
2 called for by the Federal Clean Air Act.

3 "Moreover, any assertion that the development's
4 proximity to the refineries should preclude development is
5 misguided. I would point out many people live within the
6 two-mile distance of the refineries in the cities along
7 the Texas Gulf Coast, and it is my understanding that
8 there has not been an offsite death due to a refinery
9 accident in over seven years. Please do not lose sight of
10 the fact that the standards sought to be imposed by staff
11 would virtually preclude development in almost all of
12 downtown Port Arthur.

13 "Finally, it appears that the QAP rule changes
14 have made it much more difficult for minority cities to
15 compete for 9 percent tax credit financing. Until this
16 year it has been twelve years since a developer seeking to
17 build affordable housing in Port Arthur has been able to
18 successfully compete.

19 "The Prince Hall redevelopment is the high-
20 scoring application in TDHCA's Region 5 Urban funding
21 pool. I represent both the cities of Beaumont and Port
22 Arthur, and it is not only a long time past for Port
23 Arthur to receive an award but critical for the community.

24 "In conclusion, Prince Hall is currently and
25 has historically been zoned for multifamily housing, and

1 it's in proximity to a revitalizing area of Port Arthur,
2 it's in an area of declining poverty, and has
3 demonstratively acceptable air quality meeting all state
4 and federal standards.

5 "This existing affordable housing development
6 needs TDHCA resources to provide the rehabilitation
7 residents deserve. There is sufficient documented
8 mitigation related to environmental factors, poverty and
9 blight, and I urge you to support the redevelopment of
10 Prince Hall and to find the development site eligible for
11 an award of housing tax credits.

12 "Respectfully requested, Joe D. Deshotel, 22nd
13 Legislative District."

14 MR. GOODWIN: Thank you.

15 Can we have people speaking opposed to staff
16 recommendation raise your hand? Those in favor of staff's
17 recommendation?

18 Okay. Three minutes.

19 MR. AKBARI: Mr. Chairman, Board members, I'm
20 Chris Akbari. I'm the CEO of ITEX. We are the
21 co-developer of Prince Hall Village, which, as staff has
22 said, is 1209 units of Section 8 project based.

23 It was affected by Hurricane Harvey, has been
24 renovated so the units are re-occupied, but we need to be
25 able to do the substantial renovation for this project to

1 be put back together. Our goal is to be able to
2 revitalize and preserve this housing that is adjacent to
3 downtown Port Arthur.

4 There was a lot of things mentioned about the
5 decline of that area. What was not mentioned is that
6 there's been redevelopment of the West Side Center,
7 there's been added dentist offices and things like that
8 within a quarter of a mile from here.

9 There's also in downtown Port Arthur a major
10 redevelopment, and I know it was described as being only
11 for in lieu of taxes, but that's not the case. Motiva is
12 actually investing \$150 million to bring engineers, to
13 bring staff to downtown buildings to try to revitalize
14 downtown and to try to create jobs for the community
15 members, just like those that live at Prince Hall Village.

16 We believe that every bit of data that was
17 provided relating to the previous demolition of Carver
18 Terrace is incorrect in nature. Part of what happened, as
19 ITEX was a part of those, we worked with the Port Arthur
20 Housing Authority who wanted to access the Community
21 Development Block Grant funds from Hurricane Ike.

22 Those funds had a voluntary compliance
23 agreement that was signed by TDHCA giving the Texas
24 Housers the ability to have a say-so in how that money
25 would be used. So we knew that we couldn't be able to use

1 that money to revitalize Carver Terrace at the existing
2 site.

3 In order to get the money and to preserve the
4 housing for Port Arthur Housing Authority, we devised a
5 plan to work in collaboration with the housing advocates
6 to rebuild that housing. As part of that, we used the
7 expedited process through SAT, and that's why you have
8 some of the information that was provided relating to that
9 demolition.

10 I'd also like to say that we believe in having
11 safe and sanitary housing. We believe that this site is
12 acceptable, it meets the requirements for preservation of
13 housing. We also believe that the poverty rate is
14 declining, it is currently at 44 percent, and in previous
15 instances this Board has actually taken action based upon
16 excluding the low-income units that are existing at the
17 site. If you take out the 120 units and approximately 200
18 or more residents, the poverty rate is actually under 30
19 percent.

20 We know that we've addressed the issues related
21 to blight, we know that this is a very valid project and
22 will do very well for the City of Port Arthur and also
23 preserve this housing and the Section 8 HAP contract.

24 MR. GOODWIN: Someone in favor of staff's
25 recommendation?

1 MR. DUNCAN: Hello again. Charlie Duncan from
2 Texas Housers.

3 We submitted one of the RFADs that's before you
4 in the supplemental Board book, and I applaud staff for
5 putting together very well all the information about the
6 issues with this site. Marni laid it out very well; I
7 agree with the issues that she's brought up.

8 I want to focus in on something in particular.
9 The poverty rate, according to census data, has come
10 down, but there's two really important factors to consider
11 here. One is the aforementioned removal of the public
12 housing in the area.

13 We were party to the conciliation agreement
14 that Mr. Akbari mentioned earlier. Part of that
15 conciliation agreement was replacing damaged affordable
16 public housing in a manner that complied with fair housing
17 law. This is an area that has been subject to a history
18 of disinvestment, of environmental issues, flooding
19 issues.

20 It's been affected by Rita, by Hurricane Ike
21 and now Hurricane Harvey, and it was important to give
22 folks provide a better housing choice than they had there.

23 That's a lot of low-income people contributing to that
24 poverty rate that were removed from the area.

25 Another one is something called the Housing

1 Opportunity Program, which was a part of that conciliation
2 agreement. This program allowed folks who were affected
3 by Hurricane Ike to choose whether to rebuild in place
4 their damaged home or they could take that funding and buy
5 a home elsewhere and remove themselves from that hazardous
6 area or that poverty concentrated area.

7 And of all the areas across Texas there was no
8 more greater participation in that program than west Port
9 Arthur. People chose to enter into that program and leave
10 the area because of the conditions of that community.

11 Now, it's a shame, you know, the state of the
12 community on part of the effects of the refineries and
13 such. That's stuff that's out of y'all's hands, but it is
14 in y'all's hands to ensure that people have good housing
15 choices, safe housing choices, and not bound people to
16 another 30 years of living in these conditions that
17 clearly HUD has agreed are unacceptable for their public
18 housing and that they have found with project based
19 developments in other cities it's not necessarily a reason
20 to keep funding this. Those can be moved, those can be
21 converted to housing choice vouchers where people can
22 choose to live elsewhere.

23 So I would encourage all of you to agree and
24 support the staff's recommendation.

25 MR. GOODWIN: Okay. Any questions?

1 (No response.)

2 MR. GOODWIN: Someone going to speak that's
3 opposed to staff's recommendation?

4 MR. RICHARDSON: Good afternoon. I'm glad to
5 be here today. My name is Raynard Richardson. I'm part
6 of the development team. I'm the former director of
7 multifamily housing for the Department of Housing and
8 Urban Development, and I'm very familiar with this
9 particular asset, it was under my jurisdiction, I used to
10 be the asset manager for this site.

11 HUD has invested, since 2001, \$19 million in
12 this asset for housing assistance payments. It's
13 projected to invest another 13 to \$14 million through 2031
14 because of the land use restriction document it has with
15 it.

16 The public housing programs are governed by a
17 different set of rules than the multifamily housing
18 programs because it deals with private industry. HUD has
19 assisted this asset through what was called in the past an
20 operating assistance grant which is no longer in the scope
21 of the toolbox for HUD. Then HUD did a mark to market
22 redevelopment where they took the debt and put it in a
23 second or third position to try to extend the preservation
24 of the housing.

25 The problem is there's no other funding stream

1 except to come here to you to get funding to revitalize
2 the asset. The department has done all it could on the
3 private side of its business. On the public housing side
4 they control all the funding streams. Other than that, we
5 don't have any other place to go but to TDHCA to get the 9
6 percent credits. The asset is 50 years old now, it needs
7 to be rehabilitated.

8 Our presenters are going to present
9 documentation that states that the air quality in Port
10 Arthur does not violate any type of law, rule or reg. And
11 during the time that the transition was taking place for
12 public housing, I was a member of the HUD staff, I
13 remember everything that went on, and I commend the Texas
14 Housers and the staff for what they've done.

