

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

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

September 5, 2019
8:03 a.m.

MEMBERS:

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

BOBBY WILKINSON, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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1
2 MR. GOODWIN: I call to order the Board meeting
3 of the Texas Department of Housing and Community Affairs,
4 September 5, 2019.

5 First we'll start with roll call. Ms. Bingham?
6 She's here, I know.

7 MS. BINGHAM ESCAREÑO: Here.

8 MR. GOODWIN: Mr. Braden?

9 MR. BRADEN: Here.

10 MR. GOODWIN: Ms. Reséndiz?

11 MS. RESÉNDIZ: Here.

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 will stand and join me and Bobby in the
18 pledge to the American flag and the State flag.

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

21 MR. GOODWIN: We have a guest from the
22 Speaker's Office that we would like to recognize, Jennifer
23 Saenz.

24 Jennifer, would you stand up? Glad to have
25 you, Jennifer.

1 (Applause.)

2 MR. GOODWIN: We also have someone who is here
3 at our last Board meeting who has served this Board very
4 well, and our executive coordinator, Terri Roeber.

5 Terri, thank you for all that you have done for
6 us as a Board and for the agency and for the people of the
7 State of Texas. Thank you very much. We're going to miss
8 you.

9 (Applause.)

10 MR. GOODWIN: Terri is in perfect health, she's
11 retiring. I guess I should have stated that.

12 (General laughter.)

13 MR. GOODWIN: Michael, we have a resolution,
14 two resolutions. All right.

15 MR. LYTTLE: The first one reads as follows.
16 It says:

17 "Whereas, the U.S. Department of Energy has
18 designated October as National Energy Awareness
19 Month;

20 "Whereas, the Weatherization Assistance
21 Program, the nation's largest residential energy
22 efficiency program, was established by the U.S. Department
23 of Energy in 1976 to make homes more energy-efficient,
24 safer, and healthier for those with low and moderate
25 incomes;

1 "Whereas, the Texas Department of Housing and
2 Community Affairs administers a Weatherization Assistance
3 Program, funded with both U.S. Department of Energy funds
4 and Low Income Home Energy Assistance Program funds, which
5 is operated by a network of community organizations,
6 nonprofits and local governments;

7 "Whereas, the Texas Weatherization Assistance
8 Program has injected millions of dollars into communities
9 to improve thousands of homes, thereby helping Texans,
10 including many of whom are elderly, disabled, or families
11 with young children, conserve energy and reduce utility
12 costs;

13 "Whereas, the Program conducts computerized
14 energy audits and uses advanced diagnostic technology,
15 investing as much as \$7,541 in a home and providing an
16 array of improvements that include weather stripping of
17 doors and windows; patching cracks and holes; insulating
18 walls, floors, and attics; replacing doors, windows,
19 refrigerators, and water heaters; and repairing heating
20 and cooling systems; and

21 "Whereas, weatherization efforts contribute to
22 the state's economic, social, and environmental progress
23 by creating jobs; prompting the purchase of goods and
24 services; improving housing; stabilizing neighborhoods;
25 reducing emissions; and decreasing the risk of fires;

1 "Now, therefore, it is hereby resolved, that
2 the Governing Board of the Texas Department of Housing and
3 Community Affairs does hereby celebrate October 2019, as
4 Energy Awareness Month in Texas.

5 "Signed this fifth day of September 2019."

6 MR. GOODWIN: Do I hear a motion to approve
7 this resolution?

8 MR. BRADEN: So moved.

9 MR. GOODWIN: Second?

10 MS. THOMASON: Second.

11 MR. GOODWIN: It's been moved and seconded.
12 Any discussion?

13 (No response.)

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

15 (A chorus of ayes.)

16 MR. GOODWIN: Opposed?

17 (No response.)

18 MR. GOODWIN: Okay.

19 MR. LYTTLE: Okay. Mr. Chairman and Board, our
20 second resolution reads as follows:

21 "Whereas, September 15, 2019, through October
22 15, 2019, is Hispanic Heritage Month, and has a nationally
23 designated theme of "Hispanic Americans: A History of
24 Serving Our Nation," to reflect on Hispanic Americans'
25 service and contributions to the history of our Nation;

1 "Whereas, September 15th was chosen as the
2 starting point for the celebration because it is the
3 anniversary of independence of five Latin American
4 countries: Costa Rica, El Salvador, Guatemala, Honduras
5 and Nicaragua. All declared independence in 1821. In
6 addition, Mexico, Chile, and Belize celebrate their
7 independence days on September 16th, September 18th, and
8 September 21st, respectively;

9 "Whereas, the Texas Department of Housing and
10 Community Affairs (the Department) recognizes the
11 significance of Hispanic Heritage Month as an important
12 time to remind us of the many contributions and service to
13 Texas and the United States by Americans whose ancestors
14 came from Spain, Mexico, the Caribbean, Central America,
15 and South America;

16 "Whereas, the Department recognizes the deep
17 historical importance of generations of Hispanic Americans
18 to the American story and how Hispanic American history,
19 cultures and traditions shape our character, define our
20 beauty, strengthen our patriotism, and enhance our future;
21 and

22 "Whereas, the Department recognizes that the
23 contributions and achievements of the diverse cultures
24 within the Hispanic community positively influence, enrich
25 and strengthen our nation as one diverse community of

1 Americans;

2 "Now, therefore, it is hereby resolved, that
3 the Texas Department of Housing and Community Affairs:

4 "(1) recognizes the significance of Hispanic
5 Heritage Month as an important time to acknowledge,
6 appreciate, and celebrate the history of Hispanic
7 Americans, and encourages the continued celebration of
8 this month to provide an opportunity for all Texans to
9 learn more about Hispanic American history, culture, and
10 tradition, and their contributions to the history of our
11 Lone Star State and our Nation; and

12 "(2) recognizes that in the pursuit of the goal
13 and responsibility of providing equal housing
14 opportunities for all, the Governing Board of the Texas
15 Department of Housing and Community Affairs does hereby
16 celebrate September 15, 2019, through October 15, 2019, as
17 Hispanic Heritage Month in Texas and encourages all Texas
18 individuals and organizations, public and private, to join
19 and work together in amplifying our voice to continue to
20 observe Hispanic Americans' history, cultures, and
21 traditions and the importance of equal housing treatment
22 and opportunity for all.

23 "Signed this 5th day of September 2019."

24 MR. GOODWIN: Do I hear a motion to approve
25 this resolution?

1 MS. RESÉNDIZ: So moved.

2 MR. GOODWIN: Second?

3 MR. BRADEN: Second.

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

5 Any discussion?

6 (No response.)

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

8 (A chorus of ayes.)

9 MR. GOODWIN: Opposed?

10 (No response.)

11 MR. GOODWIN: Sorry, Paul. My hearing is not
12 what it used to be.

13 Next we move to the consent agenda. Are there
14 any items on the consent agenda that anybody would like to
15 see pulled for discussion?

16 (No response.)

17 MR. GOODWIN: If not, I'll hear a motion to
18 approve the consent agenda and reports.

19 MS. BINGHAM ESCAREÑO: So move to approve the
20 consent agenda.

21 MR. GOODWIN: Second?

22 MS. THOMASON: Second.

23 MR. GOODWIN: All in favor say aye.

24 (A chorus of ayes.)

25 MR. GOODWIN: All opposed?

1 (No response.)

2 MR. GOODWIN: Okay. Moving to action items.
3 We start with action item number 3, Internal Audit, and
4 we'll have a report from Ms. Thomason.

5 MS. THOMASON: The Audit and Finance Committee
6 meeting was this morning at 7:30. We had no action items
7 today so nothing to approve by the Board.

8 We had several report items that included the
9 presentation and discussion of our Internal Audit reports.

10 They were presented to us by Mr. Mark Scott, the director
11 of Internal Audit. We discussed the complaint resolution
12 process, the status of prior audit findings and
13 recommendations, and site visits of the migrant labor
14 housing facilities. He also provided a status update on
15 external audit activity at TDHCA.

16 That really concluded our report items, and
17 Mark is here if there are any questions from the Board.

18 MR. GOODWIN: Any questions from the Board?

19 (No response.)

20 MR. GOODWIN: If not, do I hear a motion to
21 accept the report from the Audit and Finance Committee?

22 MR. VASQUEZ: So moved.

23 MR. GOODWIN: Second?

24 MS. RESÉNDIZ: Second.

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

1 All in favor say aye.

2 (A chorus of ayes.)

3 MR. GOODWIN: Opposed?

4 (No response.)

5 MR. GOODWIN: Okay. At our last Board meeting,
6 somebody came over to me when it was over and said I ran
7 the meeting too fast and that they didn't get a chance to
8 speak up.

9 Can y'all hear me back there in the back?

10 (Affirmative response from audience.)

11 MR. GOODWIN: Okay. So we've reserved these
12 first two rows for people that are going to speak. If
13 you've got any items on the action items of the agenda
14 that you want to speak about, if you would, please move
15 up, don't wait for your item to come up. Just get up here
16 and let's fill up these first two. We won't stop the
17 meeting until everyone who is going to speak on any item
18 is in here and had a chance to be heard for three minutes.

19 MR. VASQUEZ: Or less.

20 MR. GOODWIN: Appropriately spoken, Mr.

21 Vasquez. Thank you.

22 So now we'll have item number 4, Fair Housing.

23 Good morning.

24 MS. TRACZ: Good morning. Good morning

25 Chairman and Board members. I'm Cate Tracz, Fair Housing

1 manager.

2 Item 4 requests your approval of the final
3 Analysis of Impediments to Fair Housing Choice, or the AI.

4 As you'll recall, a draft of this document was brought
5 before you back in March and presented in detail, seeking
6 approval to be released for public comment. So following
7 that March meeting, the draft AI was released for more
8 than 40 days of public comment between March 25 and May 6.

9 During this time, staff held 13 public hearings
10 around the state, one in each of TDHCA's service regions,
11 and consistent with our HUD approved citizen participation
12 plan. Notifications of these hearings was provided by
13 Listserv email distribution, a posting in the *Texas*
14 *Register*, postings to the TDHCA website, and several
15 announcements through the Department's social media
16 accounts.

17 Through the public comment process, eight
18 individuals gave comment at the public hearings and six
19 email submissions of written comment were also received.
20 I should note that some of the in-person commenters also
21 submitted email comments as well, and there were two
22 comments that were received outside of the public comment
23 period. So based on the public comment received on the
24 draft AI, a few changes have been made to the AI before
25 you today.

1 First, one comment requested that we extend the
2 scope of the AI to the local level and assist local
3 jurisdictions in the development of their own AIs. While
4 this would be beyond the authority and capacity of the
5 state and while the processes differ between the state and
6 the local AIs, we have added language regarding
7 coordination with local governments that are required to
8 perform an AI and the sharing of best practices with those
9 entities. So this new language appears in recommendation
10 5 which is titled, "Work or trade organizations, local
11 jurisdictions, and regulatory agencies for mutual
12 benefit."

13 Similarly, two comments critiqued the public
14 comment process and indicated that the state should have
15 utilized other methods to solicit input for the AI. While
16 the Department did fully cooperate and comply with its
17 citizen participation plan, we are open to broadening
18 future communications, and therefore, changes to
19 recommendation 5 have been made to indicate that the state
20 will invite more local entities to its fair housing
21 communications distribution list.

22 Next, in response to a comment, the title of
23 Impediment 4 has been revised to include the location of
24 accessible and visitable housing, since those topics are
25 discussed in the description of Impediment 4. So the

1 title of Impediment 4 now reads, "The scarcity and
2 location of accessible and visitable housing units limits
3 fair housing choice for persons with disabilities."

4 Finally, one commenter noted that the
5 definition of disability used in the analysis of the AI is
6 not the same as the definition of disability as understood
7 in the Fair Housing Act, and we recognize that there are
8 differences between these two definitions, but we did use
9 the U.S. Census data in the analysis sections of the AI,
10 so we've added some disclaimers to the beginning of
11 Chapters 2 and 5 explaining this difference in the
12 definitions.

13 And then the same commenter also pointed out
14 that there were discrepancies in the way the draft AI
15 addressed the terms boarding homes and group homes, so
16 changes have been to the final AI to keep the use of this
17 terminology when consistent when discussing group home
18 facilities.

19 So some of the other comments received that
20 staff did not make revisions to the AI from the public
21 comment are related to the following items: the scope of
22 the AI, including the breadth of state, regional and local
23 agencies covered, and providing a historical perspective
24 on impediments; source of income discrimination; income
25 levels for program eligibility; TDHCA's homebuyer programs

1 and lending and credit activities; scoring and
2 administration of the Housing Tax Credit Program; the use
3 of fair housing testing at a state level; timetables and
4 metrics for the implementation of recommendations; and
5 efforts to neutralize steering processes. Many of these
6 topics are beyond the scope of the AI as required by HUD

7 So it should be noted also that the Texas
8 Department of Agriculture provided responses specifically
9 made on the Community Development Block Grant Program, or
10 CDBG, and then the General Land Office similarly provided
11 responses to comments made specifically on disaster
12 recovery efforts and the CDBG DR Program, and changes were
13 not made to the final AI as a result of these comments as
14 summarized by our partner agencies.

15 So once adopted, the AI will serve as a guide
16 for the program areas and the Fair Housing team at the
17 Department as we work on implementing the recommended
18 actions to minimize identified impediments. Periodic
19 reports of this process will be presented to the Board.

20 So that concludes my overview of this item and
21 I'm happy to answer any questions.

22 MR. GOODWIN: Any questions from any Board
23 members?

24 (No response.)

25 MR. GOODWIN: If not, do I hear a motion to

1 accept this report?

2 MS. BINGHAM ESCAREÑO: I'll move to accept the
3 report.

4 MR. GOODWIN: And seconded?

5 MS. RESÉNDIZ: Second.

6 MR. GOODWIN: Any discussion? Somebody wants
7 to speak? Okay.

8 MR. PIRTLE: Sorry to interrupt that process,
9 I'm new to this.

10 MR. GOODWIN: That's all right.

11 MR. PIRTLE: Good morning, members of the
12 Board. I'm Adam Pirtle. I'm the advocacy co-director for
13 Texas Housers. We're a fair housing nonprofit.

14 MR. GOODWIN: Adam, I need for you to sign in.

15 MR. PIRTLE: Oh, beg your pardon. I sure will.
16 Hope you can read my handwriting.

17 So as I said, I'm the advocacy co-director for
18 Texas Housers. We're a fair housing nonprofit that works
19 with low income Texans to help them achieve the American
20 dream of living in a safe and decent home in a quality
21 neighborhood.

22 I want to thank you so much for your service to
23 Texas, and thank you, too, to the staff. Unfortunately, I
24 come here today to ask you to vote against approving the
25 AI until amendments can be made to bring it into line with

1 the state's obligation to affirmatively further fair
2 housing.

3 The AI's refusal to take responsibility for
4 some laws and policies that negatively and
5 disproportionately impact protected classes, I think
6 jeopardized the issue on some critical community
7 development funds for our citizens in the state.

8 I want to refer you to the written comments
9 that were submitted by colleague, Amelia Adams, as well as
10 those comments offered by Madison Sloane of Texas
11 Appleseed.

12 Because I have only have a limited time, I know
13 three minutes is important, I'm going to highlight three
14 key deficiencies which must be immediately amended.

15 First, the AI fundamentally misstates Texas's
16 obligation to affirmatively further fair housing -- I'm
17 going to say AFFH from now on because it's a long word --
18 by limiting its scope to the efforts of agencies
19 participating in the HUD program. The fair housing
20 planning guide and 24 CFR 5.152 state that the AFFH
21 obligation isn't just restricted to HUD funded programs,
22 rather, it expands to all housing and urban development
23 activities in the state, so that really needs to be
24 changed. More importantly, the Fair Housing Act flatly
25 prohibits HUD from distributing money to jurisdictions

1 that aren't affirmatively furthering fair housing, so the
2 AI wouldn't be able to ignore an agency action or state
3 law that would be contrary to the AFFH obligation, so we
4 think that that needs to be changed.

5 Second, we feel that the state's preemption of
6 city ordinances prohibiting source of income
7 discrimination is undoubtedly a fair housing impediment.
8 As you know, the vast majority of housing voucher holders
9 are people of color or people with disabilities, or both,
10 and so in every major city we've done countless studies
11 showing that source of income discrimination concentrates
12 voucher holders in areas of racially and ethnically
13 concentrated areas of poverty that severely limits their
14 housing choice. And although we really appreciate the
15 AI's identification of NIMBYism in impediment one is a
16 major problem, we don't that the state can ignore the
17 NIMBYism implicit in that law, so we think that this needs
18 to be added as an impediment before the AI can move
19 forward.

20 And then finally, the language in the AI
21 suggesting that the Low Income Housing Tax Credit Program
22 is not subject to the affirmatively furthering fair
23 housing requirement needs to be removed immediately. The
24 AFFH requirement, again, refers to all activities relate
25 to Housing and Urban Development activities. The Tax

1 Credit Program, as you know, is the main program that is
2 creating affordable housing in the state, so that language
3 needs to be changed.