15 But in essence, the reality is there's nothing
16 else that we can do. The LURA is going to be in effect
17 until 2031, the residents are going to be there. HUD, we
18 have a comfort letter from them.

19 I contacted the HUD office in Fort Worth, the
20 regional office. We have a comfort letter, if we get the
21 tax credits they're going to process for the transition of
22 this and we're going to rebuild and make it a safer place
23 to live. If right now the environmental position of that
24 asset violated any law, then the federal government would
25 have moved the residents out.

1 So I just want to ask you to consider what's
2 been stated. You know, I understand both sides, I'm like
3 an earlier person who spoke, I've been with HUD, I'm on
4 this side now, I'm an advocate for people and for
5 residents, and now you have me on a project in Houston,
6 two of them, as a matter of fact, because I feel like
7 you're rational people and you'll consider both sides of
8 this. You know, everybody is not able to live in certain
9 places, so we appreciate your consideration.

10 MR. GOODWIN: Any questions?

11 (No response.)

12 MR. GOODWIN: Someone in favor of staff's
13 recommendation?

14 MS. SCOTT: Good afternoon. My name is Erica
15 Scott, and I'm a vice president of development at Herman &
16 Kittle Properties.

17 In the interest of time, Mr. Chairman, since
18 I'm trained not to repeat things that have been repeated
19 before, but we do appreciate this opportunity to speak and
20 would like to thank TDHCA staff for all of their hard
21 work.

22 We have expressed concerns with the Prince Hall
23 application in the areas of undesirable site features and
24 neighborhood risk factors. TDHCA staff evaluated all of
25 the information related to the site and these specific

1 issues. Their recommendation is to find the site
2 ineligible.

3 I would like to introduce Natasha Martin, who
4 is an attorney with Graves Dougherty Hearon & Moody.
5 Natasha's area of expertise is environmental law. Given
6 her subject matter expertise, Natasha will elaborate on
7 the concerns associated with the site, the Prince Hall
8 application, and describe the surrounding uses as shown on
9 the posters, which were also included in your Board
10 package.

11 MS. MARTIN: Thank you, Erica. My expertise is
12 clearly not easels.

13 MR. GOODWIN: You need to state your name and
14 sign in.

15 MS. MARTIN: Yes, Natasha Martin of the law
16 firm Graves Dougherty Hearon & Moody, and I'll get signed
17 in.

18 So I guess I'm not your typical lawyer. I
19 worked at the TCEQ for about 4-1/2 years. During my time
20 there I conducted health effects reviews on air permit
21 applications, much like the permits that are in place for
22 the refineries we'll talk about today.

23 So we want to highlight the environmental and
24 health and safety risks at Prince Hall and why mitigation
25 is not an option here and is outside the scope of the

1 developer's ability to assure mitigation.

2 The posters we've put up show a map of the
3 affected area. It's slightly modified from what was in
4 the RFAD -- and I can provide copies if you'd like -- but
5 we've added the Prince Hall is the pink rectangle and
6 Carver Terrace is the orange.

7 And I won't belabor Carver Terrace, but we want
8 to say that we agree with staff's recommendation to deny
9 the application. Staff says mitigation may not be
10 possible due to the potential health and safety risks of
11 the development being this close to this type of
12 undesirable site feature. Staff's interpretation of the
13 rule is spot on. This close is less than half a mile, and
14 this type are two refineries producing more than 100,000
15 barrels of oil per day that have been in frequent
16 violation.

17 No mitigation plan was submitted, and I guess
18 the claim for that is that they claim to be eligible for
19 an exemption. We would urge you to not approve the
20 exemption because the Department's own rules state that
21 preservation of affordable units alone does not present a
22 compelling reason to support a conclusion of eligibility.

23 Think about Carver Terrace and HUD's decision where the
24 quality of life outweighed preserving unsafe affordable
25 units.

1 We'll quickly talk about environmental risk
2 factors and what's coming out of these refineries. So a
3 short list of pollutants are: volatile organic compounds
4 that can cause liver, kidney, central nervous system
5 damage; sulphur dioxide, respiratory issues; carbon
6 monoxide, complications for people with heart disease.

7 The list goes on, nitrogen oxide is again
8 respiratory damage; hydrogen sulfide, irritation to eyes,
9 nose and throat. I only bring these up because these are
10 permanent pollutants, and there's a long history of
11 noncompliance, so I want to explain the importance of
12 complying with these permits.

13 TCEQ has assessed \$3.5 million of penalties for
14 at least 56 violations. It is true that regionally the
15 area is within federal standards, but you have to look at
16 the impacts to the receptors closest to the property.

17 Can I please just one more thing?

18 MR. GOODWIN: Wrap it up.

19 MS. MARTIN: I will wrap it up.

20 So noncompliance continues. Just yesterday,
21 June 26, the TCEQ considered a \$32,000 fine against Motiva
22 for a violation of nitrogen oxide limits. They're busting
23 their permits, and I think that's important to know.

24 Finally, in regards to mitigation, it's not
25 possible here. The developer can't control operations and

1 maintenance at these refineries, the developer cannot
2 enforce the permits, and they can't control whether or not
3 Motiva expands.

4 MR. GOODWIN: Any questions?

5 (No response.)

6 MR. GOODWIN: Thank you.

7 MS. MARTIN: Thank you.

8 MR. GOODWIN: Opposed to staff's
9 recommendation?

10 MR. PELS: Yes. Good afternoon, ladies and
11 gentlemen of the Board. I'm Gerry Pels of Locke Lord,
12 where I chair our firm's environmental law section.

13 I'm speaking today on behalf of Port Arthur
14 PHD, who is the applicant, with regard to air quality
15 issues specifically and environmental issues generally.
16 Over the last 30 years I've represented clients across the
17 country on air quality and environmental issues involving
18 litigation, permitting and compliance. Among those
19 clients is the City of Houston, where I represented them
20 before the United States Fifth Circuit, and that was kind
21 of fun.

22 In this case, applicant has met the
23 requirements of the QAP, and protestors' arguments that
24 have been embraced by the staff are not supported by the
25 facts, and in fact, are inconsistent with the very

1 documents submitted by protestors.

2 Let me go through a few things: First, we
3 expressly disclosed the refineries in our application, no
4 question about that. With regard to mitigation we
5 prepared and provided a Phase I environmental report,
6 meeting the requirements of 11.305. The professional's
7 opinion was that the surrounding assets, the surrounding
8 facilities, including the refineries, are not and will not
9 be impacted by the refineries.

10 Now, with regard to the air emissions issue
11 specifically, protestors make four arguments against the
12 application related to air emissions: one, health risks
13 are associated with the refineries' proximity to the
14 proposed development; two, mitigation is not ongoing;
15 three, health risks are related to the refineries'
16 noncompliance; and last, the compliance history suggests
17 adverse health effects.

18 We would urge the Board to please consider the
19 factual matters we included in our response to the RFADs,
20 the over-200 pages that were mentioned by staff. Let's go
21 through these.

22 With regard to proximity to the refineries
23 representing a health risk to the residents, it's just not
24 accurate. There are seven monitors in Port Arthur,
25 including one within 600 feet of our proposed development,

1 that are maintained and monitored by the TCEQ.

2 In the most recent TCEQ report, it shows that
3 all air pollutants, including the benzene, including the
4 VOCs, including the SO2 referenced by protestors, they're
5 all at concentrations at levels that are below the TCEQ's
6 conservative health-based screening levels.

7 TCEQ's own empirical evidence shows that the
8 local air quality at Prince Hall is safe, and as mentioned
9 in the representative's letter, Jefferson County meets all
10 clean air standards. That's more than I can say where I
11 live in Houston.

12 Second, protestors state that mitigation is not
13 ongoing. Wrong. In fact, over the last 20 years studies
14 show that local industry has reduced VOC and SO2 emissions
15 by about 60 percent and 50 percent, respectively. Total
16 emissions from unauthorized upset events have been reduced
17 by 95 percent over that period of time.

18 In addition, rules are coming into play that
19 are very stringent -- I'll take two seconds -- the recent
20 EPA refinery sector rule amended December 2018 imposes
21 fence-line monitoring and redundant standards on controls
22 for upset emissions.