4 I really appreciate the time and your
5 consideration.

6 MR. GOODWIN: Thank you.

7 Any questions from any Board members?

8 (No response.)

9 MR. GOODWIN: Anybody else want to speak to
10 this issue?

11 (No response.)

12 MR. GOODWIN: If not, I'll call for the vote.

13 All those in favor of staff's recommendation say aye.

14 (A chorus of ayes.)

15 MR. GOODWIN: Opposed?

16 (No response.)

17 MR. GOODWIN: Moving on to item 5.

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

22 Staff recommends approval of item 5 authorizing
23 the Department to implement limited and specific
24 forgiveness provisions through the Neighborhood
25 Stabilization Land Bank Program. Under current rules, the

1 final sales price to an income eligible homebuyer may not
2 exceed the lesser of the total development cost or the
3 market value. In some markets the total development costs
4 exceeds the market value, creating a situation in which
5 sufficient funds to repay the Department at the time of a
6 home sale will not be available. There is no federal
7 requirement that these amounts be repaid, so the
8 Department is requesting authorization to institute a
9 forgiveness provision associated with NSP-1 Land Bank
10 activities. It will only be exercised for the amount that
11 the total development cost of a property exceeds the
12 appraised value.

13 And with that, I conclude my presentation.

14 MR. GOODWIN: Do I hear a motion to accept
15 staff's recommendation.

16 MS. BINGHAM ESCAREÑO: Move to approve.

17 MR. GOODWIN: Second?

18 MS. THOMASON: Second.

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

20 Any discussion? Anybody want to speak to this issue? Any
21 questions from the Board?

22 (No response.)

23 MR. GOODWIN: If not, I'll call for the vote.

24 All in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Okay. Thank you, Raul.

4 Item number 6.

5 MS. VERSYP: Good morning, members of the
6 Board. I'm Abigail Versyp, director of HOME and
7 Homelessness Programs. I'm presenting item 6(a) which is
8 an appeal from Randy Sams' Outreach Center regarding their
9 application for funding to the 2019 Emergency Solution
10 Grants local competition to the Balance of State Continuum
11 of Care.

12 For the 2019 grant of the ESG, TDHCA utilized a
13 provision in rule that allows us to procure vendors to run
14 a local competition in each continuum of care rather than
15 running the complete competition in-house. There weren't
16 respondents in all CoC regions to our solicitation, but
17 Texas Homeless Network submitted a proposal which was
18 accepted, they were ultimately contacted to run a local
19 competition for the Balance of State funds. This means
20 that all organizations that would serve areas designated
21 as the Balance of State would apply directly to THN for
22 funding instead of TDHCA. THN would then, in turn,
23 recommend applications to TDHCA for an award of ESG funds.

24 THN, as our vendor, was permitted great
25 latitude in their selection criteria for an award, so long

1 as all applications were treated equally. This helps
2 TDHCA meet our goal of collaborating with local CoCs to
3 ensure that the program aligns with local need. THN did
4 elect to utilize the scoring criteria that the Department
5 adopted for applications submitted to us and did not add
6 any additional scoring items. It' important to note that
7 THN, even though they were not required to, utilized
8 scoring criteria that had been through a full TDHCA
9 rulemaking process, including roundtables before the rules
10 were proposed and a formal public comment period during
11 which no public comment was received.

12 Overall Randy Sams' application for emergency
13 shelter scored 49 points. The lowest scoring emergency
14 shelter application which TDHCA recommended for funding
15 scored 51 points, and another application for Family
16 Crisis Center scored 50 points, more than Randy Sams' but
17 still not enough to be recommended for an award by THN.

18 Randy Sams' appeal did not dispute the
19 application score or rank. They acknowledged that their
20 score fell below the funding threshold in their appeal.
21 Furthermore, Randy Sams' appeal states that the points-
22 based criteria is a fair way to make award
23 recommendations.

24 The basis for their appeal centers around three
25 points. First, that the scoring criteria doesn't reflect

1 all the services that Randy Sams' provides and that they
2 would like an exception to the scoring criteria. The
3 scoring criteria utilized by THN for services directly
4 reflects the scoring criteria used by TDHCA for services.

5 This is set forth in the ESG rules and we received no
6 comment during rulemaking requesting addition of
7 additional services to the criteria. In fact, we
8 specifically solicited input on this criteria during
9 roundtables prior to approval of the draft rule and no
10 comment was received from Randy Sams' or any other entity.

11 Second, the appeal states that it appears that
12 general population shelters, like Randy Sams', were at a
13 disadvantage when competing for funding against special
14 population shelters like those that serve victims of
15 domestic violence. Although more domestic violence
16 shelters were recommended for funding, they were not
17 awarded additional points due to their special purpose.
18 Points were awarded for serving special populations, and
19 Randy Sams' requested and received the maximum possible
20 points in this category, putting them on a level playing
21 field with domestic violence shelters. Again, THN
22 utilized scoring criteria that TDHCA utilized in our
23 competition, which is in rule and for which comment was
24 solicited, and no comment was received.

25 Third, the appeal states that Randy Sams' is

1 the only Texas-based general purpose shelter and not
2 receiving 2019 ESG funds from TDHCA puts Randy Sams' at
3 risk of closure by the end of the calendar year. Although
4 Randy Sams' is the only Texas-based general purpose
5 emergency shelter in Texarkana in the State of Texas, the
6 Salvation Army operates a general purpose emergency
7 shelter in Texarkana .6 miles from Randy Sams' Outreach
8 Shelter, across the state line that bifurcates the city.

9 That being said, TDHCA has been in talks with
10 the City of Texarkana to devise solutions to provide gap
11 funding to Randy Sams' from the City of Texarkana's
12 remaining balance of 2018 ESG funds and from the portion
13 of the EH fund that was offered to the City of Texarkana
14 as provided in the rule. The total of these funds is
15 approximately \$85,000.

16 This year funds requested in the Balance of
17 State competition exceeded the available funding by almost
18 60 percent. Overall, funds requested across the state in
19 all competitions were 180 percent of the funding
20 available. The need outstrips the resources available,
21 which is why a transparent fair system of award is
22 critical to the integrity of the program.

23 Although we're sensitive to the needs of each
24 applicant for funding, the appeal from Randy Sams' doesn't
25 appear to include grounds for appeal as provided in rule.

1 They did not dispute that the processes were followed as
2 outlined by both TDHCA and our contractor THN. They did
3 not dispute that their application did not meet the
4 threshold for funding based on the scoring criteria.

5 Additionally, if this appeal is granted today,
6 then the Department must rework the funding for Balance of
7 State outside of its regulatory framework and will have to
8 reduce funding for other applications that have already
9 been notified of their award so that we can identify
10 funding for Randy Sams' and determine the fairest course
11 of action for Family Crisis Center, the higher scoring
12 unfunded emergency shelter application in the Balance of
13 State. We'll need to bring both a waiver and a new award
14 item to the Board in October. This reworking will cause
15 us to violate our federal requirement to obligate the 2019
16 ESG funds by September 10.

17 Because of insufficient grounds for appeal
18 provided by Randy Sams' and in order to ensure compliance
19 with our federal obligation requirements, staff must
20 recommend denial of this appeal.

21 I'm happy to answer any questions.

22 MR. GOODWIN: Any questions? You have a
23 question?

24 MR. VASQUEZ: Just out of curiosity, you said
25 the Randy Sams' had a 49 score?

1 MS. VERSYP: Yes.

2 MR. VASQUEZ: There was a 50 that did not
3 qualify?

4 MS. VERSYP: Correct.

5 MR. VASQUEZ: And then the lowest was 51.

6 MS. VERSYP: That's correct.

7 MR. VASQUEZ: What was the range generally of
8 the rest of the scores?

9 MS. VERSYP: They ranged from 66 to 51, those
10 that were scored. The very lowest scoring application was
11 32. This is only for the emergency shelter component.

12 MR. VASQUEZ: But for the awardees it's 51 to
13 66.

14 MS. VERSYP: That's correct.

15 MR. VASQUEZ: Okay. Thanks.

16 MR. GOODWIN: Any other questions?

17 (No response.)

18 MR. GOODWIN: If not, do I hear a motion to
19 accept staff's recommendation?

20 MR. VASQUEZ: Move to accept the
21 recommendation.

22 MR. GOODWIN: Second?

23 MR. BRADEN: Second.

24 MR. GOODWIN: Any questions or discussion?

25 Anybody want to speak to this?

1 (No response.)

2 MR. GOODWIN: I'll call for the vote. All
3 those in favor say aye.

4 (A chorus of ayes.)

5 MR. GOODWIN: Opposed?

6 (No response.)

7 MR. GOODWIN: Okay. 6(b).

8 MS. VERSYP: 6(b). The last one was long which
9 makes this one much shorter.

10 (General laughter.)

11 MS. VERSYP: I'm now going to present 6(b)
12 which constitutes an award recommendation for the 2019 ESG
13 grant.

14 As you heard in the previous item, TDHCA was
15 allocated funding for ESG from the 2019 federal budget.
16 4.5 percent of these funds are retained by the Department
17 for administration, and 93.5 percent are distributed to
18 subrecipients in the method previously described. A total
19 of \$8.7 million in awards to 50 subrecipients is presented
20 for award today, exhausting the allocation.

21 Our solicitation for administrators of local
22 competitions resulted in local competitions in three CoC
23 regions: the Balance of State, San Antonio, and Tarrant
24 County. In these regions applications were submitted to
25 the administrator of the local competition, who in turn

1 made their recommendations for funding to TDHCA. Those
2 recommended applications underwent a previous
3 participation review by TDHCA and were subsequently
4 approved by EARAC.

5 Applicants in the remaining eight regions
6 competed in TDHCA's competitions. Applications competed
7 first by region, and two regions, Houston and Dallas, were
8 oversubscribed. One partial award offer was made and
9 accepted by Shelter Ministries of Dallas for their rapid
10 rehousing application under the regional round of funding.

11 This offer exhausted the funds available to Dallas in
12 round one, the regional competition. One partial offer of
13 funding was made in the Houston CoC to the Houston Area
14 Women's Center for their emergency shelter application,
15 but it was declined. This means that although Houston was
16 oversubscribed in round one, they were they most under-
17 funded region with remaining funding, and so Houston Area
18 Women's Center was eligible to compete in round two, where
19 they are being recommended for a full award.

20 The funds remaining after round two of the
21 competition were pooled and made available to the highest
22 scoring applications regardless of CoC regional.

23 CitySquare's street outreach's application is recommended
24 for a full award of funding in the statewide competition.

25 City House's street outreach application is the next

1 highest scoring application, but was offered and accepted
2 a partial award as only 60 percent of ESG funds can be
3 used for street outreach and emergency shelter combined.
4 The remaining funds are recommended to be awarded to
5 Shared Housing Center to partially fund their rapid
6 rehousing application.

7 These awards have been approved from EARAC
8 without conditions with the exception of City House, which
9 was approved with a condition of repayment of disallowed
10 costs further described in the board book. Should City
11 House fail to meet this condition, the funds earmarked for
12 their award will instead be awarded to Shared Housing
13 Center's rapid rehousing application which was only
14 partially funded.

15 Happy to answer any questions.

16 MR. GOODWIN: Any questions?

17 (No response.)

18 MR. GOODWIN: Do I hear a motion to accept
19 staff's recommendation?

20 MR. BRADEN: So moved.

21 MR. GOODWIN: Second?

22 MS. THOMASON: Second.

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

24 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 MR. GOODWIN: Okay. Thank you.

6 Item 7, Asset Management.

7 MR. BANUELOS: Good morning. I am Rosalio
8 Banuelos, director of Multifamily Asset Management.

9 Item 7 is presentation, discussion and possible
10 action regarding a material amendment to the housing tax
11 credit land use restriction agreement for 2100 Memorial,
12 file number 9603. This request is to suspend monitoring
13 under the LURA and extend the term of the LURA, which I
14 will get into details further on.

15 2100 Memorial is a 197-unit development in
16 Houston which was approved for housing tax credits in 1996
17 for the adaptive reuse of a former Holiday Inn originally
18 built in 1969. The development is owned by Memorial Drive
19 Elderly, LP which is an affiliate of the Houston Housing
20 Authority. The tax credit LURA restricts 148 units for
21 low income elderly households and requires a compliance
22 period of 24 years and 10 months and an extended use
23 period of 39 years and 10 months unless a note that is
24 currently due to HUD is prepaid, and in that case then the
25 compliance period is to be 20 years and the extended use

1 period is to be 35 years.

2 However, in August of 2017, Hurricane Harvey
3 caused significant damage to the development. The parking
4 structure, the basement, the first floor of the building
5 were flooded and no access points into the building could
6 be reached by emergency vehicles, leaving residents
7 stranded. After the flood, inspectors found that
8 extensive damage had been incurred to the electrical
9 system which is primarily located in the basement. The
10 hurricane also caused damage to the laundry space, trash
11 equipment, elevator, leasing office, business equipment,
12 mailroom, meeting space and roof. In addition, the window
13 walls leaked and caused sheetrock damage.

14 Due to all of the damage caused by the
15 hurricane, the developer determined that the development
16 was no longer safe or suitable for occupancy and needed to
17 be vacated in order to accomplish the repairs. Notices
18 were sent to the tenants that leases were being terminated
19 due to the extensive damage and health and safety concerns
20 arising from the damage. While most of the tenants
21 relocated after the hurricane, a number of tenants,
22 approximately 26, refused to move out. Those tenants then
23 filed a lawsuit and obtained an injunction against the
24 development owner. However, the Department has been
25 informed that this lawsuit has been non-suited by all

1 tenants which has the effect of dissolving the injunction.

2 As of August 15, 2019, there were 18 tenants at
3 2100 Memorial, however, the Department was informed that
4 each tenant voluntarily agreed to relocate within six
5 months and the building is expected to be vacated by no
6 later than March 1, 2020.

7 The owner states that repairing the development
8 to its condition prior to Hurricane Harvey is estimated to
9 cost \$14 million, so instead of only repairing the
10 development and risking flooding again, the development
11 owner is planning a re-syndication of the development
12 using tax exempt bond financing with 4 percent housing tax
13 credits which would include demolishing the existing
14 structure and rebuilding on the same site.

15 The 4 percent application has not been
16 submitted yet, but in order to accomplish this
17 re-syndication, the development owner is requesting that
18 monitoring on the existing LURA be suspended for a period
19 of three years to allow the necessary time to submit the
20 application, demolish and reconstruct the development. In
21 addition, the LURA needs to be amended to remove the
22 provision preventing demolition of the units.

23 And to compensate for the suspension of the
24 compliance monitoring, the owner proposes to extend the
25 term of the LURA by three additional years. Furthermore,

1 due to the period of time that the majority of the units
2 were not available for occupancy after the hurricane, the
3 term of the LURA for the development will be extended by
4 an additional two years which will result in an aggregate
5 extension to the term of the LURA of five years.

6 Staff recommends approval of the requested
7 material amendment to the LURA for 2100 Memorial, however,
8 the amendment to the LURA to allow for demolition of the
9 building will not be effective until March 1, 2020 or
10 until the owner submits a certification confirming an
11 earlier date when the project has been voluntarily vacated
12 by all tenants and confirming that there is no pending
13 litigation regarding the occupancy of the project.

14 That's all I have, but I'm available for
15 questions.

16 MR. GOODWIN: Do I hear a motion to accept
17 staff's recommendation?

18 MS. BINGHAM ESCAREÑO: I move to accept staff's
19 recommendation.

20 MR. VASQUEZ: Second.

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

22 Any discussion?

23 (No response.)

24 MR. GOODWIN: Did you want to speak to this,
25 sir?

1 MR. GUNSOLLEY: Good morning. My name is Tory
2 Gunsolley. I'm the president and CEO of the Houston
3 Housing Authority.

4 And I just wanted to thank staff for working
5 with us through this difficult recovery process.
6 Obviously, we didn't want to find ourselves in this
7 situation but we believe that we have a plan that is going
8 to ensure the long-term affordability of these units on
9 this property and be a net positive that can come out of
10 this disaster.

11 So happy to answer questions, but just wanted
12 to acknowledge their help through this process.

13 MR. GOODWIN: Any questions for Tory?

14 It looks like our counsel has a question.

15 MR. ECCLES: It's actually just a point of
16 clarification in case any of the residents of 2100
17 Memorial are watching this and to make really clear some
18 things that Rosalio said. This is to bring forward before
19 the Board a material amendment to the LURA but it's
20 prospective in nature that TDHCA will suspend its
21 monitoring to allow for reconstruction but that's once all
22 of the residents have voluntarily vacated the building.
23 So it's not that they're being kicked out, it's that there
24 is some agreement between the residents and the
25 development owners to relocate them and to make sure that

1 they have a place to live. So they're not being streeted,
2 they're being helped to move to another location.

3 The other thing is the non-destruction or the
4 non-demolition clause of the LURA is only suspended once
5 the building is vacated, so if between now and when the
6 building is voluntarily vacated by tenants they still
7 maintain their right to say you're not treating us well,
8 you've effectively reduced our rights, you're not living
9 up to your end of the bargain that was made with us, they
10 still maintain their rights not only to complain to TDHCA
11 but to seek any other legal redress that's available to
12 them under the LURA. So I just wanted to make that clear,
13 this isn't as of today the building can come down because
14 there are people still living there.