23 I want to read a quote from the TCEQ with
24 regard to the upset emissions cited by protestors in their
25 documents. The TCEQ stated with regard to each of those

1 upset events: "Amounts of pollutants do not exceed levels
2 that are protective of human health as a result of the
3 violation" or words of similar import.

4 Finally, with regard to compliance history, the
5 TCEQ's website and the protestors' documents say it's
6 satisfactory and they don't consider these refineries
7 repeat violators.

8 MR. GOODWIN: Any questions?

9 MR. PELS: Thank you very much, and I'll be
10 happy to answer any questions.

11 MR. GOODWIN: I don't hear any questions.

12 MR. PELS: Thank you.

13 MR. GOODWIN: Anything new from anyone that's
14 in favor of staff's recommendation?

15 (No response.)

16 MR. GOODWIN: Do I hear a motion from the
17 Board?

18 MS. THOMASON: I'll make a motion to uphold
19 staff's recommendation to find this item ineligible.

20 MR. GOODWIN: We have a motion to find it
21 ineligible. Second?

22 MR. BRADEN: Second.

23 MR. GOODWIN: It's been moved and seconded. Do
24 we have any further discussion?

25 MS. DULA: Yes. Tamea Dula, Coats Rose, on

1 behalf of the applicant with something new.

2 I've been charged to discuss with you the
3 procedural irregularities with regard to this matter. We
4 knew about the RFAD because the RFAD -- the third party
5 that requests the RFAD has to send a copy to the
6 applicant, and that copy was received.

7 Nothing was sent by staff. There was no
8 administrative deficiency, inquiry or anything of that
9 nature. We were never notified of any intent to
10 terminate. The only notification we got was that in last
11 month's Board book there was an indication in the summary
12 of RFAD actions that Prince Hall would be dealt with at a
13 different date before the Board.

14 And then the next thing was the fact that it
15 was on the agenda, and then finally, the only information
16 we got concerning the staff's sense with regard to this
17 was when the Board book supplement was published on
18 Monday, so effectively four days in advance of this
19 meeting.

20 The materials published by staff on page 682 of
21 the supplement book, staff indicates that this matter is
22 being brought to the Board pursuant to 11.101(a)(2)(K),
23 which requires the staff provide the applicant with
24 written notice and an opportunity to respond and place the
25 matter before the Board for a determination.

1 Since written notice was never provided, nor
2 was the applicant advised that this was going to be under
3 that provision until the supplement was published on
4 Monday, the applicant, in an effort to be overwhelmingly
5 clear about this, filed the 200-page response to the RFADs
6 on its own notion because they knew they were going to be
7 discussing before the Board, and we had to get something
8 to the staff in order to published in the Board book.
9 Otherwise, we would be standing here with nothing.

10 And so we wanted you to understand the
11 circumstances. I am not quite sure what your vote today
12 is going to entail since the administrative requirements
13 have not been met.

14 Thank you.

15 SPEAKER: We just have one resident that would
16 like to speak as well.

17 MR. GOODWIN: Somebody else would like to speak
18 in favor of staff's recommendation or opposed to staff's
19 recommendation.

20 SPEAKER: Opposed to it.

21 MR. GOODWIN: Opposed. Come on up.

22 MR. ECCLES: And actually, if I could ask
23 Tamea.

24 MR. GOODWIN: Hold on just a second, sir.

25 MR. ECCLES: I'm looking in the Board

1 supplement at a June 10 letter from Locke Lord that's
2 addressing this application and all the issues that were
3 raised regarding ineligibility and 16 exhibits.

4 What is it your contention is that -- what are
5 you seeking by bringing up a procedural irregularity?
6 Would you like the Board to table this until the next
7 meeting? What is it that you're seeking by bringing up
8 that irregularity?

9 MS. DULA: No, I'm not requesting the Board
10 table it, unless Chris would like to have that done. I'm
11 bringing it up to show that this applicant is bending
12 over backward to comply with everything, to show you that
13 they are complying with all the rules and requirements of
14 the QAP, and giving you information that's up to date and
15 countering the scattershot effort of the RFADs to throw a
16 lot of spaghetti and see what sticks -- mixed metaphors.
17 So that's the reason it's been brought forward.

18 MR. ECCLES: Do you need a further opportunity
19 to respond to everything that's been presented?

20 MS. DULA: No. We were proactive in that
21 regard.

22 MR. ECCLES: Very good.

23 MR. GOODWIN: Sir.

24 MR. CHEVALIER: Good afternoon, Chairman
25 Goodwin and the Board. My name is Harry Chevalier, and

1 I'm from Prince Hall, I'm a resident at Prince Hall
2 Village Apartments. I've been a resident for 15 years
3 now. I've graduated three kids, two of which is in the
4 Army in the military and one is on their way out.

5 What I've listened to today, I've listened to
6 both sides of the argument, but as a resident, what I say
7 and what I've seen is I believe it needs improvement, but
8 also, it's not improvement for -- it's more for the kids.

9 As far as for me, I'm graduating again, I'm going on my
10 second degree, and like I said, I've been there 15 years,
11 it never held me back on anything, but for the kids that's
12 coming up today, they need something to look forward to.

13 They're looking at ceramic floors, outdated
14 walls, so you know, it knocks some of their morale down.
15 But in my case I tries to tell them, Don't let that stop
16 you from doing your goals, because you may not have
17 electric stove, you might still be outdated with your gas
18 stoves, so it don't affect your outcome.

19 And I also heard a lot of them say about the
20 poverty. Poverty is all over our city, the whole of Port
21 Arthur is in poverty. You know, I've never been sick,
22 thank God, none of my kids have been sick through the air
23 quality control, thank God.

24 And also, it's coming from a homeless guy.
25 Prince Hall had opened its doors, when I first became a

1 resident, I was homeless. Thank god, 15 years later, like
2 I said, I had a chance to raise three kids. It never
3 affected us, it never bothered us. But for the kids
4 that's coming up today, they do need something to look
5 forward to.

6 Like for instance, I have this program that I
7 work with the kids. We pick up cans, and the reason why
8 we pick up the cans is to get a new playground, they've
9 been asking for a new playground, they want new equipment.

10 So that's the things I tell them to do.

11 Everything -- you don't want nothing given to
12 you, you have to work for it, so that's another reason why
13 we pick up the cans, that's why we go and do different
14 things, to show them without hard work you'll never get
15 nothing.

16 You know, we're not looking for handouts, we're
17 not asking, we're just coming to just whatever that you
18 can help us with to improve our quality and to improve our
19 kids. That's all we're asking.

20 You know, like I said, I'm going to state my
21 belief it's not for handouts, I believe if you work hard,
22 dedication, that's how they told us. And I teach the kids
23 the five Ps: Proper preparation prevents poor
24 performance. If you go and do what you're supposed to do
25 and let everything else take care of itself. Just pray

1 about it and put the rest in God's hands.

2 So I'm just speaking for all the people that
3 can't speak that's a resident of Prince Hall, and to the
4 Board I would just appreciate any help, any help that you
5 would be able to do for the kids of Prince Hall would be
6 very, very, very acceptable. And I thank y'all for having
7 me here.

8 MR. GOODWIN: You need to sign in.

9 MR. CHEVALIER: Yes, sir.

10 MR. GOODWIN: Thank you.

11 (Applause.)

12 MS. RESÉNDIZ: Mr. Chairman, I'd just like to
13 make a comment.

14 Sir, you inspire me, and I wish there were more
15 people like you. And please thank your sons for their
16 service.

17 MR. CHEVALIER: Thank you, ma'am, thank you
18 very much.

19 (Applause.)

20 MR. PALMER: Barry Palmer, Coats Rose,
21 representing the developer, in opposition to staff's
22 recommendation.

23 And one important point, just one point that I
24 want to make for you to consider is you're not being asked
25 to put 120 units into this neighborhood. This is not a

1 case where we're looking to build 120 units outside
2 downtown Port Arthur. These units are there, they've been
3 there for a long time, they're going to be there for a
4 long time.

5 We have 120 units fully occupied by tenants
6 just like the last gentleman, and what we are talking
7 about here is putting a major investment to rehab this
8 property so that their quality of life over the next 15
9 years while that Section 8 contract is in place is
10 dramatically improved.

11 So that's why, to me, it makes a big difference
12 whether this is talking about moving new units into Port
13 Arthur versus just preserving units that are there and are
14 going to be there for a long term, they're not going
15 anywhere for the long-term Section 8 contract in place
16 there.