15 MR. GUNSOLLEY: That is correct.

16 MR. ECCLES: Okay.

17 MR. GOODWIN: Any other questions?

18 MR. VASQUEZ: More of a comment.

19 Notwithstanding counsel's clarifications, but the location
20 of this building and the disaster that occurred during
21 Harvey, they're not overstating what happened to this
22 structure, and the fact that the City of Houston and the
23 developers are willing to demolish and reconstruct this
24 and maintain housing at this prime location -- I mean, if
25 this place went to commercial developers, the prices on

1 the sales or rentals would be astronomical. So it's so
2 good that I think we're hopefully taking this action to
3 suspend the LURA and preserve this incredible site for
4 affordable housing.

5 MR. GOODWIN: Any other questions or comments?

6 MR. GUNSOLLEY: Thank you.

7 MR. GOODWIN: Thank you, sir.

8 Barry, did you want to speak?

9 MR. PALMER: (Speaking from audience.) No.
10 Just here to support.

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

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Moving to item number 8, the
17 rules.

18 Good morning, Brooke.

19 MS. BOSTON: Good morning. Brooke Boston. I'm
20 here for item 8(a). This is relating to Section 1.7, our
21 appeals process, and we are proposing this as a draft to
22 go out for comment.

23 This section relates to appeals other than our
24 housing tax credit appeals. So almost every appeal you
25 guys hear is related to tax credits, with the interesting

1 exception from this morning from Randy Sams', but keep in
2 mind as you're looking at this it's catered to all the
3 other programs that we have.

4 Basically, the rule makes revisions regarding
5 the processing of appeals and staff has identified a need
6 to update a citation to clarify the admissibility of
7 documentation not originally part of an application and to
8 clarify the timing and of when an opportunity to appeal is
9 actually triggered.

10 The rule will be published in the *Texas*
11 *Register* and go out for comment from September 20 through
12 October 21 and returned to the Board for adoption.

13 And I'm happy to answer any questions.

14 MR. GOODWIN: Do I hear a motion to accept
15 staff's recommendation from our Rules chairman?

16 MR. VASQUEZ: So moved.

17 MR. GOODWIN: Second?

18 MS. RESÉNDIZ: Second.

19 MR. GOODWIN: Any questions?

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: Item 8(b).

1 MS. BOSTON: Thank you.

2 For item 8(b) this is for our rule at Section
3 1.10 of 10 Administrative Code relating to public comment
4 procedures. This is specific to public comment that is
5 received at Board meetings that are open to the public,
6 and staff is recommending that the revisions be made to
7 clarify when the registration form method of comment to be
8 used, to clarify that deference may be provided to reading
9 written communication from elected officials, to clarify
10 that no new materials may be provided to the Board when
11 the item for consideration is part of a competitive
12 process, and to provide that persons needing translation
13 services are afforded more time to make a comment.

14 Like the prior rule, this will be published in
15 the *Texas Register* and be out for comment from September
16 20 through October 21 and then returned to the Board for
17 final adoption.

18 And again, I can answer any questions.

19 MR. GOODWIN: Do I hear a motion to accept
20 staff's recommendation?

21 MR. VASQUEZ: So moved.

22 MR. GOODWIN: Second?

23 MR. BRADEN: Second.

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

25 All those in favor say aye.

1 (A chorus of ayes.)

2 MR. GOODWIN: Opposed?

3 (No response.)

4 MR. GOODWIN: Moving on to item 8(c).

5 MR. REID: Good morning, Mr. Chairman and Board
6 members. I'm Gavin Reid, manager of Planning and Training
7 in the Community Affairs Division.

8 Item 8(c) describes proposed rule revisions to
9 Chapter 6 of the Texas Administrative Code which
10 represents the annual cleanup of omissions, corrections
11 and new ideas for the Community Services Block Grant,
12 Community Energy Assistance Program, and the
13 Weatherization Assistance Program. We've spoken with the
14 network of subrecipients about these rule changes and
15 received input, some of which is reflected on the proposal
16 before you today.

17 If authorized by the Board, we'll proceed to
18 publish the proposed rules in the *Texas Register* for the
19 public comment process and return to the Board for final
20 adoption a few months from now. Staff requests your
21 approval to begin that process, and I'm available for any
22 questions you may have.

23 MR. GOODWIN: Motion to approve staff's
24 recommendation?

25 MR. VASQUEZ: Move to approve.

1 MR. GOODWIN: Second?

2 MS. RESÉNDIZ: Second.

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

4 Any 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: 8(d), Teresa.

11 Thank you, Gavin.

12 MS. MORALES: Teresa Morales, director of
13 Multifamily Bonds.

14 Chairman Goodwin and members of the Board, item
15 8(d) relates to the Multifamily Housing Revenue Bond rules
16 which govern multifamily transactions where the private
17 activity bonds are issued by the Department. These rules
18 primarily address the pre-application requirements that
19 include both threshold and scoring. The scoring component
20 is required by the Department's governing statute, Chapter
21 2306. This rule also mentions some of the full
22 application requirements with the majority of those
23 application requirements addressed in the QAP.

24 Staff recommends approval of the proposed
25 repeal and new of 10 TAC Chapter 12, as reflected in your

1 Board materials.

2 MR. GOODWIN: Do I hear a motion to approve?

3 MR. VASQUEZ: So moved.

4 MR. GOODWIN: Second?

5 MR. BRADEN: Second.

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

7 Any 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: Raul.

14 MR. GONZALES: Good morning again, Chairman

15 Goodwin and Board members. My name is Raul Gonzales,

16 director of Office of Colonia Initiatives, Housing Trust

17 Fund, and Neighborhood Stabilization Program.

18 Under item 8(e) staff recommends a repeal of 10

19 TAC Chapter 25, Colonia Self-Help Center Program rules and

20 a new order proposing the new 10 TAC Chapter 25, Colonia

21 Self-Help Program rules, and directing their publication

22 for public comment in the *Texas Register*.

23 Some of the significant updates to the rule are

24 under Section 25.3, Eligible and ineligible activities.

25 It clarifies applicable requirements regarding fair

1 housing, affirmative marketing, homebuyer counseling, and
2 reasonable accommodations.

3 Under Section 25.5 under Allocation, de-
4 obligation, and termination and re-obligation, it provides
5 more detail on the processes that addresses administrator
6 violations of program requirements, such as failures to
7 meet expenditure thresholds. The subsection covers
8 mitigation plans, compliance with Texas Government Code
9 Chapter 2105, and the process for publishing a request for
10 administrators to utilize de-obligated funds.

11 Under Section 25.8, Colonia Self-Help Center
12 contract operations and implementation, it clarifies that
13 the Department may issue a one-time six-month extension to
14 contracts, removes a requirement that liens be issued to
15 program beneficiaries earning more than 50 percent of the
16 area median income who receive new construction,
17 reconstruction or rehab assistance, and provides that
18 these types of assistance will now be offered as a grant.

19 It also increases the maximum assistance for rehab
20 activities from \$45,000 to \$60,000 per unit, increases the
21 maximum assistance for new construction and reconstruction
22 activities from \$45,000 to \$75,000 per unit, and it
23 includes further clarification on inspection requirements
24 for all contract activity types.

25 With that, I conclude my presentation, and I'll

1 answer any questions.

2 MR. GOODWIN: Move to approve?

3 MR. VASQUEZ: Before I make a motion, everyone
4 seems pretty calm about this, but just to reiterate, this
5 series of motions, all we're doing is approving for
6 publication in the *Texas Register* for comment.

7 MR. GONZALES: That's correct.

8 MR. VASQUEZ: So part of the reason why we're
9 sort of flashing through it.

10 So with that unnecessary comment, I move to
11 approve.

12 MR. GOODWIN: Do I have an unnecessary second?

13 MS. BINGHAM ESCAREÑO: I'll unnecessary second.

14 MR. VASQUEZ: Well, the motion is necessary.

15 (General laughter.)

16 MR. GOODWIN: Any questions?

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 number 9(a).

23 MR. SINNOTT: Good morning, Chairman Goodwin,
24 members of the Board. My name is Andrew Sinnott,
25 Multifamily Loan Programs administrator.

1 I've got three items for you today. First is
2 item 9(a). This relates to possible action on the fourth
3 amendment to the 2019-1 Multifamily Direct Loan annual
4 notice of funding availability.

5 We've amended the NOFA three times already this
6 year with all three amendments adding various amounts of
7 HOME and TCAP repayment funds to meet demand under the
8 general set-aside. This fourth amendment will add the
9 state's 2019 allocation of NHTF, National Housing Trust
10 Fund, to the supportive housing soft repayment set-aside,
11 increasing the amount of NHTF available under that set-
12 aside from \$9,638,041 to \$19,498,833, an addition of
13 approximately \$9.86 million.

14 Whereas the impetus for adding HOME and TCAP
15 repayment funds to the general set-aside was to meet
16 demand among the dozens of applications we received under
17 that set-aside, the motivation for adding the 2019
18 allocation of NHTF to the NOFA is to ensure that the
19 Department can meet the July 2021 commitment deadline
20 associated with this allocation.

21 In addition to increasing the amount of NHTF
22 available under the supportive housing soft repayment set-
23 aside, this proposed fourth amendment will increase the
24 maximum request for applications proposing new
25 construction under the SHSR set-aside from \$2 million to

1 \$3 million. This action is again motivated by commitment
2 deadlines associated with the 2017, 2018 and 2019 NHTF
3 allocations that are currently available under the SHSR
4 set-aside.

5 From September 20 through October 21, 2019,
6 NHTF funds will be limited to the amount available in the
7 region as reflected in the regional allocation formula, or
8 RAF, provided in attachment B to the fourth amendment to
9 the 2019-1 NOFA. NHTF funds will then become available
10 statewide from October 22 through November 26, 2019.

11 With that, if you have any questions I'll be
12 happy to answer them.

13 MR. GOODWIN: Do I hear a motion to accept
14 staff's recommendation?

15 MS. BINGHAM ESCAREÑO: So moved.

16 MR. GOODWIN: Second?

17 MS. THOMASON: Second.

18 MR. GOODWIN: Okay. Any discussion, any
19 questions?

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. SINNOTT: Item 9(b) relates to possible

1 action regarding amendments and modifications to the
2 construction loan agreements and promissory notes for ADC
3 West Ridge, LP.

4 This development received an award of direct
5 loan funds in July 2015, closed the HOME and TCAP
6 repayment funds loans in May of 2016 and started
7 construction soon thereafter. At the time of closing the
8 completion dates in the HOME and TCAP RF construction loan
9 agreements was November 19, 2017. Staff approved first
10 amendments to extend the completion dates to what was the
11 maximum allowable administratively, resulting in a
12 November 19, 2018 completion date.

13 In the summer of 2018, the percentage of
14 construction completion approached 95 percent and the
15 property received the necessary occupancy certificates
16 from the municipalities and HUD. Around this time the
17 borrower and general contractor began to dispute whether
18 or not construction had been completed in accordance with
19 the construction contract. On October 11, 2018, staff
20 recommended that the Board approve the second amendments
21 to the CLAs to extend the completion dates to September
22 18, 2019 in light of the ongoing dispute between the owner
23 and the contractor.

24 Since that time the contractor filed a lien on
25 the property and the owner subsequently sent a notice of

1 intent to file a claim on the contractor's performance
2 bond. The development owner is here today, but my
3 understanding is that the owner and contractor have made
4 limited progress in resolving the dispute.

5 The owner has indicated that there are a number
6 of incomplete items and construction defects that will
7 require litigation to settle the matter. I'll let the
8 owner speak to the status of the litigation if you have
9 any questions about that. All the while the property has
10 continued to lease up and it's currently at 92 percent
11 occupancy.

12 Staff's recommendation before the Board today
13 is to give the executive director or his authorized
14 designee the ability to further extend the completion
15 dates and the CLAs for good cause but in no event beyond
16 May 11, 2020 as that is the date by which the project, as
17 it relates to the HOME funds invested in the project, must
18 be closed out in HUD's reporting system. Staff is also
19 continuing to evaluate if any action needs to be taken
20 with regard to the promissory notes related to these loans
21 and may bring action related to those items at a future
22 Board meeting.

23 MR. GOODWIN: Any questions?

24 (No response.)

25 MR. GOODWIN: Do I hear a motion to accept

1 staff's recommendation?

2 MR. BRADEN: So moved.

3 MR. GOODWIN: Second?

4 MS. THOMASON: Second.

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

6 Any discussion?

7 (No response.)

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

9 (A chorus of ayes.)

10 MR. VASQUEZ: I'm sorry. Just a quick
11 question. As relates to the performance bonds, is the
12 Department anywhere in that ladder or sequence where we
13 can have security in that?

14 MR. SINNOTT: I don't believe so because we're
15 in second lien position on this deal, so it's the first
16 lien lender. I'll let the development owner speak to
17 that.

18 MS. ANDERSON: Good morning. Terri Anderson,
19 Anderson Development and Construction. Thank you all so
20 much for your consideration. It's been an unfortunate set
21 of circumstances.

22 As it relates to incomplete items as well as
23 defective items, what Andrew indicated is we've kind of
24 started this dispute after we received occupancy but the
25 dispute started as soon as fixtures started showing up

1 that were unapproved and substitutions that had not been
2 reviewed by the architect nor the owner and approved via
3 change order. So a lot of the items that were installed
4 are defective, don't necessarily operate the way that
5 they're supposed to, so our dispute is continuing through
6 litigation.

7 As it relates to the payment and performance
8 bond, some of their subcontractors did file liens so the
9 payment bond is covering those liens. The contractor
10 himself also filed one lien, in March of 2018 he released
11 it so that he could get paid, and then he turned around
12 and filed it again.

13 And the performance bond, the bonding company
14 has been notified, they're included in our litigation
15 currently. The I guess recipients of the benefit of the
16 bond will be ADC West Ridge, LP which is the property
17 owner and it's something that HUD required but I do not
18 believe that TDHCA is directly a beneficiary to the bond,
19 but our regulatory agreement with HUD essentially inures
20 the benefit to HUD and to the lender based on our
21 construction contract. So there is access, essentially,
22 to get to the bond from the lending perspective, and TDHCA
23 as a second lien holder would essentially fall in line
24 behind HUD.

25 MR. VASQUEZ: Okay. Just as a general matter

1 of practice, I know sometimes there are filing deadlines
2 and things just to ensure that we are at least in line. I
3 just encourage staff to make sure that we get in line
4 wherever our place is.

5 MS. ANDERSON: Yes, sir. And you should know
6 that the loan is currently performing. We are 92 percent
7 occupied, as Andrew indicated, so the first lien is fully
8 paid to date.

9 MR. GOODWIN: Any other questions?

10 (No response.)

11 MR. GOODWIN: If not, I'll call for the vote.
12 All in favor?

13 (A chorus of ayes.)

14 MR. GOODWIN: Opposed?

15 (No response.)

16 MR. GOODWIN: Okay. Moving to item number
17 9(c).

18 MS. ANDERSON: Thank you.

19 MR. GOODWIN: Thank you.

20 MR. SINNOTT: Item 9(c) relates to possible
21 action regarding an increase in the first lien loan and
22 repayment amounts for Avanti at Sienna Palms.

23 This deal received an allocation of 9 percent
24 tax credits in July of 2018 and an award of \$1.65 million
25 in TCAP repayment funds under the general set-aside of the

1 2019-1 NOFA earlier this year. The applicant has recently
2 provided updated financing documentation and a final
3 development cost schedule with supporting documentation in
4 anticipation of closing on the TCAP loan within the next
5 45 days. The documentation provided reflects an increase
6 in the first lien loan amount from \$2.575 million to \$3.2
7 million and a decrease in the interest rate on the first
8 lien loan from 5.65 percent to 5.35 percent, resulting in
9 an increase in debt service ahead of the Department's TCAP
10 repayment funds loan from \$168,987 to \$202,455.

11 Under the Multifamily Direct Loan rule,
12 increases in the first lien debt or repayment amount on
13 the first lien debt must be approved by the Board. Real
14 Estate Analysis staff has not had an opportunity to
15 complete their reevaluation of the transaction based on
16 the updated financing documentation that the applicant
17 submitted, but once they do, changes to the principal
18 amount and/or a repayment structure for the TCAP RF loan
19 that will allow the Department to mitigate any increased
20 risk may be recommended.

21 In the meantime, staff recommends approving the
22 increases to the first lien loan and repayment amounts at
23 this meeting in order to preserve the ability for an
24 October TCAP loan closing, with the understanding that any
25 changes recommended by REA may need to be approved by the

1 executive director or returned to the Board as applicable.

2 MR. GOODWIN: Do I hear a motion to approve
3 staff's recommendation?

4 MS. BINGHAM ESCAREÑO: Just a question. Is
5 that already built in the condition and the contingency in
6 terms of executive director versus Board?