17 Thank you.

18 MR. GOODWIN: Any questions?

19 (No response.)

20 MR. GOODWIN: We have a motion and a second on
21 the floor. Call for the vote. All those in favor say
22 aye.

23 MR. VASQUEZ: Confirming that the motion is to?

24 MR. GOODWIN: Is to accept staff's
25 recommendation and uphold.

1 MR. ECCLES: The site's ineligibility.

2 MR. GOODWIN: The site is ineligible.

3 So hearing no vote. Those against say aye.

4 (No response.)

5 MR. GOODWIN: Let me clarify this. The motion
6 has been made and seconded to uphold staff's
7 recommendation, so a vote for it would uphold staff's
8 recommendation and find the site ineligible. A vote
9 against it would be to not find the site ineligible, and
10 then we could entertain a motion to find the site eligible
11 as opposed. We could withdraw this.

12 MR. BRADEN: Who made the motion?

13 MS. THOMASON: Me.

14 MR. GOODWIN: Sharon made the motion.

15 MR. ECCLES: Who seconded?

16 MR. GOODWIN: I thought Paul seconded.

17 MR. BRADEN: Did I second it?

18 MR. GOODWIN: Yes. Do you want to withdraw
19 your motion?

20 MR. BRADEN: I'll withdraw my second.

21 MR. GOODWIN: You withdraw your second, so now
22 we have a motion with a second. Do I hear another motion
23 now?

24 MR. VASQUEZ: Well, I'll second her motion.

25 MR. GOODWIN: You second her motion. Okay. So

1 the motion is to hold the site ineligible, thus agreeing
2 with staff's recommendation. All those in favor say aye.

3 (A chorus of ayes: Members Goodwin, Reséndiz,
4 Thomason, Vasquez.)

5 MR. GOODWIN: Opposed?

6 MR. BRADEN: Nay.

7 MR. GOODWIN: The motion passes, the site is
8 ineligible.

9 MR. GOODWIN: Moving on to item 7(g), Sharon.
10 Are you ready, Sharon?

11 MS. GAMBLE: I'm ready. Good afternoon, Board.
12 My name is Sharon Gamble, and I'm the administrator for
13 the Competitive Housing Tax Credit Program at the
14 Department.

15 This item is the presentation, discussion, and
16 possible action to issue a list of approved applications
17 for 2019 competitive housing tax credits in accordance
18 with Texas Government Code Section 2306.6724(e).

19 The Department's Board is required by this
20 section to review the recommendations of Department staff
21 regarding applications and shall issue a list of approved
22 applications each year, in accordance with the Qualified
23 Allocation Plan, not later than June 30.

24 Moreover, as required by Texas Government Code
25 23206.24(f), the Board shall issue final commitments for

1 allocations of housing tax credits each year, in
2 accordance with the Qualified Allocation Plan, not later
3 than July 31.

4 I want to make it clear that this list that
5 we're talking about today is simply a list of applications
6 that are eligible for an award; that is, they have not
7 been terminated or withdrawn from the cycle. On July 25
8 you will consider a list of applications that are
9 recommended by staff for award, so no award decisions are
10 being made today, just to get that clear for everyone.

11 134 competitive HTC applications were submitted
12 prior to the application deadline of March 1, 2019.
13 Counting actions taken at this meeting, 13 applications
14 have been withdrawn or terminated. Applications that
15 maybe ineligible for award due to requirements of Texas
16 Government Code Section 2306.6711(f) related to the two-
17 mile same-year rule, and/or Texas Government Code Section
18 2306.6711(h) related to developments reserved for elderly
19 persons are included in this list with their status
20 identified.

21 This is the list of approved applications as
22 required by Code. They are approved in the sense that
23 they have not yet been identified as having any material
24 deficiency or other defect that would cause them to be
25 ineligible, or if such matters have been identified, they

1 are still within the period where such matters may be
2 appealed.

3 As provided by 10 TAC Section 11.63 of the QAP,
4 award recommendations methodology, the Department will not
5 perform a detailed review of all applications. It reviews
6 priority applications that are most likely to be
7 competitive. Priority applications are identified based
8 on self-score, preliminary review, and other relevant
9 factors such as outcome of awards based on class.

10 As staff continues the review process,
11 applications remain subject to the identification of
12 material and/or administrative deficiencies, revised
13 scoring and/or applications may be found ineligible or to
14 involve ineligible applicants.

15 The list includes the current score for each
16 active application as well as relevant application
17 information. Those applications that have received a
18 final scoring notice are identified in the review status
19 column with a C, and there's probably been some since this
20 was posted so not all of those might be indicated.

21 The C indicates that a complete program review
22 has been completed. Those applications that are currently
23 under review are identified with UR, and those with N have
24 not been prioritized for review.

25 At this time applications may remain subject to

1 underwriting, completion of any remaining program review,
2 and a previous participation review. Further, the credit
3 amount reflected on this list is in most cases the
4 requested and may change to reflect the recommended credit
5 amount and/or may have conditions placed on the amount in
6 July if recommended for award. Information about
7 completed underwriting reports will be found on the Real
8 Estate Analysis web page.

9 In addition to applications that may be removed
10 from the list for issues of financial infeasibility,
11 applications may also be removed from the list of approved
12 applications as determinations are made on appeals or as
13 the Board determines under operation of rule of law.

14 Staff recommends that the Board approve the
15 attached list of active applications for the 2019
16 competitive housing tax credit round, modified as follows
17 to reflect actions taken at this meeting: application
18 19013 Our lady of Charity will be removed from the list;
19 application 19180 St. Elmo Commons will be removed from
20 the list; application 19185 Edgewood Villas will be
21 removed from the list; application 19227 Reserve at
22 Risinger will be removed from the list; and application
23 19301 Prince Hall will be removed from the list.

24 I believe that covers all the actions. I can
25 answer any questions that you have.

1 MR. GOODWIN: Any questions?

2 (No response.)

3 MR. GOODWIN: If not, do I have a motion to
4 approve staff's list, receive their report?

5 MR. VASQUEZ: Move to approve the report.

6 MR. GOODWIN: Second?

7 MS. THOMASON: Second.

8 MR. GOODWIN: Any discussion? Did you want to
9 speak?

10 MS. WINFIELD: Good afternoon, Chair and Board.

11 My name is Janae Winfield. I'm chief of staff for
12 Houston City Council Member Martha Castex-Tatum. I am
13 here because she is serving with the Texas Municipal
14 League today, and I wanted to share a letter that she's
15 authored for you all regarding the applications that will
16 be moving forward as it relates to our council district,
17 if I may.

18 "I am Council Member Martha Castex-Tatum,
19 council member for District K, where we are currently
20 presented with six potential tax credit applications in a
21 three-mile radius in our area.

22 "On November 16, 2018, I hosted a community
23 meeting where Edison Lofts and Blue Ridge Villas presented
24 their plans and sought community input. This is the
25 second year these two developers met with District K

1 residents. No other developers had reached out at that
2 time.

3 "I'd like to express my complete support for
4 Edison Lofts, that's application 19327; Blue Ridge Villas,
5 application 19257; and Belfort Park Apartments rehab
6 project, that's application 19076.

7 "I also want to take time to express my
8 thoughts on the entire application process. It seems as
9 if the process was previously done over months, and this
10 year we had weeks from the community about potential
11 applications and their opportunities for comments.

12 "I think it is extremely important as you
13 deliberate and tally points for each of the projects that
14 there be an increased point value for citizen input. As a
15 local elected official I have worked intimately with area
16 groups to develop long range plans and build consensus.

17 "Recently Fort Bend Houston was announced as a
18 City of Houston Complete Community, which will increase
19 our public-private partnership opportunity on the area and
20 enhance the revitalization efforts in Fort Bend Houston.
21 While we have identified projects we support as a
22 community, please note we are not looking to support an
23 overabundance of apartment complexes in this designated
24 area. Please consider the effect of a concentration of
25 apartment complexes in this area where targeted work is

1 occurring to improve our school district.