7 MR. SINNOTT: I believe.

8 MR. GOODWIN: It states so in the resolution as
9 being resolved that it would be the executive director.
10 Is your question do we have the legal authority to
11 transfer this responsibility to the executive director?

12 MS. BINGHAM ESCAREÑO: No, sir. My question
13 was just did we need to specify. So it says, Further
14 resolved, such changes will go to the executive director
15 or returned to the Board for approval as applicable. Is
16 as applicable already spelled out?

17 MR. SINNOTT: Yes. There are thresholds for
18 what goes to the Board and what can be approved by the
19 executive director within the rule.

20 MS. BINGHAM ESCAREÑO: Great.

21 MR. VASQUEZ: Another question. So what does
22 this increase do the debt service coverage?

23 MR. SINNOTT: Like I said, REA hasn't fully
24 reevaluated this transaction yet, but based on the
25 documentation that the applicant submitted, it looks like

1 DCR on our loan or inclusive of the TCAP loan goes from
2 1.33 to 1.22, so it's still within the 1.15 to 1.35 DCR
3 range.

4 MR. VASQUEZ: Okay. Great. Thanks.

5 MR. GOODWIN: Any other questions?

6 (No response.)

7 MR. GOODWIN: Do I hear a motion to approve
8 staff's recommendation?

9 MS. BINGHAM ESCAREÑO: I'll so move.

10 MR. GOODWIN: Second?

11 MR. VASQUEZ: Second.

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

13 Any discussion?

14 (No response.)

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

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Moving on to item 9(d).

20 MS. HOLLOWAY: Good morning, Chairman Goodwin,
21 members of the Board. I'm Marni Holloway. I'm the
22 director of the Multifamily Finance Division.

23 Item 9(d) is presentation, discussion and
24 possible action regarding a request for waiver of rules
25 for 19126, this is 3104 Divisions Lofts, 19244 Mariposa at

1 Harris Road, and 19319 Bardin Apartments. All three
2 developments are in Arlington.

3 These applications received 9 percent tax
4 credit awards at the late July meeting and each
5 development owner was issued a commitment notice with an
6 expiration date of September 16, 2019. One of the
7 conditions of the commitment notices is that development
8 owners provide evidence of appropriate zoning prior to
9 expiration of the commitment, so when they send their
10 commitment back in, they have to have proof of zoning.

11 We've been informed by the City of Arlington
12 that they may not be able to provide evidence of
13 appropriate zoning for the developments prior to the
14 expiration of the commitment notice, and the applicants
15 have requested waiver of the requirement in rule. Staff
16 believes the waiver request satisfies the requirements of
17 the rule in that the need for the waiver was neither
18 foreseeable or preventable and that the waiver would serve
19 the policies and purposes set forth in statute,
20 particularly the commitment to assisting local government
21 in providing essential public services and providing for
22 the housing needs of low income individuals and families
23 which would be significantly hindered in Arlington if all
24 Arlington awards in the 2019 round were summarily
25 precluded from proceeding.

1 Staff recommends that the requirement that
2 evidence of appropriate zoning for the developments named
3 be provided prior to the expiration of the commitment
4 notice be waived and that evidence of appropriate zoning
5 be required to be provided to the Department on or before
6 September 25. So this is a nine-day extension,
7 effectively, of the commitment.

8 I'd be happy to take any questions. I believe
9 there are some folks here to speak and we have some
10 correspondence also.

11 MR. GOODWIN: And staff's recommendation is to
12 give this nine-day extension?

13 MS. HOLLOWAY: Yes.

14 MR. GOODWIN: Questions?

15 MR. VASQUEZ: Marni, so the City of Arlington,
16 their staff has indicated that the zoning will be approved
17 on the 24th?

18 MS. HOLLOWAY: We don't know for sure, so what
19 will happen -- and let me go back to the city's letter
20 which I believe is in your book -- if zoning is approved
21 at the first reading unanimously, that would be on
22 September 10 and so it would be well within deadline. If
23 there's at least one dissenting vote, then they would have
24 to go to a second reading and that would be at a council
25 meeting on September 24. We don't at this point have

1 assurance. I mean, there's no way to say yes, the city
2 council will or will not approve at this point.

3 MR. WILKINSON: Marni, didn't they already vote
4 against one?

5 MS. HOLLOWAY: They did. They have voted
6 against one.

7 MR. VASQUEZ: That's the New York?

8 MS. HOLLOWAY: Yes.

9 MR. VASQUEZ: Other than the one that they
10 explicitly voted against, we haven't received any
11 indication that Arlington or members of their approval
12 process are leaning against this?

13 MS. HOLLOWAY: We have a carefully worded
14 letter from the city. I don't see any support from city
15 council members or anything like that attached to the
16 waiver request. The letter from the city, of course, is
17 not going to say council is going to vote to approve these
18 things. That would seem to be a dangerous position.

19 MR. GOODWIN: We have a couple of letters that
20 Michael has from cities that he's going to read before we
21 have discussion.

22 Michael, do you want to read those at this
23 time?

24 MR. LYTTLE: Yes, sir. The first letter that I
25 have is to the Board from the City of Keene, Texas. It

1 reads:

2 "Dear Chair Goodwin,

3 "As the mayor of Keene, Texas, I respectfully
4 request the Board to deny the waiver of the rules for
5 these applications.

6 "The City of Keene has an opportunity to be
7 awarded a competitive tax credit application 19020 Riva
8 Keene that will provide much needed affordable housing in
9 our community. Keene, located just 30 minutes south of
10 Fort Worth is a small but growing Texas suburb in the
11 Dallas-Fort Worth area for working families. We followed
12 the rules and did everything we could to demonstrate how
13 much we need and want this development in our city.

14 "We need the affordable housing. If you
15 approve this request to waive the rules, we will not have
16 an opportunity to receive a high quality, affordable
17 project to serve the citizens of Keene. The last tax
18 credit awarded application in Keene was in 1996. In
19 addition, we have a growing tax base attracting companies
20 that want the benefits of being in the Metroplex and the
21 smaller town quality of life.

22 "In 2018, Keene was selected by a world
23 renowned leather manufacturer to build a 100,000 square
24 foot manufacturing facility and employ up to 500 new jobs
25 at wage levels that are within the qualified income levels

1 of Riva Keene, increasing our community's need for
2 affordable housing. A decision to grant the waiver of
3 rules will significantly hinder the City of Keene to
4 provide essential homes to a significant portion of our
5 citizens and families. The Keene City Council worked with
6 the developer to provide all the necessary local
7 governmental approvals for Riva Keene's application. We
8 approved the re-zoning for the property on April 25, 2019.

9 "Please don't penalize us for following the
10 rules by approving this request for a waiver of the rules.

11 The same rules apply to each applicant as they work on
12 preparing and submitting their applications to the state.

13 These developers had as much opportunity to meet the
14 deadlines for re-zoning as Riva Keene entering the
15 competition. Riva Keene is in line to be awarded should
16 the Arlington City Council not timely pass the applicant's
17 re-zoning request. Keene is just as deserving as
18 Arlington in being awarded affordable housing.

19 "Thank you for your consideration in this
20 important decision.

21 "Gary Heinrich, Mayor, City of Keene, Texas."

22 The second letter is from Mayor James Burgess
23 from the City of Venus, Texas. The letter reads:

24 "Dear Chairman Goodwin,

25 "I am writing to respectfully request the Board

1 to deny the waiver of the rules for the applications
2 listed above. The request would allow the applicants more
3 time to possibly receive their zoning approval from the
4 city.

5 "The City of Venus has worked with the
6 developer for application 19011 Palladium Venus for over a
7 year to support their project application to the TDHCA.
8 The Venus City Council authorized the annexation of the
9 site and approved the re-zoning of the property prior to
10 March 1, 2019, the deadline for the submission of full
11 application to the state. We followed the rules and did
12 everything we could to demonstrate how much we need and
13 want this development in our city.

14 "Palladium Venus is critically important to our
15 community. Our growing city has a population that
16 reflects the needs of low income families and would be
17 significantly hindered if this waiver of the rules was
18 approved by the Board. Our last awarded tax credit
19 community was in 1997. We understand the award for the
20 tax credits is competitive. Palladium Venus is a
21 competitive application and is in line to be awarded
22 should Arlington not timely pass the respective
23 applicants' re-zoning request. We cannot wait another 22
24 years for an opportunity to be awarded an affordable
25 housing development in our city.

1 "Venus is a growing Dallas-Fort Worth suburb
2 centrally located just a 35-minute drive south of downtown
3 Fort Worth and downtown Dallas. Our close proximity to
4 the third largest city in Texas with a small town quality
5 of life makes Venus an attractive location for the growing
6 Metroplex workforce.

7 "Please do not approve the request for a waiver
8 of the rules to extend their zoning process. The same
9 rules apply to each applicant as they work on preparing
10 and submitting their applications to the state. We
11 respected the rules and considered the necessary
12 governmental approvals to support Palladium Venus and
13 provided the necessary approvals in a timely manner.
14 Venus is just as deserving as Arlington in being awarded
15 affordable housing.

16 "Thank you for your consideration in this
17 important request."

18 MR. GOODWIN: Thank you, Michael.

19 Obviously we have some people here that want to
20 speak. We've had two letters -- and by the way, before
21 those were read I didn't know whether those letters were
22 going to be in favor of staff's recommendation or opposed.

23 Is everybody that wants to speak already seated
24 up here? Is there anybody behind that wants to speak on
25 this item that has not moved up yet? Is there anybody in

1 here in this group that's in favor of staff's
2 recommendation? Since we've heard two that are opposed,
3 I'd like to hear somebody that's in favor of staff's
4 recommendation speak first and then we'll go in favor and
5 then opposed. You'll be held to three minutes.

6 MS. ANDRÉ: Well, I was going to say I could
7 argue either side, so if you tell me which way you're
8 leaning, I'll push you over the edge and, you know, claim
9 victory.

10 (General laughter.)

11 MS. ANDRÉ: My name is Sarah André. I am here
12 representing Division Lofts. I am one of the applicants
13 in Arlington, and I did not prepare any formal remarks
14 today primarily because this situation is very odd.

15 You know, I'll speak on behalf of my
16 application but I believe the other applications did the
17 exact same thing, we all put in our zoning request well
18 within the time frame specified by the City of Arlington
19 to have it out way before even award, potentially. They
20 say on their website, I think, that it takes 12 weeks and
21 these went in in February so we should have been out
22 March, April, May, you know, June at the latest, maybe
23 July even if there was some problem. And that has not
24 been what happened.

25 When we began to see that this could be a

1 potential problem, which was actually before the awards, I
2 combed the rules, I talked to our counsel, and I reached
3 out to TDHCA staff: Hey, is there any possibility for a
4 waiver on this? Everybody said, No, no, no, no. Which is
5 the way the rules are currently written, you know. I
6 guess there is a possibility for a waiver since staff
7 found the technical way for that, but the general
8 consensus is no, you have to have your zoning by
9 commitment, we all know that. So we told the City of
10 Arlington: Hey, you've got to speed it up, you're going
11 to lose all these deals. And they simply have not been
12 able to make things go any faster.

13 Since resolutions for support of all these
14 deals were approved back in December, they have had a
15 turnover on their city council, they have had a turnover
16 on their zoning commission, and frankly, the planning and
17 zoning commission hearing, they were non-functional.
18 Primarily they had members that did not even know how to
19 use their voting tool, so we received motions to approve
20 with no second, then we received another motion to approve
21 with no second, then we received a motion to disapprove.
22 I mean, they were just in chaos. And it was a number of
23 people's very first meeting and a lot of issues have gone
24 on. So they have not been able to provide this. They did
25 reach out asking for your consideration. This is

1 definitely not anything the developers have been able to
2 control and it's been beyond our wildest efforts to make
3 it go any faster.

4 I can say, Mr. Vasquez, that what the city
5 council will do is that by the 24th we will all have an up
6 or down, yay or nay vote regardless. And given their
7 current level of lack of cohesion on those boards and at
8 the council level, I don't see a unanimous vote coming for
9 anything. They're just all over the map.

10 Thank you.

11 MR. GOODWIN: Thank you.

12 Any questions for Sarah?

13 (No response.)

14 MR. GOODWIN: Is there anybody else in the
15 group that's in favor of staff's recommendation?
16 Everybody else that's going to speak is going to speak
17 opposed to staff's recommendation? Okay.

18 I would ask you to come on up, and I would just
19 caution everybody that if this comes down to a question
20 about do we bend the rules or don't we bend the rules, we
21 don't have to hear it from seven different people, you
22 know. The Board is capable of understanding what the
23 issue is in front of us, so I would ask that you not
24 repeat the same thing that each speaker before you has
25 brought. If you bring something new, great.

1 MS. BROWN: Thank you.

2 Chairman Goodwin and members of the TDHCA
3 Board, my name is Linda Brown with Casa Linda Development
4 Corporation. Casa Linda is the development consultant to
5 Palladium U.S.A. for the Palladium Waxahachie and
6 Palladium Venus applications and the co-developer, co-
7 owner with Riva Switzerland for the Riva Keene
8 application. Three competitive applications on the
9 waiting list in Region 3 with many years of experience
10 developing multifamily properties in the North Texas
11 region, we know the risk of selecting a development site
12 that is not appropriately zoned and the requirements of
13 getting it re-zoned.

14 In the Board action request and supporting
15 documentation, it is never made clear nor mentioned by the
16 applicants for Mariposa at Harris Road and Division Lofts
17 that the Arlington Planning and Zoning Commission denied
18 their re-zoning by a vote of six and one on August 7, and
19 because Bardin Apartments had development plan issues, he
20 was given a choice to either have the vote taken which
21 would have likely resulted in a denial or to continue the
22 case to the next P&Z meeting. The developer chose to
23 continue the case.

24 If P&Z had approved Mariposa, Division Lofts
25 and Bardin's applications for re-zoning on August 7, they

1 would have followed the typical council approval timeline:
2 public hearing and first reading for zoning approval on
3 August 20, and second reading and final zoning approval on
4 September 10, giving them plenty of time to submit for
5 commitment. Before award of credits, developers know if
6 their application is prioritized and in an award position.

7 Because of the P&Z denial, Mariposa and Division Lofts'
8 next step required them to request the city council for a
9 call for a public hearing at the August 20 meeting and
10 Bardin Apartments had to come back to P&Z on August 21.

11 As unfortunate as the delay of their zoning
12 cases may be, these are experienced developers and they
13 know appropriate zoning is required by commitment. The
14 risk of being denied is always a reasonable outcome of any
15 vote and could have easily been avoided by beginning the
16 approval earlier. The re-zoning process begins before
17 March 1. If your site is not appropriately zoned, you
18 must provide a letter from the city confirming that a
19 formal zoning change application was submitted to the city
20 in your TDHCA application due on March 1.

21 Palladium Venus and Riva Keene also had sites
22 that required re-zoning and both sites received unanimous
23 city council approval for the re-zoning. To say that
24 re-zoning is not in the developer's control is lowering
25 the standard by which we all operate when there are just

1 as deserving applications who worked with the city and the
2 community and got their approvals and are ready to
3 proceed.

4 If this request is approved by the Board today,
5 this will set a terrible precedent for future requests by
6 developers for extensions to deadlines, including required
7 material for commitment, documentation due on March, like
8 getting city approvals for resolutions of support. We
9 just want to be treated fairly with a set of rules that we
10 can rely on as the rules.

11 I respectfully request the Board to deny
12 granting these applicants an extension of time to meet
13 their zoning commitment required documentation.

14 Thank you.

15 MR. GOODWIN: Any questions?

16 MR. VASQUEZ: Mr. Chairman, I have actually
17 questions for staff. And again, I appreciate there's more
18 speakers but I think we get the gist of the dilemma here.

19 Let me ask a couple of questions. With the
20 Reserve at New York 19143 dropping out, does that open up
21 funding for either the Keene or Venus already? I mean, is
22 one of these a moot point?

23 MS. HOLLOWAY: I'm going to ask Shay to address
24 that for you.

25 MS. GAMBLE: Hi. Sharon Gamble, administrator

1 for the Tax Credit Program.

2 So back on July 31 we talked about things that
3 happen after award, so this is one of those things. Yes,
4 the Reserve at New York, the applicant contacted us and
5 told us that they did not get their zoning and they would
6 not be moving forward. So when that application dropped
7 out, we then went back to the waiting list and we are now
8 preparing documents to award the next application that was
9 in line which is application 19250 Cypress Creek at
10 Waxahachie. And that's how it goes, as applications above
11 drop out, then we go down the list, so we did that when
12 the Reserve at New York application dropped out.

13 MR. VASQUEZ: Okay. Are the next projects in
14 line Keene and Venus?

15 MS. GAMBLE: Yes. There are two in Venus --
16 sorry, I take it back -- there is one in Waxahachie and
17 two in Venus and then the Keene application is after that.

18 MR. VASQUEZ: So they're third in line.

19 MS. GAMBLE: They are fourth in line, the Keene
20 application.

21 MR. VASQUEZ: Fourth in line.

22 MS. GAMBLE: The Keene application is.

23 MR. VASQUEZ: The Keene is fourth in line so
24 this is a moot point for the Keene project anyhow.

25 MS. GAMBLE: Depending on what happens with the

1 applications in Arlington.

2 MR. VASQUEZ: If all three of these, Diversion
3 Lofts, Bardin and Mariposa.

4 MS. GAMBLE: If all three of them go away, then
5 the next three to be awarded would come from Waxahachie,
6 Venus and Venus, as far as the list goes. Of course, that
7 depends on staff review and all that stuff.

8 MR. VASQUEZ: Okay. But at this point, Keene
9 doesn't even have -- they're too far down the list.

10 MS. GAMBLE: Correct.

11 MR. SHACKELFORD: (Speaking from audience.)
12 There's only one Venus project.

13 MS. GAMBLE: I'm not sure what he's talking
14 about.

15 MR. GOODWIN: I'm sorry, John. What are you
16 trying to clarify?

17 MR. SHACKELFORD: (Speaking from audience.)
18 Well, there's two on the list for Venus.

19 MS. GAMBLE: Come on up here.

20 MR. SHACKELFORD: I don't want to take up my
21 time but I just want to make a clarification.

22 MR. VASQUEZ: It's my question.

23 MR. SHACKELFORD: Mr. Vasquez, there's two on
24 the list but for the developer there's just one. The
25 other Venus project did not get its zoning so it would

1 drop out.

2 MR. GOODWIN: But Sharon doesn't know that at
3 this stage of the game.

4 MR. SHACKELFORD: Ms. Gamble was unaware of
5 that.

6 MS. HOLLOWAY: We have not been informed of
7 that other Venus application dropping out.

8 MR. VASQUEZ: Okay. My next question --
9 assuming the Board would want to know this -- so if on the
10 24th of September these projects do not get their zoning
11 from Arlington, then do we go to the next groups on the
12 list, the next three on the list anyhow?

13 MS. HOLLOWAY: Yes. We go to the next
14 applications in line on the waiting list within that
15 subregion.

16 MR. VASQUEZ: So if we grant this waiver until
17 the 24th for that vote to take place and that vote in
18 Arlington goes against these three remaining projects,
19 then we go look at the next -- it automatically goes to
20 those next groups.

21 MS. HOLLOWAY: Yes. If these developments do
22 not get their zoning at that second meeting would be sort
23 of the drop dead date for those three apps.

24 MR. VASQUEZ: Okay. So by granting the appeal
25 we're just allowing for a couple of extra days because of

1 an inefficient Arlington city.

2 MS. HOLLOWAY: It's a waiver.

3 MR. VASQUEZ: So if Arlington votes for it,
4 then the regular scoring system that we did the whole
5 process just keeps moving like everything was fine. If
6 they vote against granting the zoning, then these groups
7 that are appealing, they're next in line and they're back
8 on track.

9 MS. HOLLOWAY: Right, so one or more. That is,
10 in fact, what is going on here.

11 MR. VASQUEZ: Okay.

12 MR. BRADEN: Mr. Chair, I have a couple of
13 questions too.

14 I guess what I'm struggling a little bit with
15 is what are the grounds for waiving this. Is it just
16 because Arlington will lose out on these projects? And
17 Arlington, too, could lose out on these projects because
18 of the inefficiency that it's running.

19 MS. HOLLOWAY: In this instance because it
20 impacts all of the applications in that city and it's the
21 city -- I understand Linda's position about getting
22 started early and that kind of thing, but as I understand
23 it from the letter from Arlington that all of these
24 projects were heard first by the planning and zoning
25 commission on August 7. I don't know exactly when the

1 initial application for the zoning change was submitted to
2 the City of Arlington, but there would have been in the
3 application a letter from Arlington stating: Yes, we've
4 received this application.

5 MR. BRADEN: And I understand that and I'm
6 really not criticizing the developers, it sounds like they
7 made filings in a timely manner, but if this hearing took,
8 place on August 7, I think Linda or somebody made a
9 comment that it was voted down at that point, six to one,
10 so preliminarily they've already said, Well, we don't
11 really want to move this forward.

12 MS. HOLLOWAY: I don't know exactly what the
13 vote was at that meeting, but I would imagine at that
14 meeting is when the Reserve at New York application was
15 denied.

16 MR. BRADEN: So the local zoning board said no,
17 and then your next appeal process is the city council? I
18 assume that's the way it works.

19 MS. HOLLOWAY: In general, planning and zoning
20 commissions make recommendations to city council for
21 approval. I'm sure there's some kind of appeals process,
22 or I would imagine there is, but it's very similar to our
23 Rules Committee meeting.

24 MR. BRADEN: And that initial recommendation
25 was not positive?

1 MS. ANDRÉ: I would provide clarification to
2 that. Once again, it's Sarah André.

3 There were four applicants in Arlington this
4 year. All four were present at that initial hearing of
5 P&Z Committee, and you know, Marni is correct, it is a
6 recommendation. What they did is they continued one of
7 the applicants, midstream they said, we're going to
8 continue on to the next meeting. That applicant -- I
9 believe that was Bardin -- said, we'd love a vote
10 tonight -- you know, trying to get through. And they
11 said, No, we're going to continue it. And the other three
12 they denied.

13 That did not kill your deal. You had to then
14 go to a hearing of the city council and request a vote for
15 another public hearing on the zoning. That's just their
16 formal process: P&Z, if P&Z denies it then you ask city
17 council to hear it.

18 MR. BRADEN: Did they state why they denied it?

19 MS. ANDRÉ: Oh, I believe I mentioned to you
20 how dysfunctional it was.

21 MR. BRADEN: I get that.

22 MS. ANDRÉ: It was everything from we don't
23 like apartments, we have enough apartments, to that road
24 is not a major collector, it's a feeder road, to you know,
25 we don't think a pool is a good amenity. I mean, it was

1 all over the map.

2 MR. BRADEN: I understand that they're in a
3 hard spot. It just seems like Arlington is -- I guess I'm
4 struggling, I know it's only eight days but there are
5 other people on this list who are waiting and we've set up
6 the system where things drop off and people move up, and
7 it's beyond our control and it's somewhat beyond their
8 control, but I'm not sure that merits a waiver if the city
9 itself -- it's not like even they sent a letter and said,
10 We're having internal problems but we really want these
11 projects to go forward, please give us the consideration.

12 It sounds like that letter doesn't really say that
13 either. So I guess I'm struggling with this waiver.

14 MS. THOMASON: I, unfortunately, as a developer
15 have been in very similar situations where planning and
16 zoning board or city council or staff of the city has been
17 in flux. The fact that there are three from the same city
18 makes me question. I think the applicants may have done
19 what they needed to do. Is the city really struggling in
20 the commission and in city council? Unfortunately, I've
21 been in that same position and there's not much you can do
22 other than go through the process.

23 MS. BINGHAM ESCAREÑO: I'll just add too just
24 my initial thoughts. There's a reason that we have
25 regions and as much as we, you know, want affordable

1 housing in Arlington, we also want it in Waxahachie and we
2 also want it in Venus and we also want it in Keene.
3 That's the way the funds are pooled.

4 I guess I would be interested in -- without
5 using the "P" word, precedent -- can you think of any time
6 that we as a Board have done something like this where
7 we've granted a waiver in deference to a situation like
8 this?

9 MS. HOLLOWAY: Not as a matter of Board action.
10 The closest thing I can come up with is the City of Fort
11 Worth put some requirements on applicants that they were
12 not able to fulfill on their end so we allowed those
13 applicants to rework the parts of their application that
14 included that Fort Worth financing, but that was not a
15 Board action item, that was something we could handle
16 administratively.

17 MR. GOODWIN: Any other questions for staff?
18 (No response.)

19 MR. GOODWIN: I see somebody over here that's
20 anxiously wanting to come to the podium.

21 MR. BUMP: Good morning, Chairman, Board
22 members. Casey Bump, and I represent Mariposa Apartment
23 Homes at Harris Road. I won't go through the details of
24 what Sarah had said, but really on September -- this is
25 just a functional thing to allow a second reading, so on

1 September 10 the city council is going to go in and vote
2 and they're going to vote up or down. If it's a unanimous
3 vote, they can have the same hearing that night. And the
4 city council had a zoning board that did not go with their
5 wishes and the city council is doing everything they can
6 to recover from the situation.

7 If you have a unanimous vote, they can do it
8 again on the night of the 10th. If it's just a majority,
9 one dissenting vote, they can't do the reading that night
10 which is why they're asking for the 24th. So a possible
11 modification would be if you're not given approval or the
12 majority vote on the 10th, then you're dead and you move
13 on. The second hearing is really just kind of an
14 administrative thing and I wanted to just give you that
15 piece of information because that might be something
16 that's not coming out in the letter that the city
17 provided.

18 MR. GOODWIN: Thank you.

19 Any questions?

20 MS. HOLLOWAY: If I may make a correction to my
21 earlier statement. My staff, with their big brains,
22 recalled that last year -- year before there was another
23 applicant who had a very similar situation with their
24 zoning, it was a single applicant in Rowlett, they weren't
25 able to get their zoning on time. The Board actually

1 denied that request and that application was resubmitted
2 in the next round.

3 MR. GOODWIN: Okay. Thank you.

4 MS. BINGHAM ESCAREÑO: Hey, Marni, while you're
5 up there. So Casey just mentioned -- I think what Casey
6 mentioned was that the city council is on board and what I
7 heard a minute ago was -- or what you said typically the
8 way this works is planning and zoning makes a
9 recommendation to city council and then city council makes
10 the final decision, and what I thought I heard Casey say
11 is that city council is on board. Do we have anything in
12 writing or anything that shows that city council is on
13 board? We have that super nebulous letter.

14 MS. HOLLOWAY: A very carefully worded letter
15 about their process.

16 I have not received any indication from any
17 council members that they are in support or opposed to the
18 developments.

19 MS. BINGHAM ESCAREÑO: Gotcha.

20 MR. BRADEN: To the Chair.

21 So if we don't extend to the 24th, what's the
22 regular deadline?

23 MS. HOLLOWAY: The 16th.

24 MR. BRADEN: So your point about September 10,
25 I mean, if city council is really on board and they do it

1 unanimous, they can go up to September 10 and nothing
2 changes.

3 MS. HOLLOWAY: Correct.

4 MR. BRADEN: So there is no harm. You know, if
5 you leave it alone and you don't do anything, they've got
6 one more bite at the apple. If we're wrong and they're
7 really on board and they want these projects, they can do
8 a unanimous vote at that time and they still get their
9 projects.

10 MS. HOLLOWAY: From the letter that we have
11 from the city, that is, in fact, the case.

12 MR. GOODWIN: Anybody have anything new they
13 want to add that has not been spoken? Ms. Bast, we'll
14 hear from you first.

15 MS. BAST: Seriously. Cynthia Bast of Locke
16 Lord. I'm here for the Bardin applicant. And I
17 apologize, I was holding back because my client is
18 actually on his way -- I've been texting -- and he is
19 thwarted by Austin traffic.

20 MR. VASQUEZ: So you're saying that he's late
21 again. That's a pattern.

22 MS. BAST: And, Mr. Vasquez, that's exactly
23 what I wanted to point out here is what's in my letter
24 that's in the Board book. I've not been intimately
25 involved in this but I can give you these facts with

1 regard to Bardin, which I think is a little bit different
2 than some of the others.

3 They did submit their zoning application, they
4 started the process January 4, 2019 with a meeting with
5 the city. On March 13 they received city comments. There
6 were no material issues. Those were all things that they
7 could address. In June, when it was evident that they
8 could be in the money, they provided the city with
9 responsive plans to address the city's comments. The city
10 sat on the developer's response until August 2. Three days
11 before the planning and zoning meeting the city said, Oh,
12 we want you to do some things, we want you to move some
13 buildings and do some other things here.

14 So on August 7, which is when they continued
15 Bardin and did not hear Bardin, they said we want you to
16 meet with a church, we want you to address some issues.
17 And the developer kicked in and did all those things, and
18 came to agreement with the neighboring parties. And on
19 August 21, the revised plan was submitted to P&Z and got a
20 positive vote of seven to one. So this is not one that
21 was turned down by P&Z. They have done everything that
22 the city asked them to do.

23 And so now, as some of the other speakers have
24 indicated, the first available city council meeting since
25 the August 21 meeting is on September 10, and if they get

1 a unanimous first reading, they can go to a second reading
2 and they can be approved on the 10th, but if they don't
3 get that unanimous first reading on the 10th, then they
4 would have to get their second reading on the 24th. That
5 doesn't mean that they would be turned down on the 10th,
6 it means they could get a positive vote, it's just not
7 unanimous, and then they could be heard on the 24th.

8 So I wanted to give you those facts about
9 Bardin so you could have a little bit more color about
10 where that one stands with regard to what it has done to
11 try to satisfy the City of Arlington on its zoning
12 request, and perhaps the developer will be behind me
13 shortly.

14 MR. VASQUEZ: Cynthia, just one more
15 clarification. So on the 10th if it's not unanimous, it
16 can go to the 24th for a second reading.

17 MS. BAST: Correct.

18 MR. VASQUEZ: At that second reading does it
19 have to be unanimous or just a majority vote?

20 MS. BAST: I believe it's a majority. Is there
21 someone here who -- yes, I believe it's a majority.

22 MR. VASQUEZ: Okay. So I assume, and picking
23 up on Mr. Braden's comment, I assume that the applicants
24 and their representatives could make it very clear to the
25 City of Arlington the meeting on the 10th that if they do

1 not approve it today unanimously on the 10th that the City
2 of Arlington would lose these three projects, assuming we
3 don't make any extension here.

4 MS. BAST: I think that is a valid assumption.

5 MR. VASQUEZ: So they will be well aware if
6 they didn't approve it unanimously then, then the projects
7 would miss the deadline of the 16th.

8 MS. BAST: Correct.

9 MR. VASQUEZ: Okay. Just understanding.

10 MR. GOODWIN: We're not approving the projects,
11 we're being asked to approve a waiver. If we don't
12 approve the waiver, then that would be the impact.

13 MR. VASQUEZ: Exactly. But Arlington would
14 know that at that meeting on the 10th.

15 MS. BAST: Thank you for allowing me to give
16 some more information.

17 MR. GOODWIN: Any other questions?

18 (No response.)

19 MR. GOODWIN: Anybody have something they want
20 to add that's new?

21 MR. HUTH: Good morning. Tom Huth, president
22 and CEO of Palladium U.S.A. I am the developer for
23 Palladium Waxahachie and Palladium Venus and the
24 development consultant for Riva Keene. These three deals
25 are in direct line to be awarded should these three

1 Arlington deals not get their zoning in time.

2 We've got be a little careful, we've got to be
3 a little careful for a couple of reasons. One is it may
4 sound like a few days, giving the eight-day extension
5 doesn't seem like a lot. Right? Well, all of us are held
6 by the same rules as everyone else. You have to have your
7 zoning in place by the time of your commitment deadline,
8 you have to.

9 Two years ago -- we talked about this case --
10 two years ago this very Board disapproved an exact case as
11 this. The commitment deadline date cannot be extended.
12 If you allow this to be extended, what happens to the
13 application delivery date? I didn't get my council
14 resolution of support until March 4, so then do I come
15 before the Board and say because it's a dysfunctional city
16 I didn't get my resolution of support until four days
17 after the application delivery deadline? No. We've got
18 to hold these dates.

19 These are experienced developers. These three
20 developers are very experienced in what they do. They
21 know if you put a site under contract that is not zoned
22 for its intended use as multifamily, there is a huge risk
23 you may not get your re-zoning and you may not get your
24 re-zoning in time. We as developers understand that and
25 know that. These are experienced developers, they took on

1 that risk. Why they should be given an advantage that no
2 one else in the program has received, and out of the ten,
3 eleven deals that have been awarded, there were probably
4 six needed re-zoning which got their re-zoning done in
5 time. Why would we give an opportunity for these extra
6 days for these applications just because they're in
7 Arlington.

8 We've got representatives sitting behind me
9 from the City of Venus; council lady, economic development
10 director, City of Keene right. I ask where is Arlington,
11 where is the representative from Arlington. If this was
12 so important to the City of Arlington, where are they?
13 Are they stuck in traffic? They're not here. They are
14 not here. Why? Maybe they're not that supportive.

15 These three deals have the opportunity for this
16 whole issue to go away on the 10th. If they vote
17 unanimously on the 10th, it's a moot point, they get
18 awarded, we go away.

19 Thank you.

20 MR. GOODWIN: Thank you.

21 Any questions? Anybody have any questions? We
22 have one more speaker.

23 Beau, you have something you want to say?

24 MR. ECCLES: Just response to the legal concept
25 that are they going to have folks asking for a waiver of

1 the application delivery deadline.

2 MR. GOODWIN: We get into this. At every
3 meeting we get into this that if we do this then this is
4 going to blow the whole system in the future.