2 "Edison Lofts is working with Fort Bend ISD to
3 incorporate a pre-K program near the site that would
4 benefit young school-age children. Blue Ridge Villas
5 would serve as a great option for seniors in the community
6 who are looking to downsize and remain in their
7 neighborhood. Belfort Park Apartments is an example of
8 exactly what we like to see in our community. With over
9 20,000 apartment doors already" --

10 MR. GOODWIN: I hate to interrupt you, but I'm
11 having trouble finding the relevance in here of what it
12 has to do with the agenda item of approving this list. I
13 think you might be more appropriately when we get into
14 public comment for this.

15 MS. WINFIELD: Are we not there yet?

16 MR. GOODWIN: No, we're not. We have a motion
17 on the floor to approve the list that's been presented to
18 us. And I'm going to kind of stop you if you don't mind.

19 MS. WINFIELD: That's no problem.

20 MR. GOODWIN: We'll see if there's anybody else
21 that wants to speak to this, and you can start back when
22 we get into the next section.

23 MS. WINFIELD: Thank you.

24 MR. GOODWIN: Is there anybody that wants to
25 speak to this motion that's on the floor?

1 SPEAKER: What was the motion?

2 MR. GOODWIN: The motion is accept and approve
3 the list as presented. It's in the Board book as amended.

4 MR. FOSTER: Mr. Chairman, my name is Claude
5 Foster. Let me just get some clarification. So can we
6 identify specific projects we would like to see removed
7 from the list as part of the motion?

8 MR. GOODWIN: No.

9 MR. FOSTER: So we have to wait until the
10 public section.

11 MR. GOODWIN: Public comment.

12 MR. FOSTER: Coming up next. Okay.

13 MR. GOODWIN: The question was just asked if it
14 was time to bring up specific projects that you would like
15 to see removed from the list, and I don't think this is
16 the time to do that. Is it, Beau?

17 MS. WINFIELD: While there are some that we are
18 supporting, there is a project that is on the list that is
19 going to move forward. So I'm happy to wait till public
20 comment just to clarify, because there are several other
21 community residents that will come behind me.

22 As far as those that are moved, you guys talked
23 about Briarwest, that will come up in my comments later as
24 it relates to the voluntary compliance agreement that the
25 City of Houston is under. So again, it can wait for

1 public comment.

2 MR. GOODWIN: Well, we have a process for how
3 these applications got to this stage and phase, and if you
4 had comments on those, I think the time to make those
5 comments is long past.

6 MR. ECCLES: And I would agree with that
7 assertion. However, to the extent that you can make sure
8 that your comments are being addressed to projects that
9 are on the list, I'm not sure that it's really going to be
10 possible at this phase for the Board to exclude them -- in
11 fact, I'm quite certain it's not; however, this would be
12 the time to talk about that.

13 As I heard briefly discussion about the rules
14 should allow more notice to people, that's not in
15 reference to this agenda item, that would bring up when
16 the QAP gets open. So if you could just make sure that
17 when you're discussing things that you identify that it is
18 actually part of this agenda item, it is something that is
19 on this list.

20 Again, with those parameters, this is a time
21 for comment, but it's not really going to be a place where
22 there's a process in place where the Board can just say,
23 okay, never mind, that's off the list.

24 MS. WINFIELD: Okay. I totally understand that
25 and we'll wait for the public session. I will say,

1 because she's not here, she included all of her comments
2 for everything just in one letter and it's not ordered
3 specifically.

4 So yes, there are comments about the QAP, there
5 are some comments about projects that were on this list
6 that one was not removed, thankfully, but again, I can
7 wait for the public comment after this item passes.

8 MR. GOODWIN: Okay.

9 MR. FOSTER: Mr. Chairman, the reason I keep
10 coming back, because we've brought 65 senior residents
11 here from the community that are affected by some of these
12 projects on the list, because it was our understanding
13 that the items would be on the agenda at this Board
14 meeting, so we chartered a bus and brought those residents
15 up here, because they care about their community and they
16 wanted to have input about the items that are on that
17 list, and we were told that it would be on the agenda and
18 this was our time to come to this particular meeting.
19 This has been in ongoing plannings for months to be here
20 on June 27.

21 And so I think that's where the confusion is
22 at. It's an agenda item we were told that we could come
23 to this particular meeting and talk on those agenda items.
24 And so I would argue that if they're presenting a list to
25 you for consideration that we should be afforded the

1 opportunity to say whether or not we are for or against
2 that list that's being provided to the Board.

3 MR. GOODWIN: Okay. I don't think we have a
4 problem with you saying you're for or against specific
5 item by item of what's on here, knowing that there's a
6 procedure to take that input and that procedure is kind of
7 long past.

8 I wouldn't want somebody to be under the
9 illusion that we're going to go in here and say, well,
10 since you said you didn't like application 19330 -- and I
11 don't know if that's one on your list, but if it is, I'll
12 say, well, gee, I'm sorry.

13 MR. FOSTER: I think the confusion is the fact
14 that we were told that it was on the particular agenda
15 item, it is item 7(g), and that we would have an
16 opportunity to come here and comment, provide additional
17 testimony as to our reasons for either supporting or not
18 supporting a particular project.

19 MR. GOODWIN: And who told you that?

20 MR. FOSTER: That's the information we got from
21 the staff.

22 MR. GOODWIN: Okay. Fine.

23 MS. HOLLOWAY: We have received a great deal of
24 communication from these folks, and we've received
25 petitions and letters, and there's actually a whole other

1 set of documents in the Board materials that's everything
2 that we have received as far as public comment.

3 They had asked when they could talk to the
4 Board, because this item as the list is really the only
5 opportunity before the late July meeting for them to come
6 and provide their comments to you regarding these
7 applications.

8 So yes, I told them that they would have an
9 opportunity to come and provide comment, just like an
10 attorney representing an applicant. So I apologize if I
11 misstated.

12 MR. GOODWIN: I don't know that you did. We've
13 never had this situation as long as I've been on the
14 Board, so frankly, I was just taken a little off guard
15 that it wanted to go application by application, and when
16 we were hearing the letter it sounded like stuff that
17 should have been in the QAP committee or they should have
18 been involved in rulemaking, et cetera, et cetera.

19 And the other is I'm a little lost as to what
20 authority we can have as it relates to that other than to
21 hear their comments, which we'll be more than happy to do.

22 I don't want to not give you a voice. I just also don't
23 want you to mislead you to think that we're going to take
24 some of those applications off this list based on your
25 comments.

1 So we'll continue. And in the brevity of time,
2 I'm going to ask you to keep your comments to three
3 minutes, and since we've gone three hours without a
4 restroom break, I'm sure from time to time one of us
5 might -- only one of us can leave at a time to still have
6 a quorum.

7 Go ahead.

8 MR. EVANS: Yes, sir. My name is Carl David
9 Evans. I'm the president of Fort Bend Houston Super
10 Neighborhood Council 41.

11 I want to make it clear that there is no
12 NIMBYism in Fort Bend Houston Super Neighborhood. Our
13 board is not divided. Our strategic planning committee
14 has vetted all proposed developments and made the
15 determination, based upon our strategic plan developed by
16 our strategic planning committee, which consists of
17 designated representative from our Fort Bend Houston
18 communities and with our council, working with Council
19 Member Martha Castex-Tatum in the best interest of Fort
20 Bend Houston communities, we elected to support the Edison
21 Lofts, number 19327; and Blue Ridge Villas, application
22 number 19257.

23 And I am here to say that Fort Bend Houston --
24 to make it clear that there is no NIMBYism present within
25 Fort Bend Houston. I therefore want to ask you to support

1 application number 19327, the Edison Lofts, and Blue Ridge
2 Villas, application number 19257.

3 We also would like to ask you to deny
4 application 19242, The Tramonti; application number 19245,
5 the Huntington Chimney Rock; and application number 19109,
6 Verdin Square.

7 And with the Chairman's permission, I'd like to
8 yield the rest of my time to Mr. Willie Rainwater.

9 MR. GOODWIN: Okay. And by the way, you've
10 made this recommendation without each person needing to
11 come up. You said there's 55 people. Could those people
12 stand up if they all agree with what you're requesting.

13 (Nos from audience members.)

14 MR. GOODWIN: You want to speak?

15 (Nos from audience members.)

16 MR. GOODWIN: No, you don't want to stand up,
17 or no, you don't want to speak.

18 (Audience members said they don't agree.)