5 MR. ECCLES: Well, just from a rule standpoint,
6 we're talking about 10 TAC Section 11.207, Waiver of
7 rules. Waiver requests on competitive housing tax credit
8 applications will not be accepted between submission of
9 the application and any award of the application. So if
10 you wanted a waiver of the application submission deadline
11 or anything that was required in the application, you'd
12 actually have to submit that waiver request at or before
13 the application, or as we have here, this is post-award
14 that is a time when you can submit under this rule a
15 request for waiver of the rules which requires that the
16 applicant show that the waiver was both not reasonably
17 foreseeable and was not preventable by the applicant.

18 MR. GOODWIN: So there's a rationale for this
19 waiver to be in front of us today.

20 MR. ECCLES: Right. And just from an open
21 meetings standpoint, if there is a matter on the City of
22 Arlington's agenda to have a council member from the City
23 of Arlington here talking about it would be -- I can't
24 imagine that the city attorney would recommend that.

25 MR. HUTH: it could be a representative,

1 though.

2 MR. ECCLES: I understand, but you asked where
3 are members of council, and I just wanted to make clear.

4 MR. GOODWIN: We're not here to have a debate,
5 so thank you for your comments.

6 Yes, ma'am.

7 MS. BURCHETT: Hi. My name is Sallie Burchett
8 and I'm with Structure Development, the applicant. The
9 primary reason I'm up here is I don't want the City of
10 Arlington to think that we think they're dysfunctional

11 I'm a member of the American Institute of
12 Certified Planners, my background is in planning, and
13 staff has been, while slow, very helpful, and we will go
14 in March and then April and then May and June and they
15 will feed us information that they know their elected
16 officials want to hear. For example, we would really like
17 a butterfly garden, or we would really like a package
18 locker system so our residents can have a place to store
19 things. And we would respond and they have a system, it's
20 very regimented but it's transparent, and they tell us
21 what they want and we submit it and they review everybody
22 at the same time.

23 Arlington is a home rule city, it's a city that
24 can set their own rules and they have their processes and
25 their deadlines, and you can submit on one day and you get

1 pushed back to the next month, and in this situation June
2 had only one meeting and so that just kind of pushed it
3 along a little bit farther than maybe we would want it.
4 So they have followed their rules, they've been very
5 helpful in guiding us into a planned development district
6 that they think will get the majority of support of their
7 leadership, and we're just asking for the ability to make
8 it to that final hearing if we need it.

9 Thank you.

10 MR. GOODWIN: Any questions?

11 (No response.)

12 MR. GOODWIN: John, something new, I assume.

13 MR. SHACKELFORD: Of course. It deals with the
14 rules.

15 My name is John Shackelford. I represent the
16 Palladium organization.

17 A couple of things. One is you asked earlier,
18 or somebody made the comment about had there ever been a
19 grant of an expiration date on a commitment notice. You
20 actually asked that two years ago when the Pedcor
21 Palladium issue came up before this Board, you asked that
22 question, you said, Beau, Tim, has it ever come up. Mr.
23 Irvine looked at you and said, to the best of my
24 knowledge, we've never granted an extension of an
25 expiration date in a commitment notice. And I think

1 there's good reason.

2 And I want to also go back to this was not put
3 in staff's write-up but two years ago what was at issue
4 was 10.402 where the language specifically states on the
5 expiration date of a commitment notice, the last sentence
6 says, "The commitment expiration date may not be
7 extended." That's what these applicants are asking for,
8 an extension of their expiration date to the 24th. And
9 what I would say is I do think you're setting a dangerous
10 precedent. You're opening the flood gates to all these
11 items that are due by the developers for their commitment
12 notice and it may seem like, well, it's not a big deal, we
13 just extend from the 16th to the 24th, but where do you
14 start drawing a line each time when a developer comes up
15 and says, well, I couldn't provide this for this reason.
16 I think you're opening up the door, and the rule says the
17 commitment expiration date may not be extended.

18 Mr. Palmer represented Palladium in that matter
19 two years ago because I had a conflict with representing
20 both clients. Mr. Braden, at the end of the discussion
21 you ended up saying, I found Mr. Palmer's argument to be
22 persuasive, and you made the motion to deny. Mr. Vasquez,
23 you seconded. It was approved unanimously by this Board.

24 It's the same situation. It's just unfortunate we had
25 three applications out of the City of Arlington for

1 whatever reason.

2 I also want to make the observation that, based
3 upon what I'm hearing from these that are speaking in
4 favor of the waiver request, I don't think they need it.
5 I mean, I think they sort of made the argument. If they
6 get what they need on the 10th, this is a moot issue, so I
7 don't think this is one where the Board should be, in my
8 opinion, granting a waiver on extending an expiration date
9 for a commitment notice when the rule specifically says
10 it's not to be extended over something that may never even
11 arise because the developers, if things go their way, they
12 get the breaks they need, they've gotten their awards,
13 they're golden on the 10th, and as Mr. Huth said, we go
14 away.

15 And on the waiver what I would point out is
16 Marni said that this furthers the policies. The rule
17 actually says that in granting a waiver it's a two-part
18 test, and the second part of the test is that the waiver
19 request must establish by granting the waiver it better
20 serves the policies and purposes of the program than not
21 granting the waiver. I haven't heard any evidence so far
22 presented to the Board that says by granting this waiver
23 it's better than if it does not grant the waiver.

24 Everybody is deserving, everybody is on the
25 wait list, people just move up.

1 Thank you.

2 MR. GOODWIN: Any questions for John?

3 (No response.)

4 MR. GOODWIN: It seems that we're hearing the
5 same thing over and over again -- wait just a second,
6 Barry -- and we've been hearing this discussion and so I
7 think it's probably appropriate -- I'm not cutting off
8 discussion -- to see if we have a motion that a Board
9 member would like to make as to whether it's for staff's
10 recommendation or to deny staff's recommendation.

11 Mr. Braden, you look like you were going to
12 make a motion to me.

13 MR. BRADEN: As Mr. Shackelford pointed out,
14 there is precedent.

15 Mr. Chair, I'd like to make a motion that the
16 waiver request in application 19126, 19244 and 19319 be
17 denied.

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

20 MS. RESÉNDIZ: Second.

21 MR. GOODWIN: So we have a motion and a second.
22 Now we'll take discussion on that motion.

23 MR. VASQUEZ: I'd just like to comment that I
24 think this has been actually a very good discussion. My
25 pendulum has swung back and forth on this, and the reason

1 I'm going to support Mr. Braden's motion to not grant the
2 extension to the 24th and not give waivers and start
3 setting precedents, if there was not a September 10
4 opportunity for Arlington to vote it up if they want to
5 and we just simply had to wait because the next scheduled
6 meeting was the 24th, I'd be inclined the grant the
7 waiver, but since Arlington does have an opportunity on
8 the 10th, within our guidelines which is before September
9 16, I agree with some of the speakers, there's no reason
10 to give the waiver and let's just let the process go. So
11 I'm going to vote for the motion.

12 MR. GOODWIN: Is there any other Board member
13 that wants to comment?

14 (No response.)

15 MR. GOODWIN: Anybody else want to speak to
16 this before we take a vote?

17 MR. PALMER: Barry Palmer of Coats Rose.

18 I just wanted to point out that they're not
19 asking for an extension of the commitment notice here,
20 they are all going to make the date of the commitment
21 notice, there's just one requirement in the commitment
22 notice, the zoning that there is the ask for the extension
23 of eight days.

24 But what I would suggest as a possible
25 compromise is that you require that they provide proof by

1 the September 16 date that they got approval of the zoning
2 change at the first meeting on September 10, and as Casey
3 Bump said, if that happens, the second reading is just
4 administrative required by their rules. But if anybody
5 gets approval on September 10 of the zoning and can
6 provide that and then just have the follow-up second
7 reading on the 24th, whereas, if anybody doesn't get
8 approval of their zoning on September 10, then they would
9 be out.

10 MS. THOMASON: That would require the
11 unanimous, or are you saying a majority vote?

12 MR. PALMER: Well, so if you get a unanimous
13 vote on September 10, you're in anyway, but if one person
14 votes against you on September 10, you would still have
15 gotten approval of your zoning, you just have to come back
16 for the second reading on the 24th.

17 MR. GOODWIN: And that's presuming that
18 everybody votes the same way on the second reading.

19 MR. PALMER: Right.

20 MR. GOODWIN: It's not approval, it's just a
21 step in the approval process. Right.

22 Any other questions? Anybody else want to
23 speak?

24 (No response.)

25 MR. GOODWIN: If not, I'll call for the vote on

1 the motion.

2 Oh, we have another speaker. Okay.

3 MS. SCHWIMMER: Chairman Goodwin, members of
4 the Board, I'm Kim Schwimmer, and I'm a HUB in several of
5 the competing applications.

6 One point that hasn't been brought up is that
7 other developers are holding onto their contracts waiting
8 for these deadlines to come and it costs time and money to
9 do that. Eight days means a lot to other developers, it
10 means they're releasing earnest money to enable them to
11 continue on or else they have to back out, so this eight
12 days is very material to the other competing applications.

13 And that's all I want to say.

14 MR. GOODWIN: Thank you.

15 Any other comments?

16 (No response.)

17 MR. GOODWIN: We have a motion to deny the
18 waiver and a second. All those in favor say aye.

19 (A chorus of ayes: Chairman Goodwin, Vice
20 Chair Bingham, Members Braden, Reséndiz and Vasquez.)

21 MR. GOODWIN: Opposed?

22 MS. THOMASON: Opposed.

23 MR. GOODWIN: One opposed.

24 Okay. So we'll move on to item number 10.

25 Mr. Vasquez, it kind of seems like we've

1 already been through most of these rules.

2 MR. VASQUEZ: Mr. Chairman, the Rules Committee
3 met last night to go over the final proposed draft of the
4 QAP, and I just want to start off by saying thank you to
5 so many of you here in the room from the development
6 community for your input and working with staff over time.

7 I actually think that because of your working together
8 and letting us know your concerns ahead of time, it made
9 last night's meeting go half the time that I had mentally
10 prepared myself for.

11 And again, I think the staff did a very good
12 job, with very insightful perspectives sometimes on both
13 sides of issues where both sides had some very valid
14 points about concerns, but I believe we've come to an
15 excellent draft for a repeal and replace of these rules.
16 And I'd like to ask Marni to come up and give a couple of
17 the summaries of what came out of the meeting.

18 MS. HOLLOWAY: So there was a handout that we
19 created last night which is this potential modifications
20 to the 2020 QAP. You'll note that there were a couple of
21 things that we discussed that aren't in here.

22 One of them is purely oversight by me on the
23 mandatory amenities for historic deals. We're going to
24 change that requirement that the request be submitted with
25 the application to it must be submitted as a request for

1 amendment post-award once they have that information.

2 The other part that isn't in the handout is the
3 discussion of what happens on QCP on neighborhood
4 organization points if opposition is not found to be -- so
5 if there is opposition as challenged and the challenged
6 winds up denying the opposition, at the end of that
7 paragraph there is language that says, "Should the
8 neighborhood organization's statements be found to be
9 contrary to findings or determination of a local
10 government entity, or should the neighborhood organization
11 not respond in the seven calendar days, then the
12 application shall be eligible for four points under
13 Subparagraph (c). So the language that was requested is
14 already in the rule, so that's not in the handout.

15 MR. ECCLES: Do Board members have this
16 handout?

17 MR. BRADEN: We do not.

18 MR. ECCLES: Was this available at the desk
19 back there with copies for everyone?

20 MS. HOLLOWAY: I'm sorry, I didn't realize you
21 didn't have it.

22 MR. VASQUEZ: I was at the meeting last night.

23 (General talking and laughter.)

24 MS. HOLLOWAY: So the document that we created,
25 the potential modifications to the proposed 2020 QAP,

1 incorporates the changes that the committee discussed to
2 move forward to this meeting after the meeting last night,
3 with the exception of the two items that I just mentioned,
4 the one that I missed getting into the handout, and then
5 the other that's already in the rule in another place so
6 we don't need to add it.

7 So what you have in front of you is what the
8 changes would look like if, in fact, they are approved by
9 the Board, the first one being the change that allows
10 mitigation for a school that is rated F, that has a 2019 F
11 but has a 2018 Met Standard rating. And what I've done is
12 put that in the same section that describes mitigation for
13 a D with an Improvement Required in the previous year,
14 which is what we discussed in the meeting. There are
15 continuing changes throughout for that requirement.

16 The other thing that I've done is made sure
17 that everywhere it needed to be, it's very clear that
18 elderly developments or a supportive housing SRO
19 development are exempted from the prohibition if the
20 school is an F.

21 MR. VASQUEZ: Marni, did we say elderly, SRO or
22 efficiency?

23 MS. HOLLOWAY: At that point in the evening I
24 had five people talking to me, so I'm not really clear on
25 what the final decision was of the group. We can make it

1 SRO or efficiency, if you would like, or we can leave it
2 at SRO.

3 MR. VASQUEZ: Well, I thought last night
4 someone was bringing it up saying we should include.

5 MS. BINGHAM ESCAREÑO: Someone mentioned a
6 definition and needing to be careful. My notes said and,
7 SRO and efficiency supportive housing.

8 MS. BOSTON: And actually that was a
9 clarification from counsel, and she was just whispering
10 that to me again, that she was suggesting that we do
11 include SRO or transitional. Is that right?

12 MS. SYLVESTER: No.

13 MS. BOSTON: An SRO or efficiency.

14 MS. SYLVESTER: An SRO or efficiency. SRO is a
15 very specific and has like kitchen and bathroom
16 facilities.

17 MS. BINGHAM ESCAREÑO: We're going to have to
18 get each of you to come up here.

19 MS. SYLVESTER: Megan Sylvester.

20 Efficiencies under our rule are no bedrooms, an
21 SRO has no bedrooms but it also has other specific types
22 of characteristics, and so my question last night wasn't
23 saying you should do one or the other, I was just saying
24 that if you say SROs, it's not necessarily going to cover
25 anything that only has no bedrooms.

1 MS. BINGHAM ESCAREÑO: Mr. Vasquez, do you
2 recall what the intent of the committee was last night
3 around this? Did it have to do with high unlikelihood
4 that children would be in these type structures?

5 MR. VASQUEZ: Exactly. I think the intent of
6 the committee was --

7 MS. HOLLOWAY: SRO or efficiency?

8 MR. VASQUEZ: The highest unlikelihood of
9 having children, which would be elderly, SRO, and
10 efficiencies, would all be waived from the schools.

11 MS. HOLLOWAY: From the prohibition with a
12 grade F?

13 MR. VASQUEZ: Yes.

14 MS. HOLLOWAY: I'm going to suggest that we
15 further tighten that up a little bit and say 100 percent
16 efficiencies in the development.

17 MR. VASQUEZ: Sure.

18 MS. HOLLOWAY: So I made those changes in the
19 neighborhood risk section. I also made a corresponding
20 change in the ineligible development section.

21 Moving on to unit and development construction
22 features, what I've done is taken everything that I could
23 find that was in the larger list, the old rule, and moved
24 it to energy efficiency features all the way at the end of
25 that rule item. So Energy Start or equivalent ceiling

1 fans, WaterSense showerheads, 15 or 16 SEER HVAC, all of
2 those are in one section. And we have added a requirement
3 that at least two points out of the points that a
4 development has to meet must come from the energy
5 efficiency features.

6 There was some question after the meeting last
7 night about items versus points that we didn't clarify in
8 that meeting. This is all point-driven. Some things are
9 worth more than others. You know, a faucet isn't worth as
10 much as a 16-SEER HVAC system. So as I drafted the
11 change, it relies on points, but I want to make sure that
12 that was the intent.

13 MR. VASQUEZ: I believe it was two items from
14 the energy efficiency features were what we wanted to
15 include.

16 MS. BINGHAM ESCAREÑO: That was my
17 understanding, although I do hear the argument for the
18 relevance of points but it would just depend on are we
19 okay if somebody picks two half-point things or do we
20 prefer that they come up with the equivalent of two points
21 worth of efficiency items in order to meet that standard?

22 MS. HOLLOWAY: So the two items could be a
23 WaterSense or equivalent qualified toilet and a WaterSense
24 or equivalent qualified showerhead. That's your two
25 items.

1 MR. VASQUEZ: Which would only be one point
2 worth.

3 MS. HOLLOWAY: Which are half a point each, so
4 it would only count for one if we went with points.

5 MR. BRADEN: I mean, I'm okay with what the
6 staff is suggesting. I think it makes sense.

7 MR. VASQUEZ: That makes two points value.

8 MR. BRADEN: Two points. I don't think we were
9 clear last night.

10 MR. VASQUEZ: I agree with that, I think that
11 makes sense.

12 So the way you have it written here -- and just
13 for the rest of the Board, the discussion and it was
14 brought up by the different speakers last night that in
15 the past, I think two years ago --

16 MS. HOLLOWAY: Some number of years ago.

17 MR. VASQUEZ: -- some number of years ago in a
18 previous QAP, you had specifically had to choose at least
19 two items from energy efficient characteristics. It
20 somehow dropped out of the process. It was mentioned as
21 an encouragement by not a requirement. We're trying to
22 encourage the utilization of energy efficient items rather
23 than just items like a walk-in closet and a kitchen
24 island, nice to have but those aren't adding to the
25 efficiency, the green items. So this way we're putting

1 back in a more explicit requirement for including energy
2 efficient items along with when you're doing all the other
3 non energy efficient items.

4 MS. HOLLOWAY: So another devil in the details
5 that came up as we were looking at these changes, 9
6 percent and 4 percent applications are required to collect
7 nine points from this menu of items, so if we're saying
8 two of those must be out of the energy efficiency list,
9 the other seven can come from anywhere, even additional
10 energy efficiency features. If a direct loan only or a
11 rehabilitation project, they're required to collect four
12 points, so saying that they have to have two of them be
13 energy efficiency, I don't know that it's burdensome but
14 it's different from how we're treating new construction.

15 MR. VASQUEZ: Well, this is a good burden, if
16 you call it a burden.

17 MS. HOLLOWAY: Well, it's for rehab deals that
18 may be very difficult to get to two points on the energy
19 efficiency.

20 MR. BRADEN: You're right, on a rehab deal
21 we're making 50 percent of the required points now be --

22 MR. VASQUEZ: LED lights, fans and WaterSense
23 get you there to the two points. Those are easy options
24 to put in, and even on a rehab.

25 MS. HOLLOWAY: I just wanted to point that out

1 and make sure that you are aware that that's what would be
2 happening with those points. And you're right, we could
3 leave it exactly as it is or we could make some
4 modifications. There may be someone who'd like to speak
5 to that once we get to the Board motion.

6 MR. GOODWIN: Is that the end of your
7 presentation, Marni?

8 MS. HOLLOWAY: That's the end, yes, for that
9 report item, yes.

10 MR. GOODWIN: Leo, do you have a recommendation
11 to the Board that you would like to make a motion?

12 MR. VASQUEZ: I would move to accept the draft
13 QAP, repeal and replace of the appropriate chapters, as
14 amended, for publication in the *Texas Register*.

15 MR. GOODWIN: I have a motion. Do I have a
16 second?

17 MS. THOMASON: Second.

18 MR. GOODWIN: Now we have discussion. Any
19 Board members? Michael, do you have something?

20 MR. ECCLES: This is essentially just the
21 report from the Rules Committee.

22 MS. HOLLOWAY: This is a report item.

23 MR. ECCLES: There's still the presentation on
24 the QAP itself that's the next one.

25 MR. GOODWIN: I thought that's what we were

1 doing.

2 MS. HOLLOWAY: I was discussing what we had
3 created from the changes last night.

4 MR. GOODWIN: So we won't take your motion, if
5 you don't mind.

6 MR. VASQUEZ: Okay. Let's hold that to the
7 next one.

8 MR. GOODWIN: We move to item 11.

9 MS. RESÉNDIZ: Do we need to accept the report?

10 MR. WILKINSON: You need a motion to accept the
11 changes, and then you vote on the --

12 MR. GOODWIN: So this will be a motion of the
13 Rules Committee to accept the changes, and then we'll take
14 the comment in the *Register*.

15 MR. ECCLES: I believe that what you were
16 trying to say is that the Rules Committee recommends the
17 QAP that's been proposed, including the changes that we
18 just went through, so it's recommending that the Board
19 then consider that QAP with those changes from last night.

20 MR. VASQUEZ: This is bureaucracy in government
21 at its best. This is the problem with America

22 (General laughter.)

23 MR. VASQUEZ: As our counsel said, I make that
24 motion to approve the draft QAP for presentation under
25 item 11.

1 MR. ECCLES: I am now the face of bureaucracy.
2 Last meeting I was his wife.

3 MR. GOODWIN: I'd say you're moving down.

4 MR. ECCLES: Can't wait for next month.

5 (General laughter.)

6 MR. GOODWIN: So we're perfectly clear what
7 we're making a motion on before we hear discussion is the
8 amended changes to the QAP as presented by Marni.

9 MR. BRADEN: Didn't he just make a motion to
10 accept that?

11 MR. VASQUEZ: I'm pulling back the first
12 motion.

13 MR. GOODWIN: You're withdrawing the first
14 motion. So whoever seconded it has to withdraw their
15 second. It's been withdrawn. So now the floor is open
16 for a new motion.

17 MR. BRADEN: So we're still on item 10?

18 MR. GOODWIN: We're still on item 10.

19 MR. BRADEN: I'll make a motion that the report
20 of the Rules Committee be accepted by the Board with the
21 modifications that Marni just went over.

22 MR. GOODWIN: Do we have a second?

23 MS. RESÉNDIZ: Second.

24 MR. GOODWIN: All in favor say aye.

25 (A chorus of ayes.)

1 MR. GOODWIN: Opposed?

2 (No response.)

3 MR. GOODWIN: Did you have something you wanted
4 to say before?

5 MS. BINGHAM ESCAREÑO: I just have a couple of
6 things left on my housekeeping list from last night.

7 MR. GOODWIN: Let's move the vote back.

8 MS. BINGHAM ESCAREÑO: Sorry. Marni probably
9 already has these embedded.

10 So there was something about appeals earlier of
11 when the log is posted or.

12 MS. HOLLOWAY: Right. So in discussion after
13 the committee meeting, our appeals language in statute is
14 really very clear and really pretty prescriptive, so
15 moving to an earlier of is really an administrative
16 process.

17 MS. BINGHAM ESCAREÑO: Okay. Very good.

18 And then the other was the little housekeeping
19 thing of if a list is posted after business hours on
20 something that the clock starts the next business day --

21 MS. HOLLOWAY: The following business day.

22 MS. BINGHAM ESCAREÑO: Is that in there?

23 MS. HOLLOWAY: I haven't put it in there, but
24 we absolutely can.

25 Or Beau, do you have --

1 MR. ECCLES: That sort of thing is straying
2 away from the statutory language. I think that that's
3 something that could be put out for public comment the way
4 it is and if that's something that needs to be cleaned up,
5 then we can determine that on the basis of public comment.

6 MS. BINGHAM ESCAREÑO: Okay. And then one of
7 the first summary points that we had last night was
8 something and the caveat was that MFDL doesn't do a 10
9 percent test. There was some recommendation.

10 MS. HOLLOWAY: The recommendation initially
11 about the historic preservation requiring that that come
12 in with a 10 percent test, direct loan doesn't use a 10
13 percent test. So what we've changed it to is request for
14 amendment. That's not driven by another schedule, it's
15 driven by when they find out what they need.

16 MS. BINGHAM ESCAREÑO: I don't have any other
17 questions.

18 MR. GOODWIN: Okay. Now we can vote. All
19 those in favor say aye.

20 (A chorus of ayes.)

21 MR. GOODWIN: Opposed?

22 (No response.)

23 MR. GOODWIN: Now we move to item number 11.

24 MS. HOLLOWAY: Item 11 is presentation,
25 discussion and possible action on the proposed repeal of

1 10 TAC Chapter 11 concerning the Housing Tax Credit
2 Program Qualified Allocation Plan, and a proposed New 10
3 TAC Chapter 11 concerning the Housing Tax Credit Program
4 Qualified Allocation Plan, and directing its publication
5 for public comment in the *Register*.

6 The Department is required by Internal Revenue
7 Code and Texas statute to develop this proposed QAP which
8 establishes the procedures and requirements relating to an
9 allocation of housing tax credits along with threshold
10 measures for other fund sources. The QAP published in
11 your book identifies the differences between the 2019 and
12 2020 QAPs in a black line format. The QAP submitted to
13 the *Register* will be a proposed new version of the 2020
14 without the black lines, just so you're aware that it's
15 not going to look like that in the *Register*. The
16 Department's public comment page and the Multifamily Rules
17 and NOFAs page will include a black line version of the
18 proposed QAP to facilitate stakeholder engagement with the
19 changes.

20 In December of 2018, staff began meeting with
21 stakeholders to discuss the 2020 QAP. Over four meetings
22 we discussed urban core, proximity to jobs, preservation
23 strategies, green building standards, development costs,
24 direct loan funding and policies, tax exempt bond
25 policies, supportive housing, and the statutory changes to

1 the QAP from the legislature. We posted several topics to
2 the Department's online forum where stakeholders were
3 invited to comment on aspects of the QAP and new proposals
4 from staff.

5 A staff draft of the QAP was published on
6 August 5, and stakeholders were invited to submit their
7 informal input. Some input spoke to general policy goals
8 of certain scoring items or threshold criteria, while
9 other feedback was more targeted, focusing on the
10 mechanics of the rules, along with technical errors and
11 inconsistencies. The proposed 2020 QAP we are discussing
12 today reflects Department consideration of the stakeholder
13 input on the staff draft.

14 So for the rulemaking timeline, on your
15 approval the proposed 2020 QAP will be posted to the
16 Department's website and published in the *Texas Register*.

17 Public comment will be accepted between September 20 and
18 October 11. Staff will then consider and prepare reasoned
19 responses to all public comment as part of the final
20 action on the QAP at your November 7 meeting. The
21 proposed final QAP will be submitted to the Office of the
22 Governor not later than November 15, and the Governor is
23 required to approve, approve with changes, or reject on or
24 before December 1. After that, the adopted QAP will be
25 published in the *Register* and posted on the Department's

1 website.

2 So running through the changes. There were two
3 statutorily mandated changes and a change created by the
4 expiration of a statute originally passed in the 85th
5 Legislature.

6 Regarding the two-mile/same-year rule, Senate
7 Bill 493 provides exemptions to the two-mile/same-year
8 rule. Houston is the only municipality that currently
9 meets these requirements.

10 Community support from state representatives.
11 House Bill 1973 allows a state representative's eight
12 points to be transferred to the applicable local
13 government scoring category. We have amended this rule to
14 include the scenarios that could transfer the points and
15 the values of the points depending on the resolution
16 received from the local government. The highest possible
17 score for financial feasibility was also increased to
18 maintain the integrity of the hierarchy of scoring
19 provided in statute. If the state rep points are
20 transferred, the local government points will not exceed
21 feasibility.

22 Regarding opportunity index, the part of our
23 statute that had limited consideration of educational
24 quality to only threshold requirements expired on
25 September 1. Educational quality can now be incentivized

1 in scoring so we have added that item to our menu under
2 opportunity index.

3 So moving on to some proposed changes. In
4 previous years, some eligibility items like neighborhood
5 risk factors and undesirable site features have come
6 directly to you, the Board, for a determination. We've
7 made some changes in those sections so that now they will
8 go through the staff review, ED review and appeal process
9 before they get to you. So we're not bringing it to you
10 with you making the only decision, it will have gone
11 through all of the steps that everything else goes
12 through.

13 Moving on, 10 TAC Chapter 11, Subchapter A in
14 definitions, we've made substantial revisions to the
15 definitions of supportive housing. We sought to clarify
16 requirements for what actually constitutes a permanent
17 supportive housing development and provided an alternative
18 so that supportive housing may carry foreclosable debt if
19 it meets certain conditions.

20 On the program calendar we've modified it for
21 the 2020 round.

22 Proximity of development sites. This rule
23 prohibits two or more competitive applications from being
24 within 1,000 feet of each other. Both the 2018 and 2019
25 QAPs only applied the 1,000 foot distance if certain

1 conditions existed prior to the filing of an application.

2 In an effort to simplify the rule, staff has removed
3 those conditions. The rule will only apply in a county
4 with a population that is less than one million. That's
5 so that we're not conflicting with the two-mile rule.

6 Another new one is one award per census tract
7 limitation. In the staff draft we have proposed limiting
8 points under the underserved area to the highest scoring
9 application in a given census tract. As a result of
10 stakeholder input, we've moved that limitation to
11 de-concentration factors so that it becomes Department
12 policy statewide, but only one award will be made within
13 any given census tract. We have limited the applicability
14 of the policy to urban subregions and exempted
15 applications in the at-risk set-aside.

16 Credit amount. Applicants with applications in
17 excess of the \$3 million cap now must notify us which one
18 they will not pursue prior to posting the agenda for the
19 last Board meeting in June, as opposed to the previous
20 deadline of July 15. This earlier deadline will ensure
21 that we have enough time to review all applications that
22 are being presented to the Board at the late July meeting.

23 On force majeure, we have strengthened the
24 requirements to prove up that a development has been
25 impacted by rainfall or material or labor shortages.

1 Moving along, pre-application. In the pre-
2 application notifications, applicants will be required to
3 provide information on how and when an interested party or
4 neighborhood organization can provide input to the
5 Department on any application. We will modify our
6 templates for the notifications to include this language.

7 Moving on to scoring, income levels of
8 residents. In the past the QAP has had provisions to
9 potentially award three more points to supportive housing
10 developments as compared to non supportive housing
11 developments. We have moved one of these additional
12 points from resident services to income levels of tenants.

13 This change creates more stringent requirements for those
14 seeking the scoring benefits of supportive housing while
15 reflecting the reality that supportive housing
16 developments generally serve populations that are
17 extremely and very low income. While most developments
18 will commit to devoting 40 percent or 20 percent of their
19 units to households at 50 percent of AMI, supportive
20 housing developments will be incentivized to devote 60
21 percent of their units to households at 50 percent or
22 less.

23 There is a new underserved area scoring item
24 based on there not having been an award of Department
25 funding in a census tract within the previous 20 years.

1 Previously this type of scoring item was only available
2 for the past 15 or 30 years, so we hope that with the 20
3 years we're opening up some more census tracts.

4 In this same category we've changed the
5 methodology for the gentrification scoring item. The
6 primary reason for this change was because as written for
7 2019 we were conflicting with tiebreakers, so we've
8 changed and removed that conflict.

9 Residents with special housing needs, the
10 Section 811 Program has been removed from scoring in the
11 QAP. A two-point scoring item will continue to exist if
12 the applicant agrees to devote 5 percent of their units to
13 households with special needs.

14 Proximity to jobs is new this year. This item
15 will use a sliding scale for points and the points will be
16 exclusive from the proximity to urban core points and will
17 encourage development in areas near other employment
18 centers. The addition was triggered in part by rising
19 land prices for urban core applications. In smaller
20 cities and towns where they're on the periphery of larger
21 metros or in more sparsely populated subregions, the
22 proximity to jobs scoring item may help to locate
23 affordable housing in desirable locations where people
24 would like to live and work.

25 Readiness to proceed. The period of

1 eligibility was extended from two years to three years
2 prior to application.

3 We have added two additional options under
4 extended affordability, one going to a 40-year
5 affordability period and another year going to a 45-year
6 affordability period.

7 Historic preservation. Working in conjunction
8 with the Texas Historical Commission, an issue has been
9 identified that some 9 percent applicants are requesting
10 preliminary eligibility determinations with less than a
11 month to the application deadline. THC's deadline to turn
12 around that determination is 30 days, so we have some
13 applicants that are going to them, you have to submit an
14 application to us by March 1 and not giving THC a full 30
15 days prior. In order to ease the burden on THC in
16 receiving multiple requests without sufficient time to
17 process, we are requiring that the application include
18 evidence that THC received the request 30 days or more
19 before the application delivery date in order to receive
20 the historic preservation points.

21 Moving on to Subchapter B, Site and development
22 requirements and restrictions. We've made several changes
23 here. Flood plain, we've added a requirement that rehab
24 deals in the 100-year flood plain, the owner must state in
25 its tenant's rights and resources guide that part or all

1 of the development site is located in a flood plain and
2 encourage residents to get appropriate insurance or take
3 necessary precautions.

4 Neighborhood risk factors. Due to changes in
5 how campuses are evaluated by the Texas Education Agency,
6 corresponding changes have been made to neighborhood risk
7 factors regarding educational quality. Applicants will be
8 required to disclose if the development site falls within
9 the attendance zone of a school that was rated D in 2019
10 and Improvement Required in 2018, or as modified last
11 night, F in 2019 and Met Standard in 2018, they'll be
12 required to disclose and provide mitigation. Previously
13 disclosure was required if a school was rated Improvement
14 Required for one year, so we're actually expanding that a
15 little bit.

16 We've added a limitation that developments that
17 fall within the attendance zone of a school that is rated
18 F will be considered ineligible with no opportunity for
19 mitigation. This will not apply to properties that are
20 currently in the TDHCA portfolio, so they're preservation
21 deals coming back with a TDHCA LURA. It will not apply to
22 elderly developments and it will not apply to SRO and
23 efficiency only developments, as per the changes last
24 night.

25 Regarding mitigation for schools, the number of

1 options has been reduced from four to three. There's a
2 concern that the fourth option, busing children to a
3 school that has met TEA standards, may not be realistic.

4 On poverty rate, this is census tracts where
5 the poverty rate is above 40 percent, may be mitigated
6 with a resolution from local government acknowledging the
7 high poverty rate and authorizing the development to move
8 forward. This is another item that we would be adding
9 language to our templates in order to assist those local
10 governments in coming to those resolutions.

11 Ineligible developments reiterates the
12 ineligibility of sites within the attendance zone of a
13 school with an F rating from TEA. Of course, with the
14 same modifications from the committee last night regarding
15 elderly and TDHCA preservation deals coming back, and SRO
16 and 100 percent efficiency deals.