19 MR. GOODWIN: I guess I'm confused.

20 MR. EVANS: I would like to say this. I'm the
21 president of the Super Neighborhood Council. We have
22 about 30 homeowners associations in our council
23 representing almost 25- to 30,000. There is a few people
24 who does not agree with the decision that is made by the
25 board, but the board itself has voted, and they are not

1 divided on that.

2 MR. GOODWIN: On what you just stated?

3 MR. EVANS: Yes.

4 MR. GOODWIN: Okay. Who's next?

5 MR. RAINWATER: Good afternoon. My name is
6 Willie Rainwater, and as he said, I am here in opposition
7 to the project 19109 Verdin Square. And the reason that I
8 oppose that project, the main reasons that I oppose the
9 project is because it goes against the TAC that you guys
10 have, and it goes against the TAC in a couple of ways.

11 First of all, the mileage that they state from
12 the so-called full service grocery store, which is Family
13 Dollar -- a Family Dollar is not a full service grocery
14 store. And the points that were given to this development
15 was one point for one mile. Well, from the development to
16 the Family dollar is 1.1 mile, it's not one mile, it's one
17 mile and two-tenths of a mile, so that's outside of what
18 your TAC says.

19 Also, they tell you that there's a park. Now,
20 the park for their outdoor recreation that they chose is
21 in Missouri City; it's not Houston's municipality. Now,
22 the closest Houston park would be Blue Ridge, and that
23 would be like 2.7 miles from that development. The
24 development is 1.2 miles from the wrong park which is in
25 Missouri City, and that's a whole different municipality.

1 Now, both places, Fort Bend Houston and Fort Bend Missouri
2 City are both in Fort Bend County.

3 The other thing about the Verdin Square is that
4 the licensed daycare -- the daycare is supposed to be
5 within two miles, so the TAC says. The daycare actually
6 is 2.2 miles. And I have pictures of all this that I'm
7 telling you, because I drove it, and I titled each one, I
8 put the miles by it, so I can share this with you. But
9 that's how I know that it's outside of what your TAC says.

10 Now, the thing also is that the development
11 site is in an area where it's a four-lane highway that has
12 no sidewalks, it's right next to an expressway, and you're
13 putting people in a location where there's no public
14 transportation. The closest bus stop is 2.7 miles away.
15 They don't have a pharmacy close by, that's going to be
16 another couple of miles. So basically --

17 MR. GOODWIN: I need for you to wrap it up,
18 sir.

19 MR. RAINWATER: Okay. And the last I'll say is
20 that we're not against housing, but what we are is against
21 putting people in places that don't help them, because
22 your mission statement says that you guys want good
23 housing so it helps everybody. Well, this doesn't do
24 that.

25 MR. GOODWIN: Thank you.

1 MR. FOSTER: Mr. Chairman, this is going to be
2 real quick, but if you'll give me an opportunity to make
3 three points.

4 MR. GOODWIN: Inside of three minutes.

5 MR. FOSTER: Inside of three minutes. Thank
6 you very much.

7 As the staff indicated, we did send a letter
8 with a lot of our arguments, so I'm not going to go over
9 that. But there are some things I do want to bring to
10 your attention.

11 The impact of the HUD investigation on the City
12 of Houston had an impact on the way the city operates,
13 because what HUD found was the city was arbitrary in terms
14 of the way it approved low-income tax credit housing for
15 letters of support.

16 That's why you'll notice on this round of the
17 applications here, Houston submitted almost every
18 application that the developers submitted to them, and a
19 byproduct of that is it's changed the attitude of the
20 council members because they're under the belief, because
21 of the HUD investigation, that they can't deny -- or they
22 can't turn down any projects that come before them.

23 Otherwise, they will be found in violation of the HUD
24 findings of discrimination. And so there is an attitude
25 on council that they have to send everything to you all

1 and let you all sort it out.

2 And what does this impact do? The mayor -- I
3 support everything that the president said about the
4 projects that we support or don't support, but I just
5 wanted to inform you of this.

6 There are two projects, The Tramonti and
7 Huntington Chimney Rock that are going back to the City of
8 Houston for funding. The mayor has stated to us, to this
9 organization, to this community that he's not going to
10 approve the \$2.5 million funding for The Tramonti and the
11 \$2.6 million for the Huntington Chimney Rock.

12 And I think that's important for the Board to
13 know as you deliberate on what projects you're going to
14 approve because you don't want to approve projects where
15 the applicant doesn't have the money to complete the
16 project. It would be a waste. I've watched the member of
17 the Board because I know that's a concern.

18 And also, these developments perpetuate
19 segregation. These census tracts where these projects are
20 going to be going have a black and Hispanic population --

21 MR. GOODWIN: You're speaking specifically to
22 these two projects, sir?

23 MR. FOSTER: Yes, sir, to Huntington Chimney
24 Rock, The Tramonti, and Verdin Square, because the
25 neighborhood opposes those projects.

1 (Chatter from audience.)

2 MR. FOSTER: It is the Super Neighborhood
3 position that these projects perpetuate segregation. That
4 census tract is 93 percent black and brown, and it
5 continues the pattern of segregation in the City of
6 Houston of citing these developments in low-income tax
7 credit developments.

8 There are three consequences of this. The
9 residents of these developments are likely to be black.
10 Section 8 is one of the allowable sources of income that
11 you use to move into affordable housing. 89 percent of
12 the residents that are on Section 8, or the 17,000 people
13 that are on Section 8 in Houston are African American, 4
14 percent are Hispanic -- I mean, 6 percent are Hispanic and
15 4 percent are other.

16 MR. GOODWIN: Thank you.

17 MR. FOSTER: I can leave these remarks because
18 I did really want to bring home those three points.

19 MR. GOODWIN: Send them our staff and they'll
20 distribute them to the Board. Okay?

21 MR. FOSTER: Okay.

22 MS. GARDNER: Hello. My name is Regina
23 Gardner. I am the executive director of a grassroots
24 community organization in the Fort Bend Houston area. I'm
25 a social worker, community organizer, and education

1 advocate.

2 We have a group of stakeholders that have come
3 together to support the mission for resolving both
4 academic and disciplinary disparities in our local
5 schools. As members of this collaborative --

6 MR. GOODWIN: Let me interrupt you and ask
7 which of these applications on this list your comments
8 apply to.

9 MS. GARDNER: The Edison Lofts project.

10 MR. GOODWIN: Edison Lofts?

11 MS. GARDNER: Yes. So we're supporting a
12 mission to support both academic and disciplinary
13 disparity in local schools, to address that issue.

14 And so as a part of this collaborative, we want
15 to support the Edison Lofts project because it stands out
16 in contrast to the other applicants. Now, we don't want
17 to be inundated with multiple projects like this, of
18 course, but this particular project supports our local
19 mission, and we want to ask you to approve it because of
20 the following benefits.

21 It has an early childhood literacy center which
22 is a public-private partnership that allows for more
23 community involvement that will directly impact our poor
24 educational outcomes that we're having.

25 The project includes restaurants, a dental

1 office, and a bank, which will boost the economic activity
2 in the area.

3 It will have onsite security that will address
4 the longstanding problems we've had with vagrancy and
5 dumping on that property. I grew up in that area, and I
6 know so well that particular problem with that problem.

7 It includes a first-class performing arts
8 center, green space and an amphitheater, which will
9 significantly improve the aesthetics and the local built
10 environment.

11 As a community social worker, I understand the
12 research, and I understand how the research affects the
13 social determinants of health in our community. In many
14 instances we are fighting for our very lives when it comes
15 to education, health care, economic stability, the built
16 environment, and even the social context. But what I want
17 to stress to you that this particular project addresses
18 all of those factors that impact the overall health in our
19 community.

20 The education will be impacted by the early
21 childhood literacy center. Our access to health care will
22 be impacted by the dental office. The economic stability
23 will be impacted by the businesses that are brought to the
24 community. The built environment will be impacted by the
25 green space and the amphitheater that will be in that

1 location. And the social context is even impacted because
2 it is a testament of what community members can do when
3 they come together to impact their destiny.

4 MR. GOODWIN: Thank you.

5 MS. GARDNER: Thank you.

6 MR. GOODWIN: I want to remind those speaking
7 we're not approving anything by approving this list.
8 We're not approving a project, we're not pulling a project
9 off. The list, as Sharon explained it, is what will be
10 worked on, and then final determination for approval and
11 awards will be made in the July 25 meeting.