17 MR. ECCLES: Just a quick clarification, Marni,
18 because you've mentioned it a couple of times. The 2019
19 rating of F cannot be mitigated if they also had an
20 Improvement Required in 2018. That was a committee thing
21 from last night and it's in the handout.

22 MS. HOLLOWAY: Okay. As long as I've got it in
23 the handout.

24 MR. ECCLES: Just making sure.

25 MS. HOLLOWAY: Yes. I recall that now, the

1 distinction between the 2018 and 2019.

2 Moving on to Subchapter C, Filing of
3 applications for tax exempt bond developments. We have
4 made some changes here to hopefully create a more
5 efficient review process and to align with changes at the
6 Texas Bond Review Board due to their recent legislation.

7 Regarding deficiency process, the causes for
8 termination of a 4 percent or direct loan application have
9 been clarified. In addition, we've gathered rules about
10 the deficiency process from all over the QAP into one
11 section so everything is right there in one place now.

12 Regarding the feasibility report, the
13 requirements have been modified to assist applicants in
14 performing due diligence given development site
15 constraints and local jurisdictional requirements.

16 For appraisals, the Department will require
17 appraisals for adaptive reuse developments.

18 Moving to Subchapter D, Acquisition costs.
19 Staff has clarified how the acquisition costs will be
20 determined for USDA developments and identity of interest
21 transactions.

22 Regarding developer fee, the provision that
23 allowed a 20 percent developer fee on RAD deals with 4
24 percent credits has been removed. The developer fee on
25 acquisition costs has been limited to 5 percent in

1 identity of interest sales. And for multifamily direct
2 loan only applications, the developer fee will be limited
3 to 7.5 percent.

4 Scope and cost review guidelines. The name of
5 the property condition assessment has been changed to
6 scope and cost review to better reflect a number of
7 changes in this section. The requirements have been
8 expanded with the goal of clear articulation of the
9 capital improvement requirements of the development
10 undergoing rehabilitation or an adaptive reuse project.

11 This is the last one. Fee schedule. The
12 commitment and determination fees have been reduced to 2
13 percent, as opposed to 4 percent, for the year 2020 only.

14 In the compliance section, properties with both direct
15 loan and tax credits will only pay the tax credit
16 compliance fee.

17 Staff recommends that the Board accept the
18 proposed repeal of 10 TAC Chapter 11 and the proposed New
19 10 TAC Chapter 11, thereby approving it for publication in
20 the *Texas Register* for public comment.

21 MR. GOODWIN: Any questions for Marni?

22 MR. VASQUEZ: Marni, just to clarify, we
23 determined last night that the scope and cost review, or
24 SCR, should not be referred to as sucker.

25 MS. HOLLOWAY: I don't think we decided that;

1 we discussed it.

2 MR. VASQUEZ: Just clarifying.

3 (General laughter.)

4 MR. GOODWIN: Do I hear a motion to accept
5 staff's recommendation?

6 MS. RESÉNDIZ: Motion to accept staff's
7 recommendation.

8 MR. GOODWIN: Second?

9 MR. VASQUEZ: Second.

10 MR. GOODWIN: Okay. Discussion.

11 MS. MARTIN: Hello. Audrey Martin with Purple
12 Martin Real Estate. I'm here speaking on behalf of TAAHP
13 as the co-chair of TAAHP's QAP Committee.

14 So first I just wanted to thank staff for all
15 their work getting to this point with the proposed
16 official draft. TAAHP has already submitted two rounds of
17 written comment to staff, one in advance of release of the
18 staff draft and then one in response to the staff draft,
19 and a number of our comments have been incorporated and we
20 really appreciate that.

21 Additionally, I wanted to state support for the
22 change in the handout related to neighborhood risk
23 factors. I think it's a really good clarification to add
24 that language about F rated schools will be treated and
25 then the carve-out for elderly and SRO. So thank you for

1 that as well.

2 There were just a couple of comments that I
3 wanted to make again on TAAHP's behalf. I'm a little bit
4 of a broken record here but can't help it. There are two
5 items.

6 So first I wanted to talk just about the
7 readiness scoring item. This is something that TAAHP has
8 talked about over the last couple of years since that
9 scoring item was put into the QAP by the Governor. That
10 was a way to address Hurricane Harvey impacted areas of
11 the state and we kind of feel like we've had a good test
12 run on that scoring item. I think that it has resulted in
13 some housing coming online earlier, but I think the net
14 benefit of that scoring item is probably pretty limited
15 simply because there's a lot of pre-development cost
16 that's incurred without certainty of award for those
17 developments that are trying to pursue those points.

18 And additionally, because there's such a rush
19 in the development community to close those readiness
20 deals, the other transactions that are not readiness deals
21 might actually experience closing delays. So I think
22 overall the effectiveness might not quite be there, so we
23 would like to just put on record again that we would love
24 to see this scoring item be eliminated.

25 And I might have forgotten to say this piece

1 last night, but at the very least we feel like it should
2 not be applicable to the at-risk set-aside. What we are
3 seeing is that the at-risk set-aside has been under-
4 subscribed and I think a big reason for that is that
5 owners of existing developments that are not in the
6 disaster impacted counties are not applying because they
7 are at that immediate point disadvantage. And that's a
8 statewide competition so we sort of feel like to have that
9 be a more even playing field, maybe that should not apply
10 to at-risk.

11 And then the only other thing I wanted to
12 mention is the cost per foot scoring item. This year
13 staff put together a lot of really great information on
14 the actual costs of existing developments in TDHCA's
15 portfolio, and that has been extremely helpful information
16 to have, and I know that TAAHP really appreciates the
17 compilation of that information. What we've noticed is
18 that the scoring item cost levels are at a really severe
19 discount to what the actual costs are, so TAAHP's
20 recommendation was that we should kind of pin the scoring
21 item to the actual cost data that TDHCA staff has
22 compiled, and we suggested that a 20 percent discount from
23 actual costs to the costs incentivized in the scoring item
24 would be a reasonable place to start. That actually would
25 be an increase from the cost levels that are in the QAP

1 right now.

2 Thanks.

3 MR. GOODWIN: Any questions for Audrey?

4 (No response.)

5 MR. GOODWIN: Next? Jean, are you going to
6 speak?

7 MS. LATSHA: It's still morning. Yes. Good
8 morning. Jean Latsha.

9 First, thank you so much for the memory of
10 Rowlett. I didn't know that was going to happen today.
11 That is under construction and they're super happy with
12 this, so I'm happy to report that. So yeah.

13 But I'll go on to the QAP. Part of this, as a
14 representative of TAAHP, along with Audrey, just to say
15 I'm a co-chair with her on that QAP committee, and so just
16 kind of reiterating that.

17 One other comment that we did make too was
18 about the timing of the priority 3 tax exempt bond
19 applications. We would like to see that go back to where
20 you can submit that application 30 days before your
21 reservation. Part of what happened there, too, was that
22 staff expanded their time period for review, which I think
23 is very fair, but right now we're looking at if we get a
24 certificate of reservation it might be 30 days before we
25 are allowed to put our tax credit application in because

1 it's the 5th of the month now -- which I think is a great
2 idea too -- but then you're another 90 to let's say 120
3 days before you get to a Board meeting so you're already
4 at 150 which is really tight still with the 180 days from
5 a certificate of reservation.

6 I do want to say this, though, the timing of
7 these closings, especially when you tack on things like
8 HUD financing, is really, really complicated. You've got
9 Bond Review Board deadlines, and tax credit deadlines, and
10 HUD deadlines, and staff has been amazing working with us
11 through those, and so we will continue to try to manage
12 all of that.

13 But one other thing too with this \$50 million
14 cap is that you're going to see applications coming in
15 throughout the spring, and I know that that's a problem
16 too with the 9 percent round and that's even part of the
17 rule with not prioritizing those applications when they're
18 kind of competing with the 9 percent reviews, and so one
19 more reason to not limit when we can put those
20 applications in. We'd like to be able to put those in as
21 early as possible. You know, we're going to continue to
22 work with staff and all of those funding agencies to time
23 these things the right way, but we'd like to see that go
24 back, and that was part of a TAAHP comment.

25 And this was not a TAAHP comment but more

1 something that came up in one of our recent developments.
2 We're looking at a site that has 20 percent housing tax
3 credit units per total households, and that is something
4 that you can get a resolution from the governing body to
5 kind of mitigate that to make that an eligible
6 development. But the language in the rule is really
7 interesting and some city attorneys are kind of objecting
8 to putting it in their resolutions, and it's not statutory
9 language either so I think it's a pretty easy fix.

10 But it says, "ineligible unless the governing
11 body of the appropriate municipality or county containing
12 the development has by vote specifically allowed the
13 construction of the specific development." And they don't
14 want to say that in their resolutions because it feels
15 like they're issuing building permits, and so we'd like
16 that language to more mirror like the resolution of no
17 objection and have it say something like they have
18 determined by vote that they do not object to the specific
19 development, something like that. So it's still they're
20 acknowledging the fact that they're in that kind of census
21 tract but they're not saying you have building permits by
22 issuing a resolution, and we've come across a couple of
23 city attorneys that have some heartache with that.

24 MR. GOODWIN: Thank you.

25 MS. LATSHA: Thank you. I'll leave it at that.

1 MS. ANDERSON: Good morning, Chairman Goodwin.
2 Terri Anderson, Anderson Development and Construction.

3 I just wanted to repeat myself from last night
4 where the affordability has been increased to 40 years or
5 45 years. Previously TDHCA lowered that affordability
6 term down. Comments that had last night during the
7 committee -- thank you, sir, for that -- were related to
8 the useful life of an asset, and kind of piggybacking on
9 what Audrey was saying on behalf of TAAHP related to the
10 costs where TDHCA is lowering the costs of the
11 developments, if we're expected to provide affordability
12 for 45 years without re-capitalization or some sort of
13 rehabilitation, then I would think the costs associated
14 with the developments should take into account the quality
15 of housing that we're developing.

16 Thank you.

17 MR. GOODWIN: Thank you.

18 MS. FINE: Good morning. Tracey Fine with
19 National Church Residences.

20 This is more of a request that TDHCA staff also
21 release a site demographic report when it goes to the
22 *Register's* office. These are data plains and poverty
23 rates, what income census tract quartile your project is
24 in, updated inventory lists, updated concentration census
25 tracts. It makes analyzing sites and analyzing the rules

1 imperative to be able to review an updated site
2 characteristic report. So I think it would be a best
3 practice and a request that as it goes to the *Register*
4 that that report is also released so we can review the
5 rules with updated data.

6 Thank you.

7 MR. GOODWIN: Thank you.

8 MR. MOREAU: Walter Moreau, the director of
9 Foundation Communities.

10 I just wanted to respond to Terri's comment. I
11 think it's great that the staff have put the option of a
12 point for 40 years and two points for 45 years. Most
13 states do 45 years or more. You're investing \$700 million
14 or more to build about 80 projects next year and you
15 should get the most affordability you can. I don't think
16 there's a developer in this program that's going to walk
17 away from this investment opportunity and the equity you
18 provide just because there's extended affordability.

19 The argument that, well, these buildings may be
20 rundown in 35 years. If you've got a 45-year LURA and
21 compliance, then for the families living there in 35
22 years, you still have a stake in what happens to that
23 development. Some of these are going to be in high
24 opportunity areas and really wonderful places to live, you
25 just ten more additional years. In some cases they may be

1 rundown and they need a workout. If it's a 45-year LURA,
2 that developer still has the opportunity to come in and
3 re-syndicate and get re-investment and continue the
4 program.

5 At a minimum I hope you'll keep this in the
6 draft as the staff have recommended and then you'll get
7 public comment on it and can go from there.

8 Thanks.

9 MR. GOODWIN: Thank you.

10 MR. HENNEBERGER: Good morning. I'm John
11 Henneberger with Texas Housers. I'd like to offer three
12 perspectives from a tenant point of view with regards to
13 the proposed QAP.

14 First of all, with regard to the affordability
15 period, why wouldn't you get more for the citizens of the
16 State of Texas by increasing the affordability period? I
17 would suggest to you that standard industry practice
18 across the United States is a 45-year affordability period
19 which ought to be a baseline with an incentive point to
20 provide a 50-year affordability period.

21 The second thing has to do with school quality.

22 I think the proposed QAP is headed in the wrong direction
23 because I believe that the most important consideration
24 for anybody with children is the quality of the schools in
25 making a home selection, and you are, in essence,

1 exercising the judgment of people with low incomes about
2 where their options are for them to live. They're
3 constrained by their economics and so they must seek out
4 the affordable housing that this agency provides.

5 I would suggest to you that the creation of any
6 new constructed affordable housing development in an area
7 served by a D rated school is unacceptable and that the
8 QAP ought to be modified to prohibit such. An F school is
9 a complete failure. That is an indication that a child
10 not move forward in that type of school. You are
11 entrusted with exercising the judgment that parents with
12 limited incomes can't exercise, and their number one
13 priority would be the school quality consideration.

14 I would also suggest to you that with regard to
15 rehab projects and preservation deals that there be a
16 negative point incentive for rehabilitating developments
17 within a school that is failing. It is simply
18 perpetuating the cycle of poverty and the cycle of
19 segregation.

20 And then finally, I would suggest that the
21 option to provide local governments with an ability to
22 provide a waiver for a 40 percent poverty district is
23 inappropriate. Forty percent poverty in a neighborhood?
24 That is a neighborhood which is dysfunctional to the
25 extreme. You do not lead rehabilitation of a neighborhood

1 with additional government subsidized housing. Government
2 subsidized housing should follow the revitalization of a
3 neighborhood, and where you have a neighborhood that is in
4 that deep cycle of failure, 40 percent poverty is beyond
5 HUD's definition of racially and economically segregated
6 areas.

7 That is not an area where simply the investment
8 of an additional subsidized housing unit will turn it
9 around. It will only consign the children and the
10 families who live in those neighborhoods to cope with
11 problems which they should not be saddled with. This is a
12 highly competitive process, the Low Income Housing Tax
13 Credit Program, and we should use that competition to get
14 better results for families and to act on the basis of
15 what are in the interests of their children.

16 Thank you very much.

17 MR. GOODWIN: Thank you.

18 MS. ANDRÉ: Good morning. Sarah André.

19 I just want to comment on the 45-year
20 additional affordability. I would encourage you to study
21 that a little further. We have two very knowledgeable
22 people who said that that was industry standard. I have
23 not heard that and I would like to look into it further
24 before we go forward with that.

25 I think the assertion that you're getting more

1 bang for your buck on that is incorrect. As a policy, it
2 may be wonderful. I have no problems with that element of
3 it. But any deal that is in there for more than 40 years,
4 they are going to have to get re-syndicated so they're
5 coming back for more money from you. And you can't get a
6 mortgage that's more than 40 years, or I can't, maybe
7 somebody out there that can. It's the useful life of the
8 real estate, all the depreciation is gone at that point.
9 Like I said, it may be a good policy but I would like to
10 see some more facts and figures on that before we move
11 forward with it.

12 MR. GOODWIN: Okay. Any questions from any
13 Board members?

14 (No response.)

15 MR. GOODWIN: I'm not seeing any other
16 comments.

17 MR. VASQUEZ: The last item that Jean put forth
18 about the letters from the city and the way that they're
19 worded, I don't recall us talking about that last night.

20 MS. HOLLOWAY: No, we did not discuss it last
21 night, because it's not part of the changes to the QAP so
22 we didn't discuss it.

23 There is a part of statute that's authorizing
24 the construction of or something, and I think that we may
25 have gotten our wires crossed on exactly where that

1 applies. When Jean raised the question, I went looking
2 through statute and actually found that language but
3 before we reissue our templates for 2020, we need to go
4 back and examine statute and make sure that we are using
5 that appropriate language.

6 MR. ECCLES: I think the simple solution to
7 make sure, Jean, that that comment is submitted in the
8 public comment time period, and then we can address it
9 accordingly.

10 MR. GOODWIN: Any other comments or questions
11 from Board members?

12 (No response.)

13 MR. GOODWIN: Seeing no other speakers, we'll
14 call for a vote on the motion. All those in favor say
15 aye.

16 (A chorus of ayes.)

17 MR. GOODWIN: Opposed?

18 (No response.)

19 MR. GOODWIN: Thank you very much, Marni, and
20 thank you to your staff for holding all the meetings and
21 putting this wonderful new document together.

22 And thanks to all of you that participated in
23 that process as well.

24 We've hit a point in the agenda where we take
25 comments for items that were not listed for setting the

1 agenda for future Board meetings. Do we have any public
2 comments?

3 (No response.)

4 MR. GOODWIN: Hearing none, I'll entertain a
5 motion to adjourn.

6 MR. BRADEN: So moved.

7 MR. GOODWIN: Second?

8 MR. VASQUEZ: Second.

9 MR. GOODWIN: All in favor say aye.

10 (A chorus of ayes.)

11 MR. GOODWIN: Thank you. See you in a month.

12 (Whereupon, at 10:47 a.m., the meeting was
13 adjourned.)

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MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: September 5, 2019

I do hereby certify that the foregoing pages, numbers 1 through 135, 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: September 11, 2019

(Transcriber)

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