12 MS. CARTER: Good afternoon. My name is
13 Charity Carter with the Houston Arts Foundation.

14 I'm here in favor of the Edison Lofts mixed-
15 income development, application number 19327; and Blue
16 Ridge Villas senior development, application number 19257.

17 I'm here specifically to speak about the
18 process, our process. Over the last three years our
19 organization has worked diligently with Briargate
20 community, its board, the City of Houston, Fort Bend
21 Houston Super Neighborhood Council 41, and other
22 stakeholders, including the late Council Member Larry
23 Green, Fort Bend County Commissioner Grady Prestidge,
24 State Representative Ron Reynolds, City of Houston Mayor
25 Sylvester Turner, and our current Council Member Martha

1 Castex-Tatum, the Fort Bend Houston Super Neighborhood
2 strategic plan committee and the Fort Bend Independent
3 School District regarding community support and master
4 plan revitalization of a mixed use development efforts.

5 The process to gain support for the Edison
6 development is a case-making project that capitalized on
7 our local community's assets, inspiration and potential
8 with the intention of creating public spaces that promote
9 our community's health, happiness and well-being.

10 Additionally, in this process we brought Bill
11 Rowell [phonetic], the owner representative of a 20-year
12 blighted property, to inform Briargate board of directors
13 of the owner's support of the sale of the property for the
14 purpose of mixed-use development.

15 It is my ask that the process for support be
16 strongly taken into consideration for the Edison Lofts,
17 application number 19327, that has the highest priority
18 with the greatest impact.

19 Local community organizations, local community
20 leaders, government officials were engaged in this process
21 that took time, resources, energy and effort at the
22 developing partner to get stakeholder and community
23 support for the success of this project.

24 Thank you.

25 MR. GOODWIN: Thank you.

1 We are fast losing Board members because they
2 have flights and things, and nothing that is going to be
3 said is going to probably change anything off of this
4 list, so after this we're going to have public comment
5 where you can make exactly the same comments that I've
6 heard today.

7 So if no one objects -- I don't know about the
8 other Board members as far as what their time commitment
9 is, but I would recommend that we take a vote while we
10 still have a quorum so we can get this list approved, and
11 then afterwards have public comment, if that's acceptable
12 to those of you that want to speak. Anybody object to
13 that?

14 (Nos from audience.)

15 MR. GOODWIN: If not, we'll call for a vote on
16 the motion, which is to approve this list.

17 MR. ECCLES: With the oral modifications.

18 MR. GOODWIN: With the modifications that
19 Sharon delineated. All those in favor say aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: Thank you, Sharon.

24 Okay. We're now in the part where we'll still
25 remain and take public comments as long as we have a

1 quorum. We're down to four; when the next person has to
2 leave, this is over.

3 Start reading from your letter, if you want,
4 where you were.

5 MS. WINFIELD: Actually, I put the letter aside
6 because most of the points were made.

7 Again, chief of staff for the council member
8 here on her behalf.

9 I hope what you see now is kind of
10 representation of the public's understanding of your
11 process, and so one thing our office has tried to do,
12 though there is a state rep and a state senator that
13 should explain the state's process and the state's
14 business, we have tried to explain the process and got our
15 constituency through it so they would so they would
16 understand the appropriate time to come before the body
17 and comment exists.

18 Most of our residents here today did speak at
19 the Houston public hearing and have their comments
20 documented for your consideration as you move along to
21 approve or not approve the final list that you'll look at
22 in July.

23 But specifically as it relates to projects --
24 to just not hold you here, the Belfort Park Apartments
25 which is 19076 -- and I understand it's open comment --

1 the council member is very much so supportive of this
2 project because it is a rehab. It will reduce the number
3 of doors that are in this particular area of our council
4 district. Right now we estimate about 20,000, and a lot
5 of these apartments are out of date, there's much crime in
6 these areas, and so to see a rehab where there's a
7 reduction of the number of doors and you're making
8 something nicer for people in this income bracket to live
9 in is great, and she's supportive of that.

10 As it relates to project 19327 Edison Lofts,
11 because this area of Fort Bend Houston has been designated
12 a complete community, this project is in line with much of
13 the work that the City of Houston at the local level is
14 doing to revitalize the area.

15 And project 19257 Blue Ridge Villas is a senior
16 complex that the council member believes complements,
17 again, the work that is going on in the Fort Bend Houston
18 area.

19 There are three projects that the council
20 member is not here to support today. That is 19242, The
21 Tramonti; 19245, Huntington at Chimney Rock; and 19109,
22 Verdin Square.

23 And so getting back to the process of how an
24 application moves from the city ultimately to the state,
25 yes, our housing department does bring a resolution of

1 support before the city council.

2 Because of the voluntary compliance agreement,
3 many council members were asked not to strike projects
4 from the list because our CDBG funds are at risk. As you
5 know, we're still recovering from Hurricane Harvey, its
6 impact on Houston, and so CDBG funds aren't just for
7 housing, as you know, they do go toward some
8 infrastructure projects, and in our council district we
9 have many infrastructure projects.

10 Specifically for Fort Bend Houston, the area
11 where two of the three projects we are supporting reside,
12 we need CDBG dollars for our infrastructure development
13 there. So we didn't want to do anything that would put us
14 at risk. And so I want to make it very clear on her
15 behalf that just because she did not oppose it and it made
16 its way here to you, it doesn't mean that the council
17 member is supportive.

18 And then last, because I may not be here in
19 July or at a later date to talk about the QAP, if I could
20 wrap up, the council member believes that while there are
21 points in this process for a state rep's letter, that
22 there should be points for community input, because these
23 are the people that have to live near what will exist for
24 maybe 30 years in their area.

25 MR. GOODWIN: Thank you.

1 MS. HUGHES: My name is Cheryl Hughes, and I am
2 a 30-year resident of the Briargate community.

3 I've listened to them talk about being on the
4 project for the last three years or the last two years.
5 The Briargate community has not been informed, we have
6 never been invited, we've never received anything from our
7 representative, and our super neighborhood does not even
8 have us listed on their website.

9 We're caught in the middle of Fort Bend and
10 Houston, and unfortunately we're in the struggle between
11 the two. They have projects going all around us. We're
12 currently surrounded by a 1,000-unit low-income apartment
13 complex within five miles, built within five miles of us.

14 Now they want to put some additional complexes that will
15 be within a mile of each other: The Edison Lofts, the
16 Huntington project and The Tramonti project will all be
17 within one mile of each other.

18 We do not support the Edison Lofts. The Edison
19 Lofts, we would like to see emergency facilities, other
20 things to come to that particular area. They want to put
21 a sports complex, they want to put a natatorium, but we
22 have to travel eight to ten miles out of our way to go to
23 emergency facilities, to go to doctors, to medical center.

24 We don't have the resources within our neighborhood to
25 support the apartment complex.

1 So I just want to go on record that we do not
2 support the Edison Lofts.

3 MR. GOODWIN: Thank you.

4 If you're going to speak, I would ask you to
5 move up to the first two rows, which is a common practice,
6 so we don't have to wait for you to walk from the back.

7 MR. ADAMS: Ladies and gentlemen, my name is
8 Aaron Adams.

9 I am a resident and homeowner in Briargate
10 subdivision for the past 17 years. In that time I've seen
11 many changes in my subdivision. In my block alone, when I
12 initially moved in, more than 75 percent of the folks were
13 homeowners. Now, less than 50 percent of the residents
14 are homeowners. Section 8 housing is steadily being
15 increased throughout the subdivision as well. Now, with
16 the proposed building of the Edison Lofts at 7100 West
17 Fuqua, homeownership will decrease even more.

18 I am in opposition of the TDHCA development
19 number 19327 because, number one, we don't need more
20 affordable housing in Briargate; number two, it would
21 negatively change the character of our neighborhood;
22 number three, it would increase crime to the percentage of
23 the influx of residents engaging in illegal activities;
24 number four, it would decrease property values; number
25 five, it would lower the quality of our local public

1 schools due to overcrowding; number six, it would increase
2 traffic; number seven, it would not be well maintained;
3 number eight, affordable housing projects for low-income
4 residents usually become an eyesore over time due to lack
5 of upkeep; number nine, it would remove incentives to
6 become self-sufficient through homeownership; and number
7 ten, its residents would not fit in with the existing
8 community because of the homeowners in Briargate have been
9 residents for more than 20 years and are at or near
10 retirement age.

11 Thank you very much.

12 MR. GOODWIN: Thank you.

13 So if you don't mind, how many more people
14 intend to talk, show of hands. I'm sorry, I can't see.
15 There's some of you in the back that want to talk? Am I
16 correct in identifying just two people that want to talk,
17 two, three?

18 I'm at a crossroads of whether we decide to
19 take an hour break for lunch, or we've been going now for
20 6-1/2 hours, so if there are just three more that want to
21 talk, everybody would agree you've got three minutes,
22 three more, and then we'll take a motion to adjourn.

23 If you want to speak, we don't want to cut you
24 out, but we also are going to break for lunch if we're
25 going to keep going and everybody in this room wants to

1 speak, or until another Board member leaves, and at that
2 time we won't have a quorum.

3 Yes, ma'am.

4 MS. TAYLOR ROSS: Is it morning or afternoon?
5 Thank you for listening to us today. I was a little
6 dismayed that we were -- I don't want to say misinformed,
7 because I think your staff works really hard, but it was
8 kind of discouraging but I am happy to know that y'all
9 think enough of this process and us to listen to us.
10 Thank you.

11 I come here brokenhearted because our
12 neighborhood is divided, as you can see. I came here to
13 speak against and in opposition of one project, the Edison
14 Lofts, project number 19326 -- 27 -- oh, my gosh -- 27.
15 But I have to say something because someone had the
16 opportunity to come up here and speak twice on this
17 subject.

18 I also was president of a Super Neighborhood
19 Council. Everyone here who don't know what a Super
20 Neighborhood Council is, it's something that they do in
21 Houston. It is an organization of organizations. It's an
22 organization of civic organizations, and the stakeholders
23 of those organizations are generally the presidents of the
24 civic clubs, civic organizations, the HOAs.

25 In our case we're old, so we're a CIA,

1 community improvement association, same thing as an HOA.
2 But I have to say this, and I want to ask the people who
3 are here who don't want to speak who came here to oppose
4 this project to please stand so you can see. Because if
5 you will just hear some of this you would think that
6 everybody in the Super Neighborhood Council or in the
7 Briargate community, which is inside of the Super
8 Neighborhood Council, is in support of this one project.

9 I agree with the Super Neighborhood Council
10 with the remainder of the projects that are cited to be
11 located in our area. They did a great letter, please read
12 it, they did some great research.

13 But everything that was said about those
14 projects, those proposed projects applies to the Edison
15 Lofts, every negative thing applies to the Edison Lofts
16 equally. The only thing that the Edison Lofts has that
17 they don't have is the art center, which seems like it
18 would be wonderful, actually, the art center part.

19 But understand that each civic organization
20 runs itself --

21 MR. GOODWIN: I need for you to wrap up.

22 MS. TAYLOR ROSS: Thank you. We are not -- the
23 Super Neighborhood Council does not dictate to each civic
24 organization, each civic organization runs itself. The
25 stakeholders come together to do other things.

1 This is the Briargate Community Improvement
2 Association. This is where the Edison Lofts is proposed
3 to be built in the center of Briargate.

4 MR. GOODWIN: Yes, ma'am.

5 MS. TAYLOR ROSS: No other civic organization
6 shares hardly any border with it.

7 MR. GOODWIN: Thank you. Thank you for your
8 comments.

9 MS. TAYLOR ROSS: Can I just say one more
10 thing, please?

11 MR. GOODWIN: I've held everybody else to three
12 minutes, it's really not very fair to let you stand up
13 here for five when everybody else has wrapped up in three.
14 I apologize.

15 So by my count we have two more people wanting
16 to speak. And after this we have one more person that
17 wants to speak.

18 SPEAKER: That's correct.

19 MR. GOODWIN: Okay.

20 MS. WARNER: My name is Shirley Warner, and I'm
21 speaking on opposition to Edison Lofts 19327.

22 I live in Briargate, and the reason I am
23 opposed -- I don't want to repeat what other people have
24 said, they've talked about all the reasons --

25 MR. GOODWIN: Thank you.

1 MS. WARNER: I just want to refer to the point
2 that nobody talked about how many units. They're talking
3 about 126 units. The disparity there is that it's 85
4 percent low-income. The rest of it is what they call
5 market-value income. So that's a big disparity.

6 The community, it's already been said, it's
7 inundated already with low income. So if it was flipped,
8 I think the people in Briargate would not oppose, but
9 that's too much of a burden on an already stressed
10 community.

11 The other thing is a couple of weeks ago I did
12 a crime report, extraction of a crime report. There were
13 77 crime incidents. I think it was 17 of them which was
14 violent and the rest of them were like theft, robbery,
15 some was even sexual assault.

16 So right in that very area that they're talking
17 about building Edison Lofts, a lot of that crime is
18 happening. There's only one police officer that patrols
19 that area. That's not going to change when Edison Lofts
20 comes along. I did hear someone talk about security, but
21 that's yet to be seen.

22 So I'm just talking about what is already
23 there. We don't have the infrastructure to take on the
24 burden of a community with that much low income.

25 Thank you.

1 MR. GOODWIN: Thank you.

2 The last person.

3 MS. BLUE: Good afternoon, as I sign in. My
4 name is Barbara Blue, B-L-U-E. I am a retired state
5 employee, and I've also worked for the City of Houston.

6 I have lived in Briargate, I'm a homeowner
7 there, I've lived there since 1982, coming up on my 40th
8 year. I've seen numerous changes. Even though you have
9 essentially allowed decay in the neighborhood, it does not
10 mean that you want to give it away to whomever's dream
11 they want to fulfill their dream. Their dream is not
12 necessarily Briargate's dream.

13 I want to have such things as was mentioned,
14 stores, banks, et cetera, but I also want to have my
15 quality of living to remain status quo or even better. I
16 am against the Edison Lofts.

17 I used to be the secretary for the Super
18 Neighborhood 41. I was in that meeting when the mayor and
19 Mr. Carter, myself, and the mayor's assistant talked about
20 housing. The mayor is the proponent of the housing, he
21 wants that project to have housing.

22 We do not necessarily need any apartments on
23 our main thoroughfare. There's enough congestion, there's
24 enough saturation of trash, of people -- not trash of the
25 people but trash from the people as they throw trash along

1 the way.

2 I want to make sure that you listen to the will
3 of the people, us in Briargate that live there. We do not
4 want it, clearly and succinctly, we do not want it.

5 MR. GOODWIN: Thank you.

6 MS. BLUE: You're welcome.

7 (Applause.)

8 MR. GOODWIN: So my last count we show that we
9 have all that wanted to speak have spoken.

10 So I would say to each and every one of you
11 that have spoken and to those of you that have come 180
12 miles from Houston to be involved in this process, I would
13 encourage you to examine the TDHCA process and see where
14 and when you can have input that will affect these types
15 of applications that are in your neighborhood and when you
16 can have the most impact to prevent them if you're opposed
17 to them or to support them if you're in favor of them.

18 I think the more you understand and know about
19 this process -- there have been a lot of times for you to
20 have input. This agency is extremely transparent. We
21 have on our website -- you heard Sharon say we post on
22 here the applications that are under review, the ones that
23 have already been reviewed, those that probably won't be
24 reviewed. There is a lot of time to have your input

25 And I can tell you all care about your

1 communities and our neighborhoods and your children and
2 your families, and I think all of us as Board members
3 share that with you, we care about your neighborhood, your
4 families, we care about our own families, our own
5 neighborhoods, and we understand exactly where you're
6 coming from.

7 So we appreciate you coming today. Thank you
8 very much, and we agreed that we were going to cut it
9 short as far as public comments. You're welcome to come
10 back to our next Board meeting and make other comments if
11 you would.

12 With that, I'm going to entertain a motion to
13 adjourn.

14 MR. BRADEN: So moved.

15 MR. GOODWIN: Second?

16 MR. VASQUEZ: Second.

17 MR. GOODWIN: Moved and seconded. All those in
18 favor say aye.

19 (A chorus of ayes.)

20 MR. GOODWIN: We are adjourned.

21 (Whereupon, at 1:44 p.m., the meeting was
22 adjourned.)

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MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: June 27, 2019

I do hereby certify that the foregoing pages,
numbers 1 through 256, 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.

DATE: July 1, 2019

(Transcriber)

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